

**PROSECUTION AND PROCESS:  
CRIME AND THE CRIMINAL LAW IN LATE SEVENTEENTH-CENTURY YORKSHIRE**

**Sarah Anne Barbour-Mercer.**

**Submitted for the degree of D.Phil in the University of York  
Department of History, September 1988.**

## Table of contents

List of tables, figures and appendices	2
Acknowledgements	4
Abstract	6
List of abbreviations	8
Introduction	9
Chapter 1 - Yorkshire in the late seventeenth century	53
Chapter 2 - Offences against the person	94
Chapter 3 - Offences against the peace	146
Chapter 4 - Offences against property	188
Chapter 5 - Offences against the authorities	249
Chapter 6 - Breaches of administrative regulations	308
Chapter 7 - Breaches of economic regulations	324
Chapter 8 - The administration of justice	353
Conclusion	406
Appendices	446
Figures	459
Bibliography	465

LIST OF TABLES, FIGURES AND APPENDICES

Table	Title	Page
1	Population of the Ridings	71
2	Distribution of hearths by riding	75
3	Distribution of dissent by deanery	87
4	Status of defendants to homicides	103
5	Weapons used in homicides	108
6	Status of defendants to assaults	124
7	Treatment of assault suspects at Ass	128
8	Treatment of assault suspects at Q.S.	129
9	Sexual offences by decade	133
10	Offences v.person at Assizes	144
11	Offences v.person at Q.S.	144
12	Status of defendants to riots	152
13	Status of defendants to riot/prop	152
14	Offences v.peace at Assizes	187
15	Offences v.peace at Q.S.	187
16	Status of defendants to thefts	195
17	Status of defendants to asportations	211
18	Goods taken in theft and asportation	212
19	Status of defendants to burglaries	224
20	Offences v.property at Assizes	247
21	Offences v.property at Q.S.	247
22	Status of defendants to coinings	277
23	Offences v.authorities at Assizes	305
24	Offences v.authorities at Q.S.	306
25	Administrative breaches at Assizes	322
26	Administrative breaches at Q.S.	322
27	Economic breaches at Assizes	349
28	Economic breaches at Q.S.	349
29	J.P.s in commission selected years	361
30	Persons prosecuted by decade	411
31	Bills ignored at Assizes	414
32	Crimes committed compared to population	429
33	Crimes committed by area and category	431
34	Status of defendants - numbers	432
35	Status of defendants - percentages	433
36	Felonies and misdemeanours at Assizes and Q.S.	440
37	Indicted offences - felonies or misdemeanours	441

## Appendix

1	Categories of crime according to Blackstone, modern practice and in this thesis	446
2	Population of the county by wapentake	455
3	Distribution of hearths by wapentake	457
4	Persons indicted by category of crime and quinquennium	458 a

## Figure

### Persons indicted by category of crime

1	at Assizes	459
2	at Q.S.	460
3	in both courts	461

### Persons indicted by decade

4	at Assizes	462
5	at Q.S.	463
6	in both courts	464

7	Persons indicted at Assizes by quinquennium	464a
---	---	------

## Acknowledgements

Intellectual debts are perhaps the only ones that it is pleasant to acknowledge and in the writing of this thesis I have incurred many. But it is not only since I started writing or even researching on crime in seventeenth-century Yorkshire that I have incurred such debts and the influences that initially gave me the courage to start the work should also be acknowledged. Firstly then it is my parents whom I thank. They encouraged in me the necessary intellectual curiosity and provided the means for me to attempt to satisfy it. They also, when I decided to enter on three years of research, accepted my decision and never tried to persuade me of the foolhardiness of the course of action I was following. Dr. Barry Coward, who was my supervisor at Birkbeck College, London, for a part-time M.A., helped to revive my interest in the seventeenth century and encouraged me to pursue the specific topic of my research.

During the actual research and writing I have been grateful to my father and sister for the many hours they have spent with me on the telephone and face to face discussing the problems that arose and the ideas I wished to try out on them. My father has also read my draft at various stages and his comments have always been perceptive and helpful. Dr. Barry Coward also read more than one draft and gave up a particularly pleasant Sunday afternoon to discuss the ideas in it with me. John Styles has read and commented on parts of the draft, as has my fellow researcher and recipient of most of my complaints about all the ills that beset research students, Leigh Whaley. To all of

these I am most grateful. Other friends have also had to bear with my troubles and enthusiasms and only they can say which was the worse. To them I apologise and offer my thanks.

Dr. Rob Fletcher arranged for me to use the computer facilities in the university and set up the necessary programmes for my data to be entered on it and for that I am most grateful as it greatly eased the difficulties of analysing a mass of information. Finally I want to acknowledge the assistance of my supervisor, Dr. Jim Sharpe who initially helped to direct my researches so that I avoided the pitfall of not knowing for the first year or so exactly what it was I was studying and subsequently helped in so many other ways.

## Abstract

One of the problems that has bedevilled much discussion of crime in the past has been the lack of consistency in its categorization. In this thesis a systematic attempt has been made to resolve these difficulties and to provide a categorization based principally on an analysis of contemporary jurists. It is further argued that it is essential to consider the state of the criminal law in the seventeenth century in order properly to appreciate the subtleties of the law and thus the framework within which prosecution occurred. This framework is important in showing how, contrary to received belief, the criminal law in the period was comparatively sophisticated. This was the case, not only in theory, but also in practice, and it is a major contention of this thesis that the complexities of the law were recognized by contemporaries, and, indeed, affected the practices of prosecution.

Most work on crime in the past has, to date, concentrated on the counties of the Home Circuit, close to, and doubtless influenced by, London, but in this thesis the material that exists in abundance for the Northern Circuit has been utilized to provide a picture of the pattern of crime, or rather of prosecution, in Yorkshire. From this it has been possible to see that the pattern was, in many ways, similar to that elsewhere, but that there were also significant differences, in particular a very high proportion of offences against the authorities. The chronological spread of the prosecution of crime has also been analysed and again it is plain that Yorkshire did not witness the decline in prosecution that might, from other studies,

have been anticipated to have occurred by the end of the seventeenth century.

The different influences on prosecution have also been considered and in particular it has been shown that central government initiatives were of considerable significance in affecting the prosecution of certain offences, especially those which impacted directly on the state, such as sedition and coining.



List of abbreviations used in the text

Agricultural History Review	AgHR
Economic History Review	EconHR
English Historical Review	EHR
Historical Journal	HJ
Journal of British Studies	JBS
Journal of Social History	JSH
Local Population Studies	LPS
Past and Present	P&P
Transactions of the Royal Historical Society	TRHS
Yorkshire Archaeological Society Journal	YAJ
Calendar of State Papers Domestic Series	CalSPDom
Calendar of Treasury Books	CalTreasBooks
Victoria History of the Counties of England	VCH
Dictionary of National Biography	DNB

## INTRODUCTION

The past twenty years or so have witnessed the development and growth of several new areas in historical research.<sup>1</sup> One of these areas is crime. Despite the high quality of much of the work done on this subject, it is an inevitable consequence of its relative newness that it suffers from many problems of methodology and definition. Indeed the problem of defining crime, particularly in an historical context, is a serious one, and demands our initial attention. Today a motoring offence is in theory as much a breach of the criminal law as murder, but, in practice, and by that is meant something more than just popular opinion, it is not so.<sup>2</sup> A modern crime rate that included motoring offences and other minor regulative or administrative breaches, theoretically considered to be, and punishable as, crimes, would be staggeringly high. Furthermore a previously innocent action can become criminal. It is only since 1980 that insider trading, for example, has been made a criminal offence, and the setting up of regulatory bodies can also lead to new crimes being created, such as failing to register or to obtain licences under the Banking Act of 1979. And again legal definitions can alter, as shown by the debate over whether or not it is an offence to attempt to pick an empty

- 
1. References to recent writing on crime in the early modern period will be made at the appropriate points in this introduction. For two recent general works demonstrating the dimensions of the new approaches to the social history of this period see K.Wrightson, English Society 1580 - 1680 (London, 1982) and J.A.Sharpe, Early Modern England: A Social History, 1550 - 1760 (London, 1987).
  2. A defendant with a motoring conviction only is considered to be "of previous good character" in a more serious criminal case.

pocket.<sup>3</sup> Today certain problems preoccupy students; as for example, the exercise of discretion; the reasons that lie behind the institution of proceedings; why a particular charge is preferred; and whether unpaid J.P.s or salaried judges apply the law uniformly. Such problems are not only questions for today: they are also pertinent in studying crime in the past. Of course, care must be taken not to impose modern perceptions and prejudices upon a very different society, but however cautious the historian in question might be, ultimately modern scholars are constrained to ask modern questions.

It has become somewhat of a commonplace among historians studying crime prior to the mid eighteenth century that the criminal law in the earlier period was undeveloped and unsophisticated. This fact has been attributed to the absence of lawyers from the criminal trial process in the period and thus to the absence of law reports. As J.H.Langbein stated "Law reports are lawyers' literature; it ought not to surprise us that during an epoch when lawyers were not engaged in criminal litigation, compilers and publishers were not engaged in producing precedent books for a nonexistent market".<sup>4</sup> It is undoubtedly true that the criminal law was less developed than the civil, but that the crown side of assize business was "legally uninteresting" is a dangerous dismissal of the legal theory that

-----  
3. Lawyers distinguish between factual impossibility (eg. the picking of an empty pocket) and legal impossibility (eg. where a person handles non stolen goods believing them to be stolen). Though the Criminal Attempts Act 1981 resolved the factual impossibility cases it is arguable that, despite the clear intentions of the draftsmen, the Act has failed to criminalize the would-be handler of non-stolen goods. See for example the discussion in B.Hogan, "The Criminal Attempts Act and Attempting the Impossible", Criminal Law Review (1984), pp. 584 - 591.

4. J.H.Langbein, "The Criminal Trial before the Lawyers", University of Chicago Law Review, 45 (1978), pp. 263 - 316.

informed the practice of criminal business at both Quarter Sessions and Assizes.<sup>5</sup> Thus legal writers such as Hale and Blackstone were interested in the how and why of the changes in criminal law and procedure,<sup>6</sup> and the handbooks produced for J.P.s and clerks of the peace and assize were concerned, in large part, with the criminal law.<sup>7</sup> Legal historians have perhaps been more aware of this aspect than have historians approaching the study of crime in terms of using the records of the criminal courts to analyse the behaviour and motivations of the poor and illiterate, and even today legal historians such as J.H.Baker are not so dismissive of the legal ineptitude and naivety of those responsible for the administration of the criminal law.<sup>8</sup> It will be a contention of this thesis that in the late seventeenth century the judges, clerks of assize and the peace and others involved in the administration of the criminal law were aware of its complexities and took account of them in their day to day practice.

- 
5. J.S.Cockburn, A History of English Assizes, 1558 - 1714 (Cambridge, 1972), pp. 134 - 141. Cockburn also states "reported assize cases... consist almost exclusively of nisi prius [that is civil] cases".
  6. At least a quarter of Blackstone's work is devoted to "public wrongs", and one of Hale's major works was on the Pleas of the Crown: W.Blackstone, Commentaries on the Laws of England, 4 vols (vols 1 and 2, 4th. edition, Dublin, 1771; vols 3 and 4, 3rd. edition, Dublin, 1770) and M.Hale, Historia Placitorum Coronae 2 vols. (London, 1736) hereafter Pleas of the Crown.
  7. For the handbooks see for example, M.Dalton, Countrey Justice 1619, Classical English Law Texts, ed., P.R.Glazebrook (London, 1974); W.Lambard, Eirenarcha, or the Office of Justices of Peace 1581/2, Classical English Law Texts, ed., P.R.Glazebrook (London, 1972).
  8. See for example J.H.Baker, "The Refinement of English Criminal Jurisprudence 1500 - 1848", in J.H.Baker, The Legal Profession and the Common Law: Historical Essays (London, 1986), pp. 303 - 324; idem, "Criminal Justice at Newgate, 1616 - 1627" in ibid., pp. 325 - 341, and idem, "The Dark Age of English Legal History, 1500 - 1700", in ibid., pp. 435 - 460 which is less pessimistic about the English criminal law in the period than about the current state of knowledge of it.

In addition to general works on legal history a number of particular courts have also been studied. Many writers have concentrated on courts which have only a limited relevance for the historian of crime, but some have dealt specifically with the criminal courts, looking at their functions, personnel and procedures.<sup>9</sup> Along with studies of the courts have gone studies of some of the court officials, such as the clerk of the peace, and of others involved in the administration of the criminal justice system, such as the J.P.s and the constables.<sup>10</sup> More recently interest has moved from the courts themselves to those prosecuted there. In particular local studies have devoted considerable attention to patterns of crime, to analysis of who were the victims or the prosecutors and to discovering why certain offences were prosecuted. Such local studies have to date, however, concentrated on the Home Counties. Their findings have been diverse but two major threads, discretion and authority, run through many of them. The purpose of the criminal law was the maintenance not only of property, but also of authority. In order to maintain this authority an ideology was needed which stressed the impartiality of the law, and this concept was preserved, in the eighteenth century, only by the exercise of discretion in

-----  
9. See for example, the work of J.H.Baker, "Criminal Courts and Procedure at Common Law 1550 - 1800", in J.S.Cockburn, ed., Crime in England, 1550 - 1800 (London, 1977), pp. 15 - 48, and Cockburn, Assizes.

10. A pioneering study was that of T.G.Barnes, The Clerk of the Peace in Caroline Somerset, (Leicester University Occasional Papers, 14, 1961), and there is also the work of J.S.Morrill, The Cheshire Grand Jury 1625 - 1659, (Leicester University Occasional Papers, 3rd series, 1, 1976); of J.L.Gleason, The Justices of the Peace in England, 1558 - 1640, a Later Eirenarcha (Oxford, 1969); of N.Landau, The Justices of the Peace 1679 - 1760 (London, 1984) of L.K.J.Glassey, Politics and the Appointment of Justices of the Peace, 1675 - 1720 (Oxford, 1979), and of J.Kent, The English Village Constable 1580 - 1642: A Social and Administrative Study (Oxford, 1986).

prosecution and sentencing. Our appreciation of the importance of these themes was sharpened by D.Hay's work on the eighteenth century. Many have disagreed with Hay's analysis and its applicability to the seventeenth century remains questionable. Yet it is clear that this work was of seminal importance in isolating these two themes.<sup>11</sup> One of the distinctive features of these local studies has been their use of court archives, but the use of this material itself raises problems.

Work on the history of crime and the criminal law is now sufficiently advanced to enable some general patterns to have emerged. In this introduction the methodological and historical problems encountered by previous historians and their specific relevance to the Yorkshire material will be discussed and an overview of work to date given. Such an overview is essential in order to provide a framework into which the detailed discussion of crime in Yorkshire in the late seventeenth century can be set. Obviously this is an important task, for it is necessary to see how crime patterns in Yorkshire, a northern county, compare with those established for other areas and

- 
11. D.Hay, "Property, Authority and the Criminal Law" in D.Hay and others eds., Albion's Fatal Tree: Crime and Society in Eighteenth Century England (London, 1975), pp. 17 - 64, and D.Hay, "Crime, Authority and the Criminal Law: Staffordshire 1750 - 1800" (Warwick University Ph.D. thesis, 1975). The general ideas elaborated in the article are very much based on Hay's thesis. The local studies include J.A.Sharpe, Crime in Seventeenth-Century England: A County Study (Cambridge, 1983), which is effectively a study of Essex; the work of J.M.Beattie, Crime and the Courts in England, 1660 - 1800 (Oxford, 1986), mainly a study of Surrey, like his pioneering article, "The Pattern of Crime in England, 1660 - 1800", P&P 62 (1974), pp. 47 - 95; and C.B.Herrup in her thesis, "The Common Peace: Legal Structure and Legal Substance in East Sussex, 1594 - 1640" (North Western University, Ph.D. thesis, 1982), and book, The Common Peace: Participation and the Criminal Law in Seventeenth-Century England, (Cambridge, 1987).

thus whether by the seventeenth century it can truly be said that crime in England followed a national rather than a regional pattern. Thus the major objectives of this thesis are to analyse the regional and chronological variations in the prosecution of crime in Yorkshire; to show how and to what extent it was similar to or different from that for other areas of the country in the early modern period; to analyse the role of the law-enforcers and the mass of the population in the prosecution of crime; and to demonstrate, from that analysis, the sophistication of the legal theory that lay behind the practice of the criminal courts.

#### PROBLEMS OF METHODOLOGY AND RECORD SURVIVAL

A discussion of crime in late seventeenth-century Yorkshire encounters a number of basic methodological problems: the physical survival of the records; how the surviving records are to be used; and how crimes are to be classified and discussed.

##### Record survival

Historians of crime have been long aware of the deficiencies of the surviving records of the criminal courts. Cockburn for example has drawn attention to the many ways in which indictments can be incorrect, and, of course, for many counties they do not even exist,

or exist only patchily.<sup>12</sup> Moreover the amount of crime which was never prosecuted in the courts at all, the 'dark figure' plagues all attempts to analyse total crime figures and from them to deduce crime rates in the past. Because of the difficulties attached to the use of these records it might be argued that it is impossible to use them to estimate crime rates based on comparisons of recorded crimes with population, and certainly some work has moved away from any attempt at statistical analysis to a concentration on the placing of specific crimes within their social milieu.<sup>13</sup> Along with the problem of record survival goes that of which records should actually be used by the historian. Even today the distinction between strictly criminal and strictly civil liability can be blurred and this was even more so in the seventeenth century. The most important centrally organized criminal court was the crown side of the Assizes. Quarter Sessions (like the present day magistrates' courts) dealt with both civil and criminal business and the J.P.s were also involved in the trial of criminal informations in petty sessions and increasingly during the eighteenth century, it has been argued, when sitting alone. As well as these courts the ecclesiastical courts in the seventeenth century were concerned with criminal offences such as defamation. Town and borough courts might be concerned with the enforcement of labour or market legislation and the manorial courts, where still functioning,

-----  
12. See J.S.Cockburn, "Early-modern assize records as historical evidence", Journal of the Society of Archivists, 5 (1975), pp. 215 - 231, where he discusses how far for example even such basic information as the name of a defendant or the date of the alleged offence, may be incorrectly recorded. Cockburn returns to this theme, relating it specifically to the Home Circuit records in his Introduction to the Calendar of Assize Records, Home Circuit Indictments, Elizabeth 1 and James 1 11 vols (London, 1975 - 1985), pp. 10 - 14.

13. Perhaps the best example of this is A.D.J.Macfarlane, The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England (Oxford, 1981).



also regulated inter-personal disputes such as assaults. The use of different court archives can make significant differences in the apparent criminality of an area. Thus Cockburn, using the Assize court records alone, found the indictment rate in Essex in about 1600 to be approximately 200 per 100,000 population, while Sharpe, using the archdeaconry records for one Essex parish, found it to be about 2,700 per 100,000 population.<sup>14</sup> Thus it is evident that the indictment rates to be deduced from the records can vary considerably depending on what the student considers to be criminal and thus on whether, all actions prosecuted in the ecclesiastical courts, for example, are included.<sup>15</sup> The type of court studied has implications for the proportions of different offences apparently prosecuted too. Thus when courts other than Assizes and Quarter Sessions are looked at the proportions of types of crime alter significantly. In Kent, for example, whereas at the Assizes the percentages of crimes were: property 74%; person 15%; peace 8%; and moral breaches 3%, when all the courts (that is Assizes, Quarter Sessions and local courts) are considered property crimes (at 10%) were the smallest category, followed by crimes against the peace (20%), crimes against the person and moral offences (each 22%), and, most numerous, public nuisances (25%).<sup>16</sup>

- 
14. J.S.Cockburn, "The Nature and Incidence of Crime in England 1559 - 1625: A Preliminary Survey", in Cockburn, ed., Crime in England, pp. 49 - 71 and J.A.Sharpe, "Enforcing the Law in the Seventeenth-Century English Village", in V.A.C.Gattrell, B.Lenman and G.Parker, eds., Crime and the Law, The Social History of Crime in Western Europe since 1500 (London, 1980), pp. 97 - 119.
  15. It should be stressed also that what is being studied is the court record, i.e. those offences that resulted in prosecution.
  16. L.Knafla, "'Sin of all sorts swarmeth': Criminal Litigation in an English County in the early Seventeenth Century", in E.W.Ives and A.H.Manchester, eds., Law, Litigants and the Legal Profession (London, 1983), pp. 50 - 67.

These problems and the necessary caution that they engender must be constantly borne in mind. Nonetheless this thesis will use the records of, primarily, the courts of Assize and Quarter Sessions to look at overall patterns of crime in Yorkshire in the late seventeenth century. The material studied is extensive. The Assize court records consist essentially of indictments, depositions and a gaol book for part of the period.<sup>17</sup> The surviving depositions can be matched with the indictments in about 500 cases and in addition the depositions suggest that about a further thousand people were charged with offences. The apparent omission of these persons from the indictments raises two problems. The first is whether those apparently accused of crimes and about whom depositions were taken, were in fact proceeded against. It might of course, be thought that those cases which appear to arise from the depositions but for which no indictment has been traced consisted of possible offences which were never prosecuted. However, by using the gaol book for the period that it exists, i.e. 1658 - 1673, it is possible to check many of the 'recreated' crimes. Thus, for example, in the 1660s there are five 'recreated' infanticide cases, and for each of these the result of the case is clear from the gaol book.<sup>18</sup> Similar exercises for other

- 
17. The indictments are bundled according to year and assize under reference Public Record Office Assize (hereafter PRO. ASSI.,) 44. They run consistently from 1650 to c. 1689/97, and then recommence in 1723. Each box, that is PRO. ASSI., 44/5 - 44/44 should represent a year, but some bundles are misfiled. Included in the bundles are some grand and petty jury lists and Nomina Ministrorum. The depositions, PRO. ASSI., 45, cover the whole period, with approximately one box per year. The gaol book, PRO. ASSI., 42/1 covers the period 1658 - 1673. Some loose calendars or extracts from later gaol books appear in PRO. ASSI., 47/20/6.
  18. These cases are those of Sarah Fawcett, PRO. ASSI., 45/6/1 and 42/1 fol 89; Elizabeth Chadwicke, PRO. ASSI., 45/6/2 and 42/1 fol 108; Isabel Truitt PRO. ASSI., 45/6/2 and 42/1 fol 89; Anne Linscale, PRO. ASSI., 45/7/2 and 42/1 fol 165 and Grace Robson, PRO. ASSI., 45/8/2 and 42/1 fol 196.

'recreated' cases give similar results and therefore these thousand additional persons are included in the analysis. It is sometimes difficult to tell from a single deposition what is the offence charged; in particular, in cases of theft involving more than one person, it is hard to know which individuals, if any, were likely to have been proceeded against. The thousand additional defendants include large numbers named in the depositions of three or four persons who implicated many others in coining offences, particularly towards the end of the period. In these cases it may be that the persons named in a deposition (usually by a confessed accomplice) were never, for whatever reason, actually charged. The second problem of course is that of record survival. The fact that depositions have been taken from individuals who appear from the gaol book to have been proceeded against, but for whom no indictment exists, shows that indictments are missing. The real issue is whether they are missing evenly over the whole period and between different regions within Yorkshire. No categorical answer can be provided; but taking into account the totality of the records, the relationship between indictments and depositions in each decade and the patterns that have emerged from the study, it is the writer's view that save for the last two or three years of the period and possibly the 1650s, the survival of the indictments and depositions is fairly evenly spread.

All the Assize indictments and depositions have been looked at, but for the Quarter Sessions only a sample, consisting of the first two years of each decade, have been transcribed. The reason for only sampling the Quarter Sessions material is simply its bulk, and the consequent constraints of time, but again it is the writer's view that the sample is unlikely to be misleading. For the North and West

Ridings the Quarter Sessions records are good, essentially consisting of a series of books that cover the whole period. The books appear to contain all the indictments and presentments at each session, and many are endorsed with the verdicts.<sup>19</sup> No Quarter Sessions records exist for the period for the East Riding. In addition to the records of these two courts indictments removed from them to Upper or King's Bench are also extant. Once again only a sample has been used, but a rather different sample. All Yorkshire Upper Bench indictments between 1650 and 1660 have been noted and in addition the Index Book for the King's Bench indictments from 1661 - 1700 has been studied to gain a total figure. However, whereas the indictments for the 1650s can be categorized those for the later period cannot be. Nonetheless it is worth noting that in the 1650s a total of 247 indictments were either removed from the Quarter Sessions and Assize courts into Upper Bench, or initiated there, and that for the following forty years a total of almost two thousand were.<sup>20</sup> These figures should thus be added to the total numbers of prosecutions initiated in the courts in Yorkshire.

The details of both the Assize and Quarter Sessions indictments have been transcribed and entered on a computer. This data consists of a total of about 12,400 indictments involving about 16,500

- 
19. For the North Riding the records have been microfilmed and in accordance with the policy adopted by the county record office access to the original books is not permitted, and reference to them will therefore be by their microfilm number. These are mic 98 - 102. For the West Riding the accession numbers are WYRO QS 4/6 - 4/16. Very few depositions for either riding survive for the period.
  20. The indictments are filed under PRO. KB., 9/846 - 9/883 for the 1650s and KB., 9/884 to 9/932 thereafter. The Index Book is PRO. KB., 15/58.

individuals.<sup>21</sup> Of these 7,300 indictments involving 9,400 individuals were prosecuted at the Assizes. Of those persons prosecuted at the Quarter Sessions, about 2,600 or 43% committed crimes in the North Riding, and about 3,400, or 57% in the West Riding. These proportions between the Ridings are rather different from their respective proportions of population, (North Riding 35% and West Riding 64%),<sup>22</sup> so the North Riding appears to have a higher incidence of prosecution than its population would warrant. The North Riding had a particularly high proportion (42%) of persons charged with economic or administrative breaches, so that the discrepancy between persons charged and population may be accounted for by the diligence with which the North Riding J.P.s prosecuted for failure to repair the highways or breach of the wages statutes.<sup>23</sup> The King's Bench Index Book can be used to get some idea of the proportions of indictments being removed from the different ridings too. Thus for the period

- 
21. For the 1650s the Quarter Sessions records have only been used to provide overall figures and in the discussions that follow the detailed examination is confined to the period after 1660. The decision to limit the discussion of the material in this way was made as a result of the extension of the thesis of another worker in this area, R.A.H. Bennett, whose thesis "Enforcing the Law in Revolutionary England: Yorkshire c1640 - c1660" (London University Ph.D. thesis, 1987) is most informative on the earlier period.
  22. See chapter one below for a discussion of the population of the county in this period.
  23. By the eighteenth century the North Riding J.P.s were no longer so diligent. Cockburn considered indictments to average thirty per annum in the period he studied, but it is really only from about 1696 that the level of prosecutions declined to that figure. In the period 1690 - 1695 over one hundred prosecutions per annum were recorded; in the period 1696 - 1700 less than fifty:  
J.S.Cockburn, "The North Riding Justices 1690 - 1750: a Study in Local Administration", YAJ, 41 (1965), pp. 481 - 515,  
and for a discussion on the enforcement of the wages statutes see R.K.Kelsall, "Statute Wages during a Yorkshire Epidemic, 1679 - 1681", YAJ, 34 (1939), pp. 310 - 316.  
During the epidemic years it appears that sixty five presentments relating to overpayment were made compared with only thirty other cases in the period 1605 - 1716.

1661 - 1700 of the 1,544 indictments removed to that court 573 came from the Assizes and a further 157 from the City of York and other towns with their own Quarter Sessions. Of the remainder the West Riding Sessions provided 76%; the North Riding Sessions 15% and the East Riding Sessions only 9%, so that the West Riding appears to have had a substantially higher proportion of indictments removed than its population would warrant while the North and East Ridings had only half what might have been expected. The King's Bench indictments therefore do not permit an estimation to be made to supplement the missing East Riding sessions books.

In order to arrive at an estimate of the total amount of crime prosecuted in the county during the period it is necessary to allow for the omission of the East Riding and to increase the sample to include the missing years. If the allowance is made for the East Riding on the basis of its proportion of the population of the county;<sup>24</sup> the result added to the total for the West and North Ridings; and the sum multiplied by five the rough estimate of indictments presented at Quarter Sessions for the county of Yorkshire between 1650 and 1700 rises to almost 30,000, and of individuals indicted to about 39,000. Thus in total the average number of persons prosecuted each year at the Assizes was about two hundred and at Quarter Sessions about 850, so that, whereas on the actual figures, Assize crime amounted to around 60% of all prosecuted crime, when the Quarter Sessions sample is adjusted the proportion of Assize crime falls to around 20%. From the King's Bench files we can see too that

-----  
24. That is on the basis of 18/97th. See chapter one below for a discussion of the population of the county and the respective proportions for the Ridings in this period.

Assize indictments removed amounted to 37% of all those removed and that this should have resulted from only about 20% of actual prosecutions should not be surprising for one would expect that those prosecuted at the Assizes would be the most likely to attempt to have the cases against them removed when it suited their purposes to do so. As for the overall 'indictment rate' something approaching 50,000 persons were prosecuted in the period, and if we take the population as being around 400,000 this gives an annual rate of about 250 per 100,000 population.

Two further general points about the material need to be made. In a large number of cases two or more persons were accused, either as joint principals or as principal and accessory. The offences which most commonly involved more than one perpetrator were riotous or unlawful assembly, for which a minimum of three persons was a legal requirement, and non-attendance at church, for which a presentment might contain a hundred or more names. The numbers of presentments for non-attendance were small, and, as it is not intended that any extensive study of that offence will be made, only the name of the first named defendant has been transcribed. Accordingly, for the years in which presentments for non attendance were made the actual numbers of individuals appearing before the courts would have been considerably higher than appears from the tables. On the whole it appears preferable to use figures for individuals rather than for indictments when analysing both patterns of crime and the results of proceedings, but this can again cause confusion, when comparisons are made with other writers who do not always make plain whether the figures they present relate to individuals or to indictments. A further problem is that of duplication. Where the same individual or

group of individuals faced a number of indictments for different offences they will all be counted as separate individuals, though in the detailed analysis, efforts will be made to show where this has occurred. On occasions it appears that two separate indictments for the same offence were drawn. This cannot simply be dismissed as an error on the part of the drafting clerks for in some cases it is plain that the defendant has been tried twice, for one of the indictments is endorsed that the defendant pleaded a previous conviction or acquittal. However where two indictments appear to exist because one was drawn by the clerk of the peace and one by the clerk of the assize and there is no obvious conflict between them they will be treated as the same and one ignored.<sup>25</sup>

The question of the punishment meted out to those defendants convicted of an offence is obviously of importance and is an issue that has attracted considerable attention.<sup>26</sup> It should be pointed out at this stage, however, that although, where possible, attempts at analysis of the punishments imposed have been made, it is not possible, from the existing Yorkshire records to deduce overall figures. Thus although indictments, particularly for the more serious offences, were supposed to be endorsed with both verdict and sentence, in many cases the sentence is missing. This is especially true in relation to indictments for misdemeanours. To an extent the problem can be overcome by the use of the Gaol Book but that survives for the period 1658 - 1673 only and figures covering the whole period

-----  
25. The most sophisticated discussion of the problems of counting individuals, indictments or offences is in the Appendix to D.Hay's thesis, "Crime, Authority and the Criminal Law".

26. See for example the discussion on punishments in Beattie, Crime and the Courts, pp. 450 - 618.



cannot therefore be prepared.

### Classification of crimes

Discussions of patterns of crime among historians are bedevilled by the fact that no standard categorization of crimes has been adopted. In part this is because historians have been more concerned with studying the social factors giving rise to crime and criminal prosecutions and their effects rather than with any legal certainty in definition. Also many historians have been interested in one type of offence and have effectively ignored others, while the standard method of dealing with the small number of inconvenient odd offences has been to use a large miscellaneous category. The work for this thesis has involved the recording of all prosecutions and the presentation of the evidence garnered will be based on the way in which the crimes prosecuted have been categorized, for the convenience of a large miscellaneous category has been eschewed here and all prosecuted offences placed in one of the six categories adopted.

The classification of crimes by contemporary writers of legal handbooks such as Lambarde and Dalton was haphazard.<sup>27</sup> Hale attempted a classification; but it still leaves much to be desired. Blackstone

-----  
27. Dalton distinguishes treasons, felonies at common law and by statute, and those offences with which a single justice of the peace can deal, but effectively discusses the various offences in alphabetical order: Dalton, Countrey Justice. Lambard effectively does the same and his two books are on the powers of the justice and the procedure in the courts. In so far as Lambard does classify offences the distinction he draws is between ecclesiastical causes, which include treasons, conjuration and perjury, and lay causes: Lambard, Eirenarcha.

used five major divisions: crimes against God and religion; against the law of nations; against the supreme executive power; against public policy and against private persons.<sup>28</sup> Probably the most common division used by historians is a three-fold one into crimes against the person, property and the peace, but it has not been used by all of them. Thus Knafla did so but Samaha effectively divided crimes only into those against the person and against property, while Weisser also used a two-fold division, although a rather different one into what he describes as social and economic crimes, the distinction depending upon the nature of the victim.<sup>29</sup> In social crimes, as defined by Weisser, whether theft or assault, the victim is an individual, whereas in economic crimes (for example trespass on public lands or theft or destruction of public property) the victim is the state or a corporation, such as the city lords whose ordinances forbade the peasants from exercising, for example, grazing rights, without payment of a tax. For rather different purposes Wrightson and Levine offered a four fold division (homicide; interpersonal disputes, including theft and assault between individuals; obligation enforcement; and regulative breaches), while Sharpe suggested a fivefold division: property, violence, drink,

-----  
28. Blackstone, Commentaries, vol. 4, passim.

29. Knafla, "'Sin of all sorts swarmeth', pp. 50 - 67.

J.Samaha, Law and Order in Historical perspective: the case of Elizabethan Essex (London, 1974), pp. 17 - 20.

In fact the distinctions he uses are between crimes that violated the body (against the person), those that harmed an individual and his possessions (robbery and burglary) and those that damaged property only (theft). M.Weisser in "Crime and Punishment in Early Modern Spain", in Gattrell et al. eds., Crime and the Law, pp. 76 - 96 makes a different distinction and one that should not be confused with the concept developed by E.P.Thompson and others which sees "social" crimes as those acts which claim legitimation from significant sections of the population.

economic and miscellaneous.<sup>30</sup> The most comprehensive categorization was that adopted by T.C.Curtis, who used seven types, against the person, against property, against the peace, against the authorities, administrative, "immoralities", and miscellaneous.<sup>31</sup>

The use by historians of different categories of offence necessarily makes the drawing of valid comparisons difficult. In particular this is so when a category that includes both crimes against the person and against property is used, as in Wrightson and Levine's "interpersonal disputes", or Weisser's "social crimes". Obviously crimes such as robbery, involving theft and assault, could be placed in a category of offences against either property or the person, but it seems preferable to draw a distinction between crimes which consist of an attack on individuals and those which are an attack on property of some sort. This is certainly the basis of modern distinctions and was one of which contemporaries were also well aware. In essence the difference between offences against the person or against property is taken to be that in the former the intention of the perpetrator was to harm an individual, usually a specific individual. In the latter the intention was to gain economic advantage, and the identity of the victim was often irrelevant.

It is therefore possible to see that the categories used by historians neither follow those used by contemporary writers, nor yet

-----  
30. K.Wrightson and D.Levine, Poverty and Piety in an English Village: Terling 1525 - 1700 (London, 1979), pp. 116 - 117. Sharpe, Seventeenth Century England, p. 188.

31. T.C.Curtis, "Some Aspects of the History of Crime in Seventeenth Century England with special reference to Cheshire and Middlesex", (Manchester University Ph.D. thesis, 1973).

modern legal practice which divides crimes into eleven groups.<sup>32</sup> Appendix 1 sets out the classification of crimes used by Blackstone, modern practice and in this thesis. No instance falling within Blackstone's category of offences against the law of nations, which includes violation of safe conduct and piracy, occurs among the Yorkshire indictments, nor do any offences relating to drugs. We are then left with four categories from Blackstone and ten from today. Some are easy to sort out and to place in the categories which will be used in this thesis. These are the first five discussed by Curtis, together with a sixth consisting of economic offences. Thus the modern group of offences under the Theft Acts and other offences against property can be combined, and from Blackstone's group of offences against private individuals, two subgroups, against the habitations of individuals and against property, can be extracted. Similarly the modern group of offences against the person and the third subgroup of Blackstone's offences against private individuals form our category of offences against the person. Our category of offences against the peace will likewise be similar to the modern one and Blackstone's sub group within the offences against public polity. The fourth group is of offences against the authorities and this includes the modern categories of offences against the Crown and government, against public justice and against religion. Similarly Blackstone's group of offences against the supreme executive power and against God and religion are here, as is his sub group of

-----  
32. These are: offences under the Theft Acts; other offences against property; offences against the person; offences against the Crown and government; offences relating to drugs; offences against religion; offences against public justice; offences against the peace; offences against trade; offences against public morals and policy and inchoate offences such as incitement and attempt.

offences against justice from the public polity category. These four are easier than the much smaller last categories, but economic breaches effectively include the modern group of offences against trade and Blackstone's similar sub group from the public polity category. Administrative breaches are some of those categorized by Blackstone as sub groups against public health and public police and economy, including several common nuisances such as blocking highways and disorderly houses, and of the modern group of public nuisances also. Thus the categories adopted here, that is offences against the person, property, the peace, the authorities and economic and administrative breaches, reflect both Blackstone and modern practice, and although not all crimes are placed in the same categories, the categorization adopted, while following, save in one instance a legal logic, is far from an a-historical one.<sup>33</sup> The exception is the treatment of the old offence of forcible entry/disseisin and the modern one of criminal trespass, which both Blackstone and modern practice include in the category of offences against the peace. Despite this (and in the only instance where this thesis follows what could be considered the purely historical rather than the legal logic), the offence will here be treated as one against property on the basis that by attacking private property, though real, rather than personal, it is more analogous to the theft of personal goods than to a food riot.

The most common offences against the person were assault and homicide but included in the category are all the sexual and moral offences,

-----  
33. See Blackstone, Commentaries, vols, 3 and 4 passim and Archbold, Criminal Pleading, Evidence and Practice, 45th edition, eds., S.J.Mitchell and J.Beazley (London, 1986).

defamation, and witchcraft. Witchcraft was considered by Blackstone as an offence against God and religion and of course does not exist, as a criminal offence, today. Together all the sexual offences constitute only .6% of all offences and although some, such as fornication, could be said to be victimless, others, such as rape, obviously have a victim and it is easier to treat them together than to separate them into different categories of crimes. The motivation behind defamation was plainly to harm an individual and similarly witchcraft, although sometimes undirected or directed against goods, was usually directed against a specific individual. An instance of the difficulties that would arise were, for example, Blackstone's categorization to be adopted, is that witchcraft is treated by him, though somewhat sceptically, as an offence against religion. This is not only inappropriate to modern ideas but would seriously undermine the historical validity of a treatment of religious offences, for the treatment of witchcraft as simply one among other religious offences would undoubtedly alter the picture of those prepared to suffer for their religious beliefs.

Crimes against property are thus taken to include offences involving game (considered by Blackstone as an offence against public police and economy), as well as the various forms of theft. All of these obviously fulfill the criterion of being motivated by an attempt to gain economic advantage, but two other crimes, arson and what would today be called criminal damage, are also included here. In both of these cases it could be argued that the motivation behind them was likely to have been to cause harm to the victim, but they are included in the property category as the evidence suggests that no physical hurt was caused to any person and property was always

involved. Both are included in the modern property category and by Blackstone in the sub group of offences against the habitations of individuals.

A group of offences that is particularly difficult to categorize is that of wrongful prosecution and false imprisonment, frequently associated with a charge of illegal assembly. At first sight it would seem that the two should be separated and the first placed with perjury and its subornation in the category of offences that pervert the course of justice, and the second with other forms of illegal assembly. However, some of the false imprisonment cases involve the use of false warrants and are more similar to forgery or wrongful prosecution cases. On the other hand a number appear simply to involve a group of individuals incarcerating a victim for a number of hours, and probably form part of other mass peace-breaking activities. Thus despite the similarities between the two, wrongful prosecution is included among offences against the authorities, while false imprisonment is placed among offences against the peace. The other offences in this latter category are the many forms of illegal or riotous assembly and more individualistic acts such as breach of the peace and barratry.

Offences against the authorities are taken to include those which are essentially victimless, or where the victim is, as in Weisser's economic crime category, the state or a public corporation. Thus the most serious offence against the state would be treason, and that is included here. It should of course be remembered that coining was itself treasonable in this period, and the various forms of coining indeed account for almost 50% of this category. This too was to be

the offence for which Yorkshire was to be notorious in the eighteenth century.<sup>34</sup> Analogous to treason per se, are the religious offences included here. These range from treasonable adherence to the See of Rome to non attendance at church, but are again, despite the differences amongst them, most easily treated as a specific group within the general category. Offences of perjury or subornation of perjury, and of contempt are easily seen as affecting the course of justice, and by analogy so is forgery, (though seen by Blackstone as an offence against private individuals) particularly of documents such as warrants of distress or arrest. Negligence or extortion by officials and escapes from custody, while sometimes harming a specific individual, are also more generally directed against the course of justice and thus the state. The utterance of seditious words is also included in this category. Many of the words complained of seem mild although they might have been considered likely to cause trouble at the time, and might therefore be considered to be more appropriately included in the category of offences against the peace. Nevertheless as charged they are more suitable for inclusion here.

The two categories of administrative and economic breaches are comparatively small. Economic offences are various, including usury, short weights, and breaches of the apprenticeship laws. The administrative breaches are two fold only: those relating to the blocking or failure to repair highways, bridges and watercourses, and those relating to alehouses, that is the keeping of either disorderly or unlicensed ones.

-----  
34. J.Styles, "'Our Traitorous Money Makers', the Yorkshire Coiners and the Law, 1760 - 1783". in J.Brewer and J.Styles, eds., An Ungovernable People, the English and their Law in the Seventeenth and Eighteenth Centuries (London, 1980), pp. 172 - 249.



Lastly, and purposely not separately categorized other than in this introduction, are the inchoate offences of aiding and abetting before and after the fact and inciting. These offences, which are almost invariably charged in an indictment containing a substantive offence, will elsewhere be dealt with under the substantive offence itself.

Apart from the classification of crimes according to their nature contemporaries were aware of another classification: that between treasons, felonies and misdemeanours. Historians have also been aware of this distinction but have, it will be argued in this thesis, given it less than its due weight. In particular it will be shown here that not all thefts were treated as felony; that is that contemporaries distinguished in the taking away of goods between a felonious and a trespassory asportation. This distinction had important consequences for the defendant, and it also has important consequences for the historian of crime, for it significantly affects the proportion of serious and less serious crimes prosecuted in the two courts, so that in Yorkshire felonies amounted, on this reckoning, to only about 35% of all prosecuted crime and more than half even of Assize business was concerned with misdemeanours.

#### HISTORICAL PROBLEMS AND HISTORIOGRAPHICAL SURVEY

A number of problems have been raised by historians of crime and the criminal process. Perhaps the one that first attracted attention and that has pervaded much subsequent research is the extent and pattern of crime and how it has altered over time and between localities, and historians have also been aware of the 'dark figure', that is the

amount of crime committed but not prosecuted and whether and to what extent that also altered over time. Connected with this and influenced particularly by the work of D.Hay is the role of those involved in enforcing the criminal law and their motivation in prosecuting some offences and failing to prosecute others. Finally, there is the question of the extent to which the law, and in particular the criminal law, was used by the mass of the population and how they viewed it.

Study of long term trends reveals a decline in the annual indictment rate from about 200 per 100,000 population in the late sixteenth and early seventeenth centuries to about 50 per 100,000 in the eighteenth century, rising again to about 200 per 100,000 in the early nineteenth century and then falling from the 1840s until perhaps the 1930s.<sup>35</sup> However, attempts at such large generalizations raise problems, for fluctuations between individual years can be considerable. In Essex, for example, the overall indictment rate rose from about 70 per 100,000 population in 1559 to a peak of about 360 per 100,000 population in 1598, and then fell to about 140 per 100,000 in 1603, remaining at about that figure until the latter part of the century.<sup>36</sup> It might be thought that this was a pattern peculiar to Essex but Sharpe has argued that certainly by the seventeenth century the nature of serious crime had fallen "into a national pattern"; that property offences "accounted for between two

-----  
35. V.Bailey, "Bibliographical Essay: Crime, Criminal Justice and Authority in England", Bulletin of the Society for the Study of Labour History, 40 (1980), pp. 36 - 46.

36. Samaha, Law and Order, p. 33. 1598 was an exceptional year and a five year average for the last quinquennium of the sixteenth century gives a rate of about 200 per 100,000, but the fluctuations are nevertheless startling. For the end of the period see Sharpe, Seventeenth-Century, pp. 15 and 183.

thirds and three quarters of prosecuted felony and that the only other offences to figure prominently were homicide and infanticide." Sexual offences, at .5%, arson and witchcraft were all unusual.<sup>37</sup> All studies to date appear to show that thefts were the vast majority of felonies indicted; homicide levels were low but assault, a misdemeanour, was fairly common.<sup>38</sup>

It is fairly widely accepted that the seventeenth century saw a general decrease in levels of violence, and certainly no work has discovered a gross homicide rate approaching that of fourteenth-century Oxford.<sup>39</sup> From the mid sixteenth to the early seventeenth century and later it appears that the number of killings each year remained fairly constant, but that there were significant

- 
37. J.A.Sharpe, Crime in Early Modern England, 1550 - 1750 (London, 1984), pp. 55 and 57. In support of his contention Sharpe cites the similarities between a peripheral area such as Northumberland and the rest of the country.
  38. Cockburn has suggested that about 70% of Assize indictments were for larceny; 10% for homicide; up to 5% for witchcraft and the remaining 15 - 20% of indictments consisted of charges of assault, rape, bigamy, coining and others: Cockburn, Assizes, pp. 97 - 99.
  39. L.Stone and J.A.Sharpe, while disagreeing on the interpretation of the data and the explanations for it, agree that the rate of recorded homicides per 100,000 population in the late sixteenth and early seventeenth centuries was five times the modern level, having fallen from ten times that in the medieaval period and that it continued to fall rapidly from about 1660. L.Stone, "Interpersonal Violence in English Society, 1300 - 1980" P&P, 101 (1983), pp. 22 - 33, and J.A.Sharpe, "The History of Violence in England, Some Observations", P&P, 108 (1985), pp. 206 - 215.  
For Oxford see C.Hammer, "Patterns of Homicide in Early Modern Europe", P&P, 78 (1978), pp. 3 - 23. Hammer's analysis of the coroners' rolls shows, from a very small number of cases, a gross homicide rate in fourteenth century Oxford averaging 110 per 100,000 population. (A modern violent American city would have a homicide rate of about 20 per 100,000 population.)

differences between different counties.<sup>40</sup> A considerable decline in the incidence of indicted murder and manslaughter over the period 1660 - 1800 appears from work on Surrey and Sussex. In Surrey for example, the rate fell from 6.1 per 100,000 population in 1663/5 to 2.3 per 100,000 in 1722/4.<sup>41</sup>

Infanticide was little prosecuted before the middle of the sixteenth century. There was an increase in both the numbers of cases prosecuted and the amount of case law dealing with infanticide from around the late 1570s. The 1576 Poor Law, with its emphasis on preventing bastard children becoming a charge on the rates, encouraged the detection of unmarried pregnancy and thus of infanticide. In 1624 a bill was passed providing for a presumption of murder where a bastard's birth, whether live (and subsequent death) or stillborn, was concealed. Before this the annual indictment rate was running at 1.44 per 100,000 population in Essex,<sup>42</sup> though it has been suggested that up to two and half times as many neonaticides occurred as were included in the records of the criminal courts.<sup>43</sup> In the areas studied by Hoffer and Hull the indictment rate rose after 1624 as proof became easier, when evidence of prior sexual misconduct and concealment of birth helped to establish guilt.<sup>44</sup> The eighteenth century witnessed an early decline in infanticide

-----  
40. Cockburn, "Nature and Incidence", pp. 55 - 56. Sharpe agrees with this verdict in Seventeenth-Century, pp. 133 - 135. Similarly Wrightson and Levine find that homicides accounted for less than 1% of crimes in Terling, p. 118 and further afield in the Montes of Spain the number of homicides was also small, Weisser, "Crime and Punishment", pp. 85 - 90.

41. Beattie, "Pattern of Crime", p. 61.

42. P.C.Hoffer and N.E.C.Hull, Murdering Mothers, Infanticide in England and New England, 1558 - 1803 (London, 1981), pp. 13 - 21.

43. K.Wrightson, "Infanticide in Earlier Seventeenth Century England", LPS, 15 (1975), p. 19.

44. Hoffer and Hull, Murdering Mothers, pp. 23 - 27.

indictments and convictions, as a number of technical defences were adopted. Other studies confirm the pattern.<sup>45</sup>

On the whole sexual crime was rare but it probably increased to a peak in the middle of the eighteenth century.<sup>46</sup> Sexual crimes included a wide range and different offences were viewed with differing degrees of opprobrium. Rape was almost certainly under-reported, while it may be relevant to note that in New England convictions for both buggery and sodomy, although both were capital crimes, rarely resulted in executions.<sup>47</sup>

A crime which, particularly for continental Europe, has been well studied, is witchcraft, although the pattern of its prosecution is subject to dispute. In contrast with the fifteenth century, there

- 
45. Beattie in "Patterns of Crime" suggests that infanticides saw a decline similar to that for homicide in the period 1660 - 1740, and Cockburn, in "Nature and Incidence", p. 57, also considered infanticide to be comparatively rare prior to 1625.
46. Cockburn found that of 7,544 persons indicted only sixty eight were charged with a sexual offence. This total consisted of fifty rapes, sixteen offences of buggery and two of sodomy; "Nature and Incidence, p. 58. Sharpe too notes that there were only twenty eight cases of rape and eight of buggery out of a total of 2,255 felonies in Essex: Early Modern, p. 49. In Terling, however, a heavier concentration of sexual offences seems to have occurred in the early seventeenth century: Wrightson and Levine, Terling, p. 119.
47. The underreporting of rape also occurred in the thirteenth and fourteenth centuries when embarrassment to the victim and possible retribution by the rapist or his family have been suggested as causes; see J.M.Carter, Rape in Medieval England (London, 1985), p. 153 and B.Hanawalt, Crime and Conflict in English Communities, 1300 - 1348 (Cambridge, Mass., 1979). For sexual crime in New England see R.F.Oaks, "'Things Fearful to Name', Sodomy and Buggery in Seventeenth-Century New England", JSH, 12 (1978), pp. 268 - 281 where it is claimed that there was only one execution for sodomy - in New Haven in 1646. Oaks argues that the legal requirements for the offences were strict, but that in cases of buggery they were interpreted more laxly than in the sodomy cases.

were few trials in the early sixteenth century, but from 1560 onwards numbers increased and larger areas were affected. The early seventeenth century saw another decline until the 1620s which witnessed "the climax of the European witch craze".<sup>48</sup> England is usually regarded as having been on the periphery of the European witch craze, and the county where witchcraft has been best studied, Essex, is far from typical of England as a whole. Nevertheless there, according to one writer, it was "not a peripheral and marginal crime, but of central importance", forming 5% of all charges brought to the Essex Assizes between 1560 and 1680.<sup>49</sup> Generally the figure fell again in the 1630s though there were to be later sporadic panics.<sup>50</sup>

A much commoner crime was assault. It is difficult to analyse because it is widely defined, ranging from a strict assault, which need involve no application of physical force, to a battery resulting in serious wounds. Depositions do not often survive for this offence and there is therefore little information available to facilitate a

- 
48. The period 1300 to 1330 saw a few trials, mostly in France, England and Germany, and involving prominent figures as either victim or suspect. From 1330 - 1375 the trials, like the earlier ones, concentrated on sorcery, rarely featured diabolism, and occurred mainly in France and Germany, with a few in Italy and England. Between 1375 and 1435 there was a steady increase in trials and in the proportion involving diabolism. At this time Switzerland and Italy started to provide cases in similar numbers to those of France and Germany. In the fourth period from 1435 to 1500 most cases occurred in France, Germany and Switzerland; the pace of prosecution was much higher as was the proportion of cases involving diabolism. C.Larner, "Crimen Exceptum? The Crime of Witchcraft in Europe", in Gatrell et al. eds., *Crime and the Law*, pp. 49 - 75.
49. A.D.J.Macfarlane, "Witchcraft in Tudor and Stuart Essex", in Cockburn, ed., *Crime in England*, pp. 72 - 89. In fact Macfarlane shows that in the period of its most intense prosecution witchcraft accusations formed 13% of all Assize business. Essex, however, was undoubtedly unusual in the high numbers of witchcraft prosecutions.
50. Larner, "Crimen Exceptum?", pp. 55 - 56.

meaningful discussion of motive or the type of wound inflicted. Nevertheless some generalizations can be made. Thus it appears that "crimes of violence diminished as social status declined" and victims were disproportionately likely to be officials.<sup>51</sup>

The motivation behind unlawful assemblies, riots and other breaches of the peace varied widely, and again is difficult to discern. These crimes appear to increase considerably in the late seventeenth century and the first third of the eighteenth century, in contrast to the pattern of a general decrease in other crimes. This is true of rural and urban Surrey and of Sussex, despite significant differences between them during other periods. At an earlier period differences between counties were striking. In Essex and Hertfordshire group violence constituted about 70% of total violent offences, in Sussex about 35%.<sup>52</sup> One important distinction in this type of offence which can be made is that between group violence as such and controlled violence with specific aims and claiming legitimation. Examples of this would be the price-setting riots, whose legitimacy was claimed to derive from the Book of Orders, and which have been seen as a form of direct action by the poor. The authorities often responded to the threat of such direct action, which often arose from dearth, by the subsidising of bread for the poor.<sup>53</sup>

-----  
51. Samaha, Law and Order, p. 27.

Cockburn in "Nature and Incidence", p. 59 found that 16% of victims were officials.

52. Beattie, "Patterns of Crime", pp. 66 - 67; and Cockburn, "Nature and Incidence", pp. 59 - 60. Cockburn has suggested that this difference is due to differences in the social and economic make up of the counties.

53. E.P.Thompson, "The Moral Economy of the English Crowd in the Eighteenth-Century", P&P, 50 (1971), pp. 76 - 136.  
J.Walter and K.Wrightson, "Dearth and the Social Order in Early Modern England", P&P, 71 (1976), pp. 22 - 42.

Previous historians have treated all unlawful appropriations as felony; have shown that they were by far the most commonly indicted felony; and that taking all offences against property together they accounted for between two thirds and three quarters of total recorded crimes. In Surrey and Sussex there appears at first sight to have been a very considerable increase in the average annual number of offences against property from the later seventeenth century to the early eighteenth century. But when the figures are set against the population increase they appear much less significant as indicators of increased criminality, and indeed the 1790s differed little from the 1670s. There was, however, a striking difference in rates between urban and rural areas. Thus for urban Surrey (that is essentially London's Surrey suburbs) the average property crime rate was 74 per 100,000 population, compared with Sussex's average of 26 per 100,000.<sup>54</sup>

Particularly for property offences it has been shown that there was a correlation between crime and dearth. In Essex there were annual averages of 78.6 prosecutions in 1592 - 1594 but of 178.3 in 1595 - 1597.<sup>55</sup> The connection between theft and famine in other periods has

-----  
54. Beattie, "Patterns of Crime", pp. 74 - 80.

55. Walter and Wrightson, "Dearth and the Social Order", p. 24



also been established.<sup>56</sup> Even apart from famine years a correlation between crime and the price of wheat can be shown in the rural areas of Surrey and Sussex in the eighteenth century in both the long and short term. The pattern was similar in the earlier period though more so in the sixteenth than in the seventeenth centuries.<sup>57</sup>

For London explanations of the rise in property crime are more complex but one basic factor was the effect of war, or rather, of peace. Crime rates peaked at the end of wars as in 1674-76 and 1747-51. During wartime many men were employed in the army and in the naval yards at home. With the ending of war came disbanded soldiers and sailors, unemployed workers and crime.<sup>58</sup> There was no simple correlation of crime patterns with population density or poverty in Essex between 1580 and 1680 but a difference between the high numbers of prosecutions in the textile areas and the fewer in the also poor and populous open field areas, may be due to government fears of crime among potentially restive cloth workers and consequent

-----  
56. Thus the famine year of 1315 seemed to have immediate and direct effects on the numbers of thefts of foodstuffs. In five southern counties in 1314 eighteen out of 265 thefts in the peace sessions rolls were of foodstuffs; by contrast, in Kent, in 1316 - 1317 about 33% of thefts were of foodstuffs, principally grain and its products, about 40% were of livestock, of which almost half were sheep, and most of the remainder were of cash. The Gaol Delivery Rolls show a similar pattern: in Kent in 1308 - 1309 seven out of 112 thefts were of foodstuffs; in 1316 - 1317 twenty six out of seventy six were: I.Kershaw, "The Agrarian Crisis in England 1315 - 1322", *P&P*, 59 (1973), pp. 3 - 50.

57. Cockburn, "Nature and Incidence", pp. 67 - 70.

58. Beattie, "Patterns of Crime", pp. 85 - 92, but P.Linebaugh in his work on London in the eighteenth century was not able to trace any such correlation there: P.Linebaugh, "Crime in London 1700 - 1750" (Warwick University Ph.D. thesis, 1975), and see also D.Hay, "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts", *P&P*, 95 (1982), pp. 117 - 160 for the most thorough discussion of this point.

severity.<sup>59</sup>

Figure 1 shows, by crime categories, the number of persons indicted at both Assizes and Quarter Sessions in Yorkshire, and Figures 2 and 3 the numbers indicted in each court separately. In Yorkshire, as elsewhere, crimes against property were far and away the largest single category at both Assizes and Quarter Sessions, even though the inclusion of the Quarter Sessions figures brings the proportion of property crime down slightly from 43.5% to 42.4%. At the Assizes the second largest category was that of offences against the authorities at 21.3%, but at Quarter Sessions these fell to fifth place and their proportion to 7%. This is not surprising. The bulk of this category was made up of serious offences such as treason and the quasi-treasonable coinings, and it is to be expected that these offences should have been prosecuted principally at the Assizes. At both Assizes and Quarter Sessions the proportion of offences against the person was similar: 14.3% of the total of Assize crime and 16.8% of Quarter Session crime. This category included both the serious crime of homicide, of which all save a few cases (a mere four out of 510) were prosecuted in the higher court, and the much less serious assault. The proportion of offences against the peace varied between 16.3% of Assize crime to 12.3% of Quarter Session crime. In contrast, when the economic and administrative breaches are considered the importance of the lower courts in controlling such comparatively minor offences becomes plain, for administrative breaches accounted for 16% and economic breaches for 7% of Quarter Session crime, compared with 2.5% and 2.2% respectively of Assize crime. Overall

-----  
59. Sharpe, Seventeenth-Century England, pp. 198 - 210.

there was an increase in all categories of crime from the 1650s to the 1660s. The 1670s saw approximately the same rate of prosecution, but thereafter prosecutions fell so that the numbers prosecuted in the 1690s were only slightly greater than in the 1650s.

All legal systems rely simultaneously upon means of coercion and upon a measure of consent. The seventeenth century legal system of course had only a very limited paid bureaucracy and the role of the mostly volunteer enforcers of the law has aroused considerable interest.

The persons involved in the administration of the criminal law were numerous and varied, and came from a wide range of occupations and statuses. At the bottom of the hierarchy of enforcers was the parish constable. He was both an officer of a manor or township, who had been locally appointed for a specific purpose, and an officer of the executive, subordinate to the Sheriff and to the J.P.s. Traditionally the method of appointment was by election in the court leet<sup>60</sup> and it has been suggested that the existence of a constable came to be regarded as the most characteristic mark of an independent township, and indeed that he was seen as the representative of the court leet jury.<sup>61</sup>

Modern historians have, on the whole, accepted that constables were ignorant and of low social status, but recent research has suggested that they were normally neither dilatory, disobedient, nor of low

-----  
60. He was still appointed by the villagers not by the J.P.s, at least until 1662, when J.P.s were authorized to appoint if the leet had failed to do so or the constable had moved or died. H.B.Simpson, "The Office of Constable", EHR, 10 (1895), pp. 625 - 641.

61. Simpson, "Constable", pp. 627 - 630.

social status. In Pattingham, Staffordshire, for example, sixty three out of eighty one constables who held office between 1583 and 1642 were large or middling-size farmers and an additional nine were tradesmen or craftsmen.<sup>62</sup> Their level of literacy and legal knowledge varied considerably in different areas. Thus the view of J.R.Kent might gain support from the 7% illiteracy of Somerset constables in 1642, but the 100% illiteracy of Cheshire constables in the same year suggests that certainly in some areas of the country the constables were ignorant.<sup>63</sup> Those who acted as constable also filled other local officerships such as that of churchwarden, normally regarded as the preserve of men of higher social status than those who served as constables.

The duality of role of the constable could easily cause conflict. As the lowest officer in a hierarchy of authority he had to represent the king to the villagers and the villagers to his superiors. The constable was a member of the village community and thus subject to local ties and neighbourly pressure, and, particularly in his role as a tax collector, these could conflict with the responsibilities of an official of the central administration. During the 1630s indeed, as new duties were placed on the constables and such conflicts perhaps intensified, an increasing reluctance to serve became apparent.

At a superior level was the High Constable, usually appointed by the

- 
62. J.R.Kent, "The English Village Constable 1580 - 1642: The Nature and Dilemmas of the Office", JBS, 20 (1981), pp. 26 - 49, and see also her book, The English Village Constable.
  63. K.Wrightson, "Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth Century England", in Brewer and Styles, eds., An Ungovernable People, pp. 21 - 46. The latter figure might suggest that Cheshire constables, at least, were of low social status.

J.P.s, and responsible for a larger area. In Yorkshire two were appointed for each wapentake, at least in the North and West Ridings. This was an exacting office, usually filled by persons "of considerable estate", certainly not by the humbler men we have been discussing.<sup>64</sup>

In part the role of the constable was altering as methods of enforcing the law changed. The late sixteenth century witnessed a change in the system of hue and cry from a verbal call in which the whole community participated to a written warrant, sworn before a J.P., issued to a constable and whose execution depended essentially on the participation of those directly involved. The shift away from a communal responsibility probably lessened the effectiveness of the hue and cry, a fact of which contemporaries complained. Despite the shift away from communal participation in law enforcement, the system nevertheless remained a mixture of private and public responsibilities and authority. It is interesting to note however that, if Terling accurately reflects other areas, the involvement of some members of the village community in law enforcement was increasing.<sup>65</sup>

Nowhere is this demonstrated more clearly than in the court leet which in many places still functioned as a court in this period. The view put forward by earlier writers is that the courts leet were

-----  
64. Minutes of Proceedings in Quarter Sessions held for the parts of Kesteven in the County of Lincoln, 1674 - 1695, ed. S.A.Peyton, (Lincoln Record Society, vols. 25 and 26, 1931), pp. xxxviii - xlvi.

65. C.Herrup, "New Shoes and Mutton Pies: Investigative Responses to Theft in Seventeenth Century East Sussex", HJ, 27 (1984), pp. 811 - 830, and see also Wrightson and Levine, Terling, pp. 140 - 141.

defective as a means of providing justice in both form and substance. They acted as prosecutor, defence counsel and jury, they returned almost universal guilty verdicts after little or no deliberation, often with defendants being unaware of the charges they faced, not present in court or, if present, not allowed to speak, or call witnesses; after judgement fines were assessed in the same way. This view has recently been questioned, and it has been suggested that the leets functioned much more equitably. Before the court leet met a list of nominated jurors was prepared and the sworn jurors, together with the steward or his deputy constituted the court. The presentment officers, who were selected either annually or by houserow, tended to be less well off than the jurors. The list of offenders facing the court leet jury was sifted beforehand, jurors sometimes viewed the scene of an alleged offence, they heard witnesses and they deliberated. Some presentments would be thrown out and others respited for various reasons. Those found true were passed to affeerors who assessed the amercements. Defendants were usually present in court, judgments were public and presentments could be voided even after a verdict. The courts leet functioned in a way we would recognize today as a court, providing a reasonable system of justice, and the participation in them by many individuals helped to reinforce the widespread involvement in law enforcement.<sup>66</sup>

-----  
66. W.J.King, "Leet Jurors and the Search for Law and Order in Seventeenth Century England: Galling Persecution or Reasonable Justice", Social History: Histoire Sociale, 13 (1980), pp. 305 - 324, and see for a discussion of leets in Yorkshire, N.Brueen, "Leet Jurisdiction and Social Regulation in Seventeenth-Century Yorkshire: The Courts of Coxwold, Otley and Marske (1633 - 1664)", (York University, M.A. thesis, 1984). Bennett's discussion of the role of manorial courts in Yorkshire and their decline after the Interregnum is likewise of considerable interest: "Enforcing the Law", pp. 72 - 124.

Superior to the courts leet, manor, hundredal and county courts were the courts of Quarter Sessions and Assize. At both of these presentments were made to a Grand Jury which considered whether there was a case sufficient to go to a petty jury for final determination. The legal qualification for jury service was a forty shilling freehold but in practice those chosen as jurors were probably of somewhat greater property. Thus in Cheshire some four thousand families qualified; but only 500 supplied jurors and they were minor gentry and yeomen. These men were little if any wealthier than many others, but were, almost without exception, styled 'gentleman' rather than 'yeoman', and Morrill has suggested that jury service in itself was considered to confer gentility. It was from this same body of middling freeholders that both head constables and petty jurors were drawn, men often serving as grand jurors before serving as petty jurors. In Devon, however, the situation appears somewhat different, for in that county there were significant differences in social status between those who served as grand jurors and those who served as petty jurors and the overlap between the two panels was comparatively small.<sup>67</sup> In Yorkshire unlike Cheshire, however, jury lists include large numbers of men described as "yeoman".

In Cheshire eight grand juries were sworn each year, one at each Quarter Sessions and two at each Assizes. Between 1625 and 1659 there were a total of 222 panels on which 609 men from 497 families

-----  
67. Analysis of the Devon Quarter Sessions grand jury between 1649 and 1670 found it by no means as independent as that of Cheshire either: S.K.Roberts, "Participation and Performance in Devon Local Administration, 1649 - 1670" (Exeter University D.Phil. thesis, 1980) and see also his book, Recovery and Restoration in an English County: Devon Local Administration, 1646 - 1670 (Exeter, 1975).

served.<sup>68</sup> On average each juror served almost six times, but over seventy men sat more than twenty times during their lives. Many might also be summoned but not actually sit. Furthermore, in Cheshire, the same men sat on both Assize and Quarter Sessions grand juries, and it has been suggested that the selection of panels was a careful process designed to ensure both variety and continuity.<sup>69</sup>

Over the period there may have been considerable change in the activity of those who served as jurymen. Thus whereas up to about 1600 Terling jurymen took little active part in the presentment of charges or the initiation of judicial business, by 1620 their successors were more enthusiastic and indeed ready to remind the judges that "the magistrate beareth not the sword for naught but is ordained by God to take punishment on them that do evil". This greater involvement, it has been argued, reflects the fact that "custom was on the retreat in Terling before changes in social attitudes which were to play a significant part in remoulding the pattern of social relationships in the village" and in the increasing differentiation between the better sort and the labouring poor.<sup>70</sup>

Presentments by the grand jurors themselves were numerous. The most common categories were non-maintenance of highways and bridges, negligence or abuse by officials, and disorderly and unlicensed alehouses. The purpose of a presentment was less to indict an

-----  
68. Knafla in his study of Kent points out the frequency with which jurors were summoned to the variety of courts that were still functioning, suggesting that it was a weekly occurrence across the county as disputes were litigated endlessly: Knafla, "'Sin of all sorts'", p. 65.

69. Morrill, Cheshire Grand Jury, pp. 9 - 15 and Appendix 11, pp. 56 - 58.

70. Wrightson and Levine, Terling, pp. 140 - 141.



individual than to draw attention to possible causes of disturbance and attempt to ameliorate them. It might also lead to the issuing of general orders by the J.P.s. Views upon grand juries vary. Cockburn considered them "subservient, ignorant and conservative".<sup>71</sup> Morrill thinks that their role was "more than an insignificant part of the pageantry and bureaucracy of the English criminal process. Without the grand jury system such benevolent paternalism as early modern local government practised would have been less systematic, less informed and less effective": certainly Cockburn's views appear unduly pessimistic.<sup>72</sup>

The J.P.s were the most obvious enforcers of the criminal law and certainly their role was important and, like that of jurors, appears to have been changing. Some of these apparent changes can be misleading - thus there was a large increase in the numbers of J.P.s but not in the number of active ones. In Surrey the two most active J.P.s made 74% of commitments in 1720 and 70% in 1750. Of the other J.P.s who appear to have transacted any business in the courts there were eighteen in 1720 and sixteen in 1750.<sup>73</sup> The role played by the Yorkshire J.P.s will be analysed in a later chapter and though their importance is fully acknowledged, they will not be discussed in detail here.

-----  
71. Cockburn, Assizes, p. 113.

72. Morrill, Cheshire Grand Jury, p. 45 - 47. The work of T.A.Green on jury nullification suggests that juries played an important role in mediating the harshness of the criminal law, whether without, or, as during this period, with, judicial and governmental approval: T.A.Green, Verdict According to Conscience: Perspectives on the English Criminal Jury Trial, 1200 - 1800 (London, 1985).

73. J.M.Beattie, "Towards a Study of Crime in Eighteenth Century England, A Note on Indictments", in P.Fritz and D.Williams, eds., The Triumph of Culture (Toronto, 1972), pp. 299 - 314.

There were officials of more importance and status than those who served on the lower rungs of the court hierarchy. By the seventeenth century the clerk of the peace had "become the pivotal figure in county government". It was well established that the Clerk of the Peace was appointed by the Custos Rotulorum and held his office at the latter's pleasure, although his prime responsibility was to the Bench as a whole. In Somerset the senior clerks were barristers or attornies, and the clerk's deputy was also an attorney. He oversaw the work of the fairly numerous subordinates, themselves mainly attornies, who served as drafting clerks. In addition to this array of legal talent each individual J.P. probably had his own clerk, knowing at least some law, and sometimes being of gentle status.<sup>74</sup> The clerk had three basic functions. He was the keeper of the records of the court; he was clerk to the court where his responsibilities included setting the agenda, issuing warrants, arraigning the accused, and noting the disposition of each case, and he was "executive secretary of magistracy". The clerk exercised complete authority over his own staff, and effectively, through control of their fees, over the clerks to the individual justices. Accepted and trusted by the J.P.s, he had delegated to him considerable powers and served as a means of communication both among the county's own magistrates and with the benches or clerks of other counties. Together with the J.P.s he would attend the Assizes, where again he

-----  
<sup>74</sup>. Barnes, Clerk of the Peace, pp. 5 - 11.

would play an important role as communicator.<sup>75</sup>

The clerk of Assize was an even more important figure. He was usually a barrister, prohibited from practising on the circuit of which he was also clerk. Competition for clerkships was keen and family connections and traditions of service important. It was a profitable office from the fees received, either legitimate or extortionate, and one Northern Circuit clerk, Robert Benson, left his son an estate sufficient to found a career leading to ennoblement. The clerk, by the seventeenth century, was a virtually full time administrator, responsible for the running of the Assizes and the control of his subordinate clerks.<sup>76</sup>

Individuals of comparatively humble status could be involved in the process of law enforcement and this involvement in many ways helps to explain how the law and legal forms and procedures pervaded everyday life. Along with the law litigiousness had penetrated popular culture. The reign of Elizabeth saw a remarkable increase in the number of lawsuits, but, although growth continued at least until

- 
75. Barnes, Clerk of the Peace, p. 47. The Somerset clerk was an able administrator expecting, and on the whole, obtaining high standards from his own staff and from the justices' clerks. His great failure was in not establishing an efficient messenger system, doubtless because of a reluctance to expend more of the profits of his office. The efficiency of the clerk's office nevertheless declined after 1633 and Barnes attributes this to the pressures imposed on the magistracy by the increased weight of administration enjoined by the Book of Orders. In conclusion Barnes is struck by the fact that the Clerk of the Peace, the professional element at the base of county government, "discharged his duties with a sufficient measure of efficiency to satisfy both his masters and their master, the king".
76. Cockburn, Assizes, pp. 70 - 85.

1640, it was slower after 1603.<sup>77</sup> Many courts were available for litigation too. In Wiltshire for example, in addition to the central royal courts, such as King's Bench, there were the Assizes, Quarter Sessions, courts leet, manorial courts, courts baron (of which one averaged three actions a year), hundredal courts, (which might, like Mere, deal with eighty suits a year) and county courts. During this period those initiating litigation were not just the elite but "men and women of moderate and small property",<sup>78</sup> and these same people were heavily involved in the administration of the law as jurors, parish officers and sureties. Their contact with the law was further reinforced by the wide availability of cheap chapbooks and ballads, devoted to notorious crimes and criminals.<sup>79</sup> By the end of the seventeenth century, however, the intensity of the litigation of the previous hundred years was declining and it is doubtful whether the integration of the law into popular consciousness continued into the eighteenth century, other perhaps than in the form of Tyburn Tree standing at the heart of the popular culture.<sup>80</sup>

-----  
77. C.W.Brooks, Pettyfoggers and Vipers of the Commonwealth, The Lower Branch of the Legal Profession in Early Modern England (Cambridge, 1986), p. 57.

78. J.A.Sharpe, "The People and the Law", in B.Reay, ed., Popular Culture in Seventeenth Century England (London, 1985), pp. 244 - 270.

79. Quarter Sessions and Assizes probably saw about one hundred true bills each year. Exchequer Memoranda Rolls and Star Chamber saw respectively 270 and ninety cases in the periods 1614 - 1618 and 1615 - 1624, while the common law courts at Westminster also saw substantial numbers of cases, and although the numbers of cases in Chancery was probably small the civil jurisdiction of the ecclesiastical courts would have generated substantial numbers of cases. For a detailed discussion of this see M.J.Ingram, "Communities and Courts: Law and Disorder in Early Seventeenth Century Wiltshire", in Cockburn, ed., Crime in England, pp. 110 - 134, and also the work of Knafle on Kent in "'Sin of all sorts'".

80. Hay, "Property, Authority and the Criminal Law", passim.

In this introductory chapter we have touched on the major issues that will concern us in the body of the thesis. The deficiencies of the records need to be constantly borne in mind and should make us treat with caution all the generalizations based on the counting of numbers. Nevertheless the use of statistical methods is justified particularly when dealing with such large numbers of persons actually prosecuted, for we need to look at and analyse the reasons behind the apparent trends in indicted crime and we cannot do so without some attempt at deciding what those trends were. It is hoped that the discussion of how individual crimes can be categorized will also have helped to provide the necessary conceptual framework within which discussions of patterns of crime can take place, and will aid the discussion on the sophistication of contemporary legal thought and practice. Furthermore the brief overview of the historical problems raised by a study of crime in the seventeenth century and the summarizing of current work and thinking on some of these areas should assist us to integrate the Yorkshire material into the national pattern and will show the extent to which patterns of prosecution in Yorkshire differed from those elsewhere.

## CHAPTER ONE

### YORKSHIRE IN THE SEVENTEENTH CENTURY

#### AGRICULTURAL REGIONS

In 1974 the county of Yorkshire, long divided for administrative purposes into three Ridings, was reorganized into six county authorities.<sup>1</sup> In this study, however, the old administrative units will be used, for in seventeenth-century Yorkshire it was through them that justice was administered. The area covered is large. The West Riding alone was the largest county in England and Wales, consisting of almost 1.8m acres; the North Riding covered 1.3m acres, and, by comparison the East Riding was small at only .7m acres.<sup>2</sup> Given Britain's complicated geological structure it is not surprising that in this area there should be many geological areas and differing patterns of agriculture, land use and social organization. One of the questions that arise from a study of crime in the past (and in the present!) is whether, and if so to what extent, social organization affects levels and patterns of crime and, for the purposes of the discussion on this issue later on, nine areas within the county have been distinguished and will be here described.

#### The Wolds

The Wolds run in a crescent shape from the high cliffs by the sea at

---

1. K.J.Allison, The Making of the English Landscape: The East Riding (London, 1976), p.21.

2. VCH, Yorkshire, vol. 2, p. 455.

Flambrough Head to the Humber estuary, nowhere exceeding 800 feet and rarely 600 feet.<sup>3</sup> The chalk gives rise to a thin porous soil, particularly in the higher areas, where two thirds of the High Wolds was said to consist of grass or rabbit warren.<sup>4</sup> Townships on the north or west scarp edges of the Wolds often had boundaries stretching into the Vales of Pickering or York and thus included areas of arable or meadowland, but elsewhere such areas were scarce. The poor quality of the arable land generally resulted in differences in methods of cultivation between fields close to, and those farther from, the village, the outfields being left fallow for several years at a time, while the infields, cropped by furlong rather than by field, followed a two or three course rotation. The Wolds-bred sheep, small and compact with a fine short wool, was starting to graze the land comparatively intensively. One or two sheep per acre grazed the poorest soils in summer and were folded by night on the arable land. The size of flocks in the Wolds averaged twenty seven compared with ten in the lowland areas on either side.<sup>5</sup> The lack of an adequate water supply and shortage of meadow land discouraged cattle rearing and where there were cow pastures on the commons they were regulated by complex stinting arrangements. The pattern of settlement was of small nucleated villages, many dominated by a resident squire. Little rural industry developed. Common fields and pastures were enclosed from an early date, usually by agreement, but it was not until 1750 - 1800 that the greater part was enclosed, frequently under Act of Parliament giving rise to the large, regular field pattern. Only

-----  
3. Allison, East Riding, p. 22.

4. D.Hey, "Yorkshire and Lancashire", in J.Thirsk, ed., The Agrarian History of England and Wales, vol. V.i (Cambridge, 1984), p. 74.

5. Hey, "Yorkshire and Lancashire", pp. 74 - 75.

after that date did isolated farmhouses start to appear.<sup>6</sup> Considerable depopulation and conversion of tillage to sheep pasture or rabbit warren had occurred earlier, but in this area was often not followed by physical enclosure.<sup>7</sup>

## 2 Holderness and Hullshire

To the east of the Wolds lies the valley of the River Hull and the plain of Holderness. The pattern of husbandry was a two field system, one field lying to each side of a nucleated village, usually on higher ground than the pasture or meadow. The heavier well-watered soils in the valleys, which produced good meadow and pasture were subject to early enclosure by agreement and by the sixteenth and early seventeenth centuries some townships had been entirely enclosed for pasture. The area developed both corn growing and cattle rearing, the average of fifteen head of cattle per farm being the highest in Yorkshire. Wheat and beans or peas were the main crops; oats and barley were fairly uncommon, and rye rare. The corn was exported via Hull or Bridlington to Rotterdam, as was another cash crop of rapeseed. The shallow valleys were liable to flooding and consequently tended to be used only to produce coarse hay or as summer pasture for working animals and young beasts. Some horse

- 
6. In the mid eighteenth century the estate of Sir Digby Legard at Ganton amounted to over 6,000 acres of which 5,000 were uninclosed high wold with around 500 acres sown with barley or oats and the remainder sheep walk: A.Young, A Six Months Tour through the North of England, 4 vols, (London, 1771, reprinted 1967), vol. 1, p. 239.
  7. A.Harris, "The Lost Villages and the Landscape of the Yorkshire Wolds", AgHR, 6 (1958), pp. 97 - 100. Marshall in the 1790s said "formerly the Wolds, whether parcelled out or in common field, or disposed in more entire properties, lay entirely open, excepting a few small yards, about the villages". W.Marshall, The Rural Economy of Yorkshire, 2nd. ed., 2 vols (London, 1788 and 1796), vol. 2, p. 237.



breeding occurred within the district and many farmers also relied on fishing, fowling and peat cutting. Draining improvements had started early and although frequently regarded with suspicion, some were being implemented during the seventeenth century.<sup>8</sup>

These two areas made up most of the East Riding and although generalizations can be misleading a clear pattern of enclosure can be seen. For example around 1650 it appears that all the East Riding deaneries still had over 50% open fields and two, Dickering, lying mainly on the Wolds, and Holderness had over 70%. Even in 1700, of forty four villages in Holderness whose field systems are known, thirty six had just the two open fields.<sup>9</sup>

### 3 Southern Vale of York

The southern Vale of York, together with the Jurassic limestone belt to the east, forms an agricultural region separate from the northern part, which is more similar to that of the Vale of Pickering. The soil types and quality differ considerably within small areas and drainage has long been a problem. Greater emphasis was placed on cattle than on crops, and the crops produced varied according to the underlying soil. In the clay areas wheat, barley, beans, and oats were produced. On the sandy soils small plough teams with wooden rather than iron harrows were used and rye, barley and oats were the principal crops. More diverse crops were starting to be grown. Around Selby, for example flax was frequently grown on a few acres and

-----  
8. Hey, "Yorkshire and Lancashire", pp. 76 - 78.

9. M.W.Beresford, "Glebe Terriers and Open Fields in Yorkshire", YAJ, 37 (1948 - 1951), pp. 325 - 368.

further east hemp might be. By the end of the seventeenth century rape had been introduced and in the early eighteenth century potatoes. Some of the townships, particularly those on the heavy clay soils, were fully enclosed during the seventeenth century; but in many others early closes for pastures and unstinted large commons remained, although there were increasing examples of partial or complete enclosure of stinted pasture.<sup>10</sup>

#### 4 Don and Trent valleys

To the south and west the Vale of York runs into the lower valleys of the Don and Trent, both of which have similar alluvial deposits, and, in the areas around Hatfield and Thorne, the remains of flooded marshland. The area of Hatfield Chase had been partly drained by Vermuyden in the late 1620s, and the Dutch and Flemish settlers had improved the land by warping, producing oats, winter corn, rapeseed and some hops. In the 1660s Hatfield Park was divided into parcels and put to tillage, although each township also had a small area of common field usually producing peas and rye. These common fields were surrounded by closes and ings and beyond them lay extensive common pasture and turf moors.<sup>11</sup> Cattle were reared and fattened and there was some dairying and horse breeding. On average each farm in the 1690s had thirteen head of cattle, but sheep, although sometimes appearing as large flocks, figure in only about 30% of inventories. The horses were traded at the large horse fairs at Doncaster, Howden, Snaith and Thorne. The new farms on the Levels were generally larger than elsewhere in the Chase, where under a system of partible

-----  
10. Hey, "Yorkshire and Lancashire", pp. 78 - 79.

11. Hey, "Yorkshire and Lancashire", p. 79.

inheritance the average size was under twenty acres. In those circumstances the generous common rights of turbary and wood were vital, and many farmers had to work as boatmen to make ends meet.<sup>12</sup> To the south west, in an area of sand and marls, arable and pasture received equal emphasis but more sheep were kept than in the marshlands.<sup>13</sup>

#### 5 Magnesian limestone belt

To the west of the Vale of York and Don and Trent valleys is a ridge of Magnesian limestone which runs from Doncaster towards Darlington and is about four to five miles wide. The country rises gently from the plain to about 200 feet at its western scarp.<sup>14</sup> This free-draining red-brown soil formed the best arable land in Yorkshire. It was an area of mixed husbandry with livestock and crops receiving equal attention. On average farms had eleven or twelve head of cattle reared for both beef and milk, and some sheep. The cereals produced were wheat, barley, oats and peas, with some rye and beans, and there were early experiments with new crops, for example hops at Wadsworth in the 1630s, and rapeseed at Hooton Pagnell in the 1690s.<sup>15</sup> The area had few rural industries and a large proportion of the adult male population were engaged full time in farm work. The small nucleated villages had shrunk from their greater size in the Middle Ages and the manorial framework was strong, the parishes being

-----  
12. Young commented on the "vast moors... what they call turf, and is dug into square pieces for burning" around Howden: Young, Six Months Tour, vol. 1, p. 239.

13. Hey, "Yorkshire and Lancashire", p. 80.

14. A.Raistrick, West Riding of Yorkshire (London, 1970), p. 17.

15. Liquorice was also grown around Pontefract: see Young's description of its method of cultivation in Six Months Tour, vol. 1, pp. 343 - 347.

the smallest in the North of England. There had been early piecemeal enclosure but many townships retained considerable areas of common field and pasture until Parliamentary enclosure.<sup>16</sup>

## 6 Coal Measures and Millstone Grit

The Coal Measures lie to the west and beyond them stretching to the Derbyshire and Lancashire borders lies an area of millstone grit. In the coal measures occur several beds of fine sandstone, frequently used for building purposes, and of ironstones, the basis of the local iron industry.<sup>17</sup> The agriculture was one of corn producing and the keeping of cattle primarily for dairying. In addition industry developed early here and played a significant part in the life of the area.<sup>18</sup> The area of millstone grit consists of wide level moor with broad peat swamps, heather and upland pasture. The valleys are gorge like and often heavily wooded in contrast to the broader, more compact woods of the coal fields.<sup>19</sup>

## 7 Pennines

The main length of the Pennines consists of limestone, giving rise to thin soil and peat bog, with fertile land confined to the valleys.<sup>20</sup> The millstone grit, coal measures and limestone areas of the Pennines all practised subsistence farming during the seventeenth century, although in the lower-lying ground corn and cattle were of greater

-----  
16. Hey, "Yorkshire and Lancashire", p. 81.

17. VCH, Yorkshire, vol. 1, pp. 17 - 25.

18. Hey, "Yorkshire and Lancashire", p. 85.

19. VCH, Yorkshire, vol. 1, pp. 12 - 16.

20. E.Kerridge, The Agricultural Revolution (London, 1967), p. 161 and VCH, Yorkshire, vol. 1, pp. 6 - 11.

importance. In the dales small meadows and closes of pasture covered the valley bottoms, while on the fell sides were large stinted pastures. Many farmers kept sheep but the mainstay animals were the black longhorns, raised equally for dairy products and beef, which averaged eight per farm in the period 1700 - 1725. Small areas of arable remained in the residual common fields. New crops were being introduced and in the early eighteenth century the Vicar of Masham was demanding tithes of potatoes, turnips, carrots, hemp, flax and rapeseed. The principal activity remained dairying and sheep and stock raising with the lower and better parts of the moor providing stinted pasture for cattle in the summer and for sheep all year. There were enclosed grounds for milk kine and for the fattening of young beasts for the butcher. Further enclosure took place during the late seventeenth century,<sup>21</sup> although some proposals for enclosure, such as those for the Forest of Knaresborough were defeated by the opposition of freeholders and customary tenants afraid of a rise in poor rates were the cottagers to be deprived of cattle grazing.<sup>22</sup>

Because of partible inheritance holdings were small, few being larger than eight or nine acres, and rural industry was thus important. The weaving of wool or linen cloth or making of coarse stockings provided employment for squatters on the forest or common edges in the areas where manorial control was not able to prevent such encroachments. Lead mining also was important, with the scale of operations growing during the seventeenth century, and with more reliance coming to be placed on it; by the end of the eighteenth century the area was one

-----  
21. Hey, "Yorkshire and Lancashire", p. 69.

22. B.Jennings, ed., A History of Nidderdale (Huddersfield, 1967), pp. 118 - 150.

of miners who worked part time as farmers rather than the other way around.<sup>23</sup> The textile industry was well established throughout the area and in litigation in 1638, Halifax was said to have 12,000 people employed in the cloth trade and Bradford, Bingley and Keighley had some 10,000 clothiers. The staple cloth in the seventeenth century was the coarse kersey which remained centred on Halifax, but by the end of the century a broadcloth industry had developed round Leeds and the early eighteenth century saw the introduction of shalloon making.<sup>24</sup> By then Defoe could write '...we could see that at almost every house there was a tenter, and almost on every tenter a piece of cloth, or kersie or shalloon,... high to the tops, and low to the bottoms, it was all the same.'<sup>25</sup> The upper Calder valley was an area of markedly greater wealth than the rest of west Yorkshire and this wealth was based on the cloth industry. Most often the process of cloth working was carried on in the home, though there were probably some large operators employing a number of workers. The houses of the

-----  
23. See Young, Six Months Tour, vol. 2, pp. 261 - 264.

24. VCH, Yorkshire, vol. 2, p.415. J.Thirsk in "Industries in the Countryside", in F.J.Fisher, ed., Essays in the Economic and Social History of Tudor and Stuart England (Cambridge, 1961), pp. 70 - 88, suggests that rural handicrafts developed in pastoral communities of small freeholders or tenants with tenures analogous to freehold. Where based on dairying, these areas had seen early enclosure and manorial controls were weak; where based on breeding or rearing, large common pastures provided no incentive to enclose and, since arable land was meagre, cooperative husbandry was not pursued. Partible inheritance was likely and the commons were also able to support a large population. Her argument is challenged by G.F.Spenceley in "The Origins of the English Pillow Lace Industry", AgHR, 21 (1973), pp. 81 - 93, where he shows that the areas in which the industry developed, while including wooded pastoral zones, such as Northamptonshire, also existed in basically arable Bedfordshire. He suggests that the explanation lies in the expansion of population in the sixteenth century and consequent development of a poor class of agricultural labourers, particularly women, who provided the necessary labour supply.

25. Quoted in Raistrick, West Riding, pp. 117 - 118.

yeomen/clothiers of the upper Calder valley from the seventeenth century on have the distinctive feature of a 'shop', usually sited below an entrance passage and, according to the inventories and to Defoe, used for the production or storage of cloth.<sup>26</sup> By 1640 there were eighteen or twenty fulling mills in Halifax alone and it appears that five of them processed an average of 2,300 to 2,800 cloths a year each.<sup>27</sup> Farming was not of primary interest to the inhabitants of this area. More important to the local economy of towns such as Halifax were the mines, quarries and cloth industry.

The importance of a dual economy was not confined to the combination of farming and some form of textiles. The metal trades were of great importance and provided both urban, rural and semi rural employment. The parish of Ecclesfield lay to the north of Sheffield and the southern part was involved with the Sheffield cutlery trade while the northern was the centre of a nail making craft. D.Hey considered Ecclesfield to be 'a typical South Yorkshire parish, with a social structure which consisted of a broadly based social pyramid tapering at the top to accommodate a few resident gentry'.<sup>28</sup> A distinctive group of metalworkers existed, whose wealth appears to be somewhere between that of the husbandmen and yeomen and the other craftsmen of the parish. The probate inventories of all the craftsmen however reflect the continuing importance of farming, for farm goods or stock

-----  
26. C.Giles, Rural Houses of West Yorkshire 1400 - 1830, West Yorkshire Metropolitan County Council and Royal Commission on Historical Monuments, Supplementary Series, 8 (London, 1986), pp. 152 - 155 and 125 - 130.

27. M.E.Francois, The Social and Economic Development of Halifax, 1558 - 1640, Proceedings of the Leeds Philosophical and Literary Society (Leeds, 1966), vol 11, part 8, pp. 217 - 280.

28. D.Hey, "A Dual Economy in South Yorkshire", AgHR, 177 (1969), pp. 108 - 119.

still account for around one third of the value of the personal estate in comparison with the over two thirds of those apparently principally dependant on farming.

## 8 Blackmoors

Running round the coast from Saltburn to Scarborough are the Cleveland, Hambleton and Howardian hills, an area of Jurassic limestone. It is an area of "bleak mountains, covered with heath, and intersected by cultivated dales".<sup>29</sup> Here occur ironstone beds, such as have been worked in the Cleveland Hills, jet rocks and alum shales. Over these rocks in places lie later deposits of oolitic limestones and clays.<sup>30</sup> The agriculture of this area resembled that of the Pennines, although there was a greater emphasis on arable in the valleys than in the Pennines. The pattern was of enclosed land in the dales and unstinted common pasture for cattle and sheep on the moor edges.<sup>31</sup> The moors themselves also provided some rough grazing and common rights of turbary. Oxen remained important as draught animals, this being the only area of Yorkshire where they outnumbered horses. The by employments were stocking knitting in the west and the manufacture of coarse linen in the east. In addition the alum works on the coastal cliffs around Mulgrave, Asholme and Sandsend provided substantial employment.<sup>32</sup>

## 9 Northern Vale of York, Cleveland and Vale of Pickering

-----  
29. Marshall, Rural Economy, vol. 2, p. 265.

30. VCH, Yorkshire, vol. 1, pp. 37 - 44.

31. Beresford, "Glebe Terriers", pp. 348 - 349. In the Deanery of Cleveland less than 15% of land was still in open field.

32. Kerridge, Agricultural Revolution, pp. 169 - 170 and Hey, "Yorkshire and Lancashire", p. 74.



The northern Vale of York, which consisted of Triassic sandstone, often covered by later drift, but forming dry light land where exposed, and Cleveland had an agricultural pattern similar to that of the Vale of Pickering,<sup>33</sup> which lies to the south of the North York Moors and is alluvial plain. The soils of the Vales of Pickering and York were similar and some townships had a high proportion of arable land. The northern Vale of York and the Vale of Pickering practised, in addition to the growing of corn and rearing of cattle, substantial dairy farming, and had some rural industry. Many of the open fields had gone by the middle of the seventeenth century and others were enclosed by agreement over the next few decades, and the pressure on the remaining commons resulted in stunted grazing, though Marshall writing in 1788 said that in his "own remembrance, more than half the Vale... lay open."<sup>34</sup> The crop rotation was of barley or maslin, followed by peas, beans or oats, followed by fallow, and the cattle were raised for milk meat and hides. There was in addition an annual intake of Scots cattle for fattening. Horses were also bred both for coaching and riding. The chief agricultural product was butter, exported through the important market town and inland port of Yarm, as well as through Stockton and Whitby. Yarm was drawing on a hinterland of at least a thirty mile radius. The principal rural industry was the weaving of linen on the moor edges and in the areas of the former forests of Pickering and Galtres. Most land in these areas was held in farms of under thirty acres, and the pattern was of small but substantial farmers with the resident gentry providing a

-----  
33. Hey, "Yorkshire and Lancashire, map of farming regions, p. 61, though it was distinguished from the Vale of Pickering by Marshall.

34. Marshall, Rural Economy, vol. 1, p. 50.

strong manorial framework.<sup>35</sup>

#### General comparisons

The agricultural divisions of the county are reflected in their comparative wealth. Thus farms in the Dales, Craven, North York Moors and the West Riding industrial area were all valued at around £50 in inventories. Farms in Cleveland, the Vale of York and Holderness were valued more highly at from £67 to £83, but highest of all were those in the Wolds valued at £119 during the seventeenth century. Corn was more important than cattle only in the Wolds and most sheep were kept on the Wolds and North York Moors farms.<sup>36</sup>

There are discernible regional differences in field systems.<sup>37</sup> Thus many villages in the Wolds, Holderness and the hills just north of the Vale of Pickering had no enclosures outside the village. The arable land was divided into a small number of fields with a regular

- 
35. Hey, "Yorkshire and Lancashire", pp. 71 - 72, and see also D.Pearce, "Yarm and the Butter Trade", Cleveland and Teeside Local History Bulletin, 9 (1970), pp. 8 - 12.
  36. W.H.Long, in "Regional Farming in Seventeenth-Century Yorkshire", in AgHR, 8 (1960), pp. 103 - 114, extracted 997 inventories for the years 1688 and 1689 but used, for the purposes of the article, only 871, having discarded the others in which the valuation was £12 or less or in four cases over £400. Apart from these somewhat arbitrary limits there is no discussion of what constitutes a "peasant" inventory and the discarding of the relatively poor inventories was on the basis that such a holding was unlikely to be one where dependence was mainly on agriculture. There is no indication in the article of the areas from which the discarded inventories came.
  37. This summary is taken from the analysis of regional variations in J.A.Sheppard, "Field Systems of Yorkshire", in A.R.H.Baker and R.A.Butlin, eds., Studies of Field Systems in the British Isles (Cambridge, 1973), pp. 158 - 167. The rest of her chapter, particularly the discussion on the elements of the different field systems is also useful, as are the general introduction and conclusion.

layout of arable holdings. The organization of village and agrarian life was strict with severe stinting, particularly of horses and cattle. In the southern Vale of York, the coalfield area and the magnesian limestone hills common land and closes were inter-mixed. The arable land was often divided into numerous small fields, furlongs were of various sizes and shapes and it does not appear that arable holdings followed a regulated pattern. The agrarian regime was flexible.<sup>38</sup>

The remaining areas of the county are harder to group. In the northern Vale of York the majority of townships in the northern part were enclosed by the middle of the seventeenth century although some in the southern part still had common fields, perhaps in the pattern similar to that in the southern Vale of York. In the Pennines and North York Moors the lower ground was mostly enclosed by the early eighteenth century although some places had retained fragmentary open

-----  
38. J.C.Harvey considered that the "Dearne Valley townships illustrate for a small area what is true for the whole of the West Riding, that for the eighteenth century and in fact before, the significance of common field agriculture decreases from east to west". These differences he attributes essentially to local geography and he draws a distinction between the lower lying areas such as Adwick and Mexborough with large areas of common land and the higher Pennine townships such as Wombwell where common fields had probably never occupied more than a small area around the settlement itself, and farming in severalty was more usual: J.C.Harvey, "Common Field and Enclosure in the Lower Dearne Valley: A Case Study", YAJ, 46 (1974), pp. 110 - 127.

fields.<sup>39</sup> The higher ground was common land providing large stinted pasture in most of the Pennines and unstinted moorland pasture shared by various townships and grazed primarily by sheep on the plateau tops of the Pennines and on the North York Moors. In the Pennines the area of stinted pasture usually exceeded that of the lowland arable and pasture and the gates to the stints could be bought and sold separately rather than as appurtenances to dwellings.

## POPULATION

The general course of population change in the period prior to the late seventeenth century can be summarized as follows: there was an upward movement from the later fifteenth century mounting to a demographic boom in the late Tudor and early Stuart period. Despite famine at the end of the sixteenth century and epidemics in the first half of the next population continued to rise slowly until the mid seventeenth century. The plague died out by the late 1660s but other diseases, such as typhus and smallpox, ravaged the country, population fell slightly and it was not until the late 1680s that it

-----  
39. Certainly in the early seventeenth century it appears that fairly extensive open common fields still existed in the Dales, although by far the greater part of the 'bottom' land belonging to the Crown and surveyed in 1605 had been enclosed and it was piecemeal enclosure of this bottom land and some intaking of cow pasture that continued during the century. Communal agriculture survived though in the sharing of closes between two or more tenants and the sharing of labour, equipment and capital as well as in the stinting of the lower fellsides and unstinted pasturage on the tops: see R.Fieldhouse, "Some Evidence of Surviving Open Fields in the Seventeenth Century Pennine Dales and the Gradual Elimination of Communal Agriculture", YAJ, 54 (1982), pp. 111 - 118.

started to increase again and then slowly.<sup>40</sup> Historians disagree about the absolute figures but about five million for 1650 is generally accepted. For the end of the period Gregory King's work, as analysed by D.V.Glass, suggests a figure of between 5.2m and 5.5m for England and Wales.<sup>41</sup> The increases differed from region to region and between different types of community in the same region and these variations must affect estimates of the population of Yorkshire, of its fluctuation during the century and of differing rates of change, which are based on national figures.<sup>42</sup>

One must, of course, be careful about applying the general pattern to

- 
40. E.A.Wrigley and R.S.Schofield, The Population History of England 1541 - 1871 (London, 1981), discussion pp. 207 - 215 and Appendix 3:1, p. 528. J.D.Chambers, Population, Economy and Society in Pre-Industrial England (Oxford, 1972), p. 22. It has been argued recently that the Black Death and Great Pestilence of 1665 were not bubonic plague but more probably anthrax. One of the arguments used to support the thesis is the typology of an outbreak of bubonic plague in Suffolk in the early years of this century: G.Twigg, The Black Death, A Biological Reappraisal (London, 1984).
41. For Gregory King see D.V.Glass, "Gregory King's Estimates of the Population of England and Wales, 1695", LPS, 3 (1949 - 1950), pp. 338 - 374. However, Wrigley and Schofield suggest a figure for the 1650s of almost 5.3m, from which it declined to about 5m by the end of the century, having fallen further in between. Population History, Table 7:8, pp. 208 - 209.
42. Clarkson suggests a difference between parishes in the north and north west where the early seventeenth century saw a generous surplus of baptisms over burials but the late seventeenth century a surplus of burials over baptisms, with the Midlands, where the population of, for example, Wigston Magna, "typical of many industrializing areas in the Midlands", grew rapidly after 1670 after having stagnated from about 1620. L.A.Clarkson, The Pre Industrial Economy in England 1500 - 1750 (London, 1975), p. 28. Wrigley and Schofield note that in Morley wapentake the pattern of a rise to the middle of the seventeenth century and a decline thereafter was more pronounced than in the aggregative parishes: Population History, p. 171. Between 1674 and 1743 Chambers notes a 12.7% increase in population in sixty two agricultural villages, but a 47.8% increase in forty industrialized villages in Nottinghamshire. J.D.Chambers, The Vale of Trent 1670 - 1800, A Regional Study of Economic Change, Econ. Hist. Rev. Supplements, 3 (1957), p. 20.

Yorkshire. On the evidence of Davenant's tables, probably based on, or at any rate, close to, the Lady Day 1689 Hearth Books, Yorkshire in 1695 had a total of 121,052 houses. This was almost a tenth of the total for the whole of England and Wales of 1,319,215 and Yorkshire easily outstripped the next largest unit, London.<sup>43</sup> Gregory King himself, however adjusted the 1,319,215 figure for households downwards and Glass considers the number to be between 1.17m and 1.2m. If the Yorkshire figure is adjusted downwards proportionately the total number of households in the county would be between 107,000 and 110,000 at the end of the seventeenth century.<sup>44</sup>

From a detailed analysis of the Yorkshire Hearth tax returns however this would seem to be an overestimate. The assessments used by J.D.Purdy varied in date, but, save for the Ainsty, all fell within the period Michaelmas 1670 and 1674, that is some fifteen to twenty years before those used by King.<sup>45</sup> Purdy considers that the assessments for the West Riding show a substantial underrepresentation of non chargeable households but, having allowed for that, finds a total of households for the county of 86,397, only

-----  
43. Glass, "Gregory King's Estimates", pp. 372 - 374. On the basis of the sums paid for transcribing the Hearth Books Glass estimates there to have been 1,285,200 names entered for Lady Day 1689. London had 110,000, Wales 78,000 and Devonshire and Norfolk 58,000 houses each.

44. Glass, "Gregory King's Estimates", p. 357.

45. J.D.Purdy, "The Hearth Tax Returns for Yorkshire", (Leeds University, M.Phil., thesis, 1975). For the City of York and the East Riding he used the Michaelmas 1672 return save for Hull and Hullshire where he used the return for 1673. For the North Riding he used the Michaelmas 1670 return and for the West Riding the Lady Day 1672 return save for Osgoldcross where a 1674 return was used. The return used for the Ainsty, the only one extant, was that for 1665.

slightly over three quarters that of King's figure.<sup>46</sup>

Despite these difficulties, we must arrive at some estimate of Yorkshire's population to allow us to discuss fluctuations in the incidence of crime, and Table 1 sets out such an estimate. Purdy's work is a detailed reconstruction of the Hearth Tax returns and although it differs significantly from King's figures for only twenty years later I am inclined to rely on it. On a purely practical point it is the only easily available source which permits the population of individual parishes to be estimated. The only other comprehensive source is the Compton Census, of which an edition has recently been published. Unfortunately many parishes are missing so that it is impossible to work out a total from it. There are, of course, arguments about the multiplier to be used in estimating population from Hearth Tax figures and by taking what is perhaps now considered to be the high one of 4.5 any possible underestimation from Purdy's figures may be compensated for.<sup>47</sup>

-----  
46. Purdy, "Hearth Tax", pp. 316 - 317. Even accepting Wrigley and Schofield's analysis showing a marked decline in population to the mid 1680s and rise thereafter the difference is marked. It may be that, as in Morley wapentake, the national pattern was more marked in Yorkshire which would go some way, though not far, to explain the difference: Population History, pp. 170 - 171 and 208 - 209.

47. For a discussion on multipliers see J.Patten, "The Hearth Taxes 1662 - 1689", LPS, 7 (1971), pp. 14 - 27, where he says that 4.5 is a "generally accepted figure", and that most estimates have varied between 4.2 and 4.5. But T.Arkell in "Factors in Estimating Population Totals from the Hearth Tax", LPS, 28 (1982), pp. 51 - 57 argues that King in fact used an overall multiplier of 4.17 and Laslett one of 4.3 for late-seventeenth century households (not houses) outside London. For the Compton Census see A.Whiteman, ed., The Compton Census of 1676: A Critical Edition, Records of Social and Economic History, New Series, 10 (1986).

-----  
TABLE ONE

POPULATION OF THE RIDINGS

EAST RIDING	72,351
NORTH RIDING	108,315
WEST RIDING	198,617
CITY OF YORK	9,545

The figures are taken from Purdy, "Hearth Tax", pp. 316 - 317.  
-----

Throughout the country there were different rates of population growth during the century.<sup>48</sup> Within Yorkshire too these differing rates can be seen, varying from a suggested decline of 8% in the East Riding to a suggested rise of 14% in the West Riding.<sup>49</sup> It is perhaps worth comparing the apparent differences in population growth between 1676, 1743 and 1811 in two areas. In thirty seven parishes in Bulmer deanery (a mostly rural area) the period 1676 - 1743 apparently witnessed a decline of about 10% while overall there was a growth of 40%, whereas in twenty one parishes in Pontefract deanery, including such as Halifax, Huddersfield, Almondbury and Mirfield, (an area with already developed and developing industries) the earlier period saw a 36% growth and the whole century and a quarter a 318% increase.<sup>50</sup>

-----  
48. Figures taken from a map showing population change between 1600 and 1700 in H.C.Darby, "The Age of the Improver 1600 - 1800", in idem., ed., A New Historical Geography of England (Cambridge, 1973), pp. 302 - 388. The greatest differences are between a growth for London and Northumberland of 141% and 68% respectively and a decline for Westmorland of 16%.

49. Darby, "Improver", p. 306. The increase for the North Riding was 3%.

50. Whiteman, ed., Compton Census, pp. 569 - 581.



This situation appears to contrast with that found by Chambers in the Vale of Trent.<sup>51</sup> By the mid 1670s the distribution of population show the dominance of the West Riding. On Purdy's figures, which increase the numbers of non chargeable households, it had a population of about 199,000, (51%) while the North Riding's population was about 108,000 (28%), that of the East Riding about 70,000 (18%) and that of the City of York about 9,500 (2.5%).<sup>52</sup> Appendix 2 shows the total number of households for each wapentake together with an estimate of population.

For the East Riding it is possible to compare figures from the 1584 Muster Roll with those taken from the 1672 or 1674 Hearth Tax Returns, with the 1743 ecclesiastical census, with Muster Roll figures for 1762 and with the 1801 census, at least for two of the wapentakes. The variation in these figures is considerable and perhaps the main thing they tell us is both how difficult it is to rely on such estimates, and that there were significant differences between districts within a fairly small geographical area so that, for example, the population of Dickering suffered a check during the seventeenth century whereas that of neighbouring Harthill increased fairly steadily. On the basis of the Muster Roll the population of the East Riding in the late sixteenth century appears to have been about 14% of the county's, lending support to the view that it declined over the next century.

-----  
51. See note 42 above.

52. Purdy, "Hearth Tax", pp. 316 - 317. These figures apply the 4.5 multiplier to the following totals of households: West Riding - 44,137; North Riding: 24,070; East Riding - 16,069 and City of York - 2,121.

## PATTERNS OF WEALTH

As the population altered during the seventeenth century so too did patterns of settlement and of comparative wealth. This was subject to considerable local variations; in Wharfedale, for example, there was considerable migration from rural to urban parishes. The early eighteenth century saw too a change from rough equality in wealth between rural and urban to a marked bias in favour of towns.<sup>53</sup>

As well as being the largest and most heavily populated the West Riding was the most prosperous of the Ridings. Thus households with one or two hearths would have belonged to labourers, small farmers or artisans, and in the West Riding these formed 78% of all households, compared with 82.5% in the East and 87% in the North Ridings.<sup>54</sup> In the next category, that is households with three to five hearths,

- 
53. The rural parishes considered by Pickles in her study were Conistone, Linton, Burnsall, Rystone, Bolton Abbey, Addingham, Ilkley and Weston; the marketing centre was Otley. There total population between 1664 and 1743 rose from 2,520 to 2,700, while in the rural parishes it fell from 4,658 to 3,987. Otley's market dealt with corn and provisions. Since, according to the 1686 survey of inns and alehouses it had some sixteen beds and stabling for fifty horses, it can be seen that it was a market town of some importance. Within the liberty woollens, worsteds and linens, a reflection of its proximity to Knaresborough, were significant industrial employments. The economy was primarily devoted to pastoral farming and the change in wealth from rural to urban shown in the probate inventories is supported by comparative declines and increases in the numbers of cattle, sheep, arable crops and household goods and in their value. See M.F.Pickles, "Agrarian Society and Wealth in Mid-Wharfedale 1664 - 1743", *YAJ*, 53 (1981), pp 63 - 78 and D.E.Smith, "Otley: A Study of a Market Town during the late Seventeenth and Eighteenth Centuries", *YAJ*, 52 (1980), pp. 143 - 156.
54. The distinction between exempt and one to two hearth houses, three to five hearth houses and houses with more than six hearths is fairly generally accepted as reflecting the social groups enumerated. See for example, C.A.F.Meekings, S.Porter, and I.Roy, eds., The Hearth Tax Collectors' Book for Worcester 1678 - 1680 (Worcester Historical Society New Series, vol, 11, 1983), pp. 27 - 32.

representing the yeomanry, medium farmers and the more prosperous artisans and traders in the towns, the West Riding has the highest proportion at 18% while the East Riding has 13% and the North Riding 10.5%. These two categories account for over 95% of the population and differences between them are useful indicators of social differentiation. The substantially greater wealth of the West Riding is doubtless due in great part to the development there of the textile industry with some areas within the Riding, such as the upper Calder valley, developing a numerous and wealthy yeomanry from the late sixteenth century. This group owed its economic strength both to the form of land tenure and, more importantly, to investment in the cloth trade, for the yeoman clothier, engaged in both textiles and agriculture, was in general twice as wealthy as a simple yeoman. Moreover an economy not dependent solely on agriculture could withstand bad harvests and slumps while an area such as mid Wharfedale, where few people were engaged in cloth production, saw a major decline in farming activity and a rise in emigration as a result of agricultural depression in the mid seventeenth century.<sup>55</sup>

The six to nine hearth category consisted of the households of most of the gentry and the more substantial merchants and manufacturers. 3% of West Riding households are in this category, compared with 2.7% in the East and 1.9% in the North Riding. At the very top of the social scale, of households with ten or more hearths, which would have included inns, the West Riding had .9%, and the East and North Ridings .7% each. Table 2 shows the proportion of the different groups of hearth numbers divided by riding and Appendix 3 divided by wapentake and that, even within the widespread poverty, significant

-----  
55. Giles, Rural Houses, pp. 121 - 130 and Pickles, "Agrarian Society", p. 64.

gradations existed, can easily be seen. Thus, to take the two extremes, Pickering Lyth in the North Riding can be compared with Staincross in the West, but on the other hand it should be noted that Staincliff and Ewcross is roughly comparable with Ryedale.

-----  
 TABLE 2

PERCENTAGE OF HOUSES WITH HEARTHES BY RIDING

	WEST RIDING	NORTH RIDING	EAST RIDING
One to two	78.2%	87.2%	82.4%
Three to five	17.7%	10.2%	13.5%
Six to nine	3.0%	1.9%	3.1%
More than ten	1.0%	.8%	1.0%

These figures are taken from Purdy, "Hearth Tax".  
 -----

TOWNS

The major problems to be confronted in analysis of the significance of towns in Yorkshire in this period are what constituted a town,<sup>56</sup> and what proportion of the population lived there.<sup>57</sup> Yorkshire probably had two towns in what Clark and Slack describe as the "first

-----  
 56. P.Clark and P.Slack, eds., Crisis and Order in English Towns, 1500 - 1700 (London, 1972), "Introduction", pp. 3 - 4 suggest four characteristics: "a specialist economic function, a peculiar concentration of population, a sophisticated political superstructure and a community function and impact beyond the immediate limits of the town and its inhabitants."

57. Gregory King estimated that there were 790 towns in 1700 and, using his figures, it would appear that about 25% of the population lived in them. In Crisis and Order, p. 6, Clark and Slack contrast this figure with modern estimates that perhaps 15% - 20% of the population lived in towns in this period.

division": York and Hull. But although only one other, Leeds, had a population of over 5,000, Halifax was undoubtedly also significant.<sup>58</sup>

By 1662, York had recovered its national place as second town in terms of taxable wealth, after having suffered a decline for about a century to 1550, as textiles moved to the West Riding and trade dwindled.<sup>59</sup> By the end of the century its population was probably between 10,000 and 12,000, possibly a slight increase since 1600, but if so, one which had occurred in the first part of the century.<sup>60</sup> Approximately 20% of households were exempt from the Hearth Tax and a further 27% were taxed on one hearth only, suggesting that around 50% of the population were poor or very poor. There was a marked geographical distinction between rich and poor. The central parishes of York had the fewest non taxable and most many-hearthed dwellings, the outer parishes the most non taxable and fewest multi-hearthed households.<sup>61</sup> York's main role during the period was as a regional market and administrative centre. Almost half of those admitted to the freedom of the city during the century were involved in the victualling, clothing and building trades,<sup>62</sup> but it would not be correct to see York simply as a centre catering for the needs of those wealthy local gentry who were starting to visit it

-----  
58. Clark and Slack, Crisis and Order, p. 5 and see P. Corfield, The Impact of English Towns, 1700 - 1800 (Oxford, 1982), diagram, p. 12. Corfield appears not to consider Halifax an important or sizeable town but it is arguable that in this period it was both larger and more significant than Leeds.

59. D.M. Palliser, "The Trade Gilds of Tudor York", in Clark and Slack, eds., Crisis and Order, pp. 86 - 116, p. 87, and see his book Tudor York (Oxford, 1979).

60. C.G.F. Forster, "York in the Seventeenth Century", in VCH, City of York, pp. 162 - 163.

61. VCH, City of York, pp. 163 - 165.

62. VCH, City of York, p. 167. This compares with an average of between 35% and 40% so engaged: W.G. Hoskins, Provincial England (London, 1963), p. 88.

seasonally.<sup>63</sup> Government in the city was in the hands of the mayor, alderman and twenty four, who constituted the privy council, and the common council consisting of eighteen representatives from each of four wards.<sup>64</sup> This oligarchy included successive generations of the same families and was largely recruited from a narrow group of wealthy merchants many linked with neighbouring gentry families.<sup>65</sup> In the early eighteenth century York had what was probably the eighth largest borough electorate in the country, with approximately 1,800 voters during the reign of Queen Anne. The franchise lay with the freemen of the city,<sup>66</sup> and usually their own nominees were elected.<sup>67</sup> Hull "owed her medieval greatness to the wool trade", but this had declined drastically by the mid-sixteenth century.<sup>68</sup> During the seventeenth century trade with the Baltic revived Hull's fortunes. Her main role was as an importer of Baltic products such as hemp, flax, timber and other naval stores, although described as "a very minor port by the end of the seventeenth century",<sup>69</sup> she still handled more than one tenth of the country's total cloth exports. These, deriving mainly from the West Riding woollen and worsted industry, were destined mainly for Holland. Increased specialization resulted in the domination of the trade by a small group of merchants, such as the Maister family.<sup>70</sup> The population of Hull in the mid 1670s was probably between 7,000 and 8,000, and remained fairly

-----  
63. It has been suggested that 50% of freemen were still engaged in manufacturing, see for example, on the continuing importance of manufacture in the large cities, N.Goose, "English Pre Industrial Urban Economies", in Urban History Yearbook, (1982), pp. 24 - 30, p. 25.

64. VCH, City of York, pp. 173 - 179.

65. VCH, City of York, pp. 180 - 182.

66. J.F.Quinn, "York Elections in the Age of Walpole", Northern History, 22 (1986), pp. 174 - 197, p. 186.

67. D.Hey, Yorkshire from A.D. 1000 (London, 1986), pp. 182 - 183.

68. M.Jackson, Hull in the Eighteenth Century (London, 1972), p. 3.

69. Jackson, Hull, p. 9.

70. VCH, East Riding, vol. 1, pp. 139 - 143.

static, perhaps as a result of epidemic disease in the 1680s. Because of the thriving nature of its commerce Hull was probably attracting newcomers many of whom were permitted to purchase their freedom.<sup>71</sup> It appears that almost 40% of the population were poor (exempt (19%) or having one hearth only (17%)). Chartered from the fourteenth century, Hull sent two representatives to Parliament throughout the period, and, like York, these were usually the town's own nominees, although in the period 1660 - 1689 considerable external, particularly governmental, pressure was being applied.<sup>72</sup>

Leeds provides a very different picture. Unchartered until 1626, and without Parliamentary representation, except during the Interregnum, until 1832, Leeds was nevertheless the second or third largest town in Yorkshire by 1700, and was to continue to grow. Its expansion had started during the sixteenth century as it became a centre for the textile industry.<sup>73</sup> Its population had increased from about 3,000 in the mid sixteenth century to around 7,000 for the intownship and about 10,000 including the outtownships by 1700. Most of this expansion was due to in migration and, as the town did not grow in size, it is not surprising that the crowded conditions resulted in a decline in average expectation of life from forty years in 1625 to thirty two years in 1699.<sup>74</sup> Leeds played a dual role as both a

-----  
71. VCH, East Riding, vol. 1, pp. 158 and 149.

72. E.Gillett and K.A.MacMahon, A History of Hull (Oxford, 1980), pp. 84 and 182 - 184, where they describe the charters and representatives, and VCH, East Riding, pp. 113 - 116 where the elections of the period are analysed.

73. G.C.F.Forster, "The foundations: from the earliest times to c. 1700", in D.Fraser, ed., A History of Modern Leeds (Manchester, 1980), pp. 2 - 23.

74. Forster, "Foundations", p. 18 and J.W.Kirby, "Restoration Leeds and the Aldermen of the Corporation 1661 - 1700", Northern History, 22 (1986), pp. 123 - 174.

manufacturing centre and a market town, and the absence of outstandingly wealthy families meant that, unlike York, for example, there was no marked geographical segregation of rich and poor.<sup>75</sup> About 20% of the population were poor (that is assessed for one hearth only) and there were few recorded as non chargeable, proportions considerably less than both York and Hull.<sup>76</sup> The corporation, like most others, was a "close knit self perpetuating oligarchy" consisting of a mayor, twelve aldermen and twenty four assistants. Of officeholders whose occupations are known, over 60% were described as merchants and they had strong links to local yeoman and gentry families, only about 7% of those holding office between 1661 and 1700 having been born outside Yorkshire.<sup>77</sup>

In 1700 Yorkshire had, in addition to the three large towns already mentioned, six more with a population exceeding 2,500: Beverley, Bradford, Halifax, Scarborough, Sheffield and Whitby. Of these Whitby and Scarborough and Bradford and Halifax can be discussed together.<sup>78</sup> As part of the attempt to discover why some towns prospered and others declined they have frequently been grouped into categories. Two of these categories are ports and dockyard towns, and spas and resorts.<sup>79</sup> Whitby was a port and Scarborough both a port and a spa by the end of the seventeenth century. In 1710 Scarborough and Whitby were respectively the fifth and sixth largest shipowning ports in England, and certainly Whitby had been building ships, albeit fairly

-----  
75. Kirby, "Restoration Leeds", p. 132.

76. Forster, "Foundations", p. 18 but see Purdy, "Hearth Tax" on the general underreturn of the exempt in the West Riding.

77. Kirby, "Restoration Leeds", p. 135 and Forster, "Foundations", p. 14.

78. Corfield, Impact, diagram, p. 12. As will be seen later though the population of the town of Halifax, let alone the parish, was over 5,000.

79. See for example, Corfield, Impact, pp.



small ones, since the early seventeenth century. Both towns were expanding from the later seventeenth century on.<sup>80</sup> In some ways Whitby's preeminence was surprising for it stood 'at the entrance of a little nameless River, scarce indeed worth a Name', according to Defoe, and so lacked access to a hinterland. Although most of its ships were engaged in carrying coal from the Tyne to London, it had a good harbour and imported coal partly, at least, for the nearby alum works, and exported butter, alum and fish.<sup>81</sup> Scarborough had not as good a natural harbour as Whitby, though it had a notable pier dating from the early seventeenth century, but was also much involved in the coasting trade, and by the end of the century was starting to develop its reputation as both a spa and resort for sea bathing.<sup>82</sup> Its popularity was confined to northern England, however, and it never achieved 'take-off'.<sup>83</sup> Scarborough had been incorporated from the mid-fourteenth century and government was vested in the mayor, aldermen and thirty one common councillors. It returned two M.P.s throughout.<sup>84</sup>

One feature common to Leeds, Halifax and Bradford had been their support for the Parliamentary cause, explained by Clarendon as being "very populous and rich towns, depending wholly upon clothiers, [they] naturally maligned the gentry".<sup>85</sup> Although Halifax had been

-----  
80. R.Davis, The Rise of the English Shipping Industry in the Seventeenth and Eighteenth Centuries (Newton Abbot, 1972), pp. 61 - 65.

81. T.S.Willan, The English Coasting Trade, 1600 - 1750 (Manchester, 1938), p. 118.

82. The first book on Scarborough was that of Dr. Wittie entitled Scarborough Spaw, and printed in York in 1667.

83. Corfield, Impact, pp. 60 - 61.

84. J.B.Baker, The History of Scarborough (London, 1882), pp. 45 - 46.

85. W. Dunn Macray, ed., The History of the Rebellion and Civil Wars in England by Edward Earl of Clarendon, 6 vols, (Oxford, 1888), vol. 2, p. 464.

prominent from the early sixteenth century, the development of the worsted industry helped both it and Bradford to expand. The change in emphasis in manufacture from the old woollens to the 'new' worsteds occurred from the early seventeenth century onwards, perhaps as English wool became coarser as the sheep were fatter and better fed. In the middle of the century the old woollen industry producing broadcloths and kerseys had faced problems but the growth of manufacture of the new shalloons and serges made towns such as Bradford and Halifax prosper. Halifax was the largest parish in the northern region and during the seventeenth century perhaps a quarter of the population lived in the town itself. There are great difficulties in using population figures for Halifax parish because of its size and the number of townships, but a possible comparison may be 16,800 in 1641 -1642; 21,000 in 1676 and 26,300 in 1743. It was also the centre of the most prosperous area of West Yorkshire where a large and prosperous class of yeoman clothiers dominated the social structure. On a similar analysis Bradford's population increased from 5,600 (almost certainly an underestimate) in 1641 - 42 to 6,600 in 1676 and to 8,500 in 1743.<sup>86</sup>

The parish of Sheffield by the later seventeenth century had a population of about 5,000 and was already well known as a centre of the metal working industry: "in a ten mile radius around Sheffield there were nearly 600 smithies", and about 50% of those whose occupations are given in parish registers, were described as engaged in metal working.<sup>87</sup>

-----  
86. Whiteman, ed., Compton Census, p. 579.

87. D.Hey, Rural Metalworkers, p. 10 and Clarkson, Pre Industrial Economy, pp. 88 - 89.

Beverley had owed its medieval prosperity to the cloth trade, and to its Beck, connecting the town, by way of the River Hull, with the sea. The westward movement of the cloth trade and the overshadowing of Beverley by Hull started early and were the main reasons for Beverley's gradual loss of importance, although it remained a sizeable town with a fair which, even in the late sixteenth century, rivalled those of York.<sup>88</sup>

Below these major urban centres were many smaller towns, which perhaps displayed only two or three of the characteristics described by Clark and Slack, but nevertheless fall within the 650 towns with between one hundred and fifty and two hundred houses enumerated by Gregory King.<sup>89</sup> At the end of the seventeenth century Yorkshire had over sixty market towns.<sup>90</sup> These included old marketing centres and incorporated boroughs with Parliamentary representation, such as

-----  
88. D.K.J.Wyatt, "Performance and Ceremonial in Beverley pre 1642" (York University, D.Phil. thesis, 1983), 2 vols, vol. 1, pp. xxv - xxvii.

89. Glass, "Gregory King's Estimates", p. 341.

90. Hey, Yorkshire, p. 186.

Ripon and Richmond;<sup>91</sup> decayed boroughs such as Hedon and Aldborough, still returning members, although with small populations and totally dominated by the neighbouring gentry;<sup>92</sup> and the developing industrial centres such as Huddersfield, unincorporated and without Parliamentary representation.

## DISSENT

Having discussed economic and, to some extent, social structures, we must now turn to the problem of religious dissent. This will not only deepen our understanding of the general background to late seventeenth century Yorkshire, but will also provide a context for our later discussion of religious offences. A number of questions arise concerning the distribution and extent of dissent, both

-----  
91. In Richmond, enfranchised in 1576, voting during the later seventeenth century was restricted to householders and tradesmen paying rates and taxes. The total electorate around 1678 was about three hundred, possibly more, but, by the eighteenth century it had been restricted. The population at this time was about 1,600. The burgage owners were significantly better off than the rest of the population: 20% of the total population was taxed for four or more hearths, but 39% of known burgage owners, and conversely 47% of the total population had only one hearth while only 22% of known burgage owners had: R.T.Fieldhouse, "Parliamentary Representation in the Borough of Richmond", YAJ, 44 (1972), pp. 207 - 216 and R.T.Fieldhouse and B.Jennings, A History of Richmond and Swaledale (London, 1978), p. 106. Ripon, incorporated in 1604, returned two members from 1553. The franchise was of burgage owners and, in 1688, 369 votes were recorded. The population around 1672 was about 1,400: K.Darwin, "John Aislable (1670 - 1742)", YAJ, 37 (1948 - 1951), pp. 262 - 324. R.W.Unwin, "Tradition and Transition: Market Towns of the Vale of York, 1660 - 1830", Northern History, 17 (1981), pp. 72 - 116.

92. Aldborough, which returned two members until 1832, had nine burgesses entitled to vote in 1660: J.W.Walker, "Records Relating to a Seventeenth-Century Election", YAJ, 34 (1938 - 1939), pp. 25 - 34. Hedon had a population of about 255 in 1676, having decayed as Hull had prospered. In the eighteenth century the franchise was in the hands of 140 burgesses: VCH, East Riding, vol. 5, pp. 174 - 182.

Protestant and Catholic, in particular whether the incidence of dissent can be correlated with patterns of social or agricultural organization,<sup>93</sup> with the development of industry or with the growth of towns.<sup>94</sup>

Nationally the census of 1676 suggests that about 4.2% of the adult population over eighteen were non conformists and that about .5% were Roman Catholics.<sup>95</sup> The Presbyterians accounted for over 50% of all nonconformists, the Independents for almost 18% and the remainder were divided among Baptists, General and Particular, and Quakers.<sup>96</sup> Nonconformity was socially hierarchical and tended to be stronger in the south and west of the country,<sup>97</sup> Catholicism in the north.

In attempting to assess the numbers and distribution of Dissenters in Yorkshire, Faithorne regards the figures in the Compton Census with some doubt, although Anne Whiteman concluded that it should be

-----

93. See for example, A.M.Everitt, "Nonconformity in Country Parishes", in J.Thirsk, ed., Land, Church and People, AgHR Supplement (1970), pp. 178 - 199, where it is noted that "social outcasts" were attracted to heathland and millenarianism, while more established forest communities followed more traditional forms of Dissent. And see the discussion in J.Bossy, The English Catholic Community (London, 1975), pp. 81 - 89 and 390 - 398, on both the inclusion of Catholicism as one of several "dissents" in the seventeenth century and on its geographical distribution in the Yorkshire dales.
94. This was certainly not always the case. In the market centre of Otley dissenters formed 1% of the population; in the neighbouring rural parish of Weston, 7%. Smith, "Otley", pp. 143 - 156.
95. B.Coward, The Stuart Age (London, 1980), p. 253.
96. Coward, Stuart Age, p. 425.
97. R.A.Faithorne, "Nonconformity in later Seventeenth Century Yorkshire", (Leeds University Ph.D. thesis, 1982). He says that it has been argued that "Presbyterians, directed by a large and well educated body of clergy and patronised by aristocracy and gentry, were socially superior to, and economically more prosperous than their sectarian colleagues. Congregationalists derived their support predominantly from artisans, tradesmen and tenant farmers while Baptist support was drawn largely from the poor peasantry and urban working class. The Quakers, as the most radical of the sects,... drew their support more than any other denomination from the lowest class."

regarded as "a valuable source, even if we cannot accept every figure in it uncritically".<sup>98</sup>

Using sources other than the Compton census Faithorne estimates there to have been about 4,500 licensed Dissenters and about 3,000 unlicensed Quakers between 1672 and 1675, and this total figure of 7,500 confirms for him that the Compton Census, which gave a total of 6,800, "conceals a significant undeclared Dissenting population."<sup>99</sup> He suggests that by 1717 the Dissenting population had risen to about 20,000 in a total county population of about 501,000.<sup>100</sup> Old Dissent was strong in the West Riding, in the administrative and commercial centres of Beverley and Hull and in York, whereas the "Quakers were more extensively and evenly distributed". He considers that "the Divine fire was probably more important than peculiarities of local economy, forms of family connection and lines of social class in determining the survival of Dissent" in post Restoration Yorkshire,<sup>101</sup> and this view gains support from the evidence of the significance of individual ministers such as John Favour and his

-----  
98. Faithorne, "Nonconformity", p. 103, and Whiteman, ed., Compton Census, p. lxxix.

99. Faithorne, "Nonconformity", p. 104.

100. Faithorne, "Nonconformity", p. 105. On the basis of the Compton Census figures dissenters in Yorkshire accounted for 3.8% of those enumerated; on the basis of Faithorne's figures for 4%: Whiteman, ed., Compton Census, p. 523.

101. Faithorne, "Nonconformity", p. 109.

successors in Halifax.<sup>102</sup>

In the West Riding (apart from the towns where a pattern is hard to discern) Dissent was associated with some parts of the eastern lowlands, particularly the parishes of Fishlake and Thorne, and was perhaps partially accounted for there by the influence of the Flemish and Dutch immigrants of a previous generation. It was present as well in some outlying hamlets, particularly in the west but was rare in the estate villages or those sited on the limestones or coal measure sandstones, where settlements were nucleated, parishes small, and "there were few isolated communities, little farming in severalty and no industrial crafts to encourage independence".<sup>103</sup>

The distribution of Dissent set out in Table 3 shows that the Deaneries of Harthill, Pontefract and Doncaster account for over 60% of dissenters, though they contain under 50% of the population. In

-----  
102. See for example the work of Francois on Halifax, and Favour's example was followed by others and Faithorne stressed the importance of the Halifax ministers ejected after 1660 in nevertheless maintaining Dissent within the area of their former ministries. Thus Eli Bentley, Vicar of Halifax; Oliver Heywood, curate of Coley; Gamaliel Marsden, curate of Chapel le Brears; Thomas Robinson, curate of Rastrick and Henry Root, of Sowerby were all ejected, but three of them continued their ministry after their ejection and at the end of the century the parish had seven Presbyterian meetings with a total of two thousand adherents. "Nonconformity", pp. 628 - 633 and 119.

103. D.G.Hey, "The Pattern of Non Conformity in South Yorkshire 1660 - 1851", Northern History, 8 (1973), pp. 86 - 118. His study is based on the Deanery of Doncaster whose area ranged from the large Pennine parishes of isolated farms and hamlets with pastoral farming combined with cloth or cutlery manufacture through the nucleated open field arable villages on the magnesian limestone to the stock farming of the lowlands. In the Doncaster Deanery of the 23,497 inhabitants enumerated only 3.1% were dissenters and only .3% Roman Catholics. There were strong differences between different areas: Sheffield had 10% of dissenters compared with Doncaster, the only corporate town which had .2%.

Harthill, where about 9% of the total population lived, almost 27% of all dissenters lived and in that deanery the Dissenters accounted for over 11% of the population.

-----  
TABLE THREE

DISTRIBUTION OF DISSENT

Deanery	%age of parishes included	persons of age to receive communion	%age of R.C.s	%age of other Dissenters
City of York	69%	3,806	2.3%	4.2%
New Ainsty	75%	9,177	2.4%	1.1%
Old Ainsty	100%	15,244	0.2%	1.8%
Craven	100%	12,881	1.0%	2.5%
Pontefract	87%	39,282	0.3%	3.2%
Doncaster	87%	22,117	0.3%	3.3%
Bulmer	71%	9,051	2.3%	2.1%
Rydale	76%	8,090	1.9%	3.1%
Cleveland	75%	12,166	5.4%	4.3%
Holderness	87%	6,289	3.4%	5.0%
Harthill	72%	14,703	1.1%	11.3%
Dickering	80%	3,397	0.8%	3.6%
Buckrose	70%	2,357	0.2%	2.8%

-----  
It has been argued that recent work shows that "feudalism, Catholicism and a violent society were not the unique and unmistakable finger prints of the North, but were rather the blurred and fading imprints of all provincial England" in the Tudor period.<sup>104</sup> This view of medieval elements, once common to all England lingering longest in the North, helps explain the strength of Catholicism among Yorkshiremen in the seventeenth century. The North Riding was, after Lancashire, "probably the English county in which Catholicism survived most strongly and which took longest to conform

-----  
104. B.W.Beckingsale, "The Characteristics of the Tudor North", Northern History, 4 (1969), pp. 67 - 83.



to the Church of England".<sup>105</sup> The exclusion of the Richmondshire deaneries from the Compton Census figures probably underestimates the survival of recusancy, but overall it appears that recusants accounted for 1.3% of the population of Yorkshire and were strongest in Cleveland deanery.<sup>106</sup> The distribution of recusants was very specific. The vast majority lived in four groups of parishes: in the north eastern coastal strip around Whitby, (where 32% of all Yorkshire recusants were counted and where they formed over 5% of the population); in part of Richmondshire; in an area between Leeds and Howdenshire; and in an area between Masham and Spofforth in Clarowapentake. The strength of recusancy in Yorkshire as elsewhere was frequently due to the support of prominent gentry families. Hemingbrough in Howdenshire, for example, was the seat of the Babthorpe family, while the Palmes and Thwing families dominated the recusant body in and around York in the period before 1642 and retained considerable influence after the Restoration.<sup>107</sup> Table 3 provides a summary, taken from the Compton Census figures and based on the deaneries, showing the proportions of Roman Catholic and other Dissenters in the parishes for which the records have survived.

#### YORKSHIRE NOBILITY AND GENTRY

- 
105. J.McDonnell, ed., A History of Helmsley, Rievaulx and District (York, 1963), p. 145. The footnotes to that quotation refer to the difference between A.G.Dickens' estimate of less than 1.5% of the population of the three ridings and J.T.Cliffe's estimate that sixty out of 195 gentry families were recusant in 1642. J.T.Cliffe, "Yorkshire Gentry on the Eve of the Civil War" (London University, Ph.D. thesis, 1960).
106. Bossy, using the work of Magee on English recusants, gives figures of 1.6% as the proportion of recusant to all households in 1641 - 1642, and 15% as the proportion of land held by Catholics in Yorkshire in 1715 - 1720: English Catholic Community, maps 1 and 2, pp. 404 and 407.
107. J.C.H.Aveling, Catholic Recusancy in the City of York, 1558 - 1791 (St. Albans, 1970), pp. 84 - 98.

At the pinnacle of Yorkshire society were the nobility and gentry. In the middle of the century there were almost 700 gentry families, of whom 29% lived in the North Riding, 21% in the East Riding, 47% in the West Riding, and 3% in York itself.<sup>108</sup> These included the forty four baronets created before 1660 and the further thirty five created between 1660 and 1700.<sup>109</sup> The representation of gentry families in the Ridings is similar to the population as a whole, save for a slightly higher proportion of gentry in the East Riding and a slightly lower proportion in the West Riding. Most of the gentry drew their main income from land, though several also engaged in urban pursuits or were lawyers or royal officials. The most substantial 10% had incomes exceeding £1,000 per annum, but for over 50% their annual income was below £250. Most had been educated at local grammar schools and about 36% had received some form of higher education.<sup>110</sup>

These, of course, were the men who served as J.P.s throughout the period. The fact that there were significant increases in the numbers of those listed in the commission of the peace during the late seventeenth and early eighteenth centuries has been noted elsewhere. In Yorkshire the greatest increase was in the number of dignitaries. Commissions for the three Ridings in the early 1660s list about twenty dignitaries and about 140 working, or potentially working, J.P.s. Those for the late 1690s list almost eighty dignitaries and

-----  
108. J.T.Cliffe, The Yorkshire Gentry (London, 1969), p. 5. Dugdale in his Visitation in 1665 - 1666 recorded the genealogies of about 470 families and in addition cited a further 250 for failing to attend. W.Dugdale, The Visitation of the County of Yorke begun in AD 1665 and finished AD 1666, (Surtees Society, 36, 1859).

109. P.Roebuck, Yorkshire Baronets 1640 - 1760 (Oxford, 1980), Appendix 1, pp. 367 - 369.

110. Cliffe, Yorkshire Gentry, pp. 25; 29 and 73.

about 160 working Justices. Whereas almost half the dignitaries appear in all three commissions, only about a dozen of the working J.P.s appear in more than one commission and only one appears in all three and he is the clerk of assize.<sup>111</sup>

#### COUNTY GOVERNMENT

Despite local variations, the main offices of county local government were well established by the late seventeenth century and need only a brief mention here. During the Middle Ages the major role in county government had been played by the Sheriff, but by the early seventeenth century he had effectively lost his military role to the lord lieutenant and his civil role in large part to the justices of the peace. Nonetheless the sheriff retained a role in government throughout the later seventeenth century: his appointment was subject to political considerations like that of the J.P.s and the Lords Lieutenant, and he was responsible for among other things, the empanelling of juries and the county gaol. He was drawn from the same group of men as those who served as J.P.s, but only the more prominent of the members of county society were chosen for the office, and it was acceptable to them despite its expenses and burden.<sup>112</sup> During the later part of the seventeenth century men such as Sir Thomas Gower and Sir Michael Wentworth served turns as sheriff. As well as the High Sheriff for the county, who was

-----  
111. PRO. ASSI., 44/5 and 44/42.

112. For a detailed discussion of the role of the sheriff and his position in counties other than Yorkshire see VCH, Wiltshire, vol. 5 (1957), p. 105; VCH, Shropshire, vol. 3, pp. 109 - 110; and Peyton, ed., Proceedings in Quarter Sessions for... Lincoln, vol. 25, pp. xiv - xxiv, and see also A.Fletcher, Reform in the Provinces: The Government of Stuart England (London, 1986).

appointed annually by the crown the corporations of York and Hull annually appointed one of their number sheriff of the town.<sup>113</sup>

The Lord Lieutenancy, a post which had effectively been created in the sixteenth century, was an office filled usually by a local notable, and was not made permanent until 1662.<sup>114</sup> Originally in charge of the militia, the Lord Lieutenant's duties became more varied. Before its abolition in 1641 the Yorkshire lieutenancy was usually held by the Lord President of the Council in the North. After the Restoration a lieutenant served for each of the three Ridings and was usually a magnate or courtier such as the Duke of Monmouth or the Duke of Kingston. The deputy lieutenants, on whom much of the actual work of the office fell, were members of the leading county families, such as the Hothams, Boyntons or Bethells.<sup>115</sup>

It has been suggested that there was a marked increase in the size of county commissions of the peace during the seventeenth century, and certainly the East Riding bench increased from between twenty five and thirty in the later sixteenth century to fifty two in 1657/58. This figure dropped subsequently, though, and in 1685 there were only

-----  
113. G.C.F.Forster, The East Riding Justices of Peace in the Seventeenth Century, East Yorkshire Local History Society Series, no. 30 (1973), p. 7.

114. In Wiltshire it had practically been monopolized by the Earls of Pembroke and in Shropshire from 1660 on by the Newports, (created Earls of Bradford in 1694) save for two periods, 1687 - 89 and 1712 - 14 when, as Whigs, they were deprived of office. VCH, Wiltshire, vol. 5, p. 80 and VCH, Shropshire, vol. 3, p. 108 and see Proceedings in Quarter Sessions for... Lincoln, Peyton, ed., p. xxxvi.

115. Forster, East Riding J.P.s, p. 8.

twenty two working J.P.s.<sup>116</sup> Political considerations resulted in considerable interference with the membership of the commission. Of a total of 188 Yorkshire J.P.s in the last commission of the Interregnum only thirty three were named in the first commission of Charles II.<sup>117</sup> The personnel of the commissions can be broken down in four groups. Firstly there were the "eminent men in the state", which in Yorkshire included such as the Earl of Clarendon. Secondly there were the judges on circuit; thirdly "men of rank and distinction in the shire" such as and lastly the main body of country gentlemen, who carried out most of the work.<sup>118</sup>

The justices' duties were many and varied, ranging from their judicial work in Quarter Sessions to the promulgation of wage rates and enforcement of the Poor Laws. As well as their work in Quarter Sessions J.P.s acted judicially singly or in petty sessions but traces of such activity are hard to find, and apart from the Diary of Captain John Pickering, a J.P. during the Interregnum, we are not aware of other surviving records for Yorkshire for this period. The judicial work of the justices, however, was of vital importance in the enforcement of the criminal law and will therefore be treated in

-----  
116. Forster, East Riding J.P.s, p. 21. In Wiltshire for example, the working membership of the commission increased from twenty five in 1562 to sixty five by the late 1650s, but in Shropshire the commission grew only from forty in 1608 to sixty seven in 1700, (though it (though it was 104 by 1712) and there had been considerable fluctuations due to political interference in between.

VCH, Wilts, vol. 5, p. 89 and VCH, Salop, vol. 3, p. 90.

117. G.C.F.Forster, "Government in Provincial England under the later Stuarts", TRHS, 5th ser, 33 (1983), pp. 29 - 48. The breakdown for the Ridings was as follows: fourteen of seventy six West Riding J.P.s reappointed; eleven of fifty seven North Riding J.P.s reappointed; and eight of fifty five East Riding J.P.s reappointed.

118. The categories are taken from J.Hurstfield in VCH, Wilts, vol. 5, pp. 88 - 89.

detail in Chapter eight.

The fairly detailed discussion in this introductory chapter serves as a basis for indicating the extent to which Yorkshire in the late seventeenth century resembled and differed from other counties in the period. One of the major purposes of this thesis has been to see the extent to which there was a national pattern of crime by the end of the seventeenth century and the extent to which variations in the economic and social structure of an area affected the patterns of crime prosecuted within it. By studying a county the size of Yorkshire, and by comparing the results obtained with work on other counties, both these aims can be realized. In particular, it will be possible, by relating the discussion of crime patterns in Yorkshire to the regions within the county, as described in this chapter, to decide whether, in what ways and for what reasons, the commonly made distinction between a highland and lowland zone pattern of settlement, agriculture and social organization affected criminality or at any rate the prosecution of crime.

## CHAPTER TWO

### OFFENCES AGAINST THE PERSON

Offences against the person constituted a significant proportion of all prosecuted crime in the period, amounting to about 17% at Quarter Sessions and 14% at Assizes. The offences included in the category varied, from murder - a felony, and in the case of a woman who killed her husband, or servant who killed his or her master a petty treason - to assault. All forms of that, no matter how serious the degree of injury inflicted, were only trespasses. Witchcraft is also included in this category on the basis that in almost all cases damage was occasioned either to the person or the property of a specified individual, and the motivation was considered to be to cause such harm. On a similar analogy defamation, the harming of an individual through words attacking his or her reputation, is also included. So are all the sexual offences. Some of these, of course, are victimless, but their small number makes it convenient to treat them together within this category.

Murder was considered to be the most serious offence against a private individual during the seventeenth century. Contemporary jurists distinguished between types of homicide, and between murder and manslaughter. Thus justifiable homicide, defined as killing "owing to some unavoidable necessity", "for the advancement of public justice" or "for the prevention of any forcible and atrocious crime" was not culpable. The penalty for excusable homicide, which was of two sorts - by misadventure or in self-defence - was forfeiture, for which a pardon and writ of restitution was a matter of course, but in

such cases, by Blackstone's day, "the judges will usually permit (if not direct) a general verdict of acquittal." Felonious homicide also had two major divisions. Self murder was felony, and thus forfeiture would follow a verdict of suicide. Of the killing of another man jurists distinguished manslaughter which "arises from the sudden heat of the passions", and murder which arose "from the wickedness of the heart".<sup>1</sup> As Hale put it "murder and manslaughter differ not in the kind or nature of the offence, but only in the degree, the former being the killing of a man of malice prepense, the latter upon a sudden provocation and falling out", and he noted that malice could be a matter of fact or of law, so that mere words would, in law, not constitute sufficient provocation to reduce a charge of murder to manslaughter.<sup>2</sup> The operation of this point in practice can be seen in a case tried before Kelyng J at Winchester in 1666 which turned on a defence of provocation, where he told the jury that "they were Judges of the matter of fact viz whether N died by the hand of H: but whether it was Murder or Manslaughter that was matter in law". In this case the jury ignored Kelyng's directions and returned a verdict of manslaughter for which they were fined.<sup>3</sup> Provocation had come to be recognized as a defence to a charge of murder as the older concept of chance medley (killing in a sudden affray) had declined during the sixteenth century.<sup>4</sup> Blackstone, quoting Coke, defines murder as "when a person, of sound memory and discretion, unlawfully killeth any reasonable creature in being and under the king's peace, with malice

-----  
1. Blackstone, Commentaries, vol. 4, pp. 178 - 190.

2. Hale, Pleas of the Crown, vol. 1, pp. 449 - 466.

3. J.Kelyng, A Report of Divers Cases in the Pleas of the Crown, (London, 1708), pp. 50 - 51.

4. B.J.Brown, "The demise of chance medley and the recognition of provocation as a defence to murder in English law", American Journal of Legal History, 7 (1963), pp. 310 - 322.



afore-thought, either express or implied"<sup>5</sup> and the three points stressed by Hale are that there must be an actual killing; that the defendant must be a person capable of killing, not, for example, an infant under ten years; and that the victim must be a person capable of being killed.<sup>6</sup> Manslaughter itself was of three types. Both voluntary and involuntary manslaughter were felony, but with benefit of clergy, but stabbing an unarmed victim to death, although manslaughter, was, under 1 Jac 1 c.8, not clergyable.<sup>7</sup> The law relating to the degrees of homicide was complex, and the writers of legal handbooks for J.P.s quoted the decided cases that established what constituted the offence and what defences were available to an accused.<sup>8</sup> Legal theory was thus detailed and consistent, and it is possible to see from the reported Assize cases and, though to a lesser degree, from the Yorkshire Assize material, that the judges were aware of, and attempted to put into practice, the legal distinctions.

Historians writing on crime in the period have distinguished most consistently between murder and infanticide, rather than between say, murder and manslaughter.<sup>9</sup> Contemporaries, however, did not consider murder and infanticide to be different in kind. Both were homicides

-----  
5. Blackstone, Commentaries, vol. 4, pp. 176 - 204.

6. Hale, Pleas of the Crown, vol. 1, pp. 424 - 434.

7. Blackstone, Commentaries, vol. 4, p. 193.

8. For example see Dalton in Countrey Justice, p. 224, where he states, in a discussion of what would now be called insanity, that "if a man that is drunke, killeth another, that is felony; for it is a voluntary ignorance in him, in as much as such ignorance cometh to him by his owne act and folly", and compare the distinction he is making with that made today between voluntary and involuntary intoxication.

9. Beattie in Crime and the Courts consistently distinguishes murder and manslaughter, but did not do so in his earlier article, and Sharpe does not do so in either Seventeenth Century or Early Modern.

and infanticide merely a type of homicide for which legislation provided certain distinctions in the burden of proof. Thus, Blackstone notes that the purpose of the 1624 statute making the concealment of the burial of a bastard child presumption of guilt of murder, was to overcome the difficulty involved in proving the existence of a "creature in being" in such circumstances. It is arguable then that by separating murder and infanticide historians are attempting to impose a pattern alien to those aware of the law in the seventeenth century. In addition of course, those historians dealing with the period before the passage of the Jacobean statute do not distinguish between unlawful killings of children before 1624 and those after, but discuss them all as infanticides. Furthermore some historians do so without strict attention to modern day law. Under the Infanticide Act 1938 infanticide is defined as the killing by a mother of her newly born child, under the age of twelve months, and is punishable as manslaughter. Some writers on infanticide in the past appear to consider that the crime consisted simply in the killing of an infant. Thus R.Malcolmson says that "babies were usually killed by women; men were involved, either as the principal or as an accessory in only a small minority of cases... a woman who killed a baby was usually the baby's own mother".<sup>10</sup> Hoffer and Hull, in the most detailed study of infanticide to date, included "the murder of all children under the age of nine, by strangers as well as relatives".<sup>11</sup>

-----  
10. R.W.Malcolmson, "Infanticide in the Eighteenth Century", in Cockburn, ed., Crime in England, pp. 187 - 209.

11. Hoffer and Hull, Infanticide, p. xiv.

Since, as has already been stated, the modern crime of infanticide can only be committed by a woman in relation to her own new born child, and since in the seventeenth century infanticide was not legally distinguished from other homicides, save in relation to the burden of proof, some historians may be in danger of exaggerating the incidence of infanticide.<sup>12</sup> Moreover the only way in which seventeenth-century infanticide cases are recognizable is by the description of the victim, or because the indictment charges the offence not contra pacem but contra formam statutam.<sup>13</sup> In some cases it is also possible to see from the depositions that the statute is being relied upon, in that specific reference is made to the fact that a woman has concealed the existence of her pregnancy, but in other cases such statements do not occur. The categorization of a crime as infanticide or homicide can therefore be somewhat haphazard. For example in the Yorkshire indictments there appear to be three or four cases which some historians would have considered as infanticide. In one, Hannah Clegg, spinster, bore a bastard child and aided and abetted Nathan and Mary Clegg, described respectively

-----  
12. That contemporaries regarded it in this light is suggested by Hale's remark that "the statute of 21 Jac cap 27 for murdering bastard children: This I shall reserve to the title of evidence": Pleas of the Crown, vol. 1, p. 696, and when he does come to treat it he says: "the statute only directs the evidence and where the case is within it, but created not a new crime", idem, vol. 2, p. 289.

13. It appears, however, that in London at any rate, the practice, on the advice of the judges, since about 1630, had been to frame the indictment as contra pacem because the statute "doth not make a new offence, but maketh a Concealement to be an undeniable Evidence that she murdered it": Kelyng, Reports, p. 32. See also the discussion by Beattie on Surrey infanticides in Crime and the Courts, pp. 113 - 118.

as clothier and spinster, to murder him.<sup>14</sup> It also appears that Jane Cooper and Margaret Mason murdered "bastard children"; that Roger and Dorothy Tinsley murdered a child; and that William Atkinson killed his infant daughter.<sup>15</sup> All these cases, however, will be treated as murder not infanticide because infanticide is considered to have consisted in the killing of a new born child by its mother. Despite the problems raised in drawing comparisons with other work because of differing definitions the distinction between murder and infanticide remains a useful one<sup>16</sup> and, therefore, in this thesis the homicide cases will be analysed separately as murders and as infanticides, construed as above.

From this discussion it is apparent that contemporary jurists were aware of the complexities involved in charges of murder. They regularly made distinctions between matters of evidence and of substantive law and were aware of the significance of the 1624 statute concerning bastard births in effectively altering the burden of proof. The detailed discussion of what constituted the offences was, of course, based on an analysis of decided cases, not statute,

-----  
14. PRO. ASSI., 44/30. In fact, Nathan was the father of Mary and Hannah and a nonconformist whose crimes caused Oliver Heywood to lament: "what shame may cover my face when these things shall be cast in the dish of dissenters... that pretend conscience that they cannot come to church, but will doe thus and thus!" J.H.Turner, ed., The Rev Oliver Heywood B.A. 1680 - 1702, His Autobiography, Diaries, Anecdote and Event Books, 4 vols. (Brighouse and Bingley, 1881 - 1885), vol. 4, p. 51. This reference appears in the notes to Malcolmson's article suggesting that he certainly considered it to be a case of "infanticide".

15. PRO. ASSI., 45/13/2; 45/17/2 and 44/16.

16. The distinction is indeed the basis for theories about both the increasing criminalization of women and the "infanticide craze": see for example the work of C.Weiner, "Sex Roles and Crime in Late Elizabethan Hertfordshire", JSH 8 (1975), pp. 38 - 60, and J.M.Beattie, "The Criminality of Women in Eighteenth-Century England", JSH 8 (1975), pp. 80 - 116.

and that many of these had arisen in the course of Assize sittings is plain from Dalton's commentary. Obviously one of the problems for the historian is to establish the extent to which the complexities of the law were applied in practice, but since the J.P.s were being informed of the details of the case law, the judges must likewise have been aware of it, and to whatever extent, applied it.

## MURDER

A total of 408 persons were charged with murder or manslaughter as principal; six as accessory after the fact and sixty as accessory before the fact.<sup>17</sup> On the whole individuals were not charged more than once with the offence, but three separate indictments were brought against Jane Croysdale, Ralph Howroyd and James Littlewood, one charging each of them as principal and the other two as aiders and abettors.<sup>18</sup> This gives an average of ninety five persons charged per decade and compares with figures of thirty nine per decade in the two counties of Hertfordshire and Sussex between 1559 and 1625, about forty per decade in the Palatinate of Chester between 1580 and 1709, and about fifty two per decade in Essex between 1620 and 1680.<sup>19</sup> Absolute homicide rates are notoriously difficult to discover, let alone to interpret. During the half century studied the rate in

- 
17. The bills originally charging manslaughter are few, only twelve, and in a further three cases the grand jury reduced a charge of murder to an indictment for manslaughter. See the discussion on the types of homicide in Beattie's Crime and the Courts, pp. 81 - 82 where it seems that in Surrey grand juries rarely took this course.
  18. This was an unusual case, described in some detail by Raine in Depositions from the Castle of York relating to offences committed in the northern counties in the seventeenth century J.Raine, ed., (Surtees Society, 40, 1861), pp. 253 - 255; PRO. ASSI., 44/27.
  19. Cockburn, "Nature and Incidence", p. 55; Sharpe, Seventeenth Century, p. 127 and Sharpe, Early Modern, pp. 55 and 61.

Yorkshire appears to be about two per 100,000. This figure is significantly less than those for Essex, Hertfordshire and Sussex in the period up to 1625, which had rates ranging from seven to sixteen per 100,000, less than that for Essex in the period 1620 - 1680, where it was about 4.5 per 100,000 and less than that for Surrey where it was between 4.9 and 6.2 between 1660 and 1699, but it was close to that for Sussex, where it ranged between 1.9 and 2.6 per 100,000 in the same period.<sup>20</sup> This difference is partly accounted for by the generally accepted idea of a decline in crimes of violence during the seventeenth century: thus in Chester the numbers indicted in the sixty years after 1640 are half those of the preceding sixty years.<sup>21</sup> But it seems also that there were significant differences in different areas of the country and that these were not just between rural and urban areas, though such a difference certainly existed in Surrey.

The 474 persons were charged on 326 separate indictments, thus giving an average of 1.5 persons per indictment. In fact the great majority of persons were charged singly, only some sixty indictments being multi-handed and although a couple of those indicted six persons, most indicted only two. Some of these cases are 'recreated' ones from the depositions - in total 101 charges arose in that way, and again, for the period for which the gaol book exists most appear there and the verdict in their cases can be established from that.

-----

20. Cockburn, "Nature and Incidence", pp. 55 - 56; Sharpe, Seventeenth Century, pp. 15 and 134; Beattie, Crime and the Courts, p. 108. In the sample years between 1590 and 1640 in East Sussex that have been studied by Herrup there were thirty three charges of manslaughter and thirty one of murder, Common Peace, p. 27.
21. Sharpe, Early Modern, p. 61 and Beattie, Crime and the Courts, pp. 107 - 109, and see the debate between Sharpe and Stone on whether the period saw a decline in inter personal violence.

When we come to consider the sex, status or occupation of defendants we need to bear in mind throughout what has already been said about the difficulties of relying on indictment evidence. Nevertheless it is a worthwhile exercise provided that its limitations are understood, and Table 4 sets out the figures. Thus of the 300 odd persons for whom occupations are recorded, thirty nine or 11% were women.<sup>22</sup> Those of gentle status or above accounted for only 7%, while yeomen and those engaged in some form of craft occupation accounted for 12% each. The vast bulk of murderers (about 57%) were likely to be described as labourers.<sup>23</sup> Some of these were undoubtedly soldiers, but it is hard to establish accurately the proportions. Using the deposition evidence perhaps something under 10% of those described in the indictment as labourer were actually soldiers so that overall the soldiery formed about 6% of all defendants to homicide charges. Some of the cases arose from rivalry between different regiments. In 1687 for example, Absalom Anderson and George Doimellan with another soldier met four men from Lord Huntington's regiment in Jubbergate in York. After words between them a fight broke out in which they were "pinking one another with swords" and as a result of which two soldiers were killed and another dangerously wounded. By this later period though soldiers were not forming anywhere near the percentage of defendants that they were in the period studied by Bennett, who

-----  
22. This figure differs from that given earlier for the proportion of women as it is taken from the descriptions of those accused. Obviously women were also distinguishable by their Christian names and that was the method used earlier.

23. In Essex the figures for gentlemen (7%) and yeomen (11%) were similar. More craftsmen (24%) were alleged to be murderers and fewer labourers (48%). This may say more about the relative prosperity of Essex and thus its occupational diversity than about those persons committing crimes: Sharpe, Seventeenth Century, p. 124.

considers that in the 1640s particularly the soldiery and those reacting against them were the cause of much of the crime being prosecuted in Yorkshire. Thus he finds that soldiers alone formed about 13% of all felons tried at the Assizes between 1641 and 1658 and almost 17% of all defendants to homicide charges in the same period.<sup>24</sup>

-----  
TABLE 4

SEX AND STATUS OF DEFENDANTS TO HOMICIDE CHARGES

Gentleman or above	25	7%
Yeomen	43	12%
Husbandmen	4	1%
Trades/craftsmen	41	12%
Labourers	202	57%
Women	39	11%
Total	354	100%

-----

Over the period there were some marked fluctuations, with the number indicted in the 1660s being double that of the 1650s. The seventies saw a sharp decline and the eighties another rise followed by a less sharp fall in the nineties. This pattern was similar to that in the Palatinate of Chester, though the fluctuations were perhaps sharper there until the last decade. For Essex between 1650 and 1680 there was a significant decrease from sixty nine in the 1650s to forty five in the 1670s.<sup>25</sup>

Of those charged as principals approximately 10% were women, while of those charged as accessories, 16% were women, supporting the thesis that women were likely to play a comparatively passive role in crimes

-----  
24. Bennett, "Enforcing the Law", p. 149 and for Anderson see PRO. ASSI., 44/35 and 45/15.

25. Sharpe, Early Modern, p. 61, and Seventeenth Century, p. 134.



of violence. The overall role of women in Yorkshire murder cases thus appears somewhere between that for Essex and that for Surrey.<sup>26</sup> Moreover their role appears to decline markedly in the 1690s when they committed only 3% of murders as principal compared to between 9% and 12% for the earlier decades. Previous historians have not always separated murders and infanticides and so it is worth noting here that if both are considered then women were accused of 25% of all killings in Yorkshire at this time.

The fate of those accused varied considerably. The bills against fifty four of them were returned ignoramus by the grand jury, that is about 11%. In three of these cases the grand jury returned the bill ignoramus against one of two accused and true against the other. On a further three bills the grand jury reduced the charge from murder to manslaughter, one of these cases being that of Robert and Mary Blow, charged with the murder of their servant.<sup>27</sup> Dalton considered that if a man corrected his servant "in reasonable manner; and the... servant happen to die thereof, this is homicide by misadventure", and it was presumably this view that the grand jury followed in reducing the charge.<sup>28</sup> The proportion of ignored bills is significantly higher than that in Essex where 4% of persons charged had bills returned

-----  
26. See for example Weiner, "Sex Roles and Crime", p. 45.

Sharpe found that 16% of those charged in Essex were women, but he does not distinguish between those charged as principal and those charged as accessories. Seventeenth Century, p. 124. Beattie found 9% of Surrey principals to be women and 11% of accessories, Crime and the Courts, pp. 97 and 124.

27. The Blows were subsequently acquitted even of manslaughter, the jury presumably accepting that they had used only reasonable chastisement. This it seems was the usual result in such cases, though there were exceptions, see Beattie, Crime and the Courts, p. 86.

28. Dalton, Country Justice, p. 224.

ignoramus, but lower than that in Surrey where it was 15%.<sup>29</sup> The rate is also much lower than for the Yorkshire infanticide cases where only about 3% of bills were ignored.<sup>30</sup>

For the remainder of the cases, that is those which were left for determination by the petty jury, final verdicts are known for a total of 271 persons. The proportions of acquittals, partial verdicts (which includes both those where the charge of murder was reduced to some form of manslaughter, thus permitting benefit of clergy to be claimed, and those where after a conviction for murder, the defendant was reprieved) and convictions varies very considerably over the decades, but as the numbers are fairly small in each decade it is difficult to know whether much can be made of the variations. Evidence though that juries considered cases carefully is provided by the charges brought against Marmaduke Sheppard and James Powell, who were charged respectively with murdering and aiding and abetting in the murder of Mary Turnbull. The grand jury found a true bill against Sheppard only, discharging Powell, and the petty jury then went on to convict Sheppard of voluntary homicide only, not murder. Obviously the grand jury had considered the evidence against each man separately and the petty jury found it to amount to a crime less than that originally charged.<sup>31</sup> Overall seventy eight persons (29%) were acquitted outright, and a further eighty seven or 32% had partial verdicts recorded against them. Twenty (7%) had other verdicts such

-----  
29. Sharpe, Seventeenth Century, p. 124; Beattie, Crime and the Courts, pp. 83 and 96, but this overall figure hides the difference between men and women: bills against 34.5% of women were ignored; against 12.8% of men. It should also be noted that the survival of the ignoramus bills in Essex was very patchy.

30. See below, p. 120.

31. PRO. ASSI., 44/21.

as 'dead' or 'at large' endorsed on the indictment, and the remaining eighty six (32%) were convicted. This figure is almost certainly an over estimate of those executed. For the period covered by the gaol book it is possible to see that several persons for whom a verdict of guilty and to hang was endorsed on the indictment, were in fact subsequently pardoned, and it is therefore likely that this also happened for the remainder of the period. For the 1660s of the persons who, according to the indictment were sentenced to hang, eight (32%) appear to have been pardoned. We can thus say only that the upper limit of those convicted and executed for murder was about 32% of those against whom true bills had been returned by a grand jury, and that probably only about two thirds of defendants convicted were actually hanged.<sup>32</sup> There were differences in conviction rates for different groups. Thus gentlemen charged with murder were more likely than the other occupational groups to be convicted and sentenced to hang (42%). This is perhaps a somewhat surprising conclusion and the reasons for it are open to speculation. On the other hand women (at 21%) were less likely than men to be hanged.<sup>33</sup> It has been suggested that the execution rate for infanticide was higher than for other homicides and it is noticeable that while 21% of women were convicted of murder and sentenced to be executed 30% of those charged with infanticide were similarly dealt with.<sup>34</sup> On the other hand whereas 55% of women were acquitted outright of murder

-----  
32. In Essex, for example, only 16% of those appearing before the petty jury were actually executed: Sharpe, Seventeenth Century, p. 124; in Surrey only about 19% were convicted of murder: Beattie, Crime and the Courts, p. 83.

33. This applies also in Surrey, where bills against one third of women principals were ignored and of the remaining two thirds left to face a petty jury, 41% were acquitted, 7% convicted of manslaughter and only 17% actually convicted of murder: Beattie, Crime and the Courts, p. 83.

34. Hoffer and Hull, Infanticide, pp. 21 - 27.

58% were found not guilty of infanticide. the major difference between the results for the two charges lay in the proportion of partial verdicts. For those accused of murder 24% of verdicts were partial, for those accused of infanticide only 12% were.

There is one case, for which no indictment survives among the Yorkshire Assize papers, but which nevertheless deserves further mention. As described below in the chapter on offences against the peace, Nathaniel Reading, one of the Hatfield Chase projectors, was indicted for murder as a result of an incident in the continuing battle between the freeholders and the enclosers. Reading had the indictment removed from the Assizes by writ of certiorari. The reason for removing indictments was stated fairly clearly in a handbook to justices:

It falleth out not seldom that when Justices of Peace have taken an indictment found before them... [it] is taken out of their hands by Certiorari and conveyed to Justices of a higher Authority, at the Solicitation and by the means of some parties grieved to the end that they may either Traverse it above, or there avoid it for Insufficiency of form or matter.<sup>35</sup>

Keble, in another section of his handbook discusses the differences between manslaughter and murder and cites Reading's case as authority for the proposition that if an unlawful act was intended by a victim of a killing it did not matter who had actually delivered the first blow.<sup>36</sup> Here it is possible to see the elaborate nature of the law relating to homicide being put into practice, and a Yorkshire case proving to be authority for a proposition of general importance.

-----  
35. Keble, Assistance to Justices, p. 206.

36. Keble, Assistance to Justices, p. 17.

The weapons used in homicide cases were, not surprisingly, fairly varied, and of course, in many cases, perhaps 45% of the total, no weapon other than the hands, feet etc. was used. The most commonly named weapon (used in 33% of cases where a specific weapon is mentioned) was some form of stick, pole or axe. Swords or rapiers were used in 29% of cases and guns or fowling pieces in 18%. Knives were used in 8% of cases, poison in 7% and some other method, such as running down with a horse or strangling, in the remainder. When the two groups previously considered separately are looked at in more detail the pattern varies. Thus those described as gentleman or above used swords in almost 70% of cases, and guns or sticks equally in the rest.<sup>37</sup> Women used sticks in 43%, and poison in 22% of cases, guns or swords in 13% each and knives in 9%. Table 5 sets out the weapons used in homicide cases.

-----  
 TABLE 5

WEAPONS USED IN HOMICIDE CASES

Hands/feet etc	123
Stick/pole/axe	51
Sword/rapier	44
Gun/fowling piece	27
Knives	13
Poison	10
Other	7

-----

There were 241 male and seventy seven female victims. Of these about 10% (twenty one women and fourteen men) may have been related to their attacker, that is both victim and accused have the same

-----  
 37. Beattie raises the question of jury attitudes to duelling, suggesting that where the "rules of honour" had been obeyed a jury would not convict: Beattie, Crime and the Courts, pp. 97 - 98. It is hard to tell with all the cases involving gentlemen using swords but it appears that several of them, such as that of Jonathan Jennings certainly were duels.

surname, and in many cases the relationship is made plain.<sup>38</sup> Contrary to the situation in Surrey, where women were the aggressors in 60% of domestic killings, in Yorkshire only about 20% of domestic killings were initiated by women. Yorkshire women were therefore much more likely to be the victims than the aggressors in domestic killings, and indeed eighteen were the victims of their husbands. The other three women victims were daughters (all named and therefore taken to be grown and not victims of infanticide), two killed by their mothers and one by her father. The male victims include two fathers and five who may have been either fathers or brothers, and the bastard son of Hannah Clegg already referred to. Four women were accused of murdering their husbands and one of them, Sarah Clerk, made 'a contract' with Josias Swallow and John Walker and "proferd to givem 20s if they would murther her husband".<sup>39</sup> The other case appears to be one where a woman murdered her nephew. In only one of these intra familial killings did a woman use poison, but William Starre and Thomas Langhorne both poisoned their spouses.<sup>40</sup> Apart from these directly familial killings there were some others possibly involving family in an extended sense. In one of these poison was administered by William Berry to a woman of the same name, but it appears that he

-----  
38. The proportion of intrafamilial killings is lower than that for Surrey where almost 36% of jury verdicts of murder were within the family and where women were more likely than men to commit such murders: Beattie, Crime and the Courts, p. 105, and see J. Sharpe, "Domestic Homicide in Early Modern England", HJ, 24 (1981), pp. 29 - 48.

39. PRO. ASSI., 45/15/3. Sarah Clerk was actually charged with aiding and abetting the two men and while Swallow was at large at the time of his trial, both Sarah Clerk and John Walker were convicted: PRO. ASSI., 44/37.

40. PRO. ASSI., 44/23 and 45/16/1, and see generally for the use of poison by women Beattie, "The Criminality of Women", p. 83 and Cockburn, "Nature and Incidence" p.57, but in Crime and the Courts Beattie cites several instances of women using considerable violence in murders, pp. 100 -101.

was a lodger in her house and no relationship is mentioned.<sup>41</sup> At least one other case involved the alleged murder of a step relative. Margaret Atkinson's step mother had beaten her over a period of at least six months before finally killing her in a beating after she failed to fetch water quickly enough,<sup>42</sup> and another involved the death of a maid servant, Margaret Collings, who had been heard to say that her master had attempted to ravish her and her mistress had beaten her.<sup>43</sup>

Women were more likely than men to be acquitted of an intrafamilial killing: while 44% of men so accused were convicted and sentenced to hang, only 25% of the women were. It should be noted though that the conviction rate for women accused of this type of murder was higher than for those accused on a non familial homicide, though lower than the rate for women accused of infanticide. These distinctions suggest that juries were less sympathetic to women accused of killing their children or other members of their family than they were to those accused of murdering a stranger.

The position of women and gentlemen in relation to their victims was likewise slightly different. Thus the gentlemen's victims were, in every instance save one, male, the exception being John Mitchell of Skipton who was accused of murdering Elizabeth Malham aged seven years, possibly a servant who had been ill treated.<sup>44</sup> In no case was a gentleman accused of killing a relative, or at any rate a man with

-----  
41. PRO. ASSI., 44/35 and 45/15/1.

42. PRO. ASSI., 45/6/2. Margaret's stepmother was acquitted:  
PRO. ASSI., 42/1 fol 119.

43. PRO. ASSI., 45/10/2. Both Robert and Mary Blow were acquitted of the manslaughter of Margaret Collings. PRO. ASSI., 42/1 fol 284.

44. PRO. ASSI., 45/38/6.

the same surname,<sup>45</sup> and in six of the seven cases where occupations are given for the victims they are also described as gentlemen. In the seventh case the victim was a bailiff who had attended to serve a warrant. In the case of the woman murderers almost half (46%) of the victims were also women and in 17% of the cases were relatives. These intrafamilial victims were more likely to be men (over 70%), but poison was used no more frequently in such domestic killings than elsewhere by the woman murderers.

Domestic discord, of course, was not the only occasion of homicide. Quarrels arising from gaming or drinking sessions frequently provoked trouble. Henry Illingworth died about a week after a fight broke out between him and John Butterworth over a pot of ale Butterworth tried to take from Illingworth. The reason for this quarrel is interesting for it appears that Illingworth had agreed to sell his wife for the sum of £5, and having received an "earnest of 12d" refused to return it.<sup>46</sup> Ralph Fetherstone's death was attributed by his alleged murderer to his failure to seek proper medical treatment. The quarrel had arisen over the payment of the reckoning in an alehouse in Flixton. Fetherstone had fallen on Christopher Burton and put a finger in his mouth "to tear his Chops asunder whereupon this Examinant might bite his finger to make him take it out of his mouth but if he had sought for any care it would easily have been healed".<sup>47</sup>

-----  
45. In fact though one of the cases involved the challenge to a duel (and subsequent fight) issued by Jonathan Jennings to George Aislabie, his brother-in-law: PRO. ASSI., 44/14.

46. PRO. ASSI., 45/15/2.

47. PRO. ASSI., 45/14/2.



These examples involved the poor, but gentlemen also brawled in taverns. The Earl of Eglinton killed a Mr. Thomas Maddox despite the endeavours of Jasper Blythman (a J.P. more accustomed to taking depositions than making them) to prevent him, though always with due regard for the Earl's exalted position. This quarrel had arisen from a series of arguments about debts in the course of several games of dice.<sup>48</sup> Heywood describes it disapprovingly: the

Earl of Eglinton... and 3 justices of peace... were drinking and ranting at Mr Matlocks house... they drank and gamed at cards, most part of the night, and about 3 a clock that wild Lord having lost... Matlock sd my Lord I hope you remember 3li I won of you... the Lord denyed, he affirmed,... at last Earl Eglinton drew his rapier, made a passe at Matlock, run him thro' the thigh, not content with that he runs him quite through the belly, none of the company offering to hinder only Justice Blithman at last stept to him, pluckt his sword from him... and the Ld is sent prisoner to York, oh prodigious villanys! he gave 100li to have yrons kept off.<sup>49</sup>

Adam Bland (the second son of Sir Thomas Bland, of Kippax) killed James Strangeways in an inn at Methley despite Strangeways having apparently been satisfied with Bland's explanation of words spoken about him.<sup>50</sup>

Soldiers could cause trouble. Besides the case of Absalon Anderson already mentioned, William Atkinson, a soldier in Hull, struck John Rand, calling him a "pitiful looker to horses".<sup>51</sup> The amount of mayhem attributable to the soldiery should not be exaggerated though, for the proportion of alleged murderers described as soldiers, or whom it is possible to identify from the depositions as being soldiers is comparatively small. Those in positions of authority were

-----  
48. Depositions, ed., Raine, pp. 249 - 251.

49. Heywood, Diary, vol. 2, p. 277.

50. Depositions, ed., Raine, p. 178.

51. PRO. ASSI., 45/10/1.

likely to be murderers as well as victims. Edmund Blackburne, a bailiff, got into an argument with his superior about the county assessments. In the ensuing scuffle Blackburne was struck and fell down, and, on rising struck Howson with a stone.<sup>52</sup> John and William Baker were watchmen in Halifax, who appear to have been teased by William Whiteley. In revenge the Bakers struck him while he was dressing a sheep in the shambles and he died from the wounds, while Abraham Cosin, constable, in attempting to ensure that a boy of fourteen was conveyed quickly to his own parish, made no allowance for the fact that he was obviously ill and he also died.<sup>53</sup> Disputes between poachers and gamekeepers might result in death. William Inman and two others, while attempting to steal deer, met and killed Richard Batty, the gamekeeper to Sir Metcalfe Robinson.<sup>54</sup> On the other side Edward Ruddocke shot and killed William Knaggs who, with several other youths, was trying to "chuse and gett a young ash tree for a May poll".<sup>55</sup> The murder of Leonard Scurr, his mother, Alice, and their maid servant, Deborah Allen, was a cause celebre of the period, and the legal procedures followed in it are of interest. Thus three persons were charged: Ralph Holroyd with murdering Deborah Allen and aiding and abetting in the murders of Leonard and Alice Scurr; James Littlewood with murdering Leonard Scurr and aiding and abetting in the murders of the other two; and Jane Croysdale with murdering Alice Scurr and aiding and abetting in the other murders, and all three with the arson of Leonard Scurr's house. These charges were laid in four indictments. All were tried in July 1682, but Holroyd was tried by a jury different from that which tried the other

-----  
52. PRO. ASSI., 45/15/1.

53. PRO. ASSI., 45/12/1; 45/10/2 and Depositions, ed. Raine, p. 286.

54. Depositions, ed. Raine, p. 164.

55. Depositions, ed. Raine, p. 141.

two. Croysdale was acquitted on all counts; the two men convicted on all. A motive is suggested by Oliver Heywood, who noted that Scurr, a litigious man, had bound some colliers "to work for him as long as water run under Leeds bridg, they blow off, he sued them, whether some burnt him and all he had out of malice, or first robed him, its not known".<sup>56</sup>

In many cases the identity of a murderer was obvious and no problems arise in analysing how he or she came to be apprehended. In a few cases however the depositions shed interesting light on this aspect of law enforcement in the seventeenth century. Thus William Inman, Christopher Fish and Marmaduke Horseman having murdered a gamekeeper in the course of a poaching expedition in 1660, escaped despite a hue and cry and proferred reward of £10. Horseman and Fish were not apprehended until eight years later, and Inman, who had actually struck the fatal blow, was apparently never caught.<sup>57</sup> Horseman, like Ralph Holroyd, one of those accused of murdering Leonard Scurr, had fled to Ireland.<sup>58</sup>

#### INFANTICIDE

On the basis of the definition of infanticide given earlier, a total of eighty nine women were charged with the murder of their children, usually described as bastards. These figures come from seventy one indictments and twenty references in depositions. Spinster is the description given for fifty nine of these women, but there are also

-----  
56. PRO. ASSI., 44/27; Heywood, Diary, vol. 4, pp. 296 - 297.

57. Depositions, ed. Raine, p. 164.

58. Depositions, ed. Raine, pp. 253 - 255.

eight described as widow and two as wife. Over the fifty years studied the numbers per decade appear to remain fairly constant at fifteen and twelve respectively in the 1650s and 1690s, and at twenty, twenty one and twenty one in the 1660s, 1670s and 1680s.<sup>59</sup>

Only three bills were returned ignoramus, a fairly small percentage, and of those women left to face a petty jury, results are known for a total of seventy two. These vary slightly over the period, but because of the small absolute numbers, these variations need to be treated with great caution. It is nevertheless noteworthy that it was only in the last decades that the numbers found guilty and sentenced to be executed approached fifty per cent. In the previous thirty years those who were acquitted or reprieved were always well in the majority. Overall for those for whom verdicts are known 28% were found guilty and executed; almost 60% were acquitted or had the bills against them returned ignoramus, and 11%, though convicted, were

-----  
59. Thus the number of infanticides per annum is rather higher than in Surrey, where in nineteen sample years between 1660 and 1699 the annual rate was between 1.2 and 1.3, but of course Yorkshire had a population probably three times that of Surrey: Beattie, Crime and the Courts, pp. 115 and 28. In East Sussex, which had a population of about 40,000 in the early seventeenth century, in sample years amounting to about 20% of the total, between 1592 and 1640 Herrup noted fifteen infanticides, the geographical incidence of which she relates to economic pressure, two thirds of them occurring "in or adjacent to one of the ten local parishes licensed to have a poor house": Common Peace, pp. 26 and 30.

rerieved.<sup>60</sup>

The circumstances that gave rise to an accusation of infanticide were undoubtedly more complex than simply the birth of a bastard child, though the depositions do not allow any very wide generalizations to be drawn. Obviously infanticide is not usually an offence which tends to be repeated often and is only prosecuted when the tolerance of neighbours has been exhausted. The finding of a dead child, perhaps some time after its birth, necessitated an inquest at which enquiries would be made, but there sometimes seems to have been little attempt at concealment. In other cases a child might have been well concealed but general suspicion led to questioning and a search for the body. The case of Dorothy Allanson seems to be an example of this. The indictment alleges her killing of a bastard female child on 15 July 1654. From the depositions however, all taken in July, it appears that on 10 March Dorothy's mother had gone to Easingwold market, leaving Dorothy sick in bed. On her return she told her to get up and, in helping her to do so, saw a child. Katharine Allanson immediately fetched Elizabeth Firbanke, the midwife, who stated that,

-----

60. These figures contrast strongly with those for Essex where overall 43% were found guilty and executed, while 48% were acquitted.

The alterations in the conviction rate in the period studied by Sharpe also differ from those for Yorkshire. Thus Sharpe notes a decline in the conviction rate from 50% or over in the period 1620 - 1659 (save for the 1640s) to under a third for the two later decades: Seventeenth Century, p. 136.

In Surrey almost 70% of those charged were discharged or acquitted, and only one, out of twenty three, was actually executed. According to Beattie, the decline in convictions and executions for infanticide does not occur until the eighteenth century: Crime and the Courts, pp. 116 - 118.

In East Sussex eight out of fifteen women were convicted and all, save one, suffered the death penalty: Herrup, Common Peace, p. 173.

On the other hand in Cheshire, infanticide was only indicted frequently after 1650 and the county saw about 30% of those accused of the crime being executed: Sharpe, Early Modern England, pp. 55 - 62.

in her opinion, the child had been born dead because her eyes had never opened. Dorothy was eventually tried and found by the jury 'to be an idiot', the only example of such a verdict in the Yorkshire records.<sup>61</sup> Apart from confirming the dangers of relying on indictments, even for information as basic as the date of an alleged offence, there is nothing in the depositions to suggest why the offence, though known to at least two persons, other than Dorothy herself, at the time, was not investigated until four months had elapsed. Possibly village opinion of Dorothy as an idiot was prepared to tolerate her action and it was only when an outsider, perhaps the J.P. who took the depositions, enquired that the facts came to official attention.

The case of Dorothy Allanson is interesting also for the point it raises on contemporary views of insanity and in particular on insanity as a defence to a charge of infanticide. Hale cites an instance of a "married woman of good reputation" who bore a child. She was then unable to sleep and in a "temporary phrenzy" killed the infant. She was indicted for murder but the jury were told that "if it did appear that she had any use of reason when she did it, they were to find her guilty; but if they found her under a phrenzy, though by reason of her late delivery and want of sleep, they should acquit her". In the light of the direction she was acquitted. The direction illustrates both that the killing of infant children was prosecuted as murder and that the verdicts available to a jury were only two - guilty and not guilty. The purpose of the 1928 Infanticide Act was to permit the prosecution of women suffering from what can

-----  
61. PRO. ASSI., 44/5.

loosely be termed post natal depression on a manslaughter charge rather than on a charge of murder.<sup>62</sup>

Confessions by the accused often led, not surprisingly, to a conviction, and the likelihood of a conviction following a confession seems to have been strengthened when the confession was only made after previous denials or changes in the explanation offered. Thus Hannah Allen, for example, (who was to be convicted) initially denied having borne a child at all to its alleged father, her fellow servant, Benjamin Green; she told Elizabeth Warren, midwife, that she had had a miscarriage; told Isabel Machon, midwife, that she had had a child but that it was not born alive; and finally stated that the child had been left in the cellar.<sup>63</sup> Mary Browne, the wife of Robert, a mercer of Beverley, alleged that the father of her child was another Robert Browne, a tailor of the same town. She admitted having consulted a widow who gave her something to kill the child in her womb, and was delivered of a still born child which she then buried secretly. This occurred in about November 1668, and in March 1669, Frances Warcopp, while digging a hole for excrement in her garth, found a male child, which Mary Browne admitted was hers, at the same time asking Frances to conceal it. She was prosecuted however and acquitted. If her evidence (that she had taken something to kill the child while in her womb) was accepted by the jury, their acquittal of her is easily explicable, for Mary Browne had not then killed "a reasonable creature in being" and could not therefore be guilty of

-----  
62. Hale, Pleas of the Crown, vol 1, p. 36. The situation in England can also be compared with that obtaining in Queensland where there is no offence of infanticide and in the Dingo Baby case Lindy Chamberlain was accordingly charged with murder.

63. PRO. ASSI., 45/15/4.

homicide.<sup>64</sup> It is harder to find a rationale behind the acquittal of Alice Burrell who, when a dead child was found in a close of corn near where she had been working, admitted that she had borne a child. The constable then asked "whether the child were liveinge or dead when she threw it over the hedge to which she answered she knew not".<sup>65</sup> Such apparent callousness, however, did not result in her conviction, though from the depositions, the presumption of guilt of manslaughter at least, appears strong. The 'benefit of linen' defence, which Hoffer and Hull suggest started to be widely used by can be seen in a few cases. Elizabeth Armitage, (in 1682) for example, said that she was "so suddenly taken that she cold not call on her neighbours", she had prepared linen and told people of her pregnancy, and was acquitted despite Hanna Roades suggesting that had she really cried out her servants would have heard.<sup>66</sup>

What appear to be false allegations were also made. Jane Browne was a York widow, who, when asked why she was so big, said it was the dropsy. When her size suddenly decreased, she refused to allow a neighbour to see her breasts, though when examined at the request of the Lord Mayor, milk issued from one. Jane maintained her denial of having borne a child for the past three years and now attributed her size to a double blanket which she wore "dureinge the coldest parts and tymes of winter" and was finally acquitted.<sup>67</sup>

-----  
64. PRO. ASSI., 45/9/3. The use of abortifaciens was not criminalized until the 1861 Offences against the Person Act.

65. PRO. ASSI., 45/14/1.

66. PRO. ASSI., 45/13/2. See the discussion on the development of this defence in which the accused pleaded that linen had been prepared for an expected child in an attempt to rebut the presumption of concealment of its birth, in Hoffer and Hull, Infanticide, pp. 68 - 69.

67. PRO. ASSI., 45/11/1.



In fifty nine of the sixty three cases where both the residence of the defendant and the place of the alleged crime is given they are the same. In three of the others the places are very near, for example Newton and Beningborough, and Wales and Kiveton. The only exception in the sixty three cases where both the abode and the alleged place where the crime was committed are given was that of Dorothy Allanson, described as of Cundall, where all the witnesses also lived, but in the indictment accused of having committed the murder at Acklam. Cundall is about eight miles west of Easingwold, where Dorothy's mother had been, but the nearer of the two Acklams is situated about sixteen miles east. It is possible to read too much into this, given the unreliability of the indictments, but those accused of the murder of bastard children were likely to be young girls, quite often servants in houses where they were open to sexual advances from both fellow servants and employers and afraid of the consequences of pregnancy. From the depositions it seems that just over half of the women accused were servants and these girls would obviously have been living in their master's house rather than in that of their parents. Thus the evidence that place of crime and abode were the same is quite likely to be correct, even if of limited value, perhaps more indicative of the fact that the women accused of infanticide were servants and that they did not return to their home village to await confinement. These women, however, were not the "lewd whores" against whom the 1624 statute was supposed to have been directed. The statute was considered by contemporaries to be a means of controlling moral behaviour and certainly it must have added to the fear of discovery of an illicit union. It is interesting to speculate on the effect of a prosecution for infanticide, even if

followed by an acquittal, or pardon. In one Yorkshire case Mary Ryley was indicted for the murder of a female child in 1665. In her deposition she gave her age as about thirty two years and stated that about ten or eleven years previously she had had a bastard child for the murder of which she had been tried at the Assizes "where she had the sentence of death pronounced against her but by some means she saith she was after reprieved." Mary's mother was bade by "widow Coppan" to "looke to her daughter" and asked "how shold shee looke to her when shee went to faires and Marketts and stayed three or fowre dayes from home together." On this occasion Mary Ryley was acquitted.<sup>68</sup>

#### ASSAULT

If murder was the most serious, assault was by far the commonest crime against the person prosecuted at both Assizes and Quarter Sessions. Assault varied considerably in the degree of harm inflicted, from a strict assault, that is any act that caused another to fear immediate personal violence to batteries, ranging from those which caused minimal harm to those resulting in, for example, the loss of a limb.<sup>69</sup> Dalton barely discusses assault, save in relation to the circumstances where it was justifiable, and the indictments rarely state the degree of harm inflicted. Overall at the Assizes 464 indictments involving 655 persons were brought in the fifty year

-----  
68. PRO. ASSI., 44/12 and 45/7/2. See the discussions in Malcolmson, "Infanticide", p. 202 and Beattie, Crime and the Courts, pp. 114 - 117.

69. See the discussion on assault prosecutions in T.C.Curtis, "Quarter Sessions Appearances and their Background: A Seventeenth Century Regional Study", in Cockburn, ed. Crime in England, pp. 135 - 154.

period, and at Quarter Sessions 586 indictments involving 933 persons were brought in the sample years. Thus something in the region of 130 persons were annually charged with the offence of whom about one tenth appeared at the Assizes.<sup>70</sup> Furthermore a good many cases of assault were removed by certiorari from the Quarter Sessions or Assizes to the courts of Upper or King's Bench. During the 1650s a total of fifty nine cases can be traced among the Upper Bench indictments. These formed over a quarter of all Yorkshire Upper Bench indictments for that decade, and for the remainder of the century a total of about seventeen hundred cases appear in the King's Bench files, so that on the same basis there were probably some five hundred additional assault prosecutions. Assault was also a crime which was likely to be charged in courts below Quarter Sessions, such as manorial ones, so that the numbers cited for the offence were considerably more than those charged only in Quarter Sessions and Assizes. Many-handed indictments were not uncommon. At the Assizes an average of 1.4 persons were charged on each indictment, and at Quarter Sessions the figure was 1.6 persons. Whereas at the Assizes the average number of persons charged on each indictment was declining from 1.7 in the first decade to 1.3 in the last decade, at Quarter Sessions it was rising marginally from 1.5 to 1.7.

There was a significant increase in the numbers of those indicted at the Assizes in the 1660s, and the second half of that decade saw the peak of assault indictments. Thereafter the numbers charged fall gradually though not reaching the level of the 1650s until the late

-----  
70. This proportion is in fact similar to that for Essex, where fifty two persons were charged at the Assizes and 575 at the Quarter Sessions: Sharpe, Seventeenth Century, p. 115.

1680s. Quarter Sessions saw the peak of assault indictments in the 1670s, the decade after the peak at the Assizes. In that decade there was a 35% rise from the level of the 1660s and a similar fall in the 1680s. In the 1690s the decline continued, though at a slower rate.

Occupations are given for approximately 1,400 of those persons indicted for assault and Table 6 sets out the results. Not surprisingly labourers are the largest single group, accounting for about 25% of all those indicted. Women constitute about 16% and the upper strata of society - gentlemen, clerks, doctors and a couple of knights - together constitute about 13%. It thus appears that gentlemen (perhaps 2% of the population as a whole), committed proportionately more assaults than labourers and this imbalance is more noticeable in the indictments prosecuted at the Assizes. For the remainder yeomen formed about 22% and husbandmen 6%, and the balance, about 17%, are described by various occupations and categorized here as craftsmen or tradesmen. When the occupations of those tried at the Assizes alone is analysed there are significant drops in the percentages of labourers and women, to under 20% and 8% respectively, and increases in yeomen and the upper strata, to 37% and almost 20%

respectively.<sup>71</sup> It is perhaps interesting to compare these figures with those for murderers where labourers were much more heavily represented while gentlemen and yeomen were much less likely to appear as defendants.

-----  
TABLE 6

SEX AND STATUS OF DEFENDANTS TO ASSAULT CHARGES  
BOTH COURTS

Labourers	366	26%
Gentlemen and above	188	13.4%
Husbandmen	91	6.5%
Yeomen	306	21.7%
Trades/craftsmen	237	16.8%
Women	220	15.6%
Total	1408	

-----

Most of the indictments do not give the occupation of the alleged victim. In several of those that do the victims are described as officials of some sort and certainly the deposition of Richard Sheldon, a surveyor of Customs, suggests why he was assaulted. He

haveinge suspicion of two persons with packets on their  
backes" asked to see what was in the packets which "they

-----

71. In Essex the overall proportions were as follows: gentlemen - 13%; yeomen - 17%; husbandmen - 12%; labourers - 15%; craftsmen/tradesmen - 35%; and women - 8%. These figures differ considerably from those for Yorkshire, with many fewer women and labourers indicted and many more crafts/tradesmen. Furthermore in Essex labourers formed a significantly higher proportion of those charged at the Assizes (30%), whereas the increase in the proportion of the upper strata charged there is much less. It would seem possible that the craft differentiation apparent in Essex occupational descriptions had not yet become so commonplace in Yorkshire: Sharpe, *Seventeenth Century*, pp. 117 - 118. The assault indictments at the Assizes include two brought against Sir William Blakiston of Gibside, co. Durham. In these he is alleged to have assaulted George Smithson, Esq., and William Skargill, clerk, in the churchyard at Danby Wiske in 1684. Both bills were found true, but what happened to Sir William is not recorded. Ten years later a William Blakiston gentleman, of Old Malton, admitted drinking a health to King James and the Prince of Wales and assaulting three men. He was fined five marks. PRO. ASSI., 44/31 and 44/40.

denied... [and] beat him in a great manner justled him  
abused him... in such manner as he could not doe his  
duty.<sup>72</sup>

Several offenders were charged more than once, but William Brooke and William Burne of Aldercliffe, the former described as both yeoman and labourer, must have had a particularly busy time assaulting four separate individuals in one day. Both had all bills against them returned ignoramus.<sup>73</sup>

Of course charges can produce counter charges as can be seen in the case of Lucas Abbot, indicted for two assaults on Nicholas Battersby<sup>74</sup> and Robert Wasse on the 24th December 1677. The victims are jointly charged with breaking the house of John Marshall and assaulting him, and with breaking the house of John Abbot, also on 24 December 1677. To both of these indictments Lucas Abbot is a witness. The bills against all defendants on all charges were found true, but no results are endorsed. However among the depositions for 1678 is what appears to be a part of the Gaol Calendar for 1680 and one folio contains a note to enter a nolo prosequi against Robert Wasse and Nicholas Battersby for breaking and entering and assaulting John Marshall and John Abbott.<sup>75</sup> Some individuals feature in many cases. Daniel Awty or Awtie was charged with assaults in 1678 and 1695 and was the victim of an alleged assault by Mary Bryers in 1685. There does not though appear to be any link between any of these offences.<sup>76</sup>

-----  
72. PRO. ASSI., 45/14/3/7D.

73. PRO. ASSI., 44/7.

74. Battersby had earlier featured as a defendant in a sorcery case, see below, pp. 141 - 142.

75. PRO. ASSI., 44/25 and 45/12/4/147.

76. PRO. ASSI., 44/26 and 44/41 for the assaults by Awty on Thomas Heward and George Johnson. PRO. ASSI., 44/33 for the assault by Mary Bryers on Awty.

Overall proportionally more people were charged on multiple indictments at Quarter Sessions than at the Assizes. So, for example, the average number of persons charged per indictment at the Assizes was 1.4, whereas at Quarter Sessions it was 1.6. Moreover fluctuations over the period were different in the two courts. At Assizes an average of 1.6 persons were charged on each indictment in the 1650s, but by the 1690s the average was down to 1.3 per indictment. On the other hand in the West Riding the 1660s saw an average of 1.6 persons charged per indictment and by the 1690s that figure had risen to 1.8 persons. To break the figures down slightly, at Quarter Sessions a total of eighty nine indictments charged two persons; fifty charged three persons; forty one charged four persons and eighteen charged between five and twelve persons each. At the Assizes sixty seven indictments charged two persons; twenty eight charged three persons; nine charged four persons and six charged between five and eight people each.

There is a significant difference in the proportion of bills ignored at Quarter Sessions and at Assizes. Over the whole period the average of ignoramus bills at the Assizes was 22% (varying from 18% in the 1670s to 33% in the 1680s), whereas at Quarter Sessions the average of ignoramus bills was 14% and this figure was much less subject to fluctuation; it was 13% in both the 1670s and the 1680s and 17% in the 1660s.<sup>77</sup> This comparative reluctance of the Quarter Sessions grand juries to throw out bills perhaps reflects the fact that they

-----

77. Again, making comparisons with Essex, the proportion of ignoramus bills at the Assizes was just over 15% and at Quarter Sessions just under 15%: Sharpe, Seventeenth Century, p. 116.

were of lower social standing than the grand juries empanelled at the Assizes, most of whom were themselves J.P.s, and therefore stood in more awe of the judicial establishment. The Assize grand juries, however, did not favour their social equals when they came to consider bills against them for assault. Twenty four of the 121 described as gentleman or above had the bills against them returned ignoramus, that is about 20%, a figure very close to the average. On the other hand the Quarter Sessions grand juries were apparently inclined to treat their social superiors more harshly as only 7% of bills for assault against the better off were returned ignoramus.

Unfortunately the outcome of the trials of persons accused of assault are frequently either not endorsed on the indictment at all, or the only endorsement is 'comp' (to appear). Non endorsement creates a problem for the researcher at the Assizes, as partial endorsement does at the Quarter Sessions. Results of trials before an Assize petty jury are known in only just over one hundred cases, about 20% of the total. At Quarter Sessions, the situation is better, with results known in about 70% of cases going to the petty jury, but a quarter of those are only endorsed to appear. The known verdicts are shown in Tables 7 and 8, and the large numbers who were fined is apparent. There are some very marked differences in verdicts between Essex and Yorkshire, as Tables 7 and 8 make plain. In particular a much higher proportion of persons in Essex were acquitted or found not guilty, while in Yorkshire a much higher proportion had the bills against them ignored.<sup>78</sup> Overall 46.8% of those for whom results are known were acquitted in Essex, compared with 3.8% in Yorkshire. This

-----  
78. In part this is undoubtedly due to the fact that so many of the Essex ignoramus bundles are missing.



very low figure for Yorkshire doubtless gives a false impression of convictions for, of course, many of those who traversed, but for whom the subsequent verdict is not known, would have been acquitted. The overall proportion of those fined is more similar - 35% for Essex, and 33% for Yorkshire. Overall too the median fine appears to fall over the period studied, from something over 5/- in the 1670s to around 1/6d. by the 1690s. Sharpe suggested a correlation between the status of the offender and the amount he was fined, but no such correlation appears in Yorkshire, where only one gentleman and his wife appear among those fined over £1. The more common fine for those described as gentleman or above was between 1s and 13s 4d.<sup>79</sup>

-----  
TABLE 7

TREATMENT OF DEFENDANTS TO ASSAULT CHARGES  
AT ASSIZES  
YORKSHIRE AND ESSEX COMPARED

	Yorkshire			Essex		
	Numbers	%age of total	%age of known	Numbers	%age of total	%age known
Ignoramus	146	22.3	55.1	13	14.9	35.1
Not guilty	10	1.5	3.8	9	10.3	24.3
Fined	18	2.7	6.8	10	11.5	27.0
To appear	12	1.8	4.5			
At large	8	1.2	3.0			
Other	71	10.8	26.8	5	5.7	13.5
Not known	390	59.5		50	57.5	
Total	655			87		

The figures for Essex are taken from Sharpe, Seventeenth Century, p. 118. He shows separately figures for those acquitted and those who pleaded not guilty but the two have been combined here.

-----

-----  
79. The figures are taken from Sharpe, Seventeenth Century, pp. 117 - 120.

-----  
TABLE 8

TREATMENT OF DEFENDANTS TO ASSAULT CHARGES  
AT QUARTER SESSIONS  
YORKSHIRE AND ESSEX COMPARED

	Yorkshire			Essex		
	Numbers	%age of total	%age of known	Numbers	%age of total	%age known
Ignoramus	135	14.5	17.8	103	15.5	22.9
Not guilty	16	1.7	2.1	164	24.7	36.5
Fined	319	34.2	42.0	162	24.4	36.1
To appear	174	18.7	22.9			
At large	16	1.7	2.1			
Traverse	31	3.3	4.1			
Certiorari	6	0.6	0.8			
Other	62	6.6	8.2	20	3.0	4.5
Not known	174	18.6		216	32.5	
Total	933			665		

The figures for Essex are taken from Sharpe, Seventeenth Century, p. 117.

-----

SEXUAL OFFENCES

Sexual offences have been found to be infrequently prosecuted in most studies and Yorkshire is no exception.<sup>80</sup> A number of disparate offences are included in the category varying from such serious ones as rape to fornication, but in total only ninety four persons were charged in ninety one indictments, seventy at Assizes and twenty four at Quarter Sessions. The law relating to all the sexual offences was varied. Under the 1650 Ordinance incest and wilful adultery were both made capital offences and fornication (upon a second conviction) felony without benefit of clergy. All these offences were repealed at

-----  
80. In his sample of nine counties Sharpe found that sexual offences never accounted for more than 2% of all felonies: Early Modern, p. 55 and see his discussion of sexual offences in Seventeenth Century, pp. 57 - 60.

the Restoration. Bigamy - committed, with certain exceptions, where a person, being married, marries again, the former spouse being alive - was made a felony under 1 Jac 1 c.10. Evidential rules prevented the first or true wife from giving evidence against her husband, and vice versa against a wife.<sup>81</sup> Buggery and sodomy were not distinguished, Blackstone referring, rather reticently, to the "infamous crime against nature, committed either with man or beast". It was first criminalized in Henry VIII's reign and under 5 Eliz c.17 made felony without benefit of clergy. Hale noted that there must be proof of penetration and that "if buggery be committed upon a man of the age of discretion, both are felons... But if with a man under the age of discretion, viz, fourteen years old, then the buggerer only is the felon." It is interesting to contrast this attitude with that obtaining in Renaissance Venice where in cases of sodomy, which was the most severely punished sexual crime, a distinction was made between the active and the passive partner.<sup>82</sup> Rape, having been treated as a trespass only for a time, was made felony under the Statute of Westminster 2 c.34 and by 18 Eliz c.17 felony without benefit of clergy, and that statute also excluded from clergy the offence of carnal knowledge of any woman under the age of ten. Contemporaries were aware of the possibility of false accusations and Blackstone suggests that delay in discovery of the offence; the victim's evil fame or the fact that in a public place she made no outcry "carry a strong, but not conclusive, presumption that her testimony is false or feigned." Again comparison with Renaissance Venice suggests that there the state intervened to ensure a marriage

-----  
81. Blackstone, Commentaries, vol. 4, pp. 64 and 163 - 165.

82. Blackstone, Commentaries, vol. 4, pp. 215 - 216 and Hale, Pleas of the Crown, p. 670. G.Ruggiero, Boundaries of Eros, Sex Crime and Sexuality in Renaissance Venice (Oxford, 1985), pp. 110 - 121.

rather than to punish a rapist, and certainly the rape of a man was more severely punished than that of a woman.<sup>83</sup> Whether in seventeenth century England there was any concept of homosexual rape cannot be established. Certainly no evidence of such an attitude appears among the Yorkshire indictments.

Table 9 appears to show a larger number of offences than normal occurring in the 1650s, but the figures include fourteen persons charged with fornication and adultery, which were offences only in that decade. No one, for obvious reasons, was charged with either offence at any other period. Eleven of these defendants were women and of them all only one, a woman, was convicted. The 1650s also saw the only prosecutions for incest, all of which involved purported marriages, between step-father and step-daughter, father-in-law and daughter-in-law and uncle and niece. A special verdict was endorsed on the indictment relating to the father and daughter-in-law, and the others were found not guilty. Cases of bigamy occurred sporadically throughout the period. Only two convictions were secured and in one a pardon was subsequently obtained. Of the remainder, one was at large, five bills were returned ignoramus and three were found not guilty. There is thus a very high proportion of ignoramus or not guilty verdicts for these offences. Not one case of buggery resulted in a conviction, about 60% being ignored by the grand jury and the rest acquitted by the petty jury. Only one case of sodomy is recorded, in which John Hallyl (accused of sodomizing a fourteen year old boy) although convicted and sentenced to hang, was reprieved.<sup>84</sup> All the

-----  
83. Blackstone, Commentaries, vol. 4, pp. 210 - 215 and Ruggiero, Eros, pp. 31 and 125.

84. PRO. ASSI., 44/38.

indictments for incest, bigamy, buggery and sodomy were dealt with at the Assizes, but Quarter Sessions saw prosecutions for the offences of adultery and fornication as well as for rape and the misdemeanour of assault intending to rape. Forty men in all were charged with these offences, seventeen of them at Quarter Sessions. The assault with intent cases, which Blackstone suggests normally carried penalties of heavy fine, imprisonment and the pillory, although more likely to be admitted, were punished comparatively leniently, with fines ranging from 2s 6d to £20.<sup>85</sup> Beattie has suggested that in these cases a form of plea bargaining went on and Blackstone states that indictments for assault with intent to rape or commit sodomy were "much more usual... on account of the difficulty of proof".<sup>86</sup> In the rape and statutory rape (i.e. carnal knowledge of a girl under the age of ten years) cases on the other hand, of which about a quarter were dealt with at Quarter Sessions, over 75% were returned ignoramus, and a further 16% were acquitted after a trial. Thus overall 70% of those charged with sexual offences were acquitted either by the grand or petty jury, and only 16% were convicted many of these after an admission and to be punished by a fine. Once again labourers committed most offences, 57% of defendants to all charges being so described, compared to 11% described as gentleman or above. However gentlemen were perhaps more likely to be charged with rape or assault with intent for if the instances of buggery, sodomy and bigamy are excluded gentlemen then form 16% of defendants and labourers only 35%.

-----  
85. Blackstone, Commentaries, vol. 4, p. 217. Of the Yorkshire cases only 16% were returned ignoramus and no one was convicted after a trial.

86. Beattie, Crime and the Courts, pp. 124 - 132 and Blackstone, Commentaries, vol. 4, p. 217.

-----  
 TABLE 9

SEXUAL OFFENCES BY DECADE AND OFFENCE

Offence	1650s	1660s	1670s	1680s	1690s
Rape	6	8	4	3	3
Statutory rape		1			
Ass with intent		4	8	2	1
Incest	4				
Buggery	1	5	7	4	2
Fornication	11				
Adultery	3				
Bigamy	4	2	2	7	1
Sodomy				1	

-----

WITCHCRAFT

Witchcraft became a statutory offence in England in 1542 and remained one, although subject to repeal and re-enactment, until 1736. The last witchcraft act of 1604 was the one most influenced by continental notions of witchcraft as involving a pact with the devil, but even that did not view every act of witchcraft as involving such a pact.<sup>87</sup> More needs to be known, particularly about the attitudes of local and national elites towards witchcraft, but current thinking suggests that English witchcraft was "prosecuted primarily as an anti-social crime rather than as a heresy", and this has been attributed in part to the "belated and incomplete reception of the cumulative concept of witchcraft" as well as to the minimal use of

-----  
 87. 33 Hen VIII c.8 made all witchcraft and sorcery felony without benefit of clergy and 1 Jac 1 c.12 provided that invoking spirits, taking dead bodies from their graves to be used in witchcraft and killing or hurting anyone by infernal arts were non clerical felonies, and that anyone using sorcery to discover treasure or stolen goods or to hurt man or beast was to be imprisoned and pilloried. Blackstone, Commentaries, vol. 4, pp. 60 -61.

torture, and to jury trial.<sup>88</sup> Thomas, following the pioneering work of C.L.Ewen, accepted a rough figure of something under 1,000 executions for witchcraft in England, but Larner thought a figure of under 500 would be more reasonable.<sup>89</sup> Such figures are not much more than informed guesses, but they are nevertheless accepted as significantly less than the figures for Scotland and for several countries in continental Europe. Moreover by far the greatest bulk of witchcraft accusations occurred in the Home Circuit counties, and particularly in Essex, where they were particularly numerous in the 1590s and, under the direction of Matthew Hopkins, in the 1640s.<sup>90</sup> One of the major difficulties in analysing the pattern of witchcraft prosecutions is to judge the extent to which it should be seen as not witch hunting but woman hunting. The stereotype of a witch in Europe has always been that of an "independent adult woman" and women formed 80% of those accused in the countries at the centre of the "witch craze", such as Germany, France and Scotland. In the peripheral areas, such as England, the proportion was even higher, at 95 -

-----  
88. K.Thomas, Religion and the Decline of Magic (London, 1971), p. 433. B.Levack, The Witch Hunt in Early Modern Europe (London, 1987), p. 183; and see his earlier chapters for an account of the spread of continental witchcraft beliefs.

89. Thomas, Religion, p. 450 and C.Larner, "Witch Beliefs and Accusations in England and Scotland", in C.Larner, ed., with an introduction by A.Macfarlane, Witchcraft and Religion: The Politics of Popular Belief, (Oxford, 1984), pp. 71 - 72. Levack suggests that the total number of "British trials", in which he includes Scotland, where prosecution was much more intense than in England, and America, may have been as low as fifteen hundred: Levack, The Witch Hunt, p. 183. See also on the topic generally, A.Macfarlane, Witchcraft in Tudor and Stuart England (London, 1970), and C.L.Ewen, Witch Hunting and Witch Trials (London, 1929).

90. Of the 101 indictments at the Essex Assizes between 1620 and 1680 fifty were tried at the Trinity Assizes in 1645: Sharpe, Seventeenth Century, p. 159.

Witchcraft and sorcery were classified by Blackstone as crimes against God and religion but again here they will be treated as ones where a specific individual is usually the alleged victim, either directly or through attacks on his goods, usually cattle.<sup>92</sup> Both offences are usually treated by historians and contemporaries alike as exceptional because by historians they are considered to be 'impossible' crimes and by contemporaries because of the different procedural standards that applied to them.<sup>93</sup>

The number of those prosecuted for the offence in Yorkshire in the period was small, and was concentrated in the early years. Thus of the thirty five persons indicted nineteen were charged in the 1650s and all save four were charged before 1675. All these cases went to the Assizes and no one was charged with the offence at Quarter Sessions. Women formed almost 70% of those accused in Yorkshire, significantly less than in Essex. Save for infanticide, specifically defined as a woman's crime, this is the only crime where women form over 50% of defendants. Most of the witchcraft indictments were preferred against a single individual, but one charged two men and three women, apparently from two families with bewitching Grace

-----  
 91. Lerner, "Witchcraft Past and Present", p. 85. In Essex, for example women formed about 92% of those accused at the Assizes: Macfarlane, "Witchcraft", p. 79.

92. The period between 1567 and 1640 saw 117 presentments for witchcraft in the church courts at York. Of these sixty two charged "charming", and of the remainder almost 68% involved damage to the health of either men or beasts. P. Tyler, "The Church Courts at York and Witchcraft prosecutions, 1567 - 1640", Northern History, 4 (1969), pp. 84 - 110.

93. See for example the discussion in Lerner, "Crimen Exceptum?" pp. 56 - 68 as to whether it is more illuminating to follow this pattern or to treat witchcraft as a crime among many.



Allerson.<sup>94</sup> Three women were charged more than once. There are three indictments against Anne Greene, for example, each accusing her of bewitching a different person, two men and one woman, none apparently related. Anne Wilkinson on the other hand, was charged in four separate indictments with bewitching four girls, all daughters of Mr. John Earnley.<sup>95</sup> Men were more likely to be the alleged victims than women: fourteen men thought they had been bewitched compared with twelve women.

The background to witchcraft accusations in Yorkshire was fundamentally similar to that found in other areas. Thus Jennet Benson and her son George pretended to have a right of way through land tenanted by Richard Jackson. A servant of Jackson's, Daniel Craven, tried to block the way and was assaulted by George Benson. A law suit followed "which was composed and satisfaction given to the said Craven". But the Bensons said that "it should be a deare day's worke unto the said Richard Jackson, to him or to his, before the year went about". Misfortunes then followed. Jackson's wife

haith had her hearinge taken from her; a childe strangely taken with fitts... himselfe... sometimes in such extremity that he conceived himselfe drawn in peices at the hart, backe and shoulders... He had also a great many swine which broake thorow two barn dores. Also the dores in the howse at that time clapt to and fro; the boxes and trunkes... was removed; and severall apparitions like black doggs and cattis was seen in the house. And... he hath lost 18 horses and meares.

Jackson attributes all of this to "the use and practise of some witchcraft or sorcerie by the said Gennet and George Benton".<sup>96</sup>

Nicholas Battersby, charged with sorcery in 1664, was a 'cunning' man

-----  
94. PRO. ASSI., 44/5.

95. PRO. ASSI., 44/5 and 44/18.

96. Depositions, ed. Raine, p. 74. Despite this evidence the Bentons were acquitted. PRO. ASSI., 44/7.

who was sent for to help Richard Redshaw. Redshaw had been accused of stealing money from Lord Fairfax and, protesting his innocence, had been committed to York Castle. When Battersby arrived at the castle he "tooke instruccions therof in his booke" and the next day declared Redshaw innocent and the thief "an old gray-haired man, and a young man, whoe were servants in the house" and the money as "hid in a great sacke, which by reason of the waters none could as yett come unto... And the said Battersby received 5s for his paines in the said business".<sup>97</sup>

One point of interest that emerges is the role played by young girls in suggesting that older women were likely to be witches. Thus Elizabeth Mallory, in her fits, accused Mary and William Wade, and Anne Wilkinson was accused by Mary Earnley. In both these cases witnesses attest to the girls having fits and being tormented by or vomiting pins. It has long been suggested that those accused of being witches were likely to be not the poorest in their community, but marginally, though not greatly, the social or economic inferiors of their accusers.<sup>98</sup> Here, however, Mary Wade's accuser was the daughter of Sir John Mallory M.P., and was later to become the wife of successively, Sir Cuthbert Heron, Bart, and Ralph Jenison, Esq., while Anne Wilkinson was accused by the daughter of John Earnley, described as a gentleman.<sup>99</sup> The case of Susan and Joseph Hinchcliffe and their daughter, Ann Shillitoe, may also fit into this

-----  
97. PRO. ASSI., 44/12; 45/6/3/4 and 42/1 fol 132. The bill against Redshaw was found ignoramus at the March 1664 Assizes when Battersby was acquitted and bound.

98. See the discussions in Macfarlane, "Witchcraft", p. 80; Lerner, "Witchcraft Past and Present", p. 72, and Depositions, ed. Raine, pp. 75 - 78 and 176 - 177.  
For the Mallorys see Dugdale, Visitation.

99. Earnley was not, however, included in Dugdale's Visitation.

category.<sup>100</sup>

## DEFAMATION

The numbers of defamation suits had increased sharply from the mid sixteenth century onwards and it has been suggested that "the amount of litigation aroused by slander was a phenomenon of the age".<sup>101</sup> Defamation was of two types - libel, which was written, and slander, which was spoken. This distinction began about the end of the fifteenth century and was becoming firmly established by the late seventeenth. From about the same time common law courts and Star Chamber began to deal with defamation cases, previously the preserve of ecclesiastical and local courts. These courts continued to hear numerous defamation suits. In the Diocese of York, for example, both the Consistory and the Chancery courts heard defamation causes and in quite large numbers; 565 causes being heard in the Consistory Court alone in the 1690s.<sup>102</sup>

Blackstone considered libels to be analogous to challenges to fight in that their "direct tendency" "is the breach of the public peace, by stirring up the objects of them to revenge and perhaps to

-----  
100. PRO. ASSI., 44/27. The bill against them all was ignored but Heywood noted that Joseph "being bound to the assizes he could not bear it but fainted, went out one thursday morning Feb 4 1674-5 hanged himself in a wood near his house, was not found till the Lords day, his wife dyed in her bed, spoke and acted as a christian praying for her adversarys that falsely accused her, was buried on Feb 4 - before he was found": Diary, vol. 1, p. 362.

101. R.A. Marchant, The Church under the Law: Justice, Administration and Discipline in the Diocese of York 1560 - 1640 (Cambridge, 1969), p. 62.

102. J.A. Sharpe, Defamation and Sexual Slander in Early Modern England, The Church Courts at York, (Borthwick Papers, no. 58, 1980), pp. 4 - 7.

bloodshed", but both libel and slander are also mentioned by Blackstone as "injuries affecting a man's reputation" and that is the justification for including both in the category of offences against the person. Blackstone appears to consider criminal defamation to lie only in relation to libels i.e. to "writings, pictures or the like", and notes that whereas in a civil suit a libel must be "false as well as scandalous" in a criminal action truth is no defence for the evil the law aims to prevent is the disturbance of the peace. What constituted defamation in law was a complicated matter, as a later example will make plain.<sup>103</sup>

A fair number of defamation cases were still reaching both Assizes and Quarter Sessions throughout the late seventeenth century, despite the remedies available elsewhere.<sup>104</sup> In total thirty nine persons were prosecuted at the Assizes and thirty at the Quarter Sessions in the half century, and it is not until the 1690s that the number prosecuted at Quarter Sessions exceeds the number at Assizes. Most of those accused were men. In fact women formed about 16% of defendants, very little higher than the percentage accused of murder. Defamation was a crime committed by those of higher social status: gentlemen or above form 30% of defendants, while labourers form only 12%. Victims too were usually men (in almost 80% of cases), and of high social status. Twenty nine of the fifty three male victims were described as gentleman or above, and in four cases the victims were such representatives of the upper strata of society as the grand jury, the

-----  
103. Blackstone, Commentaries, vol. 3, pp. 123 - 125 and vol. 4, pp. 150 - 151.

104. In Essex only twenty two cases reached Assizes and Quarter Sessions between 1620 and 1680, and most apparently involved allegations of sexual misconduct: Sharpe, Seventeenth Century, pp. 157 - 158.

J.P.s, or the Mayor and Aldermen of the City of York. This appears to be in striking contrast to the situation in the ecclesiastical courts where, in the 1690s, only 24% of plaintiffs were male, and most of those involved, whether as plaintiff, defendant or witness, were of the "rural middling sort".<sup>105</sup> These differences are probably accounted for by the comparative ease and lesser cost of initiating process in the ecclesiastical courts than of prosecuting at the Assizes, which remained a remedy only for the comparatively wealthy.

The allegations made in defamation cases varied. Elizabeth Atkinson told Isabel, wife of George Todd that "Thou is a whore and was with child and left it in Whitby".<sup>106</sup> On the other hand most cases defamed men and were rarely concerned with their sexual reputations. In only four cases had the allegations against men a sexual import: in two men are accused of having the pox and in the third an Alderman is accused not only of having begot a bastard on his maid but also of having "knockt [it] in the head with a pestall".<sup>107</sup> In the fourth case ten lines of doggerel were circulated in Wakefield defaming John and Mary Hollingworth and Daniel Hoyle, and beginning:

Behold these horns Good John they are thy fate  
Young Hoyle with thine owne wife these doe Create<sup>108</sup>

Most allegations against the men were concerned with their honesty or otherwise. Thus John Benson accused John Reynard, Christopher Smith and Thomas Marsden of being clippers, Samuel Bowes told Godfrey Copley that "you have extorted... from me... my land", and William

-----  
105. Sharpe, Defamantion, pp. 17 and 27 - 28.

106. PRO. ASSI., 44/38.

107. PRO. ASSI., 44/20.

108. WYRO., 4/10 fol 15.

Smith was told "Thou art a thief and have stolen my cow".<sup>109</sup> A more serious libel was a lengthy document also circulated in Wakefield and containing "The Cases of Several of his Maiesties subjects oppressed by Mr Robert Benson Clerk of the Assizes for the Northern Circuit".<sup>110</sup> That several of these cases had political or religious overtones is evident from that of John Green of Liversedge. He was charged (in June 1662) with defaming Sir John Armitage by saying that he was

a loggerhead slouch headed swyne bellied and brusson bellyed hound and but for him the Quakers had not been apprehended And those men the Constables charged to apprehend the Quakers weere none but such as were murderers, bastard getters whore masters and drunkards and those who sett the said Constable and those he charged to take the Quakers were no better themselves.

For this serious charge Greene was fined the large sum of £50. This result raises a problem, for Keble reports a case in 1663, which from the words quoted must surely be that of John Green. In it he notes that to say of "a Justice of Peace, that he is a Logger-headed and a Slouch headed Brussen bellied Hound is no cause of indictment... partly for want of Jurisdiction partly because the words are not actionable", so that if Green was convicted and fined he was obviously successful in appealing the verdict. He was in other trouble as well. At the same sessions he was charged also with harbouring Quakers and with refusing to take the oath of allegiance, and it appears that he was committed to York Castle for the latter offence.<sup>111</sup>

In the ecclesiastical courts, by contrast, almost 70% of plaintiffs,

-----  
109. PRO. ASSI., 44/17; 44/12 and 44/24.

110. PRO. ASSI., 44/20.

111. WYRO., 4/6 fols 153 and 154. Keble, Assistance to Justices, p. 629.

male and female, complained of sexual slander.<sup>112</sup> Since these were the courts used by the middling sort to defend their reputations and honour by waging law, it would seem that such men were much concerned with their reputation for sexual good behaviour. In contrast the option of prosecution at Quarter Sessions or Assizes was used predominantly by the better off to protect themselves more from slurs on their honesty than on their sexual incontinence. Perhaps by the late seventeenth century it was no longer an affront to the honour of a gentleman to be suspected of libertine propensities, whatever it may have been for women of the same class or men of a lower class.

Results are known in only twenty three of the Assize and Quarter Sessions cases. Three persons were dead before their trials commenced and for the rest eleven admitted the offence charged and were fined between 2d. and 5s., while a further nine were found guilty and fined between 20s. and £5.

#### CONCLUSION

The category of offence against the person was a large one and would be larger if the Upper and King's Bench indictments were included, for that increases the proportion of this category from about 15% to about 17%. The offences included are very varied, as indeed is the case with all the categorizations, but nevertheless they have an internal consistency, in the fact that in all of them harm is caused to an individual by the wilful action of the defendant. There has been much dispute among historians about the levels of violence in

-----  
112. Sharpe, Defamation, p. 10.

pre-industrial societies, the acrimonious debate between L.Stone and J.Sharpe being but one example. The generally accepted view is that homicidal violence on the whole declined between the thirteenth and the mid twentieth centuries, and that by the seventeenth century England was not "a particularly lawless or violent place".<sup>113</sup> It has also been argued that the mid seventeenth century marked a turning point not only in the perception of criminality by contemporaries, but also in its prosecution. It is not possible to make comparisons between early and late seventeenth century Yorkshire, but over the period studied there does not seem, despite some fluctuations, to have been an overall decline in homicide indictments. Nor do the infanticide prosecutions show strong variations but are likewise spread fairly evenly over the whole period. A more distinct pattern emerges in relation to the cases of assault, but Yorkshire does not appear to have witnessed a noticeable decline in violence overall, for the largest numbers of these cases were brought in the 1660s and 1670s and it was not until the 1680s that numbers fell to a level similar to that for the 1650s. Although in the 1690s prosecutions continued to decline we must, of course, remember the absence of surviving indictments for the last years of that decade. The example of Yorkshire therefore should perhaps temper the common view of a continuing decline in violent behaviour over the period and make us beware of drawing national patterns from studies based primarily on southern English material. Thus a comparison of indictments for the three major violent offences, assault, homicide and infanticide, suggests that the rate for Yorkshire in the late seventeenth century was higher than that for Essex in the late sixteenth century.<sup>114</sup>

-----  
113. Sharpe, Early Modern England, p. 175.

114. Cockburn, "Nature and Incidence", pp. 53 - 55.



Yorkshire seems to have had a continuing high rate of prosecuted violent crime at least until into the eighteenth century. Tables 10 and 11 show the distribution of offences against the peace during the period studied.

TABLE 10

OFFENCES AGAINST THE PERSON OVER TIME  
AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Murder	69	128	75	117	85	474
Infanticide	15	20	21	21	12	89
Assault	96	190	190	108	71	655
Sexual	23	11	16	15	5	70
Defamation	4	12	7	11	5	39
Witchcraft	19	6	7	1	1	34
Total	226	367	316	273	179	1361

TABLE 11

OFFENCES AGAINST THE PERSON OVER TIME  
AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Assault	216	224	295	218	200	1153
Sexual	6	9	5	2	2	24
Defamation	8	3	4	6	17	38
Total	230	236	304	226	219	1215

Even if violent crime generally was not on the decline in Yorkshire in this period, it is possible that the upper echelons of society were increasingly eschewing violence as a method of resolving their disputes, and so contributing to the divide between respectable and non respectable behaviour. Other historians have commented on examples of gentry violence and Raine considered that the Assize

depositions gave "rather an unfavourable picture of the Yorkshire gentry".<sup>115</sup> Most of the commentary has been descriptive, but from the study it is possible to see statistically the high level of involvement by the gentry in violent crime. Thus gentlemen appear to have been overrepresented as defendants in all offences of violence though they were twice as likely to feature in assault cases as in murder trials. Indeed in assault cases labourers, by far the bulk of defendants in most other crimes, only made up a quarter of defendants, while gentlemen made up 13%, and this certainly supports the view that violence remained an upper class proclivity. The reasons for this high rate of prosecution of members of the gentry for violent offences are complex. It is possible that such prosecution was a result of a lessened tolerance on the part of the authorities for self help among the governors of the county community.

-----  
115. Raine, ed., Depositions, p. 89.

## CHAPTER THREE

### OFFENCES AGAINST THE PEACE

The overlap between offences against the peace and offences against the authorities is in many ways close. Of course, all offences were considered to be breaches of the king's peace and it might well be argued that riots were direct attacks on the authorities and should be included in that category. Furthermore if the utterance of seditious words was an attack on the authorities, a riot, which might have led to a seditious action, should surely also be so; and it is hard to see what distinguished the Farnley Wood plotters, accused of treason, from other rioters, apart perhaps from the government's fear of them. It is clear from this that the categories are somewhat artificial but nevertheless the distinction being made is useful. It turns essentially on the intention of offenders such as rioters compared with that of offenders against the authorities: the first group were motivated primarily by a desire to attack an individual or group of individuals; the second by a questioning of the authority of the central or local governors. Again, making a legal point, and one which would have been familiar to contemporaries, motivation is important in determining legal liability and indeed, as will be shown below, the legal differences between the offences of riot, rout and illegal assembly turned on the concept of a common purpose.

Offences against the peace are taken to comprehend four offences only: unlawful assemblies either involving no overt act or an

assault; unlawful assemblies involving attacks on property; false imprisonment; and a miscellaneous group including challenges to fight, breach of the peace and barratry. Of these the last constitutes the smallest group, with only seventy-one persons being so charged over the whole period. On the other hand the first two offences, which are similar, account for very large numbers of persons charged; over 1,500 in all. Blackstone, while grouping them together, distinguished between unlawful assemblies, routs and riots, as indeed did Lambarde. All were misdemeanours at common law, punishable by fine or imprisonment, and all required a minimum of three perpetrators. The differences between them were that in the first two a common purpose to do an unlawful act was needed, though in the first no more, while in the second steps towards the carrying out of the unlawful purpose had to be taken, whereas in the third, no common purpose was needed, but an unlawful act of violence had to have occurred.<sup>1</sup> These are important legal distinctions, and ones which were often recognized in the drafting of indictments, but for the historian interest in this group of offences lies more in the causes lying behind a riot than in the ingredients constituting the specific illegal act. Thus the three discrete offences need to be treated together if comparisons are to be made with other studies which have, on the whole, treated riot as a category by itself, although some separate comment will be made on those involving no overt act or an assault and those involving an attack on property. Blackstone included forcible entry and detainer in the category of

-----  
1. Blackstone, Commentaries, vol. 4, p. 146. Lambarde considered that "an unlawful assembly is the first degree, or beginning: a Route, the next step or proceeding: and a Riot, the full effect and consummation of such a disordered and forbidden action": Lambarde, Eirenarcha, p. 181.

offences against the public peace but as previously stated, they will be treated in this thesis as offences against property. This creates some difficulties, for there are certainly connections between the offences of forcible entry and unlawful assembly, and the same persons are often charged with both offences at dates which indicate that the actions prosecuted form part of a common series. Nevertheless it is hoped that what follows will show that the categorization justified in the introduction is both valid and necessary.

Forcible entry, of course, related to land. Among the unlawful assemblies there is a group which involve attacks on property, but this is always moveable property.<sup>2</sup> It could perhaps be argued that these too should be included in the category of offences against property, but from analysis of them it appears that the most important constituent of these offences was the gathering to carry out an unlawful purpose, and it therefore seems preferable to treat them as analogous to the other unlawful assemblies in attempting to discover the motivation behind such group violence and the reaction of the authorities to it.

#### UNLAWFUL ASSEMBLIES IN YORKSHIRE - AN OVERVIEW

At the Assizes a total of 861 persons were charged with unlawful assembly involving no overt act or an assault in 164 indictments, and 436 with unlawful assembly involving an attack on property in eighty

-----  
2. The legal distinction is of course between real and personal property, but that is not the distinction being made here, for legally much "moveable" property might, depending on the circumstances of its severance, be considered realty.

five indictments. At Quarter Sessions 588 persons were charged in 104 indictments with the first offence and 117 persons in twenty two indictments with the second. In the 1650s twenty eight indictments for illegal assemblies in Yorkshire survive in the Upper Bench records and like the Quarter Sessions and Assize indictments they charge considerable numbers of persons. As with offences against the person the inclusion of the Upper and King's Bench indictments (on the assumption that the proportions in King's Bench were similar to those in Upper Bench) increases the percentage of offences falling within the category from 14.5% to 15.2%. The average numbers of persons charged on each indictment was slightly higher at Quarter Sessions than at Assizes, but on the whole the two offences were fairly similar. In total then the period saw 2,002 persons charged in 375 indictments, an overall average of 5.3 persons charged on each indictment.<sup>3</sup> These figures do not take into account the cases where more than one indictment was brought against the same group of persons. When allowance is made for these the totals fall to 301 indictments and 1,640 persons. This overall figure is significantly higher than those in material gathered elsewhere. In Essex, for example, between 1620 and 1680, only 103 indictments were preferred for the offences at Quarter Sessions and Assizes, and many of these related to anti Laudian activities in the early 1640s.<sup>4</sup>

There were marked fluctuations in the incidence of the offence of assembly with no overt act or an assault in different decades. The

-----  
3. It is perhaps worth noting here that the average number of persons charged on forcible entry/disseisin indictments was half this figure.

4. Sharpe, Seventeenth Century, p. 72 and 82 - 88. An additional thirty six prosecutions were brought in the King's Bench.

1660s and 1670s see by far the greatest number of prosecutions for this offence. In total over 800 persons were charged during those twenty years, over 60% of all those so charged. The pattern for the offences involving property is similar, with the 1660s and 1670s accounting for almost 50% of all those so charged. Among the latter though a sharp decline in the 1680s was followed by a rise in the 1690s.

There were marked differences among those presented both in the type of offence and between Quarter Sessions and Assizes, and Tables 12 and 13 set out the status of those prosecuted for the two offences at Assizes and Quarter Sessions. Thus whereas women formed about 15% of those charged with the assault assembly at the Assizes, they formed over 25% of those charged with the offence at Quarter Sessions. Labourers at about 33% accounted for similar proportions in both courts, but yeomen and tradesmen/craftsmen did not. At Assizes the yeomen constituted almost one third of those charged, and the tradesmen/craftsmen about 13%. At Quarter Sessions the yeomen formed only 11% and the tradesmen/craftsmen almost 22%. The differences for those described as gentleman or above were less striking. They formed 3% of those charged at Quarter Sessions and 6% of those charged at Assizes. As with other offences however it appears that the better off were likely to face Assize juries rather than Quarter Sessions ones, and the reasons for this may lie partly in their appreciation of the advantages in being tried by a jury composed of those of similarly superior status. This is a suggestion which it would be difficult to prove or disprove. Nevertheless overall the gentry were much more likely to face prosecution at the higher court rather than at Quarter Sessions and some reason for this pattern needs to be

suggested. Certainly today many defendants recognize the advantages of being tried by a jury at the Crown Court rather than in the magistrates' courts, and this in part is because the former is a tribunal composed of those more likely to be the peers of a defendant than a bench of magistrates is. The seventeenth-century gentry were doubtless, as a group, the best aware of the advantages and disadvantages of the different loci of trial. In so far as they were able to influence the decision it might be thought that gentry would prefer trial at the Assizes for a number of reasons. Firstly the status of both grand and petty jurors there was higher than at Quarter Sessions and they could therefore hope perhaps for a more favourable hearing and secondly it was probably advantageous to a defendant to be tried at the Assizes, the less local court, which would therefore have been more likely to see witnesses and prosecutors failing to appear. Among the Upper Bench indictments for riots in the 1650s the gentry appear to play an even greater part. Thus of twenty eight indictments, five were led by men described as gentlemen or esquires. However these five indictments alone involved twenty eight other persons for whom details of status have not been recorded, so that the preponderance of gentry here may be illusory. This suspicion is strengthened because the Upper Bench indictments also contain several relating to Hatfield Chase, which involved even larger numbers of people, who, though they may have been of middling status, such as yeomen, were not gentry.



-----  
 TABLE 12

STATUS OF DEFENDANTS TO CHARGES OF UNLAWFUL ASSEMBLY  
 AT ASSIZES AND QUARTER SESSIONS

	Assizes	Quarter Sessions
Labourers	230	81
Gentlemen	41	7
Yeomen	233	26
Husbandmen	11	13
Trades/craftsmen	90	52
Women	106	61
Total	711	240

-----  
 TABLE 13

STATUS OF DEFENDANTS TO CHARGES OF  
 UNLAWFUL ASSEMBLY/ATTACK ON PROPERTY  
 AT ASSIZES AND QUARTER SESSIONS

	Assizes	Quarter Sessions
Labourers	108	44
Gentlemen	47	9
Yeomen	162	23
Husbandmen	27	5
Trade/craftsmen	34	5
Women	37	6
Total	415	92

-----

The pattern for those accused of the assemblies involving attacks on property differs somewhat. There gentlemen play a larger part, 11% at Assizes and almost 10% at Quarter Sessions, as do yeomen, 39% of those charged at Assizes and 25% of those at Quarter Sessions. Women and tradesmen/craftsmen play a lesser role and labourers play a lesser one at the Assizes but a greater one at Quarter Sessions. Gentlemen were more likely to be charged with an unlawful assembly involving an attack on property than with one that involved an assault, a conclusion rather at variance with other work which has on

the whole suggested that the gentry were more likely to appear before the courts in offences involving violence than in those involving attacks upon property. They were, though, less likely overall to participate in unlawful assemblies than their counterparts in Essex, although their participation was still out of proportion to their numbers in the population.<sup>5</sup>

The fate of those accused is difficult to ascertain, although indictments do give some information. The proportion of bills returned ignoramus was higher at Assizes than at Quarter Sessions. Thus overall of those charged with the assault assemblies some 23% of persons charged at the Assizes had the bills against them ignored, while only 13% of those charged at Quarter Sessions did. Moreover there was a marked increase in ignoramus bills at Assizes in the 1660s, when 124 of the 338 persons charged (i.e. almost 38%) had the bills against them ignored. The same pattern is visible with the property offences. Overall 126 of the 436 persons charged at assizes had the bills against them ignored, (i.e.28.9%), while only five out of seventy six persons were so fortunate at Quarter Sessions. The increase in the proportion of bills ignored in the 1660s is even more marked, thirty two out of seventy six persons charged in that decade, i.e. 42.1% had the bills against them ignored, and only two bills, both at the Assizes, were returned partially by the grand jury.<sup>6</sup> The high proportion of ignoramus bills in the 1660s may of course be

-----  
5. In Essex gentlemen featured in about twenty eight of the 139 indictments, in about 20% of cases. In Yorkshire 104 out of 1,458 defendants were described as gentlemen or above. These figures are not directly comparable as Sharpe does not look at defendants individually and the percentage figure is derived from their participation in indictments: Sharpe, Seventeenth Century, p. 72.

6. In these, indictments were preferred against nine and ignored against eight persons. PRO. ASSI., 44/20 and 44/12.

related to the much higher numbers of persons charged in that decade, perhaps a regulative initiative that failed because of the reluctance of those supposed to enforce it.

For 402 of the 2,002 persons charged with the two offences the grand jury found insufficient evidence for an indictment to be preferred, leaving a total of 1,600 persons to face a petty jury. What happened to the vast majority of these - 1,402 - is not known. Seventy one of those for whom verdicts are known admitted the offence, a further fifty four cases were postponed, and a further fifty six were fined. Of the rest some were acquitted, some at large, some dead, and seventeen were bound to traverse. With results known in such a small percentage of cases it would be dangerous to try to draw too many conclusions, save to say that the results seem to be similar to those for that other common misdemeanour, assault.<sup>7</sup> The fines imposed ranged from 2d. to £1/10s, and there appears to be no correlation between the offender's status and the fine imposed.

The victims of the unlawful assemblies involving no overt act or an assault were overwhelmingly male, 214 male victims as opposed to twenty eight female. Again in most cases the status of the victim is not given and where it is it is obviously noted because of the high social status or office of the victim. Thus in the thirty five cases where status is mentioned in the indictment fifteen are described as gentlemen or above, five as clerks and fifteen as officials - bailiffs, cloth searchers, watchmen, constables and excise officers. There are no very significant differences in the victims of

-----  
7. For assault see chapter two above.

assemblies involving attacks on property. Women form a slightly higher proportion at almost 15% and a similarly small number of victims are identifiable by their status.

#### TYPES OF UNLAWFUL ASSEMBLY

Unlawful assemblies could take many forms, and there are major problems in analysing them. In this period however those which have a collective consciousness behind them centred on land and food, though protests against taxes and tax collectors and over industrial disputes also occurred.<sup>8</sup>

##### A) Food riots in the country at large

Evidence from central government records indicates that forty grain riots occurred between 1585 and 1660.<sup>9</sup> Dearth and the threat of dearth were a preoccupation of contemporaries who feared both the fact and its possible consequences. Harvest failures were fairly frequent, the 1590s, 1640s, 1670s and 1690s all witnessing more than

-----  
8. As Charlesworth says, "Sixteenth and seventeenth century reports of food riots by the authorities can be misleading because the authorities too readily translated the threat of disorder into evidence of riot and reports, when not vague and generalized, employed the stereotyped shorthand of 'food riot' which might obscure a more complex reality. For the eighteenth century... many J.P.s refrained from reporting local disturbances to central government, not wishing to admit any problems in their ability to keep order... charges of theft and assault, often brought against a few people, can hide a riot by a whole crowd.. Conversely, because the contemporary legal definition of a riot only required three people to be present... such an indictment could... be simply a personal assault or a relatively limited trespass."

A. Charlesworth, ed., An Atlas of Rural Protest in Britain, 1548 - 1900 (London, 1983), p. 63.

9. Charlesworth, ed., Atlas, pp. 72 - 85.

two.<sup>10</sup> Such failures, even if, as has been suggested, they rarely led to "crises of subsistence", nevertheless caused widespread though usually local suffering.<sup>11</sup> Even so riot was an uncommon response to dearth, and the problem is to explain why one area might riot while another, equally facing hunger, for hunger rioters really were hungry, did not.<sup>12</sup> Thus it seems that dearth alone was an insufficient factor, partly because, as Hobsbawm has said, "when people are really hungry they are too busy seeking food to do much else; or else they die".<sup>13</sup> From work on the west of England B.Sharp has suggested that fluctuations in the cloth trade and particularly unemployment there, contributed significantly to the outbreak of food riots, having noted that rioters were mainly 'artisans, skilled men employed in non agricultural occupations' and that the location of food riots was very specific, being confined essentially to areas engaged in the cloth industry and to the ports.<sup>14</sup> The connection between food riots and cloth producing areas seems a fruitful one for J.A. Sharpe has also noted the propensity to crime of the "inhabitants of the textile producing parts" of Essex.<sup>15</sup>

- 
10. W.G.Hoskins, "Harvest Fluctuations and English Economic History, 1480 - 1619", *AgHR*, 12 (1964), pp. 28 - 46, and idem, "Harvest Fluctuations and English Economic History, 1620 - 1759", *AgHR.*, 16 (1968), pp. 15 - 31.
  11. A.B.Appleby, "Disease or Famine? Mortality in Cumberland and Westmorland 1580 - 1640", *Econ. Hist. Rev.*, 2nd ser. 26 (1973), pp. 403 - 432, and R.S.Schofield, "News from the Cambridge Group for the History of Population Social Structure: Crisis Mortality", *LPS*, 9 (1972), pp. 10 - 22.
  12. This problem occurs not only in England, but also in France, a country more prone to peasant revolt than England, where the Beauvaisis, despite subsistence crises, saw no revolts: C.S.L.Davies, "Peasant Revolt in France and England, a Comparison", *AgHR*, 21 (1973), pp. 122 - 134; D.E.Edwards, "Were Hunger Rioters Really Hungry? Some Demographic Evidence", *P&P*, 71 (1976), pp. 70 - 75.
  13. E.J.Hobsbawm, *Primitive Rebels* (Manchester, 1959), p. 79.
  14. B.Sharp, *In Contempt of All Authority, Rural Artisans and Riot in the West of England, 1586 - 1660* (London, 1980), p. 13.
  15. Sharpe, *Seventeenth Century*, p. 208.

E.P. Thompson has seen the reaction of the crowd in the eighteenth century to food or grain shortages, as disciplined direct popular action, stemming from a belief in the legitimacy of communal action to restore a paternalist pre laissez-faire economy. The villains of food shortages were the engrossers, forestallers and regrators who bought up the grain and then withdrew it from the open market. Furthermore the model implicit in the activities of the crowd was one subscribed to by many in authority, leading to a strengthening of the legitimation claimed by the crowd for their actions, and conditioning the response of the authorities.<sup>16</sup> Thus as John Walter and Keith Wrightson have shown for seventeenth-century Essex and Lancashire, when dearth occurred the poor were able to manipulate the fears their betters held of potential social unrest in order to obtain local relief, and in so doing they ultimately strengthened social stability.<sup>17</sup>

#### Food riots in Yorkshire

Only one centrally recorded food riot has been noted by Walter for Yorkshire between 1585 and 1660: a seizure of food stuffs in the North Riding in the late 1640s; no others occurred in the county until the 1740s.<sup>18</sup> Certainly the Yorkshire court records do not lead one to consider this a major underestimation for few of the unlawful

-----  
16. Thompson, "Moral Economy", *passim*.

But see for criticism of Thompson's view, J. Stevenson, "The Moral Economy of the English Crowd: Myth or Reality", in A. Fletcher and J.D. Stevenson, eds., Order and Disorder in Early Modern England (Cambridge, 1985), pp. 218 - 238.

17. Walter and Wrightson, "Dearth and the Social Order", *passim*.

18. Charlesworth, ed., Atlas, pp. 72 - 75.

assemblies analysed appear to have been food riots. These riots, it has been argued, had distinctive characteristics. One was the setting of legitimate prices for grain, another the participation of women,<sup>19</sup> and neither of these phenomena seem to occur in the Yorkshire riots prosecuted at Quarter Sessions and Assizes. Yorkshire by the seventeenth century had a well developed textile industry, it had pastoral regions, often regarded as more liable to riot, and it experienced harvest failures leading to dearth. Why then is there so little evidence of food riots? The work of the Hammonds, though relating to the eighteenth century, provides a framework for a chronology of riot by the poor. With agricultural improvement came anti-enclosure riots; once the cottagers had been dispossessed they were more liable to suffer from hunger and turn to food riots, and when finally forced into wage labour, to protest over wage rates and attack the machinery that was replacing them. Thus it may be that it is not so surprising that Yorkshire, backward compared to the south of England in this period saw so few food riots.<sup>20</sup>

None of the Yorkshire indictments can be conclusively shown to be food riots but it is arguable that a few were. In the two most likely cases John Harland, a yeoman of Sicklinghall, with others took eighteen bushells of peas and beans from William Dowsland in 1682 and Edward Layton of Keighley and others two carts of grain from Hugo Currer in 1690.<sup>21</sup> A case in Leeds, in which Bryan Iles and two other yeomen took some corn measures, might have arisen from a sense of

-----  
19. Thompson, "Moral Economy", pp. 115 - 119 and Sharp, In Contempt, p. 13.

20. See Charlesworth, ed., Atlas, p. 2 and J.L.Hammond and B.Hammond, The Village Labourer (London, 1911).

21. PRO. ASSI., 44/29 and 44/39.

grievance about unfair weights. The three men charged with that offence all admitted it and were fined 3/4d each.<sup>22</sup> Besides these four other indictments may relate to food riots, but cases such as the taking by Thomas Croft and others of Masham of fourteen measures of corn and two stamps of hay from Thomas Dale are more likely to be connected with the attempt by Croft and others to eject Dale from land in Masham a month earlier.<sup>23</sup> Similarly it seems unlikely that in the only case where food was taken, when Thomas Stables and others took three cheeses belonging to Samuel Hicks of Calverley, there was any collective grievance behind it, though the motivation may well have been hunger.<sup>24</sup>

#### B) Land protests

There are many types of land protest: Charlesworth distinguishes those concerned with the drainage of fen or marshland; those concerned with forest or woodland; those concerned with enclosure or clearance; those concerned with tenure disputes and, though he deals with them separately, attacks on deer parks.<sup>25</sup> One essential cause lay behind all these different forms of protest: as a result of the price revolution in the century after 1540 landowners wanted to improve the efficiency of their holdings. Methods of doing this included enclosure of open fields; enclosure of commons; the imposition of new rents; the development of new forms of lease as

-----  
22. PRO. ASSI., 44/22. This case has similarities to that referred to by Sharpe in which Sheffield apprentices rioted in 1675 when new measures for grain were introduced, Early Modern, p. 135.

23. NRO., 102/220.

24. PRO. ASSI., 44/35. In this case the bill against all four defendants was ignored - possibly a defence of necessity?

25. Charlesworth, ed., Atlas, pp. 8 - 62.



well as improvements in agricultural practice.<sup>26</sup> Such changes led, at any rate in the well studied counties of the south of England, to "a developing conflict... between the beneficiaries and victims of economic change".<sup>27</sup>

In the sixteenth and early seventeenth centuries, land protest, although spread over a wide geographical area, was concentrated in the southern and eastern lowlands. Anti-enclosure riots were centred on the fielden Midlands, where many parishes had experienced depopulating enclosure and conversion of arable to pasture which had produced an alliance among freeholders in the still unenclosed areas, cottagers and labourers in the enclosed parishes and the inhabitants of the neighbouring woodland/pastoral communities and towns who depended on the fielden areas for grain and employment and were also threatened by disafforestation.<sup>28</sup> It was only during the seventeenth century that land protests became widespread in the upland areas of the north and west.<sup>29</sup>

The period between the crushing of the Midland Revolt and the outbreak of the Civil War saw further attempts by landowners to improve the efficiency of their estates. In particular in the North customary tenant rights came under attack, and the Crown led the

- 
26. See Kerridge, Agricultural Revolution, pp. 181 - 325 and R.H.Tawney, Religion and the Rise of Capitalism: An Historical Study (London, 1929) and Cliffe, Yorkshire Gentry, pp. 35 - 48.
  27. J.S.Morrill and J.D.Walter, "Order and Disorder in the English Revolution", in Fletcher and Stevenson, eds., Order and Disorder, pp. 137 - 165.
  28. J.Martin, "The Midland Revolt of 1607" in Charlesworth, ed. Atlas, pp. 33 - 36.
  29. Charlesworth, ed., Atlas, pp. 33 - 44.

attempt to exploit wastelands, whether forest, marsh or fen.<sup>30</sup> Both contemporaries and historians have tended to see the 1640s and 1650s as a period of greatly increased unrest. But Walter and Morrill have suggested that this has been due to a misreading of the situation and that although disorder did increase, particularly in the early and late 1640s, the forms and location that it took differed significantly from what had previously been argued. Thus the early 1640s saw anti enclosure riots combined with attacks on the church, occurring mostly in the western forests and eastern fens, rather than in the fielden areas of earlier anti enclosure protest, while the late 1640s saw conflicts between soldiers and civilians and over the introduction of the excise. Moreover the 1650s saw a general decline in disorder as the disciplined troops of the Commonwealth forcefully put down agrarian protest.<sup>31</sup> Once again the period after 1660 has been much less extensively studied but protests over enclosure, drainage and disafforestation continued sporadically.<sup>32</sup>

#### Land protests in Yorkshire

The form of land protest in seventeenth century Yorkshire that involved most people was that related to the draining of the levels

- 
30. B.Manning, "The Peasantry and the English Revolution", Journal of Peasant Studies, 2 (1975), pp. 133 - 159 and see the discussions on the attack on Border tenant right in L. Stone, The Crisis of the Aristocracy 1558 - 1641 (Oxford, 1965), p. 309, and H.G.Ramm, R.W.McDowall and E.Mercer, Shielings and Bastles (Royal Commission on Historical Monuments, London, 1970), pp. 68 - 72, where the physical evidence of the buildings in the border area is used to illuminate wider historical problems.
  31. Morrill and Walter, "Order and Disorder", in Fletcher and Stevenson, eds. Order and Disorder, pp. 138 - 147.
  32. Charlesworth, ed., Atlas, pp. 41 - 43.

around Hatfield.<sup>33</sup> This was a long standing dispute. According to an eighteenth century writer, Charles I, as Lord of the Manors of Hatfield and Epworth among others, had contracted with Cornelius Vermuyden in about 1627 to "dischace and drain the same", the terms being that one third should remain with the king, one third go to the drainers and one third to "the Respective Tenants for their Common". By 1630 the level had been drained, the Manor of Hatfield sold to Vermuyden, and Charles' one third share to John Gibbon and John Corselis. Some time later Charles granted the rents of the land to the Trustees of the young Duke of Buckingham, but despite a new allotment of land to tenants in 1637 discontent continued and after 1641 the inhabitants of Epworth and Misterton "with ye assistance of some of ye parliament Soldiers... laid waste the Inclos'd Lands... burnt... houses and Corn... and defaced the Church." For several years the authorities were prevented from acting but then

Sir Arthur Ingram and other great participants prevaile upon Nathaniel Reading Esqr to undertake ye subduing of those Monsters, and they agreed to give Mr Reading a Sallary of £200 per annum... And in the Month of September 1655 he Entered upon the Hazardous Undertaking... And After 31 set battles... he subdued those people... and made ye Levells and parts adjacent quiet safe and flourishing.

The "quiet", in fact appears to have been a change of tactics by the protesters, as they still "battled the participants at Law", until 1690 when further rioting occurred sporadically until 1696. It was

-----  
33. The draining of Hatfield Chase and the Isle of Axholme are usually discussed together, and this of course raises jurisdictional problems in a study of Yorkshire indictments, for many cases arising from the drainage and disputes over it would have proceeded in the Lincolnshire and Nottinghamshire courts.

not until 1719 that a truce was finally concluded.<sup>34</sup>

It remains hard to discover exactly what was happening by way of protest concerning Hatfield Chase simply from the Assize and Quarter Sessions records. There appears to be no extant Assize indictment against any of the fenmen. There are a number of indictments in the Upper Bench that probably relate to the disturbances and in particular one, in 1655, charged forty three named and a hundred unnamed persons with rioting and assaulting Thomas Headon, who had distrained on 155 cows and beasts, nine score sheep and forty five horses, mares and foals on behalf of Reading.<sup>35</sup> On the other hand there are eleven indictments against Nathaniel Reading either alone or with others, accusing him of theft and assault as well as participation in unlawful assemblies. The indictments range in date from 1656 to 1681 but in fact consist of six alleging crimes in 1656, one in 1661 and four in 1681. In addition it appears from the gaol book that Reading was indicted a further six times in 1661, once in 1658 and once in 1673. Mark van Volkenberg, one of Reading's collaborators was also indicted once in 1657 and once in 1661.<sup>36</sup> Reading was also being indicted in Lincoln and Nottingham, particularly during the 1680s, for encroachments on common and the impounding of horses and cattle belonging to the fenmen. In addition in 1660 he and another man were indicted for the shooting of a fenman

- 
34. G.Stovin, A Brief Account of the Drainage of the Levelles of Hatfield Chase and Parts Adjacent in the Countys of York Lincoln and Nottingham, printed in YAJ, 37 (1951), pp. 385 - 391. This account is not substantially contradicted by that of K.Lindley in Fenland Riots and the English Revolution (London, 1982), though he brings out the fact that both violent and peaceful disputes continued throughout the 1660s, 1670s and 1680s.
35. PRO. KB., 871 (4) 345, and see Lindley, Fenland Riots, pp. 215 - 216.
36. PRO. ASSI., 44/7; 44/8; 44/29 and 42/1 fols 60 and 62.

during the riot in which John Patricke was also killed. The bill against Reading was removed into King's Bench and Reading and his assistant were acquitted.<sup>37</sup>

As for Reading's opponents it seems that twenty four of the fenmen were accused of killing John Patricke in 1660 and fifteen indicted for a riot at Thorne in 1661. None of those apparently opposed to Reading suffered heavy penalties, indeed fourteen of the men charged with the murder of Patricke were merely bound over to be of good behaviour. Reading also was not severely embarrassed by his frequent appearances at the Assizes. Many of the early bills against him were ignored but in the 1680s he was fined several times, the highest fine being £20.<sup>38</sup> In total almost three hundred persons were involved in the offences above mentioned and, of course, many, if not most charges relating to the draining of the levels would have been brought at Lincoln Assizes. The cases against those who attacked Reading's house and land and corn in the enclosed allotments, were certainly brought there. These rioters varied in composition from the 100% male participation in a 1686 attack in which Reading's enclosing ditches were filled in to the 50% female participation in a 1687 attack on his house.<sup>39</sup> On one occasion at least the rioters were apparently led by Catherine Popplewell, the daughter of one leading gentry protester and wife of another, Robert Popplewell who was the solicitor for the fenmen for a long period at the end of the century

-----  
37. Lindley, Fenland Riots, pp. 235 - 245. In fact it appears that Reading successfully argued that the indictment was defective and that, as the man who died had been acting unlawfully, Reading's action was justified: see chapter two above for a fuller discussion of this case.

38. PRO. ASSI., 44/29 and 42/1 fols 53 and 74.

39. Lindley, Fenland Riots, p. 245.

(though "no man of the Law" according to Stovin), and he and others with the same surname feature regularly in the Yorkshire indictments.<sup>40</sup>

Clive Holmes has contrasted various drainage schemes and suggests that the obtaining of Parliamentary sanction significantly altered the response of the fenmen in the post Restoration period. Thus of five schemes established under Charles 1 and temporarily abandoned during the Civil War, the two unsuccessful ones, at Wildmore and the Isle of Axholme, failed to secure statutes in their favour. In those areas opposition was direct and continuous, and also used the legal experience the fenmen had gained through participation in, for example, the Court of Sewers. These fenmen had both a keen legal sense and also perhaps arising from their freehold tenure, a "sense of absolute legal and moral right". Lindley too notes the differences between the Epworth commoners, convinced of the illegality of the grant to Vermuyden, and others even within the Isle, and it is obvious from the cases brought against Reading that the fenmen knew and were prepared to "wage their law".<sup>41</sup>

The interest then of the cases connected with Hatfield Chase lies both in the numbers brought and the unlikelihood of legal success for either side. Whether or not this was due to a general reluctance on the part of jurors to prosecute the fenmen cannot be elicited from the Yorkshire court material, but certainly it was a view common to

-----  
40. PRO. ASSI., 44/19 and Lindley, Fenland Riots, p. 249.

41. C.Holmes, "Drainers and Fenmen: the Problem of Popular Political Conscientiousness in the Seventeenth Century", in Fletcher and Stevenson, eds., Order and Disorder pp. 166 - 195; Lindley, Fenland Riots, pp. 24 - 26.

the participants.<sup>42</sup> The fenmen may not have been politically conscious but they were certainly legally conscious.<sup>43</sup>

Apart from the riots connected with Hatfield Chase one can fairly confidently identify a couple of disturbances among those indicted at Assizes or Quarter Sessions as being anti-enclosure riots of some form. In June 1671 for example, Henry Hitch, a gentleman of Leadley, together with two other gentlemen and twenty three yeomen from the area around Dacre cum Beverly assembled, and damaged walls and ditches at Greenhow to the detriment of Matthew Wood,<sup>44</sup> and in 1692 Christopher Hodgson, husbandman of Middleton, together with twenty five others - weavers, maltsters, tailors, blacksmiths, labourers and husbandmen - attacked the stones marking the boundaries of common pasture and land of Richard, Earl of Burlington near Ilkley.<sup>45</sup> In another case, William Lawson, yeomen of the City of York, broke the gates of an intake belonging to the Mayor and Corporation at Huntington in 1674. This last may be an example of conscious anti-enclosure action or may be no more than an attack for which the motivation is now irrecoverable.<sup>46</sup> Other assemblies are obviously

-----  
42. See for example Sir William Killigrew's comment "that when any of the Commoners were indicted for riots, proved before the Commissioners on oaths, that the jury did still acquit them", quoted in Lindley, Fenland Riots, p. 132.

43. Lindley suggests that despite the involvement of the Levellers in the Isle of Axholme the fenmen, far from challenging government or authority, were defensive and conservative; that gentry were often involved and that though the object of violence was property rather than persons, no class antagonism was vocalized. Despite this Holmes' view of the interrelation of political and legal consciousness in the acceptance or non acceptance of drainage schemes remains persuasive: Lindley, Fenland Riots, pp. 252 - 259, and Holmes, "Drainers and Fenmen", pp. 194 - 195.

44. PRO. ASSI., 44/19.

45. PRO. ASSI., 44/39.

46. PRO. ASSI., 44/22.

part of continuing agitation probably relating to land disputes. For example the action of the Clerks of Easington who, with others in the village, attacked Edward Hopkinson, gentleman, in a variety of ways; assaulting him, damaging his crops and taking away his turves.<sup>47</sup> Such disputes involved the educated and socially respectable. Among them were the cases of John Elwood, clerk of Great Smeaton, who, with some yeomen and labourers of Ryton, attacked Thomas Simpson and Robert Sowerby, gentlemen, having previously broken their close,<sup>48</sup> and John Watkinson gentleman who appears to have lived in several parishes just north of Skipton, and who from 1682 onwards was involved in disputes with neighbours, assaulting them, breaking their closes and preventing Michael Tailforth's employees from ploughing. In 1692 these tensions culminated with an assault by him, his wife and others on the constable, Richard Trotter.<sup>49</sup> These and other cases are obviously incidents in feuds. In the early 1690s Thomas Burroughs gentleman of Swinton and others frequently trespassed on the land of John Bagshaw Esq. and also took from his land sods and turves and cartloads of coal and stones, for which transgressions they were usually fined only a few pence.<sup>50</sup>

Although there are single instances of the taking of unusual goods, such as a beehive, the most commonly taken property was loads of hay, turf, stone or coal, (twenty six cases), closely followed by cattle (twenty one cases) and then horses (nineteen cases). The latter two were frequently taken when they had been previously seized or impounded and may therefore be analogous to the frequent cases of

-----  
47. WYRO., 4/6 fols 63 and 68.

48. NRO., 100/199.

49. PRO. ASSI., 44/30; 44/35; 44/38 and 44/39.

50. WYRO., 4/16 fols 228 and 248.



this sort already mentioned in connection with Hatfield Chase. But it can be hard to tell the circumstances and no communal motivation appears to lie behind the case of William and Elizabeth Thornton and Robert Todd of Welton who assaulted the bailiff and deputy bailiff and took from them four horses seized by them in execution of a warrant. For this William Thornton was fined £20.<sup>51</sup> The significance of the appropriation of the hay etc. is also analogous to those communally conscious riots against enclosure and for grain. What might be deduced to be happening in these instances is that villagers are asserting rights to the produce of communal land. Of these instances all save two occurred in the upland areas, the exceptions being at Kelfield north of Selby and at Hovingham.

#### C) Anti-tax and industrial riots

There are only two unlawful assemblies in Yorkshire that can perhaps be attributed to these causes. The eleven Halifax chapmen who assaulted two cloth searchers in January 1682 may have been expressing objections to the enforcement of the cloth legislation. And the widow and alehousekeepers' wives who assaulted two excise officers in December 1660 may have been protesting against the duties imposed on ale.<sup>52</sup> It is noticeable nevertheless that the issue of whether the Hearth Tax should be paid by the Hallamshire cutlers appears not to have led to a single riotous assembly. The cutlers instead had sought and gained the support of their local J.P., presumably considering that such political and civil legal means would prove more efficacious as indeed they did, at any rate until

-----  
51. PRO. ASSI., 44/26.

52. WYRO., 4/14 fol 41 and 4/6 fol 43.

Reresby became annoyed at the "bad returns for favoures" the cutlers gave him and refused to act further.<sup>53</sup>

#### D) Religious riots

Some of the indicted disturbances relate to religious fervour or feelings. Edmund Garforth clerk of Gargrave was subjected to a number of attacks in 1660 and 1661. The church doors were shut against him on two occasions: the first time the protest was led by six women, and on another occasion he was prevented by the church warden among others from burying a corpse.<sup>54</sup> Jeremiah Milner, clerk and vicar of Rothwell, was ejected from his pew in the church in July 1661 by four labourers and one Christopher Walbanke, described also as a clerk.<sup>55</sup> Also interesting is the case of John Tenant, described as a clerk of Linton, who, with two of his servants, three other men described as clerks and two labourers, was charged in 1681 with having taken tithe wool, lamb, oats and barley, valued at £3/6/8d. from John Topham. Three of the defendants admitted the offence and were fined 1/- or 2/-, the others traversed.<sup>56</sup> This may be a religiously motivated riot or an objection to paying tithes, perhaps on religious grounds. It is harder to guess the motivation behind the assault on Daniel Towne clerk of Erringden by a number of yeomen and labourers in 1672.<sup>57</sup>

-----  
53. Reresby was doubtless glad of the excuse as he had earlier been reluctant to help because of the difficulties it put him in at court and by 1684 he felt that "the law was now much changed... by reason of the opinions of the judges": Reresby, *Memoirs*, pp. 104 - 105; 125 and 348.

54. WYRO., 4/6 fols 25 and 26.

55. WYRO., 4/6 fol 73. This is almost undoubtedly a religious riot, inspired by the reaction against such non conformist ministers as Milner in the wake of the Restoration.

56. WYRO., 4/14 fol 55.

57. PRO. ASSI., 44/20.

## E) Other unlawful assemblies

Many of the illegal assemblies prosecuted in Yorkshire cannot be fitted into any of the categories discussed so far. These are much more the "simple affairs involving interpersonal violence rather than action against somebody or something perceived as an offence or a threat to communal values".<sup>58</sup> An example of this type of unlawful assembly is provided by the case of John Blanshard, Henry Winterburne, John Brooke and Ralph Webster, all described as yeomen of Gate Fulford, and all accused in two indictments of unlawful assembly and assault on Edward Cooke and Christopher Cooke. From the depositions it seems that Edward and Christopher, respectively a baker and a yeoman of the City of York,<sup>59</sup> were leaving Gate Fulford on Tuesday 12th February 1678 in company with Deborah Cooke, Alice and Anne Wilkinson and Sarah Smith, all spinsters of York, when Anne Wilkinson was attacked, apparently out of the blue, by John Blanshard, and, as Christopher Cooke tried to rescue her, a general fight broke out. Richard Wilkinson, a wheelwright of Gate Fulford, heard the noise and, coming to the rescue saw Henry Winterburne and John Blanshard beating Edward Coke with cudgells. From the depositions it is impossible to tell how the other two defendants were identified, although Edward Cooke said that he saw six men coming towards him. Similarly the circumstances surrounding the attack are by no means clear. It seems probable that the Wilkinson girls were related to Richard Wilkinson, the wheelwright, and

-----  
58. Sharpe, Seventeenth Century, p. 72.

59. Perhaps Edward was the same Edward Cooke baker admitted freeman of the City of York in 1680: Register of the Freemen of the City of York, 1559 - 1759 (Surtees Society, 102, 1900), p. 154.

possibly the York party had been visiting him. Whether there was any long standing rivalry between Blanshard and the Wilkinsons and Cookes however cannot be ascertained. In the event the defendants all admitted the offences charged.<sup>60</sup>

One of the better known Yorkshire riots must be that described in Reresby's Memoirs at the burial of the Countess of Strafford on January 13 1686.<sup>61</sup> It seems on the face of it a fairly motiveless riot and illustrates some of the difficulties of research in this area. Raine prints two depositions relating to the case, those of Bartholomew Collier and Richard Hewitt and implies that others exist.<sup>62</sup> None however now appear among the Northern Circuit depositions in the P.R.O. Nevertheless it is possible to link the depositions as printed by Raine with existing indictments because Bartholomew Collier appears, among others, as victim and witness in a case against five men accusing them of illegal assembly and assault in York on 13 January 1686. Five other men were also alleged to be victims of the assault and four of them, plus another nine men and one woman were also witnesses. The accused were all described as being of the City of York and their occupations given as stonecutter, brewster, labourer, gentleman and coachmaker. Three were found guilty and the gentleman admitted the offence. What penalty was imposed is not noted.<sup>63</sup> The attack on the hearse of the Countess and the scenes in the Minster, however, cannot be simply dismissed as motiveless.

-----  
60. PRO. ASSI., 44/25 and 45/12/2.

61. Reresby, Memoirs, pp. 409 et seq.

62. Depositions, ed. Raine, pp. 278 - 281. Raine states "there is some conflicting evidence, as several persons justify the proceedings of the mob". Unfortunately he does not print those depositions nor say what the justification was.

63. PRO. ASSI., 44/34.

From the depositions there appeared to be an animus among the crowd not only against the soldiers but against the Countess herself as evidenced by the attempt to remove the escutcheons.<sup>64</sup> Unfortunately it is again hard to analyse the reasons for such animus. It is possible that the attack may have had an immediate antecedent history. A few days prior to the funeral four men from York, two labourers, an apothecary and a tailor had illegally assembled and assaulted Richard Sheldon, and he and Tempest Baldock were witnesses to the attack. Baldock was also a witness to the attack on the Countess' funeral cortege. Another witness to the attack on the cortege was himself to be the victim of an assault by three York labourers on 14 January.<sup>65</sup>

Some cases might arise from a poaching expedition, such as that of William Child, Stephen Loft and Bernard Sale, yeomen of Featherstone and South Kirkby who, taking rabbits from a warren of Sir John Wentworth at North Empsall, in September 1670, appear to have been apprehended by Thomas Hill and William Denham, perhaps Sir John's keepers, and to have assaulted them both.<sup>66</sup>

Some members of the gentry were frequently in trouble. Jeremiah Smithson not only accused a fellow J.P. of being "a base fellow, you thinke yourself impowered by being in the commission of peace. I am

-----  
64. Reresby himself does not discuss the reasons for the riot but is fully aware of the feelings against the soldiers by the corporation and expends much energy in ensuring that the King does not believe the attacks made on the garrison by the Aldermen sent to London to see him and to explain the city magistrates' dilatoriness in prosecution: Reresby, Memoirs, pp. 409 - 416.

65. PRO. ASSI., 44/34.

66. PRO. ASSI., 44/20.

in the commission and care not a fart for the commission or you", but also threatened him with a sword. Later he was to lead an attack on Richard Catton, the constable of Boroughbridge.<sup>67</sup> The namesakes of a couple of well known historians, Edward Thompson and his wife Dorothy, together with another Dorothy Thompson spinster, and others attacked Thomas Wood bailiff in Little Ouseburn.<sup>68</sup> Little can be said about material damage in such incidents, although it was varied, ranging from the windows of a house to a malthouse kiln.<sup>69</sup>

### 3) FALSE IMPRISONMENT

While Blackstone placed false imprisonment in the category of crimes against the person he states that as well as providing a civil remedy "the law also demands public vengeance for the breach of the king's peace"<sup>70</sup> and it is as an offence against the peace that it will be considered here. Although many of the indictments charge it as an unlawful assembly/false imprisonment there is of course no requirement for the involvement of more than one person, and quite a few of the indictments charge a single individual only. Thus although the Assizes saw fifty five indictments, thirty four were against one person only, and at Quarter Sessions the figures were seventy three indictments, thirty five being against one person only. In total 218 persons were charged at the Assizes and 133 at Quarter Sessions, but many were charged more than once, the total of separate individuals amounting to 274.

-----  
67. PRO. ASSI., 44/13 and 44/19.

68. PRO. ASSI., 44/25.

69. PRO. ASSI., 44/7 and 44/42.

70. Blackstone, Commentaries, vol. 4, p. 218 and for a discussion of the requirements of the civil wrong, see vol. 3, p. 127 et seq.

Once again the largest numbers of those accused was in the 1660s and 1670s with 65% of the total being charged in those two decades, 163 at the Assizes and fifty one at Quarter Sessions. Although the Assize prosecutions fell in both the 1680s and 1690s, the Quarter Sessions figure rose again in the 1690s and the fluctuations at Quarter Sessions were less.

Women were less likely to be accused of this form of offence against the peace than any other. They account for only .5% of those charged at Assizes and 3.7% of those charged at Quarter Sessions, and these figures compare with 14.9% of those charged with illegal assembly/assault at the Assizes and 41.4% of those charged with breaches of the peace at Quarter Sessions. The proportion of gentlemen and yeomen charged with false imprisonment on the other hand is high, particularly at the Assizes. Thus forty gentlemen (18.7%)<sup>71</sup> and 128 yeomen (59.8%) were so charged, while only twenty eight labourers (13.1%) were. Labourers however form the majority of those charged with the offence at Quarter Sessions (54.6%), while the proportion of gentlemen and yeomen charged there falls to 6.5% and 19.4% respectively.

The offence does not repeat the pattern that has emerged elsewhere, namely that when the numbers of those prosecuted rises dramatically so does the proportion of bills returned ignoramus. At Quarter Sessions the bills against only two individuals were ignored by the

-----  
71. Of these six were charged twice and one three times so the actual number of separate gentlemen charged falls to thirty two, but this is still high, over 14%.

grand jury and at the Assizes the highest percentage of ignoramus verdicts was in the 1690s (65.2%) when the number of persons charged was the lowest of the period. Nevertheless the overall percentage of bills ignored for this offence amounts to almost 30%.

Once again only a few results are known. At Assizes for example of the 153 persons left to face a petty jury, we do not know the outcome for 122. Of those for whom outcomes are known, eleven were found not guilty, three were dead, sick or at large, and six were fined. At Quarter Sessions the unknowns are a smaller proportion, eighty two persons in all, and the majority of those for whom verdicts are known, thirty four in all, were fined. The fines imposed ranged from 2d. to £2 but again no correlation between the status of the offender and the amount of the fine is found. The three fines of L-2 were imposed on a labourer, a clothier and a translator, while a gentleman was fined 6d.

Victims of false imprisonment were mainly but not overwhelmingly male. In the Assize cases eleven women and sixty one men were victims and at Quarter Sessions seven women and forty nine men. Women thus form 14% of all victims, a percentage considerably higher than that for women as participants in the offence. Victims and defendants seem rarely to be related. Victims were sometimes officials, as for example in the case of Robert Rhodes, a deputy bailiff imprisoned by Anthony Teasdale and others, but this was rare. Equally rare were cases where officials were accused, though Michael Hemsley of Hatfield, a frequent offender, was described as a deputy bailiff on



two indictments.<sup>72</sup>

Once again several charges can be linked with others. For example Abraham Beevor, charged with falsely imprisoning Joseph Beevor in April 1693 was also charged with others with breaking and entering Joseph's dyehouse, and with forcibly disseising him in February 1693, and Abraham's wife, Elizabeth, was charged with assaulting Joseph in April.<sup>73</sup> The crime might also be linked with perjury indictments. John and Thomas Barber were accused of having, by writ of de latitat, caused the imprisonment of James Squire. This is almost certainly linked with their separate indictments for perjury in an affidavit in the same year.<sup>74</sup> The only occasion where the parties appear to be related, apart from the Beevors, is the case of Samuel Butler, Archibald Johnson and George Marshall, described respectively as a doctor of medicine, a yeoman and a gentleman, and charged with imprisoning Susannah Butler, a spinster. Unfortunately, as in so many cases the outcome and the circumstances of this case remain obscure.<sup>75</sup>

#### 4) MISCELLANEOUS

This category is a small one, only seventy persons in all, and although the offences are disparate they have sufficient in common to be discussed collectively. They were categorized by Blackstone in different ways. Thus barratry - "the offence of frequently exciting

-----  
72. WYRO., 4/9 fol 146 and 4/14 fol 55 and 4/13 fol 207 for the indictments where Hemsley was described as deputy bailiff.

73. PRO. ASSI., 44/39.

74. PRO. ASSI., 44/25 and 44/26.

75. PRO. ASSI., 44/31.

and stirring up suits and quarrels between his majesty's subjects, either at law or otherwise" was placed by him with crimes against public justice. But being a common scold, an offence confined "to the feminine gender", and eavesdropping were common nuisances against public order and economy, while "outlandish persons calling themselves Egyptians, or gypsies" committed a felony against public order and economy. Drunkenness, on the other hand was an offence against God and religion.<sup>76</sup> The offences of barratry, being an egyptian and scolding will be briefly considered in separate sections as will duelling, which was not a specific offence but one of several breaches of the peace. There were other offences included in this category but they will only be mentioned in passing as their numbers were small. However taking them all the miscellaneous offences together, of the sixty eight persons charged thirty eight were indicted at Quarter Sessions and thirty at the Assizes. All save one of the Assize indictments occurred before 1675, but the Quarter Sessions indictments were fairly evenly spread over the period. Among the offences other than the four to be separately mentioned are: a mere three accusations of drunkenness, all prosecuted at Quarter Sessions; the accusations of causing a breach of the peace other than duelling; and those accused of swearing. It is noticeable that prosecutions for the last occur, not in the 1650s, as might have been expected, but in the 1690s and are all committed by men who also committed assaults, two of them in company with each other.<sup>77</sup> Among the breaches of the peace other than duelling was the one instance of an accusation of being a nightwalker, a minor offence and one that was only mentioned by Blackstone as being particularly suitable for

-----  
76. Blackstone, Commentaries, vol. 4, pp. 133; 164 - 166 and 169.

77. WYRO., 4/16 fols 300 and 314.

arrest by night watchmen.<sup>78</sup>

#### 4A) Duelling

There are only three extant indictments for the offence of challenging an opponent to a duel. A challenge to a duel was in law not a specific offence but a breach of the peace, but two persons actually duelling in public might have been guilty of an affray, or if one were killed of murder.<sup>79</sup> To deal with the three briefly: the bill against John Jordan, gentleman, of Ellerton Abbey was ignored; Marmaduke Burrows, a York labourer, who challenged Tady Cavanagh (perhaps an Irish soldier) was dead by the time of his trial; and Thomas Gascoigne, gentleman, admitted the offence and was fined.<sup>80</sup> The infrequency of this offence is surprising for, from the memoirs of the period duelling appears to have been a pastime indulged in with some regularity by the gentry and nobility.<sup>81</sup> Reresby for example mentions the proposed duel between the Duke of Buckingham and Viscount Fauconberg. As he relates

my Lord Falconbrige came to dine with the Duke, wher a great deale of company was present... when a quarrell hapned between the Duke and his lordship upom some words spoaken by the Duke, which his lordship resented, and returned such to his Grace that Sir George Savile was employed to carry his lordship a challenge... Soon after, as I was in the Minster... I found the challenge was accepted, and, watching the Dukes motion, followed him and the rest at a distance to the field, soe as I

-----  
78. NRO., 100/119. Blackstone, Commentaries, vol. 4, p. 289.

Elizabeth Smith of Huby, who was accused of this offence was committed to the House of Correction and whipped:

J.C. Atkinson, ed., North Riding Quarter Sessions, (North Riding Record Society, vols 6 - 8, 1888 - 1890), vol. 6, p. 152.

79. Blackstone, Commentaries, vol. 4, pp. 145; 149 - 150 and 199.

80. PRO. ASSI., 44/16; 44/13 and 44/31.

81. Sharpe, Seventeenth Century found no evidence of duelling in the court records he used though he cites an instance of a fatal duel that involved an Essex gentleman though it took place in London.

See also on duelling generally, J.C.D. Clarke, English Society, 1688 - 1832 (Cambridge, 1985), pp. 106 - 118.

was not perceived, and by the benefit of a hedge was soe near wher they stood to fight that I heard and see all that passed... the Duke I found had more mind to parley than to fight, and kept his (sword) in the scabard, till takeing some verball and superficial satisfaction of my Lord Falconbrige, the dispute went noe further. Reresby was "sorry to see my captain (the Duke of Buckingham) come of soe calmly" and told the story to a friend. The story reached the Duke, and though after some discussion, he appeared reconciled to Reresby, "I found he never was perfectly, but suspected me still".<sup>82</sup>

This account is of interest in a number of particulars. Presumably many of those present at the dinner would have been aware of the challenge, but despite its illegality nothing appears to have been done to prevent it. Where notions of honour were concerned the upper classes apparently chose to disregard the law.<sup>83</sup> This concept of honour was what was at stake too in the Duke's falling out with Reresby for it was improper for Reresby to have, even by implication, suggested to Sir Henry Bellasis, that Buckingham had been wanting in courage. It also throws light on their relationship with the church for neither Sir George Savile nor Reresby appeared to find anything incongruous in a request for a sword within the confines of the Minster. Nor is this the only instance of a duel in Reresby's Memoirs. In 1682 a Mr Batty challenged Lord Castleton to a duel in which he himself was killed. No charge appears to have arisen from this incident, although another duel resulting in death, that of Sir Jonathan Jennings and George Aislable resulted in a charge of

-----  
82. Reresby, Memoirs, pp. 59 - 61.

83. A. Fletcher, "Honour, Reputation and Local Officeholding in Elizabethan and Stuart England", in Fletcher and Stevenson, eds., Order and Disorder, pp. 92 - 115. Fletcher stresses that notions of honour could subsist only between social equals; among those of lower social status it was reputation that was at stake. Nevertheless he suggests that such open violence as this was rare, partly because "duelling was checked by royal disapproval".

murder.<sup>84</sup>

#### 4B) Barratry

Thirty three persons, all men, were charged with barratry during the period. This figure is considerably less than that for Essex where Sharpe found a total of forty one persons prosecuted at Assizes, Quarter Sessions and in King's Bench. He found it to be mainly but not wholly a male offence and in Essex it seems to be an offence mainly committed by the better off in a village. This was not the case in Yorkshire, where labourers and yeomen were both much more prominent and gentlemen much less so.<sup>85</sup> It was often a charge brought against someone who had been in trouble with the authorities on other occasions, and was often associated with indictments for offences such as perjury. Thus John Robinson of Steeton was alleged to have perjured himself in an action against Edmund Garforth of Steeton in 1665 and having been acquitted of that was cited as a barrator in December 1666 when Edmund and Thomas Garforth were witnesses.<sup>86</sup> Many charges of barratry were obviously brought as part of a strategy of litigation, and the history of feeling within a community can sometimes be seen in the charges and countercharges that were brought. In Quarmby for example, there was something of a feud between the Helliwell and the Haigh and Nicholls families. Thomas Helliwell was twice charged at Assizes with malicious prosecutions of members of those two families, and at Quarter Sessions was charged with attempting to shoot Joseph Nicholls. When finally accused of

-----  
84. Reresby, Memoirs, p. 277 and see chapter two above for a discussion of this case.

85. Sharpe, Seventeenth Century, p. 158.

86. PRO. ASSI., 44/14 and 44/16.

being a barrator however, he was, despite the evidence of nine individuals, acquitted.<sup>87</sup> Others offended more than once and a charge of barratry was not always sufficient disincentive. Roger Bainbridge, a yeoman of Crosthwaite, was charged with a breach of the peace in 1665 and in 1668 was twice charged with being a common barrator. In one of these indictments twenty three men were listed as witnesses against him, including two other Bainbridges, but despite this array of evidence the bill was ignored.<sup>88</sup> Not all cases involved vexatious law suits, the provocation could sometimes be more direct. Isaac Wade, for example, before being cited as a barrator, had been charged with extorting money on pretence of being a bailiff and with falsely imprisoning two men.<sup>89</sup> An even more interesting background is provide by the case of George Ludlum, a cutler of Darnal. He was charged with usury in 1667 to the detriment of Thomas Bright, and with having defrauded or cheated John Swinden, Thomas Beane and Edmond Cocker in 1670, and finally with being a barrator in 1671. He was found not guilty of that offence, but the circumstances raise the possibility of his having been a prosperous craftsman who also engaged in money lending and, by exploiting the need for money of those around him laid himself open to counter attack in the form of allegations of usury, cheating and vexatious litigation.<sup>90</sup> Thomas Robinson of Monk Fryston, who was accused of barratry in 1681, was also one of the only two Yorkshire men accused of being an "eavesing dropper", an accusation that was made in the same year. On the barratry charge he traversed and was found not guilty, on the eavesdropping the bill against him was ignored. He continued as a troublemaker, however, for

-----  
87. PRO. ASSI., 44/19; 44/20 and WYRO., 4/10 fols 43 and 41.

88. PRO. ASSI., 44/14 and 44/17.

89. PRO. ASSI., 44/14.

90. WYRO., 4/9 fol 209 and 4/10 fols 49 and 59.

in 1691 he was accused of taking ten sheep belonging to Christopher Bateman for which he was fined 2/6d.<sup>91</sup> The bill against Thomas Thompson in 1674 for eavesdropping was also ignored.<sup>92</sup>

Of the barrators tried at the Assizes where results are known, the bill against one was ignored, four were found not guilty, one fined and one pilloried, while at Quarter Sessions three bills were ignored and ten men were fined sums ranging from 6d. to £2. These were about average fines. Those accused of breach of the peace appear to have been much more harshly treated. Thus Henry Johnson, a Heslington yeoman, was fined £100 and ordered to stand in the pillory at York and Pocklington. The reason for this particularly severe punishment does not appear. He had, however, been in trouble on at least two previous occasions, but that was not the case with John Minton, a Gate Fulford yeoman who was punished similarly.<sup>93</sup>

#### 4C) Egyptians

There is only one instance of this offence in the Yorkshire indictments but it deserves some attention. Lambard stated that the offence was committed

if any stranger, calling them selves, or being commonly called Egiptians, have remained in the Realme one moneth: And if any person (being 14 yeres of age) which hath bene seene, or found in the fellowship of such Egiptians, or which hath disguised him selfe like to them, have remained here or in Wales, by the space of one moneth, either at one time or at severall times.<sup>94</sup>

-----  
91. WYRO., 4/14 fols 31 and 36 and 4/16 fol 260.

92. PRO. ASSI., 44/21.

93. PRO. ASSI., 44/16 and 44/17, and see for another instance of a barrator being heavily fined, Sharpe, Seventeenth Century p. 158.

94. Lambard, Eirenarcha, p. 332.

This was a serious crime, being felony without benefit of clergy and apparently, at least just before the Restoration, it was being prosecuted to execution, Hale stating that at one Suffolk Assize about thirteen were condemned and executed for this offence.<sup>95</sup> The case in Yorkshire involved four members of the Holland family, Matthew, Michael and his wife Margaret and Elizabeth. All were described as being of the Castle of York and were charged with being seen in New Malton "in company with vagabonds commonly called egyptians", and with disguising themselves like the egyptians for a month at the start of 1655. No depositions survive for this case but fortunately for these four they were all found not guilty.<sup>96</sup>

#### 4D) Scolding

This is another offence which has received more scholarly attention recently, and one writer has compared the upsurge of scolding accusations with the that of witchcraft, also a specifically female crime. David Underdown indeed argues that the period 1560 - 1660 saw a crisis in gender relations and that contemporaries were preoccupied with women as witches, scolds or those who dominated their husbands. Further he associates the preoccupation with the "decline in the habits of good neighbourhood and social harmony that accompanied the spread of capitalism" and noted a correlation between the prosecution of scolds and the wood/pasture villages where manorial control was

-----  
95. Hale, Pleas of the Crown, vol. 1, p. 671.

96. PRO. ASSI., 44/6. The defendants were presumably gypsies and the offence was meant to punish such. The derivation of the word "gypsy" is probably from "Egyptian".



weaker and agriculture less communally based.<sup>97</sup> With these ideas in mind let us look at the thirteen women (and in Yorkshire they were all women) prosecuted at the West Riding Quarter Sessions for the offence. (No such charges appear at Assizes or among the North Riding sample.) From the sample two years in each decade we see that three women were indicted in the 1670s, six in the 1680s and one in the 1690s. This might suggest that Yorkshire, rather later than the southern counties with which Underdown was concerned, was nevertheless witnessing a similar decline in the perceived threat of dominating women. However other available material casts doubt on this thesis for in the published records of the West Riding Quarter Sessions between 1611 and 1642 only five further instances appear - one in 1614, three in the 1630s and one in the 1640s, and the published North Riding records, covering the period 1647 - 1677 add only a further two instances, both in the 1650s.<sup>98</sup> The location of the offenders fits more into Underdown's pattern, though the numbers are so small that generalizations are dangerous, for in those indictments where it is given all save two of the West Riding ones are located in the Pennine coal measure area. The two exceptions are Ellena Sunderland of Arksey, just north of Doncaster, and Anne Sadler of Burton Leonard just north of Knaresborough. There were also, of course, the two North Riding examples at Outhwaite and Whitby. On the whole therefore this would lend support to the view that scolds were more common in the pasture/woodland areas and in towns such as

-----  
97. D.E.Underdown, "The Taming of the Scold: the Enforcement of Patriarchal Authority in Early Modern England", in Fletcher and Stevenson eds., Order and Disorder, pp. 116 - 136.

98. It might be that scolding was prosecuted in the manorial and ecclesiastical courts, though Bruen found only six such offences in his study: Bruen, "Leet Jurisdiction", pp. 152 - 157.

Sheffield or Wakefield.<sup>99</sup> On the whole the scolds, unlike the barrators, do not commit other offences, but the one exception is of interest. Mary Smith a widow of Scholes was presented not only for being a scold but also for having persuaded Thomas Firth to stay away from his service with Samuel Walker: Walker, and an Isaac Firth were witnesses to both charges. The link between scolding and other forms of anti-patriarchal behaviour by women is well illustrated here.<sup>100</sup> Of the scolds four had the bills against them ignored and for only two other cases are the results known. In both fines were imposed, of 2d. and 10s. These fines can be compared with one of 6d. imposed on a nightwalker.<sup>101</sup>

#### CONCLUSION

The number of persons charged with offences against the peace in Yorkshire in the period was substantial representing about 15% of all persons brought before the two courts, but with some differences between them, as at Quarter Sessions over 12% of offences prosecuted were in this category, and at Assizes over 16%. Tables 14 and 15 show the numbers indicted in both courts by decade and offence. The category thus accounts for a substantial proportion of all offences charged particularly when compared with the incidence of offences against the peace elsewhere for in Essex, for example, riots only constituted about 1.6% of all offences, and even when forcible disseisin and close breaking are included (for Sharpe considers them

-----  
99. J.Lister, ed., West Riding Sessions Records, (Yorkshire Archaeological Journal Record Series, vols. 3 and 53 1888 and 1915), vol. 53, pp. 164 and 262.

100. WYRO., 4/13 fols 234 and 238.

101. PRO. ASSI., 44/12 and 44/15.

in the same section as riots) the proportion only rises to 3.8%. Thus it appears that Yorkshire witnessed a continuing high proportion of unlawful assemblies with around two thirds of the prosecutions occurring in the 1660s and 1670s. It may well be that Yorkshire remained, in comparison with a much governed county like Essex, a comparatively lawless society where individuals and groups of individuals were accustomed to attempt to settle grievances for themselves. Bennett has also argued that the late 1640s and early 1650s saw the peak of unrest caused by the presence of the armies during and after the Civil Wars, that presence producing both crimes by the soldiers and popular disturbances directed against their activities.<sup>102</sup> Conversely, it is also the case that in the 1660s and 1670s the rulers of the county, in reaction to the turbulent years of the Interregnum, were likely to be particularly apprehensive of action by groups of the poor and probably therefore reacted strongly against it. Their fears were probably unjustified for most of the offences were small scale and the motivation for them was individual and personal, and difficult for the historian to recreate. Fewer of the indicted riots than might be expected related to land disputes and fewer still to other forms of communal collective action, but nevertheless local grievances obviously formed the basis for several of the assemblies, particularly those in the Hatfield Chase area. We know a fair amount of the circumstances of Hatfield Chase in the seventeenth century and it is likely that a knowledge of the circumstances of other specific villages would enable the identification of other communally motivated riots.

-----  
102. Bennett, "Law Enforcement", pp. 138 - 213.

TABLE 14

OFFENCES AGAINST THE PEACE OVER TIME  
AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Unlawful Assembly	98	338	191	133	101	861
Unlawful Assembly/ attack on property	29	76	161	71	99	436
False imprisonment		64	99	32	23	218
Miscellaneous	6	18	4	1	1	30
Total	133	496	455	237	224	1545

TABLE 15

OFFENCES AGAINST THE PEACE OVER TIME  
AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Unlawful Assembly	148	156	188	74	22	588
Unlawful Assembly/ attack on property	20	23		25	49	117
False imprisonment	23	21	30	24	35	133
Miscellaneous	10	6	15	8	9	48
Total	201	206	233	131	115	886

Where such popular action was led by members of the gentry it was particularly frowned upon as can be seen from the opprobrium heaped on Robert Portington for his involvement in the Hatfield Chase disputes, but nevertheless the gentry here, as in offences of violence against the person, were over represented; those so described being indicted in about 7% of cases. The gentry were still much involved in the commission of violent crime in late seventeenth century Yorkshire and their continued involvement was symptomatic of its incidence in the North until a much later period than in southern England.

## CHAPTER FOUR

### OFFENCES AGAINST PROPERTY

The category of offences against property shows most clearly how contemporary practice in the criminal courts reflected the sophisticated legal theory that had been developed by this period. This point has already been touched on in relation to the legal complexities involved in charges of homicide. In charges relating to the wrongful appropriation of goods the distinctions are equally clear and the practical application of the legal distinctions likewise plain. Thus contemporary theory and practice recognized a distinction between felonious and trespassory asportation; a distinction which turned partly on strict legal technicalities and partly on an assessment of intent. This is a distinction not previously appreciated by historians which affects profoundly the way in which it is necessary to regard the criminal law and practice of the period, and has an impact on the discussion of the levels of serious and less serious crimes.

It is widely accepted that offences against property constituted the commonest business of the courts of Assize and Quarter Sessions and that was certainly so in Yorkshire, where they accounted for 43.5% of the former and 40.8% of the latter. However, these proportions are obviously dependant on what each category is taken to include and in this thesis the offences of forcible entry and detainer (more usually placed among offences against the peace) are included here. These offences were certainly ones which broke the peace and they were

usually committed by more than one person acting together. Nevertheless the essence of the offence was an attack on property (real rather than personal) belonging to another person, and indeed it is probable that many forcible entries or detainers were technical offences deliberately committed to force a trial of a dispute over ownership of or possessory rights in land.<sup>1</sup> In a thesis such as this, which is very much concerned with analysing the reasons for trends in prosecution, the motivation behind offences is most important, and these offences were much less analogous to the communally motivated or more personal riots discussed in Chapter Three than to thefts of personal property. In many ways indeed they can be seen as attempts to steal real property - a legally impossible offence, but an action which, in a land-conscious society, was likely to be frequent. The placing of forcible entry and detainer offences within the category of offences against property thus inflates the proportion of property offences. Were they to be excluded the proportion of offences against property would fall to only just over one third of all offences, considerably less than the proportion of crimes usually attributable to this category.

Historians often also refer to 'serious' offences, by which is usually meant felonies, that is those offences for which the punishment was (in theory) death. Thus the distinction which will be made here between trespassory and felonious asportation will have a significant effect also on arguments about the preponderance of 'serious' property crime and the preponderance of 'serious' crime tried at the Assizes. In Yorkshire therefore felonious offences

-----  
1. See also for a discussion of the amount of force actually used in disseisins: Sharpe, Seventeenth Century, pp. 73 - 74.

against property, i.e. simple and compound larceny and arson, accounted for only just over 30% of all Assize and only 17% of all Quarter Sessions prosecutions. Serious property offences were thus a comparatively small proportion of crimes being prosecuted in the two courts. When the figures for prosecuted felonies only are considered there likewise emerges an apparent difference between the position in Yorkshire and elsewhere. Thus Sharpe found that felonious offences against property accounted for between 77% and 87% of all felonies prosecuted at the Assizes in selected counties and periods between 1550 and 1749, while in Yorkshire between 1650 and 1700 they accounted for only 65%.<sup>2</sup> This difference may, in part, reflect differences in the incidence of crime in Yorkshire, but it seems more likely that the distinction made at the Yorkshire Assizes and Quarter Sessions between trespassory and felonious asportation was one also made elsewhere but that the trespassory asportation indictments have either not survived or the distinction has been overlooked. As a result a somewhat inaccurate picture of the preponderance of serious property crime prosecuted in the principal criminal courts has been presented.

#### LARCENY - FELONIOUS OR TRESPASSORY

The distinction between trespassory and felonious larceny, consisting most importantly in the intention to steal (animo furandi), although

-----  
2. It is worth comparing figures for felonies alone, for Yorkshire differs from other counties in the early modern period. Sharpe found that property felonies accounted for between 74% and 93% of all felonies in selected counties and periods between 1550 and 1749 prosecuted at both Assizes and Quarter Sessions. Sharpe, Early Modern England, p. 55.  
In Yorkshire the combined rate was 71%.

discussed by legal writers, has been little if at all considered by historians. According to Holdsworth "Hale considered that it was possible to illustrate but not to define, 'all the circumstances evidencing a felonious intent'" and "from that day to this the reported cases have gone on illustrating these circumstances", but not defining them.<sup>3</sup> Blackstone defined simple larceny as "the felonious taking or carrying away of the personal goods of another" and stressed the four elements necessary to constitute the offence: personal not real goods, belonging to another person must be both taken (that is without the permission of the owner), and carried away, although Blackstone considers a "bare removal" to be a sufficient asportation; and the taking and carrying away must be done feloniously.<sup>4</sup> Situations can easily be foreseen where either the element of "taking" or of "felonious intent" is missing and such cases should therefore only have given rise to a prosecution for a non-felonious asportation. As Hale said "it must be felonice or animo furandi, for it is the mind that makes the taking of another's goods to be a felony, or a bare trespass only".<sup>5</sup> This distinction is not simply a lawyer's pedantry, for an accusation of trespassory asportation, a misdemeanour, would have resulted in fining or imprisonment with no possibility of a capital verdict, no matter what goods had been taken. Nor did the distinction occur only in legal theory: it was obviously recognized at the Assizes in the wording of the indictments.<sup>6</sup> Nowadays of course no distinction is made between

-----  
3. W.Holdsworth, A History of English Law (London, 16 vols, 1903 - 1965), vol. 8, p. 437.

4. Blackstone, Commentaries, vol. 4, p. 230 et seq.

5. Hale, Pleas of the Crown, vol. 1, p. 508.

6. Thus a felony indictment charged a person "cepit et asportavit felonice" or similar wording; a trespass indictment "vi et armis" or "contra pacem".



felonies and misdemeanours but under for example the 1916 Larceny Act (the major statute regulating theft prior to 1968) certain offences, such as taking dogs or going armed at night with intent, were categorized and punished as misdemeanours, in contrast to the more serious and more common felonies.<sup>7</sup> Why in the seventeenth century one unlawful taking away might be characterized as felony and another as trespass can be hard to discover, perhaps because the different charges reflected views of the intent involved, always a matter of difficulty in interpretation. In some cases, however, the reason is plain from the indictment. One, for example, refers to the goods taken away as having been papers concerning choses in action, which were at "common law held not to be such goods whereof larceny might be committed".<sup>8</sup> Another refers to "60 ash trees" and presumably limits the charge to trespass because growing trees were considered a part of the land and therefore realty until severed, and at common law, felonious asportation could only involve the taking of personalty.<sup>9</sup> In this thesis the felonious asportations (thefts) will be treated as distinct from the trespassory ones, for the differences between them in their consequences were great.

-----  
7. 6 and 7 Geo. 5, c.50, sects. 5 and 28. In most states of the United States of America today a distinction is still made between misdemeanour and felony taking of goods though based on an arbitrary dollar amount. For example in some jurisdictions taking goods valued in excess of \$250 is grand larceny, a felony punishable by fine, non custodial sentence or incarceration for one year to life or by death, but if the goods have a value less than \$250 the crime is petit larceny, a misdemeanour punishable by fine and/or non custodial sentence or incarceration for up to one year. Private communication from A.J. di Mattia, member of N.Y., N.J. and federal bars.

8. Blackstone, Commentaries, vol. 4, p. 234.

9. PRO. ASSI., 44/29.

## LARCENY - GRAND OR PETTY

The difference between grand and petty larceny lay in the value of the goods stolen. If they amounted to 12d or more the offence was grand larceny, for which the penalty, unless clergy was granted, was death. If under 12d the offence was petty larceny and the punishment a whipping. This distinction was the basis for the "pious perjury" practised by jurors who could reduce the value of the goods stolen in order to return a verdict of guilty of petty larceny only, thereby saving a defendant from the possibility of hanging. Whether the theft of 12d itself was grand or petty larceny was not decided, but in practice a jury intending to convict a defendant of petty larceny only, always reduced the value to 11d or less.

## LARCENY - SIMPLE OR COMPOUND

Blackstone's definition of simple larceny has already been quoted and compares with the present day offence of theft.<sup>10</sup> In compound larceny an aggravating circumstance was added to the theft, either an entry into a person's house or an assault on his person. The compound larcenies were therefore burglary and robbery.<sup>11</sup>

- 
10. In common parlance theft includes such crimes as robbery and burglary but legally these are distinguished from simple theft - the dishonest appropriation of property belonging to another with the intention of permanently depriving the other of it. S.1 Theft Act 1968. Similarly in the seventeenth century larceny included both the simple and the compound offences, although they were, of course, legally distinct.
  11. For definitions of these see below, pp. 217 - 219 and 226 - 227.

## THEFT

There were over 2,900 accusations of theft. Again some persons were charged more than once so that the number of individuals falls to approximately 2,400. These cases were contained in 2,335 indictments giving an average of 1.2 persons per indictment. This figure is not materially altered even when accessories are included, there being only sixty nine persons charged as accessories in these cases. In contrast with murder where most accomplices were charged as accessories before the fact, in theft all save one were charged as accessories after the fact. With a few exceptions those charged with theft were not also charged with asportation. Theft of course was the more serious offence; 65% of those charged with that were tried at the Assizes, but only 30% of those charged with asportation were.

The 1670s saw the largest numbers of persons charged but this hides variations between the two courts. Thus although most Assize prosecutions occurred in that decade, most Quarter Sessions ones occurred in the 1660s, and prosecutions for the offence at Quarter Sessions were effectively the same in the 1650s, 1680s and 1690s. The Yorkshire Assizes on the other hand saw only half the prosecutions in the 1690s that it had seen in the 1680s.<sup>12</sup>

The status of defendants to theft charges is set out in Table 16. Those described as gentlemen or above formed less than 1% of defendants to theft charges but labourers, over 70%. Interestingly,

-----

12. The reasons for this and the similar fluctuations over time are discussed in the concluding chapter.

women made up 30% of defendants at Quarter Sessions and 11% at Assizes, perhaps because the less serious thefts were being dealt with at Quarter Sessions.<sup>13</sup>

-----  
TABLE 16

SEX AND STATUS OF DEFENDANTS TO THEFT CHARGES  
AT ASSIZES AND QUARTER SESSIONS

	Assizes	Quarter Sessions
Labourers	1,109	383
Gentlemen	7	
Yeomen	68	9
Husbandmen	8	9
Trade/craftsmen	103	65
Women	163	204
Total	1,458	670

-----

Even more striking is the role of women as accessories, for almost 50% of these defendants (thirty three out of sixty nine) were women. But this high proportion of women apparently playing only supportive roles hides the more interesting point that most of these women were accessories to women principals. Thus of the thirty three mentioned eighteen were accessories to one or more female principals and a further seven were accessories to two or more principals, at least one of whom was a woman. Nor were these women accessories to members of their own families, at least as far as evidence of surnames allows us to tell. There is on the face of it no reason to connect Rebecca Baley, a Sherburn spinster, with Samuel Clarke or Hurst, whom she

-----  
13. Beattie found that the role played by women in thefts varied according to where they lived. Thus women in rural Sussex formed around 13% of defendants to larceny charges, whereas in urban Surrey they formed about 31%. He suggests that this may be due to the fact that the liberating effect of towns was more profound for women than for men. Beattie, Crime and the Courts, p. 239.

aided, nor Jane Syers, wife of a York yeoman, with Dorothy Dinsley, a spinster of the same town.<sup>14</sup> In some cases one can see the operation of some form of familial loyalty among accessories. Thomas and Isabella Dawtry of Foldby were accused of harbouring Thomas junior, presumably their son, and an apparently unrelated woman.<sup>15</sup> Two linked cases involving accessories are of particular interest. Anne Askew and Elizabeth Milner, both Halifax spinsters, were accused of stealing cloth valued at 21/- from Elizabeth Parker, a widow, on 14 January 1689, and Mary Milner, Mary Hilton and Phoebe Thompson with having been their accessories. Phoebe Thompson was also charged with having stolen cloth valued at 12/8d from the same Elizabeth Parker on 12 January 1689, on which occasion she was aided by the other four. Depositions from all the accused women were taken on 19 January and from the victim on 21 January. The victim's deposition merely states that of late various goods had been taken from her shop, but that she does not know by whom. From the depositions of the accused though it is plain that Elizabeth Milner, Anne Askew and Phoebe Thompson were the thieves, having stolen goods from Elizabeth Parker on more occasions than the two for which they were indicted. Mary Milner, the mother of Elizabeth, was the go-between who sold the stolen goods to Mary Hilton and two other women, Anne Page and Elizabeth Halland, and she states that none of them knew the goods were stolen. Mary Hilton was the only one of the receivers indicted. Her deposition records the buying of goods from Elizabeth and Mary Milner on at least five occasions, and it may be that she was indicted while the other

-----  
14. PRO. ASSI., 44/16 and 44/21. C.Wiener has suggested that women were more likely to play supportive roles in offences generally but this is not really what these figures imply: Wiener, "Sex Roles and Crime", pp. 40 - 47.

15. WYRO., 4/14 fol 47.

receivers were not because of the frequency with which she bought. In any event none of the accessories was convicted although all three principals were. Phoebe Thompson, accused of stealing goods valued at 13s 6d, was convicted of theft of goods valued at 4s; the others charged to the value of 21s were convicted of 3s 6d.<sup>16</sup> The problem of organized crime in the provinces has so far been little studied although there has been some discussion of professional gangs of thieves in the Jonathan Wild style; here we seem to have an early group of women shoplifters.

The victims of theft came very largely from the middling and lower ranks of society. This bears out the evidence of P.King in relation to prosecutors at Essex Quarter Sessions between 1760 and 1800 where he found that about one third were farmers or yeomen, another third tradesmen and artisans and about 18% labourers.<sup>17</sup> Very few of the indictments give details of the victim, but in those that do they are mostly described as being of higher social status. Thus of the 211 indictments where the status of the victim is mentioned eight were peers, fifteen baronets and fourteen knights; of the remainder forty six were women, described as widow, spinster and in one case as the wife of a yeoman. Some of these women were also of high rank, such as Lady Elizabeth Hutton, while others were more likely to be comparatively lowly, such as Elizabeth Parker, the victim of Phoebe Thompson and Anne Askew. The rest, save for three yeomen, two infants and two cases where the theft was specifically stated to be by a

-----  
16. PRO. ASSI., 44/37 and 45/15/2. From 1623 women could claim benefit of clergy in the case of larceny of goods worth not more than 10s and this was presumably the reason for the reduction here, 21 Jac 1 c. 6.

17. P.King, "Decision Makers and Decision Making in the English Criminal Law", HJ, 27 (1984), pp. 25 - 58.

servant from his master, were described as gentlemen, esquires, doctors of medicine and clerics, including the Bishop of Lincoln. The depositions bear out the impression given by the indictments, for when the status of deponent victims is mentioned, it was lowly and in some cases, where status is not specifically mentioned, can be inferred to be so. The proportion of indictments where status is given varies between 6% for the Assizes and 14% for the Quarter Sessions indictments. Despite this small proportion the evidence suggests that it was only in cases where the victim was of high social status that the clerk bothered to record the fact.

In general what happened to defendants is obscured by gaps in the recording of verdicts, but this is less of a problem in cases of felony than in misdemeanours. Once again the pattern of a large rise in prosecutions in the 1660s and 1670s which is, at least to some degree, offset by a rise in the proportion of bills ignored emerges, although this is more striking in the theft than in the asportation cases. Overall about 13% of surviving bills were ignored, but there were differences between Assizes and Quarter Sessions. The Assize grand juries ignored 8.6% of bills, (slightly more against women, 9.2%) but Quarter Sessions grand juries ignored 23.1%.<sup>18</sup> Within the overall picture the fluctuations between the decades are marked, varying, at Assizes, between 2.4% of theft bills ignored in the 1690s

-----

18. In Essex Sharpe found that overall 18% of theft bills were ignored and there too the bills against women were slightly more likely to be ignored (20.7%), than were those against men (17.3%), and similarly in Surrey, Beattie found that 11.5% of bills in capital property offences were ignored and 17.3% of bills in non capital property offences, and that in both categories women were slightly more likely than men to be discharged by the grand jury: Sharpe, Seventeenth Century, p. 95 and Beattie, Crime and the Courts, pp. 402 - 404.

to 13% ignored in the 1660s, and at Quarter Sessions between 17.3% ignored in the 1680s and 30.2% ignored in the 1660s.

Thus in total almost 2,500 persons were left to face a petty jury on a theft charge. Overall about 38% were acquitted outright, a figure which applies to both courts.<sup>19</sup> There were fluctuations between the decades though. At Assizes the highest percentage of not guilty verdicts was in the 1650s when 46.9% of defendants were acquitted. Thereafter the percentage fell in each decade until in the 1690s only 31.5% were acquitted. At Quarter Sessions the highest percentage of not guilty verdicts was in the 1660s, at 41.3% and it then fell to 27.8% in the 1680s before rising to 38.7% in the 1690s. As has been previously mentioned it is clear that grand juries tended to ignore more bills when the numbers prosecuted were greater. The situation with the petty jury is not so clear cut but a similar inference may be drawn.

A partial verdict was another way in which a trial jury could mitigate possible penalties for an offender; the jury reduced the value of the goods stolen to below 12d, so that the offender was convicted of petty, not grand larceny, the penalty for which, as already stated, was whipping. Quarter Sessions trial juries were more likely to adopt this method than were the Assize juries. Almost 32% of defendants at Quarter Sessions, charged with grand larceny, were convicted of petty larceny, whereas only 10% of defendants at the Assizes were. This gives a joint rate of partial verdicts returned by

-----  
19. Sharpe found that overall 33.8% of theft suspects were acquitted and Beattie that 34.5% of those accused of property offences were: Sharpe, Seventeenth Century, p. 95 and Beattie, Crime and the Courts, p. 411.



the petty jury approaching 17%.<sup>20</sup> (It should be remembered that it was of course possible that a defendant would be initially charged only with petty larceny, and indeed that was the case with 8% of those charged at Quarter Sessions, though less than 1% of those charged at the Assizes.)

Even after conviction for grand larceny, however, many still escaped capital punishment by claiming benefit of clergy. Beattie considers that "by the late seventeenth century, when it had been extended to both men and women, clergy was being granted more or less automatically to most who applied. Nonetheless the judges retained a discretionary power that was virtually uncontrollable to decide whether a man had read well enough to save his life".<sup>21</sup> Some 10.7% of all those convicted of grand larceny were granted clergy; about 9.5% at Quarter Sessions and about 11.3% at Assizes.<sup>22</sup> Once again it is interesting to note that the highest proportion in both courts was in the 1660s, when Assizes saw 19.1% of those convicted of grand larceny being granted clergy, and Quarter Sessions saw 13.2%. In one case among the Yorkshire indictments a defendant, having been convicted of grand larceny, prayed his clergy, but the court, rather than granting it immediately, reserved judgment, although their final decision does not appear.<sup>23</sup> Clergy was effectively a reprieve granted by the judge, rather than by jurors, and it appears therefore that in the 1660s, the decade that saw the greatest number of prosecutions, the judges

-----  
20. In Essex Sharpe found 24.6% of theft suspects were partially convicted: Sharpe, Seventeenth Century, p. 95.

21. Beattie, Crime and the Courts, p. 452. Women were not generally allowed clergy until 1693 under 4 W&M c.9.

22. In Essex, 26.3% were granted clergy: Sharpe, Seventeenth Century, p. 95.

23. PRO. ASSI., 44/16.

agreed with and were even prepared to strengthen the determination of juries that significantly higher numbers of persons should not be hanged.<sup>24</sup> Even in this decade, however, there is occasional evidence of judicial strictness over the granting of clergy. Thus in a case tried at Winchester in 1666, the clerk appointed by the Bishop told the judge that a defendant had read the verse. Kelyng J questioned this and ordered the man to be brought near when he confessed that he could not read. He was presumably hanged and the priest was fined five marks.<sup>25</sup>

In addition to those effectively pardoned by being granted clergy immediately by the judge, a further 2% of Assize defendants were pardoned or reprieved after or before being sentenced to hang. Some interesting work on the reasons that lay behind pardons has been done. In particular, Peter King argues that both sentencing and pardoning decisions were based on universal and widely agreed criteria rather than on class favouritism, and suggests that the factors favourable to an accused most often mentioned were previous good character, youth and post crime destitution. Factors unfavourable to an accused included the need for an example to be made and previous bad character.<sup>26</sup> Similar considerations undoubtedly affected the fate of thieves in late seventeenth century Yorkshire.

Only a small minority of defendants, about 4.2% at Quarter Sessions and 4.9% at Assizes, admitted the offence with which they had been

-----  
24. Cockburn discusses the changes in the strictness with which the Home Circuit judges interpreted the literacy test in Introduction, pp. 117 - 121.

25. Kelyng, Reports of Divers Cases, p. 51.

26. King, "Decision Makers", pp. 42 - 51.

charged. So far as can be seen all save one of these, even when they admitted to grand larceny, were granted clergy and branded. The exception was John Thompson, who stole sheep in 1680, admitted the offence, but was hanged because he had previously been branded.<sup>27</sup> This raises the question of whether these defendants were engaging in some form of plea bargaining, admitting their guilt in the knowledge that they would therefore be saved from the death penalty. Cockburn has noted the existence of indictments, recording a confession, which have been altered to reduce the value of goods or the offence charged, and has related their incidence to peaks of prosecution. He argues that these plea bargains were a means, adopted particularly when the courts were busy, to avoid the time necessary for a contested trial. Overall between 1575 and 1623 almost 13% of Home Counties defendants pleaded guilty.<sup>28</sup> The much lower level of guilty pleas in late seventeenth-century Yorkshire is attributable, at least in part, to the fact that the late sixteenth century seems to have witnessed the peaking of prosecutions which by the late seventeenth century had fallen considerably and thus lessened the pressure on the courts to find means of shortening the time taken to try cases.

Thus of the large number of persons who had faced a petty jury and a possible capital sentence, and for whom results are known, none at Quarter Sessions and only 312 at Assizes were convicted of grand larceny and not granted clergy. It should not be assumed that all of these persons were hanged. One of the peculiarities of the Yorkshire indictments seems to be that in many cases where guilty verdicts were returned the clerk did not endorse whether or not the defendant was

-----  
27. PRO. ASSI., 44/42.

28. Cockburn, Introduction, pp. 65 - 70.

indeed sentenced to hang. Thus in only sixty two of the 312 is the indictment so endorsed, and it may well be that many of the others were in fact granted clergy, or if sentenced to hang, subsequently reprieved. Sharpe found that about 5% of defendants to theft charges in Essex were hanged and Beattie that while 8.4% of defendants to property offences were sentenced to hang, there were significant differences in the rates of pardon depending on the type of offence.<sup>29</sup> Using the gaol book for the period for which it exists a clearer picture emerges for the 1660s. From the indictments it appears that fifty five persons were convicted. The indictments for fifteen of these were endorsed that they were to be hanged, while another fifteen were subsequently pardoned.<sup>30</sup>

The verdicts for two groups of defendants to theft charges are worth looking at separately. The first group was women. Not one of the indictments against women is endorsed with a hanging verdict, and less than 14% of women were convicted of grand larceny, compared to 23% of men. In the same way almost 46% of women were acquitted outright compared with 38% of men, and the proportions of reduced verdicts is also higher for women, 26.2% compared with 8.2% for men. Women were only marginally less likely to be granted clergy, 10.6% compared with 11.3% for men. These figures are comparable with those in other counties. In Essex 40% of women were acquitted, 34% convicted of petty larceny, and 13.8% allowed clergy. In Surrey 38.1% were acquitted and 22.2% partially convicted.<sup>31</sup>

-----  
29. Sharpe, Seventeenth Century, p. 95 and Beattie, Crime and the Courts, pp. 411 and 433 - 435.

30. PRO. ASSI., 42/1.

31. Sharpe, Seventeenth Century, p. 95 and Beattie, Crime and the Courts, p. 437.

Horse theft was considered to be a particularly serious offence and the verdicts on those accused of it reflect this fact. Thus although slightly more defendants to horse theft charges were acquitted, (44.2%), those convicted were dealt with much more harshly. No horse thief was convicted of petty larceny<sup>32</sup> and only one was allowed clergy; that exception is surprising for the offence was, according to statute, unclergyable. 32% of horse thieves were convicted and of those 14.5% were, according to the indictment, sentenced to hang. In fact of the sixty two indictments which show that a capital sentence was passed, fifty four defendants had been convicted of horse theft. Of the remaining 260 cases where guilty verdicts but no sentence is endorsed on the indictment, 119 were for horse theft.<sup>33</sup> However, horse thieves were, if the Surrey results are reflected elsewhere, more likely than might have been expected to be pardoned, for 74% of convicted Surrey horse thieves were so dealt with. This compares with 100% of capitally convicted cattle thieves and 85% of capitally convicted sheep thieves, but it is still considerably higher than the pardon rate for those convicted of robbery, burglary and house-breaking.<sup>34</sup> For Yorkshire though, using the 1660s as a sample period again, 48% of those charged with horse theft were acquitted, 32% hanged and a further 17% convicted, sentenced to hang but subsequently pardoned.<sup>35</sup> Thus in Yorkshire the rate of pardon for convicted horse thieves was, in the 1660s, at least, only half that

-----  
32. This would of course have been pious perjury on the grand scale, for no stolen horse was valued at less than £2.

33. In Essex 42% of horse thieves were hanged: Sharpe, Seventeenth Century, p. 94.

34. Beattie, Crime and the Courts, p. 435.

35. PRO. ASSI., 42/1. For the remainder it is not known whether a convict was hanged or not.

in Surrey.

Both Herrup and Sharpe suggest that horse thieves differed from other thieves and Sharpe suggests that they were likely to be of higher social status than the majority of thieves. 10% were described as yeomen or gentlemen and only three out of 252 as women. But in Yorkshire this was not the case for horse thieves were overwhelmingly (86.8%) described as labourers, with gentlemen forming only .6% and women 1.1%. Herrup considers that they tended to be punished more severely because horse theft was undertaken for profit not from need and the disposal of stolen horses needed organization. In her work she draws a distinction between criminals and recidivists. The former committed crimes through error, to which all men in the sin-conscious society of the seventeenth century were prone, the latter acted with evil intentions.<sup>36</sup>

Her thesis can perhaps be tested by looking at some of the cases dealt with at the Yorkshire Assizes where, from the depositions it is apparent that horse stealing was no more organized a crime than other forms of theft. Thus John Anderson was indicted for stealing a grey mare, valued at 40/- from Marmaduke Heslewood at Bealeby on 30 October 1661. Heslewood, a tailor, stated in his deposition that having put his grey mare into the town field at Bealeby he, "had a notion to use the said mair but could not find her and that he sought her for a fortnight together." Not until Tuesday 29 October did he hear of "a young man in gray clothes upon a gray Mayre", whereupon he went with Edward Kilborne to look for the mare, found

-----  
36. Herrup, "Law and Morality", pp 114 - 116 and Sharpe, Seventeenth Century, p. 98.

her in a close belonging to William Freeman, "and demanding of Freeman's wife her husband being not at home how they came by that mayre she said she did not know she might be leapt into the close for anything she knew." When Freeman returned he told them that the mare was "his man's brothers'". Kilburne made a deposition corroborating Heslewood and one is also taken from Freeman a "grasseman", who details Anderson's coming to his house; "(he having a brother dwelling with this informant)"; Heslewood's arrival, and claim to the mare which he and Kilborne took whereupon Freeman told them "that they ought not to take the said mayre and they answered him they knew not whether the said mare was stolne but that she might be strayd away from them and that they would be ready to answer when they should be calld thereto". In Anderson's own examination he states that he had the mare "in a swapp from one Richard Hutton... for one white nagg and 10 shillings he gave him to boote." Anderson was acquitted at the March 1662 Assizes. So was Rowland Armstrong, even though he had confessed that he:

returninge backe againe in Bothersbye ground in a pasture there of a maister he formerly served found a certaine horse there beinge very wearye with travaile tooke a grey mare ridd away with her to ease himselfe thinkinge to have returned her againe but in his journey towards Danby forest was apprehended at Battersbye.<sup>37</sup>

In another case a horse was taken by Joshua Broadhead when it followed him and "hee tooke ye sd horse alonge with him to carrye the cloath upon".<sup>38</sup>

None of these cases suggest organization or even much premeditation, and indeed that seems to apply to the majority of horse thefts. But there were some that may bear out Herrup's thesis. Many of these

-----  
37. PRO. ASSI., 45/6/1; 42/1 fol 90; 45/6/1; 42/1 fol 90.

38. PRO. ASSI., 45/11/3.

related to detailed transactions of sale or exchange. Thus Richard Blackburne, a Hunanby yeoman, having had a black colt stolen around 12 June, found it in the possession of George Skipwith on 27 July. Skipwith had exchanged it for a bay filly with Richard Simpson who had bought it from John Dunne, who, in turn, had bought it from William Agarr, who confessed to having stolen and sold it and was convicted.<sup>39</sup> Two of these purchases had been at one or other of the horse fairs for which Yorkshire was already known, so that the purchasers should have acquired a good title.<sup>40</sup> However the law relating to horses altered the general law as to sale in market overt by making the sale challengeable within six months and imposing certain conditions. Another case, where the defendant was noted as being 'at large', "fled to London" according to one deponent, involved the challenge by William Moxon of a horse in the possession of William Robinson who had bought it, at two removes, from the alleged thief. the first sale had been carried out in the presence of two witnesses thus ensuring that while John Burtwhistle came to be charged, Richard Precious, who had exchanged with him, could not be.<sup>41</sup> The only glimpse of organized crime comes in the examination of Robert Wryth who, met John Fabron of Scarborough by arrangement when Fabron

brought him a gray geldinge and bid this Examinant sell him in the Sotheran parts... and gave him twelve or thirteen shillings with to beare his charges, soe this Examinant travelled to Buckenhamshire... but findeinge he was suspected to have stolne the horse came away for feare of beinge Apprehended.<sup>42</sup>

-----  
39. PRO. ASSI., 44/19 and 45/10/1.

40. But see for example Dalton, Country Justice, pp. 64 - 65 on the defeasibility of a claim to title based on a sale in market overt in relation to horses.

41. PRO. ASSI., 44/36 and 45/15/2.

42. PRO. ASSI., 45/9/1.



In Essex theft indictments the goods most often taken were sheep (19%), followed by clothes and household linen and miscellaneous (14% each) and then horses (9.5%). In Yorkshire the serious offence of horse-theft accounted for almost a quarter (24.7%) of all thefts, followed at some distance by sheep and cattle theft at 13.4% and 11.5% respectively. The high percentage of horse theft in Yorkshire compared to Essex is difficult to explain. It may be that horses were more commonly used in Yorkshire both as a means of transport and for ploughing, while the county was also beginning to be a centre for horse-breeding. This difference is even more marked when Assize and Quarter Sessions cases are considered separately, for at the Assizes horse theft made up almost 35% of all thefts while the next most common, cattle theft accounted for only 15%.

Pigs were very infrequently taken, less than 1% of cases were concerned with them. Items such as hay, turves, stones and wood, which were the most commonly asported items (see below) accounted for less than 1% of stolen items. Money, plate and jewels were not asported but accounted for 8% and 4% of items stolen, and deeds, never stolen, were asported in 2% of cases. Grain accounted for 5% of thefts, clothes for 9%, and food for only 1.4%.<sup>43</sup>

#### ASPORTATION

Asportation was the offence of taking away the property of another person. It was however not a felony but a trespass and thus liable only to fine or imprisonment with no possibility of a capital

-----  
<sup>43</sup>. Comparison with Essex shows the infrequency with which food was taken there also, Sharpe, Seventeenth Century, p. 93.

sentence being imposed. As a trespass it was analogous to assault and indeed Lambard when discussing trespasses makes this connection clear when he talks at the same time of a number of different offences:

If any have committed unlawfull assault, beating, wounding, or such like trespass, against the bodie of any man: Or have with force and against the law taken the goods of an other, or have done any trespasse in the lands of an other.<sup>44</sup>

The distinction made by contemporaries both in theory and practice between felonious and non felonious asportations is of major significance, and lies not only in the obvious importance to the defendant, but also in showing how the seventeenth-century criminal law was regularly able to deal with legal distinctions which appear to have escaped the notice of modern historians. As has been previously stated one reason for preferring a charge of non felonious asportation lay in the nature of the goods allegedly taken, for no charge of felonious asportation of realty could lie at common law. The other reason lay in the intent necessary to found an accusation of felonious asportation, i.e. the need for the accused to have the animo furandi, or in modern terms, mens rea, for again without such guilty intent the ingredients of the felonious charge would not be made out.

There were over 600 accusations of asportation, the number of separate individuals charged being 520. In the asportation cases a total of 373 bills were drawn giving an average of 1.7 persons per bill. In the asportation cases of course there could be no accessories for in both treason and trespass "all persons concerned therein, if guilty at all are principals".<sup>45</sup>

-----  
44. Lambard, Eirenarcha, p. 337.

45. Blackstone, Commentaries, vol. 4, p. 38.

The 1670s saw the highest number of prosecutions for asportation in both courts, but whereas those prosecuted at Quarter Sessions, having doubled from the 1660s to the 1670s, remained fairly constant for the next two decades, at Assizes the increase from the 1660s was less. The 1680s saw only half the level of the 1670s, as did the 1690s. It should be stressed that we are not seeing a change in the offence indicted. There is a significant decline for both offences, from peaks in the 1670s, so that for both offences in both courts the 1690s figure is only just over half that of the 1670s.

The status of defendants to asportation charges is set out in Table 17 and gentlemen formed over 6% of defendants in these cases; labourers formed about 36%. Thus their role in asportation was only about half that of their role in thefts and the role played by yeomen (26%) and tradesmen/craftsmen (14%) was much greater. Indeed at the Assizes yeomen at 40% formed a larger proportion of defendants than did labourers at 28%. At both Assizes and Quarter Sessions women formed only 8% of defendants in asportation cases. It is perhaps interesting that there is little difference in the status of victims in the asportation cases. In the thirty three indictments where the status of the victim is given are two peers, nine gentlemen and six women. The proportion of indictments where status is given is around 10% at both Assize and Quarter Sessions in asportation cases.

TABLE 17

SEX AND STATUS OF DEFENDANTS TO ASPORTATION CHARGES  
AT ASSIZES AND QUARTER SESSIONS

	Assizes	Quarter Sessions
Labourers	54	130
Gentlemen	17	16
Yeomen	76	55
Husbandmen	5	36
Trade/craftsmen	20	52
Women	15	25
Total	187	314

Overall about 23% of asportation bills were ignored. In comparison with theft though the roles of the two courts were reversed with Assize juries ignoring 29.3% and Quarter Sessions juries 19.6% of bills. Thus in total over 450 persons were left to face a petty jury. Obviously the verdicts in these cases are very different from those for theft, for, as previously stated asportation was a misdemeanour not a felony. About 40% of defendants were acquitted and for those found guilty the punishment, almost invariably a fine, ranged from 6d to £2. It is not surprising that the difference between the offences is reflected in the items that were the subject matter of each. Thus in asportation the most commonly taken goods were wood, turf, hay and stones at 20.5%. All these are items which could well be considered to be realty and therefore the option of a charge of felonious asportation did not exist. After this came cattle (18.8%), horses (16.3%) and sheep (11.3%), and below this grain accounted for 7% of asportations, clothes for 7% and food, which it might be thought would be a commonly taken item, was not, accounting for only 2.8% of asportations. Table 18 shows the differences between the goods taken

in the two offences. It is worth noting, in further support of the distinction between the two offences, that no case of asportation charged the trespassory taking of money, plate or jewels, and no case of felonious asportation charged the taking of papers which would, like realty, be held not to be capable of being the subject matter of larceny.

-----  
 TABLE 18

GOODS TAKEN IN THEFT AND ASPORTATION CHARGES  
 AT ASSIZES AND QUARTER SESSIONS

	Theft		Asportation	
	Assizes	Q.S.	Assizes	Q.S.
Horses	490	11	15	31
Cattle	210	24	22	31
Sheep	116	157	7	25
Poultry	13	46		4
Pigs	14	3	1	1
Cloth/wool	122	45	4	5
Plate/jewels	64	15		
Money	114	44		
Hsehold gds	54	49	10	9
Clothes	108	84	6	14
Grain	45	62	6	14
Turf/hay		18	28	30
Food	13	15	3	5
Industrial	35	39		
Papers			3	3
Other	8	13		5
Total	1406	625	105	177

-----

ROBBERY

There were two distinctive compound larcenies, burglary and robbery, and both had subdivisions. Thus robbery was divided into two offences. The first was "privately stealing from a man's person", for example by picking his pocket, and was felony without benefit of clergy if the goods stolen were valued at more than 12d. Robbery was

"the felonious and forcible taking from the person of another, of goods or money to any value, by putting him in fear". As Blackstone notes it was the "previous putting in fear" that "is the criterion that distinguishes robbery from other larcinies" and the putting in fear need only be sufficient to create "an apprehension of danger." Robbery was only debarred from benefit of clergy when committed in or near the king's highway until 1692, when all robberies were made felony without benefit of clergy.<sup>46</sup> The picking of pockets, although a rare offence, will be treated separately, and in discussing robbery a distinction will be made between robbery and highway robbery.

A total of seventy four persons were accused of robbery and 136 with highway robbery at the Assizes and fifty eight with robbery and twelve with highway robbery at Quarter Sessions. In the robbery cases only two persons were charged more than once, but in the Assize highway robberies multiple accusations were frequent, reducing the numbers of separate individuals charged from 136 to ninety four. On the whole highway robbers were also slightly more likely to work together so that the average number charged on each indictment was 1.7, while in the robbery cases it was 1.5. In the robbery cases the 1660s saw effectively the same numbers of persons charged as the 1670s with the numbers falling in the 1680s and rising slightly in the 1690s. Highway robbery was most commonly indicted in the 1650s with almost half the persons charged facing prosecution in that decade. Thereafter there was a continuous decline until only six

-----  
46. Blackstone, Commentaries, vol. 4, pp. 241 - 243, but Dalton suggests that all robberies, wherever committed, were excluded from clergy, citing a case of a horse being taken out of a pasture while the victim looks on, having been put in fear: Dalton, Country Justice, pp. 234 - 237.

persons were charged in the 1690s. Overall then 280 persons were charged with robbery, an average of about 1.4 per 100,000 population, a figure that is more similar to that for Sussex in the late seventeenth century than to that for Surrey at the same period.<sup>47</sup> In the robbery cases just under 10% of bills were ignored and in highway robbery cases just over 12% were, the rate of ignoramus bills thus being similar to that for other larcenies. There were, however, some differences in the 1650s, most importantly the high level of prosecution in that decade. Thus sixty six persons were indicted in the 1650s but these consisted of only thirty six individuals. So, for example, Joshua Moore of Rothwell was indicted for the offence on eight separate occasions in 1657. Several of the indictments charged more than two persons: Moore, for example, was charged with four other individuals in a variety of combinations, no bill actually charging more than four persons. The overall average per indictment in the 1650s of 2.4 was considerably higher than the average of 1.4 for the remaining four decades. Nor was the pattern of a high rate of ignoramus bills in periods of heavy prosecution followed here, for ignoramus verdicts were returned in only five cases, a rate, at 7.6%, again considerably lower than for the next forty years, when it was 15.7%.<sup>48</sup>

There were differences in the sex and status of offenders in the robbery and highway robbery cases. Thus in the latter labourers account for 86% of defendants, while in the former they account for 35% only. This contrasts with the romantic view of highway robbers as

-----  
47. Beattie, Crime and the Courts, p.162.

48. On highwaymen in the Interregnum see J.Parkes, Travel in England in the Seventeenth Century (Oxford, 1925), pp. 150 - 184.

gentlemen, a contrast noted also by Sharpe in relation to Essex.<sup>49</sup>

For those defendants left to face a petty jury final verdicts in both types of robbery were similar, with almost half of those accused of both offences being acquitted outright. The fact that highway robbery was seriously regarded is illustrated by the fact that no highway robber had a partial verdict returned on him, although two robbers were convicted of simple larceny only.

Highway robbery is a crime which, it has been suggested, was highly organized, but there is little evidence of such organization in the Yorkshire indictments and depositions. John Melmerby was described by Raine as "a notorious burglar and highway robber" and he certainly featured in the indictments though more as a horse thief than as a robber, but evidence links him with other offences, providing the only possible instance of an organized ring of thieves. Thus he was charged with stealing a black mare in 1671 and a bay gelding in 1681. For the former offence he was acquitted but for the latter convicted and sentenced to hang. John Barnitt of Richmond was accused of robbing John Swinbanke of 6d in July 1675, but the bill against him was ignored. However he deposed in May 1675 to his involvement with John Melmerby in the robbing of John Chambers and burglary of Dr. Samways. In so far as the group of men around Melmerby were probably the nearest to a gang of professional thieves that the Yorkshire indictments disclose, they were small-time and without much concept of honour amongst themselves. Melmerby was informed against by Ellen Wasse and he in turn informed against Thomas Wasse, accused of

-----  
49. Sharpe, Seventeenth Century, p. 105.



burglary and highway robbery in 1667. Barnitt was in trouble on other occasions too. In 1673 he had stolen, among other items, beef which he, Melmerby and Rainsdaile "had made merry with... at an alehouse in Easby".<sup>50</sup>

Some highway robberies were very far from being organized and were probably unpremeditated. Richard Flower, constable of Romanby, appears to have been drinking in Hugh Finch's house in Northallerton, when he received £4/17/7d for three months assessments for inhabitants holding land in Romanby and a further 20s from Hugh Finch himself. On his way home he alleged that he was robbed by John Best, whose brother James, was a servant of Hugh Finch's. Best demanded the money with "a pistoll at his brest", and since John's arrest, Flower had been threatened by another Best brother. The evidence of the depositions seems adequate but the bill against Best was ignored.<sup>51</sup> William Baker, however, who was accused of robbing Robert Hogness of Doncaster of £4/2/6d after having tipped him "into the hedge bottome", despite some confusion in the evidence against him, was convicted and sentenced to hang but reprieved before judgment.<sup>52</sup>

Money was the most commonly taken item in robberies, but horses, pistols and items of clothing might also be appropriated. It was not uncommon for the victim of the assault or threatened assault and the ultimate loser not to be the same. John Hudson and others for example, robbed Christopher Copperthwaite, the servant of Martin Hall

-----  
50. Depositions, ed. Raine, pp. 218 and 160; PRO. ASSI., 44/19; 44/28; 44/16 and 45/12/1.

51. PRO. ASSI., 45/9/1 and 44/16.

52. PRO. ASSI., 44/12; 45/6/3 and 42/1 fol 133.

gentleman, of 5/- belonging to his master.<sup>53</sup> The value of goods stolen was often fairly small, as in the above case, but could on occasion be substantial, with a dozen cases involving the theft of over £100. One of these large thefts was allegedly committed by one of the only two women highway robbers, Elizabeth Ward, who, accused of robbing William Turner of £138, had the bill against her ignored by the grand jury.<sup>54</sup> The only other woman alleged to be a highway robber was Susanna Browne, accused with her husband John, of robbing John Johnson of a variety of spices and sweetmeats including 12lbs of nutmegs and five dozen gingerbreads. This couple, like Elizabeth Ward, were discharged by the grand jury.<sup>55</sup>

One of the more spectacular and interesting robberies was that involving John Nevison (possibly a relative of the celebrated William or a confusion of the two men),<sup>56</sup> Thomas Wylebore and John Blackitter. The three were each charged on two indictments with robbing Richard Burrows of a pair of "screw pistols", a clock watch and three broad pieces of gold, valued together at £12, and with robbing Valerius Germanicus Hales of £317 belonging to Sir Richard Lloyd, John Pember and John Lloyd. The indictments against Blackitter

-----  
53. WYRO., 4/13 fol 182.

54. PRO. ASSI., 44/21.

55. PRO. ASSI., 44/15.

56. Reresby refers to "one Nevison", "a notorious robber" who broke the gaol in York in October 1681, but was rearrested and hanged in 1685. His editor calls this Nevison John: Memoirs, p. 235. In A.W.Twyford and A.Griffiths, eds., Records of York Castle: Fortress, Court House and Prison (London, 1880) there seems to be confusion between two Nevisons, see pp. 241 - 248. Raine refers to John Nevison, alias Brace or Bracey and prints the deposition of an accomplice who links him with at least ten robberies: Depositions, pp. 219 - 221 and 259 - 262. The Newgate Calendar refers to William Nevison a "highwayman who, dying of the Plague as was thought, reappeared as his own Ghost", J.L.Rayner and G.T.Crook, eds., The Complete Newgate Calendar, 5 vols (London, 1926), vol 1, pp. 283 - 292.

allege the date of the offence to be 23 March 1675; those against the others to be 23 January 1676, but there can be little doubt that they relate to one and the same offence. The cases against the men were heard by different grand and petty juries. Indeed Blackitter appears to have been tried a couple of years before the other two. He was convicted, as was Nevison, who was sentenced to hang, but reprieved, while Wylebore was acquitted.<sup>57</sup> This case is interesting both for showing again the dangers of using indictments uncritically and also for raising the question of why the three men (obviously involved in a joint venture) were tried separately. It may be that the seriousness of the offence had something to do with this; the only other occasion where something similar seems to have occurred was the three indictments separately brought against Jane Littlewood and others for the murder of Leonard Scurr and others.<sup>58</sup> It may also be this case that gave rise to a highly coloured contemporary pamphlet, Bloody News from Yorkshire which describes a robbery and murder that do not seem to feature in the court records. The writer was afraid that "some may think a relation of a Robbery and Murther to be no great News, since they are unhappily become so rife and frequent", and perhaps that is why his account is so lurid. According to him on 21 January fifteen butchers "rid out of the City of York" on their way to Northallerton fair. They "took with them very considerable sums of money, each man according to his ability and occasions". About sixteen miles from York an "ambuscado was laid" when the fifteen overtook a gentleman and rode with him for a while. Then in "a place where the way was very narrow" the gentleman started to sing; the fifteen butchers joined in and that was the signal for

-----  
57. PRO. ASSI., 44/21; 44/24 and 47/20/6.

58. See chapter two above.

nineteen other highwaymen to appear with their swords drawn. "Dam ye ye Dogs deliver was the first word of command", but the butchers, "a sort of rugged people not to be huff'd out of their Money with big words" refused. A battle ensued in which the highwaymen shot and killed seven of the butchers, tied up the rest and robbed them of £936. The robbers had not had it all their own way however for three of them had been killed in the fight and later that same night the alehouse where the robbers were drinking was surrounded and in a new fray four more were killed and the other thirteen wounded. the wounded were taken before the magistrate where the surviving butchers recognized them, "whereupon they were immediately sent away to the Gaol". The pamphlet continued:

Two of them upon Examination have since acknowledged that they were first initiated in the discipline of the Road by that famous Artist Du-Vall, who brought out of his own country in to England the most gentile methods of following the high-pad, taking a purse Alamode, mustering his Savage Arabians, and exercising them to perform their parts on all occasions with the most obliging dexterity. For which and other excellent accomplishments he was about five years since deservedly prefer'd at Tyburn.<sup>59</sup>

This pamphlet is of considerable interest in permitting a glimpse of contemporary attitudes to the law and to the exploits of highwaymen, but it should also remind historians to be wary of the use of literary material from which to draw conclusions, for the incident apparently described with such a wealth of detail does not feature among the court records and perhaps throws more light on the differences between the reality and the literary image of highway robbery than anything else.

-----  
59. Bloody News from Yorkshire (London, 1674)

## POCKET PICKING

There were few indictments for this offence, the total being forty, twenty seven at the Assizes, plus four accused of being accessories after the fact, (all of whom were acquitted), and nine at Quarter Sessions. As far as it is possible to gather anything from such small numbers, the 1670s saw the largest number of persons accused, twenty in all, while the 1650s and 1660s saw only two prosecutions each. It is perhaps surprising that, in an offence involving stealth, several of those accused were acting jointly, but possibly one acted as decoy for the other. Two indictments charged two persons and one three. In addition one indictment at the Assizes and one at the North Riding Quarter Sessions charged the same five persons with what must be the same crime. At Assizes they were charged with picking the pocket of Thomas Thornton of a purse and 5s in money on 14 June 1672 and at Quarter Sessions with picking his pocket of the money only on 15 June 1672. What appears to have happened is that the five, who were charged not only with the pocket picking already mentioned but also with stealing goods belonging to Ralph Atkinson, appeared at Stokesley Sessions on 17 June 1672. From there (where they were already said to be lodged in York Castle) they were committed to the Assizes and were dealt with on the two charges, the first amended as already detailed, and the second amended to charge breaking and entering and stealing; to increase the value, though not the description of the goods, and to give the date of the offence as 15 not 14 June. They appeared at the Assizes on 5 August 1672 when on the pickpocketing charge four were acquitted, one being at large, and on the breaking and entering charge two were convicted of stealing

goods to the value of 2/4d and branded, while the other two were acquitted.<sup>60</sup> These two were women and at Quarter Sessions women defendants outnumbered men five to three. At Assizes however only eight of the twenty seven were women, but nevertheless women account for 36% of all defendants, making this offence one with high participation by women. The high rate of their involvement may be due to the stealthy and secretive nature of the offence - it was one which should have avoided any confrontation between victim and thief. All the men for whom occupations are given were described as labourers, save for William Millott of Fulford, committed from the Pontefract sessions and described as an infant.<sup>61</sup>

In two cases, one against a man and one against a woman, the bills were ignored and in those where results are known, excluding the ones already mentioned, eight persons were acquitted, one convicted and another convicted but reprieved. In all the pocket picking cases the goods taken (which sometimes did and sometimes did not include a purse, usually valued at 1d or 2d) were money, ranging from 1s 4d to £4/10s. In no case was the victim apparently related to the accused, although in three the attack was alleged to have occurred in the defendant's place of domicile.

#### BURGLARY AND HOUSE BREAKING

As with simple larceny so in the offences involving entry into a house, a distinction can be made between felonies and trespasses. Burglary itself - a felony without benefit of clergy - was breaking

-----  
60. NRO., 100/201 and 100/202 and PRO. ASSI., 44/20 and 42/1 fol 279.

61. PRO. ASSI., 44/31. Was he a precursor of Fagin's boys?

and entering a mansion house (which included a church as the domus mansionalis Dei) or the walls of a town, at night with intent to commit felony. Larceny from the house was likewise a felony without benefit of clergy in a number of specific instances, such as larceny of above 12d from a dwelling house, any person being then within the house, or larceny of 5s committed by breaking into the house even though no person was then within it. On the other hand some offences were not felonies but trespasses, for example, breaking and entering a mansion house at night with intent to commit an assault was not burglary but trespass.<sup>62</sup>

A total of 789 persons were charged with the two felonious offences, 331 with burglary and 458 with house breaking. By far the greatest number were tried in the higher court, only sixty seven were charged at Quarter Sessions and of these eight were in fact tried at the Assizes. Again some persons were charged more than once, so that the total of separate individuals charged with the former offence was 285 and with the latter 410. Neither of these offences was usually committed by large numbers of persons acting together: the average number per indictment was 1.6 and the largest number jointly charged was five for both offences. The highest level of prosecution came in the 1660s (about 36% of the total) with the figure declining thereafter to the end of the century. The highest level of prosecution for housebreaking (31%) came in the 1670s, with the next largest number being in the 1660s, then the 1690s followed by the 1680s and 1650s - a rather different pattern than that for both burglary and most other offences.

-----  
62. Blackstone, Commentaries, vol. 4, pp. 223 - 228 and 240 - 241; Dalton, Country Justice, pp. 231 - 234.

Burglars were less likely than thieves to be assisted in their crimes. Only six indictments mention accessories, one before the fact and the remainder after. These accessories consisted of ten people, seven men and three women, all of whom were charged, while the principals consisted of four women and thirteen men.

For the more serious offence of burglary we again see the pattern of the decade with the largest number of prosecutions having also the highest rate of bills ignored. In the 1660s at the Assizes eighteen bills were totally and a further four partially ignored. By a partial grand jury verdict in these cases is meant that the grand jury reduced the charge from burglary to simple larceny, thus opening the way to a subsequent grant of clergy to a defendant. In the 1660s the rate of bills ignored was about 20%, compared with 12% over the whole of the half century. The number and proportion of housebreaking bills ignored was much lower: only 6% overall, and in the 1670s (the decade with the highest number of prosecutions) only about 3%.

There were differences between the two offences in final verdicts too, with again a lower discharge rate for housebreaking than for burglary. Thus of those cases where results are known over 40% of burglars were acquitted outright compared with under 28% of housebreakers. About 19% of housebreakers were found guilty and of these 3% were definitely sentenced to hang. On the other hand almost 31% of burglars were convicted and of these 13% were sentenced to hang, though at least five (2.5%) were pardoned. In both burglary and housebreaking cases petty juries sometimes reduced the charge to simple larceny, sometimes petty, sometimes grand. Thus 18% of



burglars were convicted of simple grand larceny and 5% of simple petty larceny, while 14% of house breakers were convicted of the former and 3% of the latter.

Not surprisingly most burglars were described as labourers, 76% of Assize and 66% of Quarter Sessions defendants, and fairly similar figures (69% of Assize and 85% of Quarter Sessions defendants) apply for house breaking cases. Women feature as defendants to burglary charges in about 16% of bills and to housebreaking charges in about 9%. Gentlemen or above feature rarely, only three burglars and five housebreakers being so described. Table 19 shows the status of defendants to burglary and housebreaking charges.

-----  
 TABLE 19

SEX AND STATUS OF DEFENDANTS TO BURGLARY AND HOUSEBREAKING CHARGES  
 AT ASSIZES AND QUARTER SESSIONS

	Assizes	Quarter Sessions
Labourers	293	24
Gentlemen	8	
Yeomen	19	1
Husbandmen	3	
Trade/craftsmen	17	1
Women	56	3
Total	396	29

-----

Turning to victims, once again it would appear that their status was only described on indictments when it was noteworthy. Thus eleven widows, two yeomen, one merchant and fifteen persons of the gentry or above were victims. The upper class victims included Lord Fairfax in the case mentioned above, and Samuel Sunderland, Esq. the victim of the most profitable burglary. In this case Thomas Thompson and six

others were jointly charged with burgling his house on 11 May 1674, John Utley was charged with inciting them and Christopher Smythson with assisting them after the fact. The amount taken was £2,000 in money. These nine were tried at the Assizes on 3 August 1674 and five of them were convicted and sentenced to hang, while a sixth was pardoned. Another indictment exists charging Nathan Haythorne with burgling Samuel Sunderland of £2,000 on 11 May 1674. The bill against Haythorne was found true by the same grand jury who dealt with Thompson and the others, but Haythorne was not tried until the following Assizes on 8 March 1675 when he also was convicted. The reason for charging Haythorne separately from the others can only be conjectured. From the fact that he was not tried until the following year and from his subsequent history it may be that he had either not been apprehended or had escaped and was committed by the grand jury in his absence. According to the indictments he certainly managed to escape from York Castle twice after his conviction, once in July 1678 and once in August 1679, but it may be that there was only one escape as only one of the indictments is endorsed with a final verdict, a conviction. In any event one might have expected that a man convicted of the serious offence of burglary involving such a large sum of money would have been hanged rather than given the opportunity to escape some three years after his conviction.<sup>63</sup> In the housebreaking cases the pattern of victims is similar with one widow and seven men of the gentry or above being specified as victims.

Goods taken in burglaries show some contrast with those taken in thefts. Unlike thieves, burglars were most likely to take money doing

-----  
63. PRO. ASSI., 44/23, 44/26 and 44/27.

so in almost 40% of cases. Sometimes other small items were taken as well but frequently money or money and a purse were the only goods burgled. The sums involved ranged widely from the quite exceptional £2,000 already mentioned to the 2/3d taken by Ralph Ashton from John Kay in 1671.<sup>64</sup> The small amount taken by Ashton was also unusual; for in most burglaries involving money the sums alleged to have been stolen were pounds rather than shillings and amounts well over £10 were common.

After money the most commonly taken items were household goods (12%) and clothes (22%), but some cases involved more exotic swag. Thomas Brigg and others burgled the premises (possibly a warehouse) of William Mirfield and stole a variety of cloth including forty yards "of broad silk" and "three pieces of musk colored Padua", belonging to Richard Mitton and valued altogether at £45. Brigg did not appear at the Assizes but the other four indicted with him were acquitted.<sup>65</sup> Similarly George and Jane Randall burgled Grace Brownlow, a Wakefield widow, of clothes and cloth ranging from a "childs bibb and neckcloth" (1/-) through "five dozen buttons" (5/-) to twenty two yards of linen (£3/10/-) all valued at about £12. The range and value of the goods taken suggests again that this was a burglary of a shop rather than a private house. Although Jane was acquitted, her husband was found guilty.<sup>66</sup> Another type of shop appears to have been the subject of a burglary by Robert Ramsden and four others, including

-----  
64. PRO. ASSI., 44/19.

65. PRO. ASSI., 44/24.

66. PRO. ASSI., 44/14. Beattie has raised the problem that prosecutors faced in securing the conviction of women charged with their husbands, for legal theory maintained that wives acted under the direction of their husbands; see his discussion on this point, Crime and the Courts, p. 238.

George Gayle and his wife Elizabeth. The goods, belonging to Robert Stow and Christopher Procter, that they took from the premises of William Bolton included one pound of "sittron", eight pounds of "comfitts" and a pound of "alicanpane", as well as forty three pounds of tobacco. These items were valued at £7/1/4d. Only Ramsden was convicted in this instance and then only of larceny, not burglary.<sup>67</sup> Anne Tuteing seems to have burgled yet another type of shop, or possibly an early manufactory, when she took 1,200 knives and 300 "orchary buttons" among other items, valued at £34, from Robert Butcher in Northallerton, but the bill against her was ignored.<sup>68</sup> The goods taken by Thomas Simpson were alleged to belong to the church wardens and were taken from Whitby parish church but do not seem to be ones that would have been of much secular use, consisting as they did of a surplice, a hood, two pulpit cloths and a silk carpet, valued at £3/3/-. Simpson was convicted and hanged, perhaps because burglary from a church (the house of God) was regarded even more seriously than other burglaries. In house breaking cases the goods taken were similar to those taken in the burglary cases, with money at 31% being the most commonly stolen item. It was followed fairly closely by clothes at 25% and then by grainstuffs at 12%.

The ease with which some burglars and housebreakers were caught, perhaps because of their lack of preparation, is illustrated by the case of Charles Browning, charged with having burgled the house of Charles, Earl of Wiltshire in New Bolton and taken a cabinet worth 30/-. He is described on the indictment as being of Wensley, but his examination suggests some travelling, claiming that "upon Wensday

-----  
67. PRO. ASSI., 44/17.

68. PRO. ASSI., 44/11.

last, hee came from Newcastle". But he obviously had local connections for he knew "my Lord Wiltshire's closet where he used sometimes to lay some gold". Accordingly he

fetcht a lader forth of the gardins, and brought the same lader and sett it up to the closet window... and broake a pane out of the casement and... soe entred into the same closett; and from thence hee tooke a cabinett in which he thought there might be gold or some other treasure... but beinge closely pursued hee was forced to throw the said cabinet away.

After such a confession it is not surprising that he was convicted.<sup>69</sup>

The bill against Roger Broadbelt was ignored by the grand jury, who either believed his story that, he and Elizabeth Wilson "being in love together", she had given him leave to come and take any of her goods or that he had compensated her for their loss. On 15 January Roger went to the house of Elizabeth's aunt, Margaret Corner, with whom Elizabeth lived, and according to whom the door was broken, and took yarn and pewter from the house, apparently belonging not to Elizabeth but to her aunt. When first taxed with the theft by Elizabeth and the constable, Roger denied having taken anything, but after his father stated that he had brought something home, he admitted it and said that he would pay for the goods taken. More than ten years later Roger Broadbelt was found by John Lickas in his house at night. Lickas struggled with him and "thought to have stood him there untill ye morning" but Broadbelt made his escape and then denied being in Lickas' house. On this occasion though we do not know what happened to him.<sup>70</sup> Suspicion might well fall on someone previously accused. In 1669 Margaret Birres of Ecclesfield heard a noise during the night, rose and saw Ralph Ashton in the house with

-----  
69. PRO. ASSI., 44/31 and 45/13/2.

70. PRO. ASSI., 44/15; 45/8/2 and 45/12/4.

the door open. He had 4/- in his pocket which had previously been in the pocket of Eleanor Towne who lived in the house. Ashton said that he had found the money on the floor by the door and on this occasion was found guilty of felony only and branded. Two years later John Key, finding his outdoor broken and three or four shillings missing from his wife's pocket, thought immediately of Ralph Ashton, knowing him "to have beene formerly guilty of the like fact". Key taxed Ashton who confessed and gave Key's wife 10d, promising the balance by Saturday week, but Key caused Ashton to be apprehended. On this occasion Ashton was convicted of burglary.<sup>71</sup>

Traps were set or a watch kept on occasions but this was rare. John Doncklin, having found his barn door open on two occasions, hired Thomas Parker to watch the barn and the following day Parker saw the door being unlatched and asked the thief who he was. The thief asked Parker to say nothing but to let him go but Parker had recognized him as Thomas Bell and reported to his master. Bell, however, was acquitted: he seems not to have "broken and entered" and the amount of grain taken was small.<sup>72</sup> Being found in possession of stolen goods might be sufficient cause for a charge to be brought but would not always secure a conviction. According to his own deposition, Thomas Allen

found a box or cabinett under ye Minster walls and as he was goeing away with ye said Cabinett he mett some soldiers whereupon he sett downe ye said Cabinett and ye said Soldiers told this Examinant he had broke some house and stolen ye said Cabinett whoe answered them yt he found ye same And afterwards carryed the said Cabbinett to Mr Bower's being informed it was his.

The soldiers had some reason for their suspicions. Allen was seen at

-----  
71. PRO. ASSI., 44/17; 44/19; 45/9/2 and 45/10/1.

72. PRO. ASSI., 44/19 and 45/16/3.

3 a.m. and when stopped, dropped the cabinet and as the soldiers helped him to put papers back in it they saw him trembling. Mr. Bower's servant, Jane, reported the theft and deposed that she believed the goods to have been stolen by Allen because they were found in his possession.<sup>73</sup>

#### NON FELONIOUS BREAKING AND ENTERING

This group of offences divides into two sub groups. The smaller consists of twenty eight persons (fourteen in each court) accused of breaking and entering and committing an assault. The 1670s saw the majority (eighteen) of these offences and was the only decade that saw any bills (two of them) ignored. It was not an offence committed by large numbers of persons acting together, the average number of persons per indictment being 1.6. Eleven labourers were indicted, seven tradesmen/craftsmen, seven yeomen, two husbandmen and one gentleman but no women. No defendant was apparently related to his victim and women formed almost 50% of victims. When convicted defendants were fined; in all save one instance the fines ranged from 2/6d to 13/4d, but Richard Kirchison was fined £10.<sup>74</sup>

More significant in numbers were those charged with breaking and entering and taking goods. In total 155 persons were so charged at the Assizes and 119 at Quarter Sessions. When those charged more than once are omitted the numbers fall to 135 and 110 respectively. Slightly more indictments are multi-handed with the average number indicted per indictment at Assizes being 2.1 and at Quarter Sessions

-----  
73. PRO. ASSI., 44/40 and 45/16/3.

74. WYRO., 4/9 fol 186.

1.7. The Assizes saw most defendants in the 1660s, but the 1670s saw a similar number and at Quarter Sessions the 1670s saw the most defendants. In both courts these two decades saw 57% of all those charged. At Quarter Sessions the numbers discharged by a grand jury were small - only six persons in all, four of them in the 1690s. At Assizes the numbers were higher; in total 31% of defendants were dealt with in this way, and in the 1660s the figure was 37%. Labourers form the largest single group of defendants, but not the majority and yeomen account for over a quarter. Women make up less than 10% and in only two cases do they act without a man also being involved.

The premises broken were varied. As well as houses shops, barns, orchards and a coal pit were included. The most commonly taken goods were household items which accounted for 42% of cases. Other items varied but were taken in only a small number of cases each. Of these cattle, clothes and wood or hay were the most frequent at about 9% each. One case involved deeds (again not capable of being stolen), when Jeremy, Thomas and Paul Widdopp and Peter Hall of Stansfield broke the house of John Widdopp and took "assurances of the estate". This was probably an intra familial squabble over rights to land.<sup>75</sup> For those convicted fines ranged from 2d to £1 - an indication that these were small scale offences treated without undue severity.

#### DAMAGING PROPERTY

In this group of offences are two of very different seriousness.

-----  
75. WYRO., 4/10 fol 68.



Arson was "an offence of very great malignity" according to Blackstone both because it resulted in the absolute destruction of property and because it threatened the public at large.<sup>76</sup> It was not a common crime in Yorkshire; thirty three persons were charged with it, twenty six of them at the Assizes.<sup>77</sup> With so small a number chronological fluctuations mean little, but for what it is worth three persons were charged in the 1650s, four in the 1690s, eight in the 1680s, nine in the 1660s, and eleven in the 1670s. In six of the twenty six indictments more than one person was charged - for example James Littlewood, Jane Croysdale and Ralph Holroyd were, in addition to being charged with murder, also charged with firing the house of Leonard and Susanna Scurr.<sup>78</sup> Only two bills were ignored at Assizes, but five were at Quarter Sessions and one of the remainder was transferred to the Assizes. This suggests that the five which were ignored were very minor matters and that on the whole arson, as a serious crime, was usually dealt with in the higher court. It seems to have been another of the crimes in which women played a more significant role than usual.<sup>79</sup> Thus of the thirty three persons charged fifteen, almost half, were women. Their victims though were usually men, not apparently related save in the case of Margery Turner who apparently attempted to set fire to her husband's house (and him?) and was committed to the Assizes from Quarter Sessions.<sup>80</sup> In the only instance where a woman attempted arson against another

-----  
76. Blackstone, Commentaries, vol. 4, pp. 220 - 221.

77. In Essex the number of arson charges was similarly small, only nine, of whom only one, a man, was convicted, Sharpe, Seventeenth Century, pp. 160 - 161.

78. PRO. ASSI., 44/27.

79. See for a suggestion that arson prosecutions rose, replacing falling witchcraft accusations: Thomas, Religion and the Decline of Magic, pp. 531 - 534.

80. WYRO., 4/10 fol 11.

woman, that of Elizabeth Vevers, the bill was ignored though at the same sessions Elizabeth was accused of stealing.<sup>81</sup> Six defendants were convicted and five acquitted by the petty jury but what happened to those convicted is not known.

The offence of damaging property, analogous to the modern day criminal damage, was varied and in some ways strange. Forty four individuals were indicted at the Assizes and fifty seven at the Quarter Sessions, although the tendency towards multiple charges here produced respective totals of seventy one and fifty three prosecutions. The 1670s saw most prosecutions (fifty one) followed by the 1680s and then the 1660s with the 1690s seeing only seven persons charged. Overall 46% of Assize bills were ignored and 15% of Quarter Sessions ones.

Some of the actions charged seem more analogous to conscious popular action than to straightforward attacks on property. For example Francis Foster and John Geldart and Thomas and Christopher Foster, all West Scafton yeomen, were charged with assaulting and damaging horses and oxen drawing carts loaded with freestone belonging to Francis Lucas in 1671. Such a case may well be connected with disputes over rights to quarry and carry away such stone, as might that of John Rhodes who damaged a quick-set hedge forty yards in length to the detriment of Gervase Hatfield.<sup>82</sup> On the other hand there was unlikely to have been such a motivation behind John Haigh's stabbing to death of a black mare belonging to John Orton, nor in the actions of William Antrobus and Daniel Clough of Halifax who damaged

-----  
81. WYRO., 4/6 fols. 113 and 116.

82. PRO. ASSI., 44/19 and 44/31.

several parcels of linen cloth belonging to James Wallace, Hugo Aking, William Walker and Edward Fargison, nor in the case of Richard Jepson, who was charged, in effect, with permitting his dog to worry sheep belonging to Walter Calverley.<sup>83</sup>

#### FRAUD AND EXTORTION

A total of 228 persons were charged with these two offences, ninety six at the Assizes and 132 at Quarter Sessions, but when those charged more than once are omitted the totals fall to eighty seven and eighty four respectively. Once again the 1660s saw most prosecutions, sixty five in all, and the highest rate of bills ignored at 17%, compared to an overall percentage of 9. Women and husbandmen are poorly represented among defendants, accounting for only 2.5% each. The other four categories of occupations are fairly evenly spread from gentlemen who make up 20% of defendants to labourers who make up 26%. Gentry involvement in this offence is therefore significant suggesting that many of these cases arose where the better off were entrusted with fairly large sums of money collected for public purposes and misappropriated by them.

The offences perpetrated were many and various. Samuel and Ruth Wood and Thomas Brent seem to have threatened to expose an affair that Lionel Copley was having with Ruth Wood in a letter sent to him, presumably unless he paid up. William Marshall pretended to be a coroner in relation to a view of the body of Thomas Arduis; and Robert Wilkinson of Bridlington Quay deceived the searcher of ships about

-----  
83. PRO. ASSI., 44/23; WYRO., 4/14 fols 33 and 34 and 4/13 fol 213.

customed goods aboard his boat and attempted to bribe him with £4 and two chalders of coal. It appears that he had on board two tons of lead intending to transport it overseas.<sup>84</sup> Other frauds were more straightforward involving the misuse of monies intended for specific purposes, such as Robert Watkins who misused £11 meant for bridge repairs or Nicholas Moore who failed to pay over the poor prisoners' monies.<sup>85</sup> Or those cases where cheating at cards or dice was alleged as with William Barker and Robert Keblewhite, or selling for example, stone rings as diamonds, as with William Lucy and William Ackton.<sup>86</sup> The extortion cases are less interesting, usually involving the exaction of fees or tolls either by officials or by persons pretending to be so.

#### FORCIBLE ENTRY AND FORCIBLE DISSEISSIN

A further group of offences included in the category of those against property are those, in Blackstone's phrase, "injuries to real property", of which he distinguishes six types, i.e. dispossession of the freehold; dispossession of chattels real; trespass; nuisance; subtraction and disturbance. Of these, for all of which real actions lay in the civil courts, we are most concerned with trespass. This Blackstone defines as "an entry on another man's ground without a lawful authority, and doing some damage, however inconsiderable, to his real property".<sup>87</sup> These offences are normally placed by historians in the category of offences against the peace and in that all offences breach the king's peace, that these are usually charged

-----  
84. PRO. ASSI., 44/14; 44/16 and 44/17.

85. PRO. ASSI., 44/7 and 44/19.

86. PRO. ASSI., 44/42 and 45/13/1.

87. Blackstone, Commentaries, vol. 3, p. 209.

as "contra pacem" and that they commonly involve more than one individual there are arguments for such a classification. Nevertheless the essential ingredient of the offence was an attack on the real property of another, rather than, as in theft, on personal property. But these offences, though they have some similarities to the possibly communally motivated acts of illegal assembly, are frequently obviously small scale actions involving an attempt to gain economic advantage for the perpetrator or perpetrators.<sup>88</sup>

The offences involved large numbers of people, over 1,200 in all, and they were fairly evenly divided between the two courts, 699 persons being prosecuted at Quarter Sessions and 588 at the Assizes. When the persons charged more than once are omitted the total falls to 1,075, 567 at Quarter Sessions and 539 at the Assizes. Taking both courts together the pattern over the period was for most offenders to be charged in the 1670s and 1680s, about 28% in each decade. The 1660s saw 22% and the 1690s 15% with the 1650s seeing fewest prosecutions. The pattern in the two courts was not the same, for at Assizes the busiest decade after the 1670s was the 1660s and then the 1680s, while at Quarter Sessions the busiest decade was the 1680s followed by the 1670s and then the 1690s. These were offences which were often committed by groups acting together. One case involved twenty defendants, but most multiple indictments charged between three and

-----  
88. In his discussion on Essex forcible entries and disseissins, placed among riots and popular disturbances, Sharpe makes a similar point, noting that legal theory accepted a minimal amount of force as necessary to found an accusation, and that many were probably connected with, or tactical moves in, civil litigation over ownership or possession of land: Seventeenth Century, pp. 72 - 74. In Essex, however, the numbers prosecuted were small - less than two hundred in the sixty years studied by Sharpe, and the level of prosecution showed a marked decline in the 1660s and 1670s.

five persons, and almost half charged only a single individual. Nevertheless the average number of persons charged on each indictment was 2.5, less than half the average of those charged per indictment with unlawful assemblies.

The proportion of bills ignored was similar in both courts, 22% at the Assizes and 23% at Quarter Sessions. For each court the busiest decade saw the highest rate of ignoramus verdicts, 25% at the Assizes in the 1670s and 34% at Quarter Sessions in the 1680s.

The status of over one thousand defendants is given on indictments, and although labourers form the largest group of defendants at 38%, they are followed fairly closely by yeomen at 30%. Indeed at the Assizes yeomen, at 39% of defendants outnumber labourers at 35%. For the other occupational or sexual groups women and tradesmen/craftsmen make up over 9% each, gentlemen 7%, (more at Assizes than at Quarter Sessions) and husbandmen 6%. The role of women in these offences is particularly passive, for only six acted alone and two others acted with another woman. In all the other cases women were acting in groups in which men were also present.

Once again the indictments appear only to indicate the status of victims when it was high. Thus seven peers or wives of peers are alleged to be the victims of these offences, as are fifty nine other men of the rank of gentleman or above. Thirteen widows are mentioned and three other women, the wife of George Aislaby, Esq., and Elizabeth and Jane Mallory who were the daughters of John Mallory of Studley.

The nature of the offence can be seen from the fact that many of the indictments refer to the consumption by animals belonging to the defendant of grass or hay belonging to the victim, or to the taking of items such as wood, stone, hay and turf. These are the goods frequently taken in the non-felonious asportations to which these trespasses are similar.

#### POACHING AND GAME OFFENCES

Poaching, in common parlance trespassing in order to catch or kill game or fish, has not figured greatly in historical studies of crime, although it is the subject of more general work on the eighteenth century and of a detailed monograph. The widely accepted view of the game laws is that they preserved a sporting monopoly to the class responsible for their enforcement. Hence we find in a "celebrated case in the 1820s, a Hampshire farmer named Richard Deller was convicted by the Duke of Buckingham on the information of the latter's gamekeeper and the testimony of another of his servants - all in the Duke's own drawing room".<sup>89</sup>

The laws themselves were complicated. Property qualifications for the hunting of game were not new even in the early seventeenth century when statutes provided for different qualifications for different kinds of animal, for example after 1605 to use guns etc. to hunt deer and rabbits a man needed lands of £40 annual value. In 1671 there was a major revision of the game laws with the property qualification being increased to lands of inheritance of £100 annual value, fifty

-----  
89. P.B.Munsche, Gentlemen and Poachers: the English Game Laws 1671 - 1831 (Cambridge, 1981), p. 76.

times the qualification required to vote and, Munsche suggests, deliberately designed to exclude the 'moneyed classes' from sport. Munsche argues that by the late seventeenth century a distinction was emerging between deer and rabbits on the one hand and game, such as hares, partridges and pheasants, on the other. Thus he says that in 1671 deer, and in 1692 rabbits, were dropped from the list of animals the hunting of which was protected by a property qualification. He attributes this change in the status of rabbits and deer to the increasing practice of enclosing deer parks and rabbit warrens and says that the law came to recognize rabbits and deer as private property, not ferae naturae, and therefore capable of being stolen. Munsche states that "those who unlawfully took these animals (i.e. rabbits and deer) were treated as thieves", in contrast to the game poacher who "risked no more than a £5 fine or three months in prison".<sup>90</sup> As part of the game code enacted in 1671 though not originating then, the possession of guns, snares, nets and dogs for hunting rabbits, deer and game was also prohibited other than by qualified persons.

As for the pattern of prosecutions Munsche suggests that game offences, that is those not involving deer or rabbits, were, until well into the eighteenth century, tried mostly at Quarter Sessions; and despite the passage of the 1671 Act, it was not until the late 1670s and early 1680s that prosecutions increased. After a few years the number of prosecutions at Quarter Sessions fell and continued to decline until the late 1730s, by which time most offenders were tried out of sessions. Munsche suggests that the "sharp increase" in

-----  
90. Munsche, Poachers, Appendix, p. 180 and pp. 5 and 16 - 19.



prosecutions in the late 1670s and early 1680s "was related to the purge of Whigs from the commission of the peace in the wake of the Exclusion Crisis", not because there was a specifically "Tory" attitude towards the game laws but because of the Tories' "passion for social order".<sup>91</sup>

#### Poaching in Yorkshire

We shall deal here with all poaching offences not simply with those relating to game as defined by Munsche, though those will be separated in order to draw comparisons. Four main offences can be distinguished, possessing guns or snares without being qualified; possessing dogs without being qualified; chasing deer; and chasing other animals and fish. In total 329 persons (310 if multiple offenders are excluded) were charged with one or other of these offences and not usually with more than one, 104 at Assizes and 225 at Quarter Sessions. These charges were contained in 169 indictments. Few offenders were charged in both courts, though one, Christopher Wise, was charged with killing a buck of the Duke of Buckingham at the Assizes in 1680 and with at Quarter Sessions in the same year. The greatest concentration of offences was in the 1660s, and that was due to a large number of Quarter Sessions prosecutions in that decade. The Assizes saw most prosecutions in the 1690s with the 1660s and 1670s having seen almost equal numbers and the 1680s and 1650s considerably fewer charges. The large number of Quarter Sessions prosecutions in the 1660s was followed by a drop but still high numbers in the 1670s and a rate half that of the 1670s in the 1680s

-----  
91. Munsche, Poachers, p. 86.

and 1690s. There were differences in the pattern of prosecution between the offences too: few people (only fifteen in all) were charged with having guns while unqualified, but eight of these charges occurred in the 1680s. Unqualified possession of snares or dogs was more common, accounting for sixty eight cases in all, of which thirty one were prosecuted in the 1690s and twenty three in the 1670s, leaving the remainder divided among the other decades. Both poaching and chasing deer saw most charges being brought in the 1660s, seventy six and twenty seven respectively, but whereas chasing deer fell in both the following decades and no prosecution was brought for the offence in the 1690s, poaching was charged as frequently in the 1690s as in the 1670s (about half the 1660s level) and considerably more frequently than in the 1680s.

Overall 14% of Quarter Sessions bills and 15% of Assize bills were ignored by the grand jury, but again these figures hide large differences in the rate for the different offences, which ranged from under 3% of Assize bills for deer poaching to 70% of Assize bills for unqualified possession of dogs or snares. The Quarter Sessions fluctuations were not so marked, ranging from 7.3% ignored for poaching (similar to the rate at the Assizes for this offence) to 34% ignored for deer poaching.

Munsche's suggestion of a rise in the 'pure' game offences in the late 1670s and early 1680s followed by a decline soon after does not help to explain the Yorkshire figures. 10<sup>4</sup> offences come into his category<sup>92</sup> and forty four of these were prosecuted before 1674 and

-----  
92. His "pure" category excludes deer, rabbits and fish.

forty in the 1690s. Neither do the printed North Riding Quarter Sessions records give the picture Munsche suggested, even though he himself used them. Thus the twenty five years prior to 1674 account for thirty three game offences, the next fifteen years for twenty five, but the next fifteen years, i.e. from 1690 to 1704, for fifty. The annual rate of offences thus rises from 1.3 before 1674<sup>93</sup> to 1.7 between 1675 and 1689 and then to 3.3 between 1690 - 1704. Nor is Munsche's theory of a connection between the enforcement of the game laws and a 'Tory' bench borne out, although at first glance there is some evidence to suggest this. At the Epiphany sessions at Richmond in 1688 an order was made for constables to make returns of those

that keep or have for themselves... any greyhounds, lurchers, hounds, setting dogs, nets or any other dogs or engines for the taking... of any such game... together with the yearly value of such estate... to th'end such persons as are not qualified by law to keep greyhounds, etc., may be proceeded against.<sup>94</sup>

This it might be thought from the date alone was a 'Tory' initiative, and this view is strengthened by a knowledge of the North Riding bench in this period, for of the eight justices attending the sessions at which the order was made, only one remained in the commission after 1690 and only two appear to have been in the commission before 1687.<sup>95</sup> The sequel, however, is revealing, for the order does not appear to have been efficacious or at least not at the time. In contrast, 1692 saw a large increase in prosecutions when some twenty persons were charged with unqualified possession of dogs

-----  
93. It may be noted that for the West Riding between 1611 and 1642 the rate was 1.2.

94. North Riding Sessions Records, ed. Atkinson, vol. 7, pp. 85 - 86.

95. See Glassey, Justices of the Peace, pp. 71 - 77 for the reworking of the commissions of the peace by James II in which 245 justices were put out and 498 new men (over half Roman Catholics) put in. Of the eight justices mentioned at least two had been presented only a few years previously for non attendance at church.

North Riding Sessions Records, ed. Atkinson, vol.7, p. 47.

or nets. But the justices who dealt with these men were not the 'Tories' of 1688. Though some may have had Catholic sympathies (in the North Riding not perhaps surprising), ten of the sixteen had been appointed immediately after the Glorious Revolution and a further five had been on the bench since at least 1682.

Once again labourers are the persons most often indicted, 108 being so described. It is noteworthy however that of those thirty persons accused at the Assizes of hunting deer, not one is described as a labourer, but eight were gentlemen and fifteen yeomen. Just as it was only those of high social status who were legally permitted to hunt deer, so too even illicit deer hunting appears to have been reserved for those of higher social status, for yeomen and tradesmen/craftsmen formed almost 20% each of all defendants accused of poaching and gentlemen 6.7%. Those who had their deer, rabbits or other game poached were, of course, from the very highest ranks of society, including the Dukes of Buckingham and Norfolk.

Although some men poached with others, gangs do not seem to have been common. There were though three groups of twelve, eight and thirty six men charged with poaching 1,000 rabbits, valued at £100. in Pickering in 1661. The circumstances of this venture remain obscure. Only one man featured in more than one of these indictments but there were elements of riot involved in this incident: indeed the Quarter Sessions orders appear to consider the incident to have been such and the men were accused not only of poaching but also of refusing to obey an order by a J.P. to disperse. The rabbits poached belonged to the Queen and it may be that this incident is more properly to be seen as organized opposition to the creation of warrens. The outcome

was that the men appear to have been fined but that the fines were later respited.<sup>96</sup>

## CONCLUSION

In total 4,100 person were prosecuted for felonious offences against property and 2,900 for non felonious ones and thus the category of offences against property accounted for over 40% of all crimes prosecuted in the two courts and this fact shows that, in Yorkshire, as elsewhere, this was the largest category of prosecuted offences. This suggests that the pattern of prosecution in Yorkshire was similar overall to that in other counties and Sharpe's figures for Essex where just under 40% of prosecuted offences were property crimes would support that contention.<sup>97</sup> Yet it should be stressed that the findings in this study lead, not so much to a reiteration of the predominance of prosecution for offences against property in the early modern period, as to an emphasis on the need to differentiate between the types of offence. Thus whereas all property offences account for over 40% of prosecuted crime in Yorkshire, property felonies account for only 25% of prosecuted crime. If this figure is then compared with that for Essex (for all of Sharpe's property crimes were apparently felonies) the difference between Yorkshire and Essex is striking. Serious property crime in Yorkshire formed only about a quarter of all crimes prosecuted in the courts of Assize and Quarter Sessions. Furthermore it is necessary to bear in mind the underrepresentation of Quarter Sessions prosecutions in so far as a sample of them only has been used in this study. Using crude

-----  
96. North Riding Sessions Records, ed. Atkinson, vol. 6, pp. 30 and 50.

97. Sharpe, Seventeenth Century, p. 183.

multipliers it is possible to argue that serious property crime, that is felonious offences against property, prosecuted in the two courts amounted to less than 20% of all crimes prosecuted there. Serious property crime was by no means the most substantial part of the business of these two courts in the period. It is thus possible to see how crucial is the distinction that has been made in this thesis between trespassory and felonious asportations and to see how the failure to recognize the legal differences familiar to the jurists of the seventeenth century has obscured the reality of crime patterns then.

Bearing in mind what has been argued about the comparative sophistication of legal theory and practice in the period it would be likely that a distinction would emerge in the forum chosen for the prosecution of serious and less serious property offences. That is indeed the case and it can be seen that the serious property offences, that is the felonies were more likely to be tried at the Assizes than at Quarter Sessions. Thus whereas 70% of the property crimes tried at Assizes were felonies, only 40% of those prosecuted at Quarter Sessions were.

Table 20 sets out the pattern of prosecution by decade and offence at the Assizes and Table 21 at Quarter Sessions. One further point of importance to emerge from this study relates to the chronological incidence of misdemeanour and felonious property offences, and the prosecutions in the two courts. The gap between the numbers of misdemeanours and of felonies narrowed significantly in the period which has been studied so that whereas in the 1660s the ratio was ten misdemeanours prosecuted for almost every seventeen felonies, by the

1690s the proportion of felonies had fallen and the ratio was approximately ten misdemeanours for every eleven felonies. At the same time the proportion of property crime prosecuted at Quarter Sessions compared with Assizes likewise increased. In the 1660s two offences were prosecuted at Quarter Sessions for every three prosecuted at the Assizes; by the 1690s the ratio was about equal. What appears to be happening is that a greater proportion of prosecutions were being brought for the less serious property offences and at the same time the venue of prosecution was altering. It is most unfortunate that this pattern cannot be shown over a longer period, for the trend towards prosecution at a lower level of the court hierarchy is a phenomenon that has been noted specifically in relation to poaching offences, but it appears that it was probably not confined to them. It was not simply, however, that defendants were being prosecuted more in the lower courts with the obvious benefits to the prosecutor in terms of cost and speed, but the offences being prosecuted were the more minor ones for which the penalties to be imposed were fines. Defendants were not being deprived of the opportunity of having a puisne judge pass sentence of death upon them: they were not facing a death penalty at all.

TABLE 20

OFFENCES AGAINST PROPERTY OVER TIME  
AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Theft	305	483	525	400	209	1922
Asportation	1	56	74	31	29	191
Robbery	73	43	51	23	20	210
Pickpocket	1	1	15	9	5	31
Burglary/hsebreak	82	211	199	112	118	722
Non felonious break and enter	17	52	52	32	16	169
Arson	3	4	10	7	2	26
Damage	11	4	40	13	3	71
Disseise	46	158	208	114	62	588
Fraud/extort	16	31	23	19	7	96
Poach	11	22	23	15	33	104
Total	566	1065	1220	775	504	4130

TABLE 21

OFFENCES AGAINST PROPERTY OVER TIME  
AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Theft	144	344	272	150	151	1061
Asportation	64	59	109	105	108	445
Robbery	12	31	10	11	6	70
Pickpocket	1		5	2	1	9
Burglary	5	28	26	8		67
Non fel break	11	13	56	31	22	133
Arson		4	1	1	1	7
Damage	4	18	7	24	4	57
Disseise	98	116	135	226	124	699
Fraud/extort	12	33	30	30	27	132
Poach	43	94	65	34	32	268
Total	394	740	716	622	476	2948

Overall the 1670s saw prosecutions peak for both felonies and misdemeanours, but thereafter prosecutions for felony fell more sharply than for misdemeanour, suggesting that there may have been a change in emphasis in prosecution. For the 1680s and 1690s therefore the numbers prosecuted at Assizes and Quarter Sessions are closer



than they were in the 1660s and 1670s, when Assize prosecutions significantly outnumbered Quarter Sessions ones. The 1660s saw the highest proportion of bills ignored, having risen significantly from the 1650s and declining steadily thereafter, but once again this statement masks differences between the courts and the types of offence. Thus for felonies the 1660s saw almost 18% of bills ignored, compared with 7% ignored in the 1680s and 8% in the 1650s and 1690s. For misdemeanours however the 1680s saw 25% of bills ignored while the 1660s and 1670s saw 19% and the 1650s and 1690s slightly less. There certainly appears nevertheless to be a correlation between the rise in the numbers of those prosecuted in the 1660s and 1670s and the rise in the rate of bills ignored.

## CHAPTER FIVE

### OFFENCES AGAINST THE AUTHORITIES

Offences against the authorities formed a varied category, ranging from the most serious, treason, to contempt of court and seditious words. The category is a large one, and one that was prosecuted more at the assizes than at Quarter Sessions, perhaps not surprisingly considering the nature of many of the offences. Thus about 20% of the offences prosecuted at the Assizes fall into the category of those against the authorities, but only about 7% of those prosecuted at Quarter Sessions. It is difficult to compare its occurrence with that in other counties for it seems that either very little work has been done on it or that other counties had only a negligible proportion of such offences. Sharpe, for example in his book on Essex, does not mention treason, coining, perjury, forgery, or escapes.<sup>1</sup> Similarly Beattie's book on Surrey is confined to offences against property and the person and although he suggests that there are arguments for including coining and forgery in the category of offences against property only deals with them cursorily.<sup>2</sup> Herrup mentions seditious words, coining, forgery, perjury and rescue as constituting no more than 2% of complaints in East Sussex, but otherwise hardly discusses them.<sup>3</sup> Both treason and the religious offences, also included in this category, could form studies in themselves and much work has been done on the law of treason. This has been mostly by those interested in the law, and indeed the law of treason was well developed and

-----  
1. Sharpe, Seventeenth Century, passim.

2. Beattie, Crime and the Courts, pp. 191 - 192.

3. Herrup, Common Peace, p. 27.

complicated, a fact which may have put some historians off a discussion of the incidence of the crime. It is perhaps interesting to note that it is widely accepted that the law of treason was technically complex by this period, and the differences between the complexity of the law there and generally accepted view that the remainder of the criminal law still lingered in a "dark age" has been attributed to, for example, the non involvement of lawyers in most criminal trials. However, it is one of the contentions of this thesis that the ordinary criminal law was by no means as primitive as is sometimes suggested and the difficulty of resolving the difference between the sophistication of the criminal law in relation to a single offence and its backwardness in relation to all others does not therefore arise. Ignoring the treasonable offences would be wrong for it would give a false picture of the patterns of crime in late seventeenth century Yorkshire. Coinage offences, many of which were treasonable, formed a large group by themselves and at least twenty two persons were executed for treason in the period, a sizeable proportion of all executions.

## TREASON

The crime of treason is the most obvious offence against the authorities. Treason had been defined in statute from 1352 and the offence had been elaborated in case law since then.<sup>4</sup> There is dispute among historians about whether the passage of the statute was motivated by legal or political designs, i.e. whether it was "to establish a clear distinction between high and petty treason and so

-----  
4. Under 25 Edw 111 c. 2.

to settle the rules about forfeitures", or "to prevent the recurrence of the reckless charges and arbitrary punishments which had ruined so many noble families".<sup>5</sup> The statute in essence merely codified the law relating to existing common law treasons; subsequently case law elaborated on both common law treason as well as on the statutory definition. The treasons relating to the king's person included compassing or imagining the death of the king, queen or heir, together with violating the king's companion, his eldest daughter or the wife of his eldest son. Those relating to his regality included adhering to the king's enemies within or without the realm and levying war against the king. In addition the killing of various officials, particularly the king's judges while they were executing their office, was made treason.<sup>6</sup> It has been suggested that the Tudor period was characterized by "paranoia" which led to the numerous accusations of treason.<sup>7</sup> This is perhaps a rather exaggerated view, but certainly it would seem that the Hanoverian regime was considerably less nervous than the Elizabethan regime had been. By the end of the period procedural safeguards were being introduced into the law of treason. The statutes 7 and 8 Gul.111 c.3 provided, for example, that the accused was to receive a copy of the indictment against him five days before the trial; that he was to be allowed counsel; and that the case against him had to be corroborated by two lawful witnesses. In fact this last provision had long been

-----  
5. See discussion in J.G.Bellamy, The Law of Treason in England in the Later Middle Ages (Cambridge, 1970), pp. 59 - 61 from whence the quotations (by M.McKisack and M.V.Clarke respectively) are taken and passim.

6. It was this statute that also made treasonable certain coining offences, but for this see below.

7. L.B.Smith, Treason in Tudor England (London, 1986), p. 35.

the law but its practice had been obscured by Tudor treason trials.<sup>8</sup>

By the Tudor period the law of treason was already complex and the judges were construing the 1352 statute in such a way as to create what were in effect new offences particularly on the twin lines of compassing the death of, and levying war against, the king.<sup>9</sup> By 1663 it was established that an indictment for the levying of war required evidence of an overt act; that a bare conspiracy to levy war did not amount to such an overt act; and that the overt acts on which it was intended to rely must be expressly alleged in the indictment. These provisions were to raise some difficulties when it came to the prosecution of the Farnley Wood plotters.<sup>10</sup> Kelyng J described how he together with Chief Justices Hyde and Bridgeman, Justices Turner and Archer and the Attorney and Solicitor General

were informed that no Printing, Writing or Preaching could be proved and it would be impossible to lay such words as could be fastned on them, and to prove that they spoke them; but in general we were informed that their consulting and meeting together and agreeing to raise war would be proved; and thereupon it was resolved that the best and safest way to proceed against them was to indict them for compassing and imagining the death of the King, and to lay the meeting, consulting and agreeing to levy war as one Overt Act.

This twisting was not a course of which Hale approved and indeed there had been earlier opinions against it.<sup>11</sup> This is an obvious

---

8. L.M.Hill, "The Two-Witness Rule in English Treason Trials: Some Comments on the Emergence of Procedural Law", American Journal of Legal History, 12 (1968), pp. 95 - 111.

9. See J.G.Bellamy, Tudor Law of Treason (London, 1979), p. 12, where he quotes J.R.Tanner's estimate that between 1485 and 1603 sixty eight treason statutes were enacted.

10. See below for an account of these men.

11. Kelyng, Report of Divers Cases, p. 20 and Hale, Pleas of the Crown, vol. 1, p. 122. In the sixteenth century it seems that the judges had accepted that compassing to levy war, which was not treasonable under the 1352 statute, should be prosecuted, for it was with that offence that Nicholas Throckmorton had been charged. The judges attempted to justify its laying, but Throckmorton was acquitted: Bellamy, Tudor Law, pp. 55 - 62; 128 and 224.

example of the subtleties of the law of treason and of the level of discussion it could provoke among the judges. Treason was, of course, an exceptional case, but there seems no reason why the judges should not equally have discussed the finer points of indictments for other offences and indeed in the case of the indictment of Nathaniel Reading for murder mentioned earlier something similar can be seen.

From the surviving indictments it appears that nineteen persons, all except two men, were indicted for the offence in Yorkshire during the period. However from the depositions the names of a further ten emerge and this figure includes neither the twenty one men convicted and hanged, and others charged following the Farnley Wood plot, nor Sir Miles Stapleton, Sir Thomas Gascoigne and Sir Henry Slingsby, probably the best known of the Yorkshire traitors. From depositions and other sources therefore we can see that well over a hundred persons faced prosecution for treason, and that although the numbers charged are still small by comparison with, say, theft, they are by no means negligible, accounting for around 1% of all persons prosecuted at the Assizes. The trials of the more notable gentlemen will be dealt with individually but four of the remaining trials concerned gentlemen and five yeomen. Some of the detail of the charges appears strange. Richard Bickerdike for example was charged with having unlawfully declared he had power to summon freeholders to suppress sequestrators, excise and tithes, and with having assembled people to put the plot into effect at Topcliffe in July 1653. Raine states that this case is "difficult to explain" and despite the existence of the depositions it certainly is. On the other hand it is plain that the depositions relating to Stephen Thompson and James Calvert refer simply to the travel abroad in 1683 of several persons

while a proclamation was in effect for the arrest of possible plotters.<sup>12</sup>

Naturally enough the better reported treason cases are the more interesting ones. Sir Henry Slingsby of Redhouse near Knaresbrough had fought for Charles 1, had refused to subscribe to the Solemn League and Covenant and had accordingly been classed as a malignant and not permitted to compound. He had organized a rising in Yorkshire in 1655 for which he was charged, but the judges effectively refused to proceed against him for treason and in the summer of 1655 he was merely fined for riot. He was however imprisoned in Hull by Cromwell and it was as a result of his sojourn there that the next charges were brought against him.<sup>13</sup> In May 1658 he was tried for high treason on four counts: that he with Robert Gardiner, Edward Chapman, William Smith and others did "combine together and plot and contrive to betray and yield up the said Garrison of Hull unto Charles Stuart"; that he did "endeavour to stir up Mutinies within the said Garrison"; that he did "endeavour to stir and raise up Forces against Oliver Lord Protector"; and that he did "declare, publish and promote the said Charles Stuart to be King of England" etc. Slingsby was tried under an Ordinance<sup>14</sup> which provided for no jury and argued strongly for his right to a jury trial. He was alleged to have offered various

-----  
12. Depositions, ed. Raine, pp. 59 - 63 and 257 - 259. PRO. ASSI., 44/5 and 45/13/3.

13. S.F.Black, "Coram Protector: The Judges of Westminster Hall under the Protectorate of Oliver Cromwell", American Journal of Legal History, 20 (1976), pp. 32 - 63.

14. This was presumably the Act declaring what Offences shall be adjudged Treason of 14 May 1649, although jury trial is not specifically excluded in that Act: C.H.Firth and R.S.Rait, eds., Acts and Ordinances of the Interregnum: 1642 - 1660, 3 vols. (Holmes Beach, Florida, 1972), vol. 2, pp. 120 - 121.

officers of the garrison commissions or land on behalf of Charles Stuart, and in his defence said merely that he had been speaking in jest. He was convicted and beheaded.<sup>15</sup>

The Farnley Wood Plot was more serious. By 1663 discontent among non conformists and supporters of the old regime had increased, particularly with the passage and enforcement of the Clarendon Code. The risings in the North were a product of that general dissatisfaction and involved both groups. The plot was fairly well organized with correspondents in London and a network of supporters, but almost from the beginning it had been infiltrated, notably by agents of Sir Thomas Gower, the High Sheriff of Yorkshire. The plan seems to have been to seize York during the Assizes in August 1663, but Gower prevented that by sending in the militia under the Duke of Buckingham and arresting about a hundred of the conspirators at that time. The remainder, however, continued their plotting and agitation until the appointed date for the rising in October. By then the London leaders had attempted to call the whole thing off, and only a few actually assembled, although Gower arrested a further ninety-odd men.<sup>16</sup> Reresby considered the participants to be "some officers of the late Parliament army, and some dissatisfied persons upon account of loosing their Crown and Church lands by the Kings return and dissenters in point of religion," and Gower's actions in encouraging his informers to continue to dissemble until all were drawn in was

- 
15. F.Hargrave, ed., A Complete Collection of State-Trials and Proceedings for High-Treason and other Crimes and Misdemeanours 4th. edition, 11 vols, (London, 1776 - 1781), vol. 2, pp. 278 - 282 and 298 - 301, and J.S.Fletcher, Yorkshiremen of the Restoration (London, 1921), pp. 31 - 52.
  16. J.Walker, "The Yorkshire Plot, 1663", YAJ, 31 (1932 - 1934), pp. 348 - 359; H.Gee, "The Derwentdale Plot, 1663", TRHS, 3rd series, 9 (1917), pp. 125 - 142.



condemned by some "bycaus upon their severall examinations... ther seemd some to be engaged not soe much from inclination as persuasion of those that evidenced against them".<sup>17</sup>

Some of the plotters were sent to London and others to other counties, but in January 1664 Turner, Kelyng and Archer JJ sat in York under a special commission of oyer and terminer to try those accused of treason. The difficulties the prosecution had had in framing charges have already been discussed, and indeed Secretary Bennett having considered the depositions of the prisoners, thought that they only amounted to what they had told one another and doubted the possibility of securing convictions before a jury.<sup>18</sup> Obviously the forethought of the judges commissioned to try the cases in helping to frame the indictments was rewarded and it is perhaps not surprising that twenty two men were convicted and sentenced to death: eighteen were hanged in York, three in Leeds and one was reprieved. About eighty others who had been implicated in the plot were either remanded to the next Assizes, with most spending lengthy periods in gaol, or bound to good behaviour and to take the oath of allegiance. Captain Hodgson, who was said to have obtained his pardon by bribing the Clerk of Assize, was released in 1665, but Theodore Parkinson, for example, was still in gaol in 1668.<sup>19</sup>

A postscript to the rising itself came in the rescue of Captain

-----

17. Reresby, Memoirs, pp. 46 - 49.

18. See reference in Walker, "The Yorkshire Plot", p. 357.

19. PRO. ASSI., 47 /20 fols 127; 157 and 212. From Hodgson's own memoirs it appears that he was actually convicted of misprision of treason and paid the Clerk of Assize the fee of £20 for his pardon: Autobiography of Captain John Hodgson, ed., J. Ritson, Esq. and Sir Walter Scott, 1806, with Addtl Notes by J. Horsfall Turner (Brighouse, 1882), p. 63.

Mason, a former deputy governor of Carlisle implicated in the plot. While he was being sent down from London to York for trial he was "rescued by five men at Ferrybrig... we since understood that one Mr. Blood... was the chiefe of the party." During the rescue two men were killed and an indictment survives charging Mason with murder and Blood and two others with aiding and abetting him.<sup>20</sup>

The Popish Plot and Exclusion Crisis were the occasions for the next spate of treason trials in Yorkshire, orchestrated by Robert Bolron, described as the Northern Titus Oates.<sup>21</sup> Two indictments survive. One charged Sir Francis Hungate, Thomas Gascoigne, Esq, Richard Sherburne, Esq, Richard Yorke, Esq, Stephen Tempest, Esq, Richard Iles and Stanfield with treason in that they compassed the death of the king in May 1679, and the other charged Lady Anna Tempest, Charles Ingleby, Thomas Threng and Mary Pressick with the same offence. These persons were all of prominent Catholic families in Yorkshire and many of them were related. Thus Thomas Gascoigne was the son of Sir Thomas and brother of Anna Tempest. Sir Thomas was also the grandfather of Stephen Tempest and uncle of Thomas Threng and Sir Miles Stapleton. Charles Ingleby's stepsister was married to Richard Sherburn and Francis Hungate's grandmother had been a Gascoigne.<sup>22</sup> As well as the indictments three accounts of this batch of trials are printed in the state trials series. In one Sir Thomas Gascoigne was accused of treason; in another Sir Miles Stapleton; and in the third Mary Pressick and Thomas Threng. The principal witnesses against all the state prisoners were Robert Bolron and Lawrence

-----  
20. PRO. ASSI., 44/16 and Reresby, Memoirs, pp. 69 - 70.

21. See generally on the plot and Bolron's part in it J.P.Kenyon, The Popish Plot (London, 1972).

22. Dugdale, Visitation, pp. 289, 361 and 265.

Mowbray and they were also the witnesses whose names were endorsed on the surviving indictments against the others. The evidence against all therefore was similar. Neither Bolron nor Mowbray seem to have been particularly savoury characters and neither had a good reputation in Yorkshire. Bolron had been steward of Sir Thomas Gascoigne's coal mines since 1674 and a Catholic at that time, and Mowbray, also a Papist, Gascoigne's servant but not "an hired servant" since the same year. Bolron however had fallen out with his master and was being sued by him and threatened with eviction from his house for non payment of rent and there are suggestions that it was only when he realized that he would not dissuade Sir Thomas from these actions that he threatened to harm him. In effect the evidence against the defendants was that money had been sent for the support of priests; that a house near Ripley had been acquired for use as a nunnery; and that they had plotted to kill the king and establish the Roman Catholic religion in England. The only direct evidence of this consisted of Bolron's story that Sir Thomas had offered him £1,000 to perform the deed, and that it had been decided that, if successful Sir Thomas "should be canoniz'd a Saint". Sir Thomas was tried in London on 11 February 1680 and acquitted.<sup>23</sup> In July 1680 the indictment against Lady Tempest et al was tried in York. Although it is not endorsed to that effect in fact the indictment was split with Mary Pressick and Thomas Threng being tried together and Lady Tempest and Charles Ingleby either together or separately. In any event all save Threng were acquitted. Threng was a priest and Reresby thought that "a priest [was] more his guilt than the plot".<sup>24</sup> He was granted

-----  
23. State Trials, vol. 3, pp. 1 - 31; Fletcher, Great Yorkshiremen, pp. 87 - 108.

24. Reresby, Memoirs, pp. 197 - 198.

a temporary reprieve but then executed in October 1680. At the same Assizes Sir Miles Stapleton should have been tried. He, however, objected to many jurors (he wanted the jury that had tried and acquitted Lady Tempest), and a jury could not be impannelled. He was therefore remanded to the next Assizes, and in July 1681 he also was acquitted. Finally in March 1682 Thomas Gascoigne Esq., Richard Yorke, Stephen Tempest, Richard Iles and Stanfield were all also acquitted.<sup>25</sup>

#### RELIGIOUS OFFENCES

In addition to the specific charges of treason brought against Roman Catholics in the 1670s a further twelve persons were charged with the treasonable offence of adhering to the See of Rome. The circumstances behind these prosecutions were the same as those which provoked the charges against the Gascoignes and their connections. Of all those so charged only one, Nicholas Postgate, was executed, though Michael Pickering was also found guilty; the remainder were acquitted.<sup>26</sup>

- 
25. PRO. ASSI., 44/28, State Trials, vol. 3, pp. 79 - 90 and 317 - 327. Sir Miles was not the only one who objected to jurors: Sir Thomas Stringer, the crown counsel, objected to Christopher Tankred "as one that disparaged the Evidence of the Plot, and called his Dogs by the Names of Oates and Bedloe".
26. See generally Bossy, The English Catholic Community and the discussions on recusancy in H.Aveling, Northern Catholics (London, 1966), pp. 301 - 363; H.Aveling, The Catholic Recusants of the West Riding of Yorkshire, 1558 - 1790, (Leeds Philosophical and Literary Society, vol. 10, part 6, 1963), pp. 229 - 256 and J.C.H.Aveling, Catholic Recusancy in the City of York, 1558 - 1791, (Catholic Record Society, 1970), pp. 88 - 112. For a description of Nicholas Postgate's arrest and execution see also R.Challoner, Memoirs of Missionary Priests, ed. J.H.Pollen, (London, 1924) 1969 edition, pp. 547 - 549, and Depositions, ed. Raine, pp. 230 - 232.

Both Catholic and Protestant dissenters in the period faced prosecution for non attendance at church. This offence was punishable under statutes 1 Eliz c.2, 23 Eliz c.1 and 3 Jac1 c.4 by a fine of 1s for each Sunday's absence, payable to the poor and £20 payable to the king if absent for a month together.<sup>27</sup> In the indictments that survive for the offence it is not possible to tell which persons cited were Roman Catholics and which Protestant non conformists, other than by external evidence, and although Raine considers most to have been Catholics, that would produce a figure for Catholicism in Yorkshire significantly above the one which would be generally accepted. It is probable therefore that the indictments include large numbers of Protestants cited for non attendance.<sup>28</sup> The names of all the persons indicted for the offence (many of them consist of hundreds of names) have not been transcribed as they would form a study in themselves and are not the main interest of this thesis. Other studies have paid little attention to religious offences. Sharpe specifically excluded them from his study of Essex, but he does note an overall pattern of a high number of Quarter Sessions presentments in the 1620s followed by a low level of prosecution in the 1650s, increasing thereafter so that by the 1670s the numbers presented were reaching the levels of the 1620s.<sup>29</sup>

No indictments for the offence have survived prior to about 1662. The 1650s, often considered an era of religious persecution by bigoted Puritans was apparently more tolerant of dissent in religious matters

-----  
27. Blackstone, Commentaries, vol. 4, p. 52.

28. Depositions, ed. Raine, p. 136.

29. Sharpe, Seventeenth Century, p. 198. In three years in the 1620s 589 persons were presented at Quarter Sessions and in two Assize sittings in the same decade sixty two persons were presented.

than the Merrie England of Charles 11, though the period did witness sequestration of the estates of notable recusants. Aveling has suggested that "the main legal machinery of repression collapsed in May - July 1642" and it does not appear that it was reinstated until the 1660s.<sup>30</sup> With the restoration of Charles 11 many substantial Catholics had high hopes of an improvement in their position. Many had fought on the Royalist side and now expected their reward. The Cavalier Parliament, however, was not minded to tolerate religious divergence, either by Roman Catholics or by Non Conformists, and before long the Assize judges appear to have taken the initiative in encouraging prosecutions for non attendance at church. Thus in the 1660s thirty eight bills were laid, with only one, and that against John and Katharine Constable of Caythorpe alone, being ignored.<sup>31</sup> The other indictments named many more than two persons each. As has already been stated the details of all persons so charged have not been recorded on the computer but of the lists published by Raine, one contains 763 names and the number of persons indicted in the others ranges from seventy five to almost six hundred. Thus the thirty seven Assize indictments for non attendance at church in the 1660s would, on this basis, have charged around 10,000 persons. Many of the individuals were undoubtedly charged more than once. To take an example at random from Raine, John Harrison, Peter Harrison and his wife, Margaret and George Pinckney, all of Kirkby Hill, were charged in March 1666, in July 1669 and in July 1670.<sup>32</sup> Nonetheless the numbers of individuals involved were substantial and, had the indictments against each been separately considered, would have added

-----  
30. H.Aveling, Northern Catholics, pp. 301 and 317.

31. PRO. ASSI., 44/11.

32. Depositions, ed. Raine, pp. 136; 170 and 184.

significantly to the business of the Assizes. It seems probable, however, that they were not so dealt with, but rather were considered administratively only, with the names of those indicted being proclaimed and attempts made only subsequently, if at all, to collect the fines.<sup>33</sup>

Raine remarks on the small numbers of gentry apparently charged and this certainly seems to be the case. In the one indictment in Raine which has been analysed 763 persons are cited. Of these 350 or 45.9% were women and twenty one (2.8%) were described as gentlemen or above. In addition a further dozen men and women are identifiable as gentry, being mentioned either as the wife of a gentleman or having the same surname and residence as someone so described. Even including these however, and of course elsewhere we have not done so, the proportion of those described as gentry or above rises to no more than 4.3% of all those indicted. Two points need to be made about this analysis. Firstly the high proportion of women defendants, almost 50%, is not surprising: other writers, notably C.Weiner, have commented on the fact that women were more likely to be cited for crimes of conscience.<sup>34</sup> As for the small representation of gentry

-----  
33. It appears to be fairly widely accepted that recusancy fines were not effectively levied. V.Burke in "The Economic Consequences of Recusancy in Elizabethan Worcestershire", Recusant History, 14 (1977 - 1978), pp. 71 - 77, considered that certainly until the early seventeenth century, by which time the government was "less concerned with religion than with money" those fined or imprisoned were the unlucky few and "payments were seldom large or regular". The Nevills of Nevill Holt in Leicestershire seem to have suffered financially as delinquents during the Interrregnum, but, despite convictions for recusancy from 1680 onwards, managed to improve their fortunes by the end of the century: B.Elliott, "A Leicestershire Recusant Family", Recusant History, 17 (1984 - 1985), pp. 173 - 181. And see also J.Miller, Popery and Politics, 1660 - 1688 (Cambridge, 1973).

34. Weiner, "Sex Roles and Crime", pp. 48 - 50.

among those presented the reason may lie both in the reluctance of the gentry as a whole to prosecute their social equals as Catholics and in the legal manoeuvrings of those Catholic gentry likely to be indicted. Philip Constable of Everingham, a prominent Catholic, is a case in point. He was indignant at the prospect of recusancy presentments and supplied the constable with a protest to be returned instead of the presentment requested:

I have non in my constabulerie that I can upon my knowledge Returne as Recusantes; and for such as may forbear the Church upon Sundays his Ma[jes]tie... in his declaration dated the 25th of October 1660 hath these verie words concerning tender consciences. That no man shld be disquieted or called in question for differences of opinion in matters of religion w[hi]ch doe not disturb the peace... And anie publique act... since... I am not knoweing of.<sup>35</sup>

These words obviously had the desired effect, for Philip Constable was not troubled until the fervour of 1679. Thus in the 1660s the vast majority of those presented were from the lower levels of society, and the Roman Catholic gentry, on the whole, escaped both prosecution and fining. This perhaps was in contrast to the situation during the Interregnum when it had been the Roman Catholic gentry who had suffered financially in having to pay to compound or in having their estates sequestrated. It may be that the worse treatment of the Roman Catholic gentry during the Interrregnum has contributed to the view of that period as one of harsh persecution for, of course, the gentry were able to complain of their treatment; from the 1660s, when it was those from the lower levels of society who were suffering, fewer accounts by the literate survive.

From about 1669 for almost ten years prosecution for non attendance at church lapsed, but with the excitement of the Popish Plot in 1679

-----  
35. H.Aveling, Northern Catholics, pp. 323 - 324.



there came two indictments of twenty-five and nine persons respectively. These were all Catholics, and this time it was the Catholic gentry who were the victims. Thus the thirty four persons indicted consisted of one baronet, five Esquires, eleven gentlemen, eight yeomen and nine women. On this occasion too the penalties were more serious for in fact the oath of Allegiance was tendered, a second refusal of which invoked the Statutes of Praemunire and continuing imprisonment. Praemunire had originated as a means of limiting papal authority in England during the reign of Edward 1 when the first statute thereon was passed. After the Reformation the statutes invoking praemunire for an offence multiplied and by 5 Eliz c.1 to refuse the oath of supremacy incurred the pains of praemunire, and by 7 Jac 1 c.6 to refuse the oath of allegiance a second time, the same penalties. These were severe, involving forfeiture of estate to the Crown and imprisonment for life or during the king's pleasure. It was a measure that after the Restoration was used initially against Protestant non conformists but later extended to the Roman Catholics.<sup>36</sup> Philip Constable was among those who were tendered the Oath, and committed to York Castle for a refusal. His luck held, for before it was tendered again he was granted leave to go overseas.<sup>37</sup> Nevertheless, many Catholics of high social status were convicted and in March 1685 twenty two, including six women, remained in gaol. A petition for the release of Mary Fairfax, Magdalen Metham, Catherine Lascells, George and Mary Thwaites and John Andrews was presented in March 1685 in which the subscribers stated themselves to be

well satisfied that the within named Prisoners have bin and are loyall and peacefull subjects to his late and present Majesty and in themselves Parents and Familys have bin great sufferers for their loyalty.<sup>38</sup>

-----  
36. Blackstone, Commentaries, vol. 4, pp. 102 - 118.

37. H.Aveling, Northern Catholics, p. 330.

The early 1680s saw nine indictments, seven at Quarter Sessions and two at Assizes, all charging fairly large numbers of persons, although not on the scale of the 1660s, but after 1682 prosecution ceased save for two Assize indictments in 1691 and 1692. These were very different from the earlier ones, for they each only charged one person. In one Dorothy Westby, a York widow, was presented for not attending St. Martin's in Micklegate, and in the other William Foxcroft, a Selby gentleman, was presented for non attendance and acquitted.<sup>39</sup> Foxcroft was in other trouble. His patron was Bartholomew Walmsley, a popish recusant living abroad, and in 1693 Foxcroft was accused of defaming Richard Shuttleworth Esq. by calling him a "rogue and a rascall" and referring to the fact that his master could not be summoned to take the oaths of supremacy, nor would the Commissioners tax him double. In the same year he was also accused of perjury in swearing that Richard Shuttleworth had drunk a health to King James.<sup>40</sup>

It was not Roman Catholics only who had expected benefits at the Restoration. The Presbyterians, who had played a large part in ensuring the bloodless return of the king hoped for a system of comprehension "large enough to include the Presbyterian body, but excluding Independency and the lesser sectaries".<sup>41</sup> Like the Catholics the Presbyterians were to be disappointed. In 1661 a proclamation forbade conventicles in private houses and following the passage of the Act of Uniformity, St Bartholomew's Day 1662 saw the

-----  
38. PRO. ASSI., 47/20/6.

39. PRO. ASSI., 44/40.

40. PRO. ASSI., 44/40.

41. J.G.Miall, Congregationalism in Yorkshire (London, 1868), p. 58.

ejection of perhaps two thousand clergymen nationally and between 123 and 155 in Yorkshire.<sup>42</sup>

The excuse for the first major moves against the Protestant non-conformists came in the Fifth Monarchy Rising of 1661, and was initially directed principally at the Quakers. In Yorkshire, it has been suggested that about four hundred were arrested, including the celebrated William Dewsbury.<sup>43</sup>

There were three separate offences that non-conformists were likely to be charged with. These were: refusals to take oaths, either the test oaths or, for Quakers, any oath; attendance at an illegal religious meeting; and creating some form of disturbance in church. Indictments for a refusal to take an oath only survive for four men and one woman, but from other records we know that many more were so proceeded against. Thus the gaol calendar for March 1661 names twenty seven men, including William Dewsbury, for refusing the oath of allegiance, and in July 1662 a further three were convicted in praemunire and sentenced to remain in gaol.<sup>44</sup> There is also a surviving list of "Quakers committed into York Castle and remaining" in March 1661 which contains eighty three names.<sup>45</sup> This probably underestimates the numbers imprisoned for non conformity as it is plain that some were imprisoned and then released without charge. It was alleged that in 1660 536 Quakers alone were imprisoned either in York Castle or in other gaols around the county, and from the

-----  
42. B.Dale, Yorkshire Puritans and Early Nonconformity (Bradford, 1909), pp. 6 - 8. W.C.Braithwaite, The Second Period of Quakerism (Cambridge, 1961), p. 5.

43. Braithwaite, Second Period, pp. 9 - 11.

44. PRO. ASSI., 42/1 fols 58 and 105.

45. PRO. ASSI., 47/20/6.

Sufferings of the Quakers we can get some idea of the manner of prosecution of offenders. Thus in November 1661

fourteen persons were sent to Prison by the Mayor of York, and near sixty were summoned to appear at the sessions at Wakefield, and had the Oath of Allegiance tendred them: Upon their Refusal to swear, they wer sent Prisoners to York Castle... though 'twas apparent how little Apprehension of Danger, the Justices were under on their Account, by their committing those 60 Prisoners to be conducted 22 Miles by a Guard of only four Men... At the assizes... they were called before the Judge, who required of them Bonds for their good Behaviour, but they refused that, alledging their Innocence, and that no Man could accuse them of any ill Behaviour: The Judge told them that he had Power to tender them the Oath, but he would be favourable... At the Assizes three of them, viz John Leavens, Samuel Poole and Christopher Hutton, had the oath tendred them a second Time, and upon Refusal, were tried, convicted, and had sentence of Praemunire passed upon them: Nine and twenty others were indicted... The rest of them were released without any Examination or Trial.<sup>46</sup>

Considerably more people were indicted for attendance at illegal religious meetings. In the early 1660s indictments survive for at least thirty five persons at Assizes and thirty two at Quarter Sessions, and in addition the gaol calendar names a further forty six persons. Of these twenty were women, that is about 18% and of the remainder 36% were yeomen and 37% labourers with the others being described as husbandmen or tradesmen/craftsmen. Not a single person described as a gentleman was indicted. As well as this wave of prosecutions the early 1670s and 1680s also saw large numbers of charges being brought. Thus at Assizes fourteen persons were charged with attending illicit meetings in 1684 and at Quarter Sessions over twenty, including five women in 1670 and thirty two including eight women in the 1680s. In total from the court records we can see that

-----  
46. J.Besse, ed., A Collection of the Sufferings of the People call'd Quakers... 1650 - 1666, 3 vols. (London, 1733 - 1738), vol. 3, pp. 156 - 157.

about 180 persons were so charged. From The Sufferings though it seems that between 1650 and 1660 forty seven persons were prosecuted for attending illicit meetings and between 1660 and 1666 almost five hundred.

Oliver Heywood, the Presbyterian, also records some of the ways in which non-conformists were proceeded against. In the 1660s he seems to have escaped most prosecutions, though he was fined for his absence from church despite being excommunicate at the time. In the early 1670s he had a distress levied on his goods under 22 Car 11 c.1, but it was not until the mid 1680s that the activity of the justices and judges of Assize against conventicles brought him into serious trouble and, in 1684 on an indictment for holding a riotous assembly at his house, conviction. He refused to be bound over to good behaviour or to pay the fine and in default spent a year in prison in York Castle.<sup>47</sup>

The final offence with which Protestant non conformists were often charged was creating a disturbance in church. Perhaps unexpectedly the majority of these prosecutions were brought in the 1660s, rather than in the 1650s, some seventy two persons being then indicted at Assizes and five at Quarter Sessions, with twenty four indicted in the 1680s and eleven in the 1650s. Several of the cases in the 1650s relate to Quakers, perhaps the most interesting being that of William Sykes of Knottingley, who was indicted for a "Combination with others against paying Tithes, and for making open Proclamation thereof" and

-----  
47. Heywood, Diaries, vol.1, pp 190 - 270, vol. 2, pp. 222 - 224, vol. 3, pp. 346 - 347 and vol. 4, pp. 110 - 119.

for which he was found guilty and fined a total of £266/13s 4d.<sup>48</sup> He may not have been a Quaker but Mary Fisher, accused of saying to the Minister of Selby "Come downe, thou painted beast... Thou art but an hireling, and deludest the people with thy lyes", certainly was.<sup>49</sup> In the later period some of the accusations may well not have had any religious significance. James Moysen Esq. of Beverley and three other yeomen were accused in 1667 of creating a disturbance and assaulting John Robinson in church. Moysen had married the mother of the diarist Reresby as her second husband and was described by Reresby as "a very civill gentleman", and despite a contest between them in 1684 for the representation of Aldborough, there is no suggestion that he was religiously disaffected.<sup>50</sup> Ten of the bills for creating a disturbance in church, including that against Moysen and his friends, were ignored, that is about 9% of the total, and the punishments that followed a conviction were widely varying fines, ranging from the enormous sum imposed on William Sykes to the more common 20s.

#### COINING

The most numerous crime within the category of offences against the authorities was coining. There were a number of different offences that could be so charged, and they were of very different degrees of seriousness, consisting as they did, of almost all the types of offence: treason, misprision of treason, felony and misdemeanour. Thus counterfeiting gold or silver coin and importing foreign

-----  
48. Sufferings, vol. 1, p. 320. Not surprisingly he was unable or unwilling to pay this huge sum and died in gaol. See also for the paper that he circulated, Depositions, ed. Raine, p. 54.

49. Depositions, ed. Raine, p. 54 and Sufferings, vol. 1, pp. 323 - 324.

50. PRO. ASSI., 44/15 and Reresby, Memoirs, p. 26.

counterfeit coin current in England, knowing it to be false and intending to utter it were treason under the principal treason statute, 25 Edw 111 c.2. During the reigns of Mary and Elizabeth forging gold or silver which was not coin but was current in England; bringing into England and uttering counterfeit foreign coin and clipping all coin were all also made treasons.<sup>51</sup> Throughout the seventeenth century the import of specified foreign base coin and the melting down of sterling were felonies but uttering and dealing in false coin were misdemeanours. As for these last, they were not, as Blackstone suggests and subsequent historians seem to have accepted, only created in 1694 under 6&7 Gul.111 c. 17, for a statute of 1551/52 had provided that any person exchanging coined gold, silver or money for more in value than it was declared to be current should forfeit the same and be liable to fine and imprisonment.<sup>52</sup> The melting down of silver was made punishable by forfeiture and a fine of double value as well as disfranchisement and six months imprisonment during Charles 11's reign. By the late 1680s clipping had become a matter of national importance.<sup>53</sup> In part this was due to the widespread concern about the state of the currency and particularly about the divergence between the values of the gold and silver coinage. By 1695, for example, the gold guinea, which in 1690 had been worth 21s 6d in silver, was worth nearly thirty shillings. It

-----

51. 1 Mar c.1 repealed all treasonable coinings created since 25 Edw 111 c.2. 1 Mar c.6 made forging gold and silver current in England, but not coin, treason; 1&2 P&M c.11 made the import of counterfeit foreign coin treason; 5 Eliz c.11 made "clipping, washing, rounding and filing" treason and 18 Eliz c.1 made "diminishing, impairing, falsifying, sealing and lightening" coin treason.
52. The first under 27 Edw 1 c.3 and 9 Edw 111 st. 2 respectively; the next under 13 Eliz c.2 or alternatively 14 Eliz c.3, according to Blackstone, Commentaries, vol 4, pp. 99 and 120. For the statute see: 5&6 Edw VI c.19.
53. 13 and 14 Car 11 c.31.

was also a result of the increased prevalence of clipping as silver was exported from England. In essence in the late seventeenth century coin was supposed to have an intrinsic metal value identical with its monetary value, but all silver coins were subject to natural "diminishing" simply by being handled. With silver bullion in demand the practice of clipping more from the coins in circulation for conversion to bullion and subsequent export became more attractive. The Excise Commissioners started to sample the coin received as cash receipts (always considered to be the most worn) from 1685 and, whereas in 1687 they found that coin taken in taxes had lost about 12% of its metal content, by 1694 such coin had lost 40% of its metal content. Other figures suggest that these clippings were ultimately being exported. Thus it has been estimated that between 1689 and 1695 8.4m ounces of silver bullion was exported and in the same period 9.2m ounces of silver was lost from the silver coinage. With what has been described as the "double forward" commitment of both army and navy in William III's continental wars in the 1690s the loss of silver from the coinage, with the consequence that money increasingly became acceptable by weight only not by its reputed value, had important and potentially disastrous repercussions on the government's ability or otherwise to pay for its troops.<sup>54</sup> The Parliaments of the mid 1690s therefor attempted to grapple with the issue, and 1696 saw the passage of a bill "to remedy the ill state of the coin" by a recoinage which was subsequently estimated to have

-----  
54. The basis of this summary is the work of D.W.Jones, War and Economy in the Age of William III and Marlborough (forthcoming). I am indebted to Dr. Jones for the use of his material; for his willingness to discuss it with me at considerable length; and for several useful references.



cost the government around £2,700,000.<sup>55</sup> At roughly the same time the law relating to dealing in false coin was tightened and persons who bought or sold clippings or filings were made liable to forfeiture, a fine of £500 and branding. A year later the possession of instruments for coining was made treason, and the blanching of copper and receiving and paying of counterfeit money at a lower rate than its stated value was made felony.<sup>56</sup> During the whole of the period studied we can therefore categorize the coining offences into three groups: counterfeiting and clipping, both of which were treasonable; uttering, which was a misdemeanour; and the various offences reenacted or codified towards the end of the century making dealing in clipped or counterfeit coin illegal.

There had always been sporadic prosecution of coining offences, but the late 1680s witnessed a major initiative against counterfeiters and clippers. John Craig suggests that systematic prosecution began while the clerk to the Warden of the Mint was Thomas D'Oyley and was continued under his successors until an extra clerk, later to become the Solicitor of the Mint, was appointed. D'Oyley operated principally around London, relying on a network of informers and agents. The costs of the operation were met from the seized estates of those convicted; from repayments by the suspected of 'expenses' in consideration of staying proceedings; and from occasional rewards from the Treasury.<sup>57</sup> In the Northern counties too and particularly in Lancashire the late 1680s saw the beginnings of a nationally

-----  
55. H.Horwitz, Parliament, Policy and Politics in the reign of William 111 (Manchester, 1977), pp. 152 - 164, and J.Craig, The Mint (Cambridge, 1953), p. 194.

56. 6&7 Gul.111 c.17 and 8&9 Gul.111 c.26.

57. Craig, The Mint, p. 172.

orchestrated prosecution initiative, again using informants and agents, such as George Macy.<sup>58</sup> The national incidence of coining, however, has been little studied. The work of D.W. Jones, already referred to, has made plain that attempts at prosecuting were widespread from the late 1680s onwards with George Macy, for example, being sent in 1693 to apprehend clippers in Worcestershire, Oxfordshire, Staffordshire, Cheshire and Yorkshire. Sharpe, writing of Essex, makes no reference to coining offences, other than to note that six of the 460 persons executed in Essex had been convicted of coining. These were presumably included in his miscellaneous category of offences which comprise 10% of the total. Writing of Cheshire, however, he notices a rise in prosecutions in the 1690s attributable entirely to "a short lived burst of prosecutions of coining offences".<sup>59</sup> Similarly Beattie hardly mentions the offence, referring only to the fact that there were about two hundred prosecutions in Surrey between 1660 and 1800 with slight variations visible over the period, most clearly an increase in the 1690s.<sup>60</sup>

The pattern of prosecution for the various coining offences in Yorkshire was very different from that for almost every other crime, with by far the greatest numbers - almost two thirds of the whole -

-----  
58. Macy, "an officer relating to the Mint", was in contact with the clerk of the peace in Lancashire from at least 1688 until 1696, in the course of which correspondence he refers to the sum of £1,200 forfeited from clippers and in the hands of the Sheriffs, and warns of the dangers of relying on "discoveries" of accomplices by those who had been apprehended. Historical Manuscripts Commission, 14th. Report, Appendix, Part IV, Manuscripts of Lord Kenyon (London, 1894), pp. 192; 305 and 409.

59. Sharpe, Seventeenth Century, pp. 143 and 183, and Early Modern, p. 57. Sharpe seems to refer to the Cheshire coining offences as felonies, but of course (at least until 1695) the most commonly prosecuted offences were either treasons or misdemeanours; clipping and counterfeiting were the former and uttering the latter.

60. Beattie, Crime and the Courts, pp. 191 - 192.

being prosecuted in the 1690s, and over three quarters in the last fifteen years of the century. As mentioned in the introduction, a large number of the 'recreated indictments' arose from analysis of those implicated in the depositions of a few persons detailing illicit coining in the 1690s. Overall the 'recreated indictments' account for something over 12% of the total figures. In the coining cases however this proportion is higher. For the period before the 1690s (when only one third of the cases occurred) the proportion was about 16%; for the 1690s, when a single deposition might implicate as many as forty persons, the proportion was just over 20%. The general question of record survival has been discussed earlier, but it would seem likely that here the position may well be that, rather than indictments having been lost or destroyed, many of those implicated were not prosecuted, some almost certainly because they were prepared to turn King's Evidence. With these cases it is not possible, as it was with others, to match 'recreated indictments' with other records, for only one gaol calendar survives for the 1690s. From that it is obvious that some of the 'recreated indictments' were actually preferred but the correlation is limited. Accordingly in discussing all the coining offences the actual and 'recreated' indictments will be treated separately.

In the three earlier decades a total of 117 persons were charged with treasonable coinings (and a further twenty three on recreated indictments) and thirty eight (plus one recreated) with uttering false coin. The 1680s and particularly the latter half of it saw the start of the massive rise in prosecutions that was to be the hallmark of the 1690s. In the 1680s therefore 112 persons were charged with treason (plus twenty seven recreations), twelve (one recreation) with

uttering, and five (four recreations) with dealing. By the 1690s the figures had soared. Then 281 persons plus eighty three in recreated indictments were charged with treason; fifty one and five with uttering and 205 plus forty nine with one or other of the offences relating to dealing in false coin.

All these figures relate to prosecutions at the Assizes. The numbers prosecuted at Quarter Sessions were minimal: four persons charged with counterfeiting in the 1660s and two with clipping in the 1690s and three with uttering in the 1650s and 1690s.

Elsewhere and in general a rise in prosecutions also saw a rise in the level of ignoramus verdicts. That does not apply in the coining cases. For the first three decades approximately 27% of all bills were ignored: in the last two decades only 5% were, though (at 6%) the rate was slightly higher in the treasonable than in the non treasonable offences, as indeed was the case in the earlier period when 30% of bills for treasonable coining were ignored. From this low rate of bills ignored in the period of the highest number of prosecutions it would appear that the regulative initiative to stamp out coining was one which met with the approval and support at least of the grand juries in this period.

Occupational descriptions are given for almost 800 defendants and the breakdown of them is very different from that for other offences. These are set out in Table 22. Thus labourers account for 12% of all defendants, outstripped both by yeomen, 12.5%, and by tradesmen/craftsmen, who at 58.5% form by far the largest grouping. Women and husbandmen each form just over 6% and gentlemen or above

over 4%. Some differences are accentuated when the offences are considered separately. For example while labourers form 17% and 14% of those accused of clipping, counterfeiting and uttering, they form less than 2% of those accused of dealing in false coin. This is almost certainly because the deals indicted were for comparatively substantial sums, such as the exchange of 100 shillings in broad money for 110 shillings in clipped or counterfeit money. Presumably few labourers had £5 worth of coin in their possession. Among tradesmen/craftsmen however this transaction was much more common, and thus they formed only 38% of those accused of uttering but 72% of those accused of dealing in false coin. Within this group too the role of smiths is evident. 255 tradesmen/craftsmen were accused of coining or clipping and of those forty six were described as smiths: white, gold or black. The smiths alone accounted for 10% of all defendants to the treasonable charges and this high proportion is doubtless due to their ability to use the tools of their trade for other purposes. Yeomen were most likely to commit the misdemeanour of uttering false coin (they formed 26% of defendants to that charge) as were women (who formed 11%). The amounts of money involved in uttering were commonly much smaller than in either the dealing offences or than in the treasons, where indictments usually referred to the clipping or counterfeiting of presumably specimen sums, twenty halfcrowns, twenty shillings and twenty sixpences. In uttering on the other hand the amounts mentioned in the indictments are less standardized and smaller, perhaps only a couple of sixpences and labourers also played a larger role in this crime, accounting for 14% of all defendants.

TABLE 22

STATUS OF DEFENDANTS TO COINING CHARGES AT ASSIZES

	Numbers	%age
Labourers	96	12.1
Gentlemen	34	4.3
Yeomen	99	12.5
Husbandmen	49	6.2
Trade/craftsmen	463	58.5
Women	51	6.4
Total	792	100.0

Coining in later seventeenth century Yorkshire was regionally specific. The areas of the Pennine moorlands and the coal measures were the most criminous with approximately 50% of all crimes taking place there and about the same proportion of defendants coming from there. In coining however the two areas accounted for 75% of both defendants' domicile and scene of crime, but whereas the Pennines were the location for 40% of the crimes, only 35% of defendants came from there and 40% came from the coal measure area. Moreover differences between the types of coining offence are apparent so that almost 50% of the treasonable coinings were perpetrated in the Pennine moorlands. Partly this is likely to reflect both the comparatively populous nature of the areas then and their isolation. Within these two regions the offences were were fairly widely spread, ranging from places such as Bowes, Dent, Garsdale, Bentham and Clapham, all fairly close to the Lancashire border and in the more inaccessible parts, to Middleton, Pateley Bridge, Masham and Richmond.

Although over 60% of the coining offences charged were the serious treasonable ones of counterfeiting and clipping, few coiners appear to have suffered the death penalty, which in these cases was drawing and hanging. As has been previously stated however the endorsement of verdicts becomes less precise and routine towards the end of the period and only one gaol calendar survives for the whole of the 1690s, so that in only about a quarter of cases are verdicts known. From these it appears that in the treasonable cases about 25% of offenders were convicted with about 6% of those indictments being endorsed that the defendant was sentenced to death. For the non treasonable offences the conviction rate ranged from 33% for the misdemeanour of uttering to 45% for the dealing charges. In addition in both the latter cases the conviction rate was effectively increased by the numbers of persons who admitted the offence and were fined. These persons accounted for about 28% of those charged with uttering and 12% of those charged with dealing in false coin. As no defendant charged with uttering was said to have been at large the acquittal rate for that offence, at 42%, was considerably higher than that for dealing in false coin where it was 27% and a further 11% of defendants did not attend to stand their trial.

Counterfeiting and clipping were unusual crimes both because they were so seriously regarded as to be treated as treasons and because of the nature of their organization. J.Styles has suggested in relation to the Yorkshire 'yellow piecemakers' of the eighteenth century that their "illegal trade was sustained by massive and active popular support". In this it differed from other major coining enterprises such as that of Thomas Lightowler; as it did also in

combining clipping and counterfeiting so that the clippings rather than base metal were used to manufacture false coin. Styles states that "clipping and coining were new to the Halifax area in the 1760s and strictly limited to it", and attributes this to the specific local economic circumstances of the area in that period. His account of the organization of the trade and of the large numbers involved in it is interesting as is his view that the "recoinage {of 1773 - 76} removed the preconditions which made the practice of the yellow trade possible." His arguments and suggestions can be usefully applied to the spate of coining prosecutions in Yorkshire in the late 1680s and 1690s.<sup>61</sup> Thus the evidence relating to seventeenth century coining suggests that it was organized as a trade; that it enjoyed a considerable measure of popular tolerance, if not of support; and perhaps that the economic circumstances of the period were such that it sustained a local economy from what would have been the effects of a massive depression had the export of bullion failed. It is not surprising therefore that the depositions that relate to counterfeiting and clipping differ from those for other crimes also. Thus the evidence in these coining cases consists, inter alia, of the depositions of a number of persons who implicated large numbers in a widespread clipping and coining operation. Those who made the depositions were almost always accomplices, having often been very heavily involved themselves. Indeed in many cases it is obvious that the deponents have turned King's evidence in a bid to escape the penalty for their own deeds. In one deposition for example, Simon Scott, a Halifax goldsmith, and his wife implicated twenty six separate individuals. These twenty one men and five women were said

-----  
61. Styles, "Our Traitorous Money Makers", pp. 187 - 249.



to have sold the Scotts either clippings or bullion or to have exchanged broad money for little money at the rate of 22s or 22/6d of little money for every 20s of broad money. Some of Simon Scott's diligence in confessing might have been due to the fact that John Aked gave Scott about 20ozs of clippings of money "to melt downe which he accordingly did and afterwards returned ye same back to the said Rachel [Aked, John's wife] for which he was to have had a guiney but he never received the same".<sup>62</sup> John and Rachael Aked were both charged: John with knowingly possessing 20ozs of silver and Rachael with selling 10ozs of clippings. John was acquitted but Rachael was convicted and fined £5.<sup>63</sup>

The network of those involved in coining was geographically extensive: the Scotts, for example, implicated persons from Halifax and its townships as well as several from Lancashire and others from Skipton and Leeds. Arthur Fairis, another major informant implicated people in Derbyshire and Henry Bateman of County Durham referred to an innkeeper at Hardraw who gave him about £9 worth of clippings to exchange for him at York. The greatest evidence both of geographical spread and of the fact that the activity was carried on as a trade with what were in effect apprenticeships, comes from some of the Lancashire depositions. The Higham family of Ince were heavily involved. 'Old Tom' had, in 1683 "for the space of thirty years and upwards... used and exercised the craft of makeing false Money" which he sold at the rate of 8d per shilling. He and his family, his wife, Elizabeth, daughters Margaret and Katherine, sons Thomas, John and Roger and daughter in law Elizabeth all seem to have been involved in

-----  
62. PRO. ASSI., 45/16/4.

63. PRO. ASSI., 44/40.

supplying false coin throughout Staffordshire and Cheshire. Old Tom was said to have "driven a great trade with severall in the County of Stafford... hee hath usually gone into that County or that way once a month or six weeks". Another deponent records his initiation into the trade, his master then lending him a pair of shears and when warrants were out for his arrest advising him to "fly into Ireland and he... would send moneys to him every yeare for his maintenance".<sup>64</sup>

Both the Lancashire depositions and some of the Yorkshire ones suggest how eager the coiners were to acquire the basic material for their trade, unclipped or comparatively unclipped coins. Jonathan Alcroft recalls that a major Lancashire coiner advised him "to sell what Cattell hee could spare and turne them into money for the better carryinge on the trade of Clippinge", and Daniel Awty suggested to a number of persons that they acquire money for loan to him and that he would then allow them "reasonable profitt for the loane thereof, for... he could clipp about 3s of every pound... and further... it was noe treason to talke of it." Another man had a chamber at Dewsbury

very convenient for discovering the Ratchdale clothiers from Lancashire... which trade from thence to Wakefield weekly for the taking of their money from them as they returned from their markt and that what prises he gott from them he would be very civill in his requittall.<sup>65</sup>

Mention of Awty raises the role played in the trade by the goldsmiths. D.W.Jones stresses this, suggesting a three sided organization of goldsmiths, who bought molten silver from clippers, who, in turn, received coin to be clipped from dealers, who had

-----  
64. PRO. PL., 27/1.

65. PRO. PL., 27/1 and Depositions, ed. Raine, pp. 215 - 216.

themselves come into possession of large amounts of unclipped coin. He further notes that contemporaries believed the largest role in the export of silver bullion was played by the Jews and goldsmiths of London.<sup>66</sup> Simon Scott, already referred to was a goldsmith, and Awty was also described as such. Awty appears to have been informed against in the 1670s, but he was certainly not hanged then for in 1683 he faced a charge of clipping. This time it seems that some at least of the silver being melted may have been part of the Minster communion plate for a deposition printed by Raine has Awty's sister Mercy Hutchinson boasting that her brother "got the plate which was stolne out of York Minster some yeares agoe." Mercy also said that the plate "or a great part of it was there melted downe and that part of the table upon which it was melted was burnt in the melting of it". She also called Elizabeth Richardson, who was "commonly reported to have been naught with the said Awtie 'clipping whore'" and told her that "it was the Minster plate that made her to flourish". Other depositions refer to Awty being ferried over the river Ouse with something hidden under his coat and Awty himself said that he

carried 3 skelletts of workeinge silver to one John Smyth a goldsmith at Owsebridge End which before it was melted was old plate... the said Smyth not haveinge a skellet soe good as this Examinant desired him to melt the same downe.

This might seem surprising both because Smith was himself a goldsmith and because he was later to be charged with coining, though he, like Awty, was acquitted.<sup>67</sup>

Another prominent goldsmith involved in the trade was Arthur Mangy and his family. Arthur himself had made the Leeds city mace in 1694,

-----  
66. Jones, War and Economy.

67. PRO. ASSI., 44/31; 45/13/3 and 44/37.

for which he was paid £60/11/-.<sup>68</sup> The family appear to have been involved in the coining trade for several years. Arthur's brother Benjamin, Benjamin's wife Dorothy and a Philip and George Mangy appear in the depositions or indictments. There is no direct evidence to link George and Philip with Arthur and Benjamin but the name was not a common one and the coincidence of name, occupation and criminal proclivity are suggestive. It was Philip and George who first came to the attention of the authorities, for in 1683 both of them were charged with counterfeiting silver coin. The bill against Philip was ignored by the grand jury but what happened to George is not known. By the late 1680s however it is obvious that the authorities in the area of Wakefield, Leeds and Pontefract were making strenuous efforts to investigate and stamp out coining, doubtless as part of the national initiative previously referred to. In that year Benjamin and his brother in law, Leonard Baynes, a York upholster, were arranging for the transport of silver to Pontefract. The depositions are confusing but the two seem to have tried to conceal their activities, employing for the purpose at least two unknown boys as messengers. A letter delivered to the Mayor of Pontefract by one of the boys, together with a bag of clippings, apparently requested the apprehension of those who sent the letter and the boy who delivered it. Baynes was charged and convicted and in May 1690 a warrant was sent to the Clerk of Assize for the Northern Circuit for the delivery into the Treasury of the 83ozs of clippings and 1oz of filings produced in evidence against Baynes by the Mayor of Pontefract.<sup>69</sup> The

-----  
68. Some years later the corporation had the details of the maker removed from the mace: E.Kitson Clark, "The Leeds Mace" (Thoresby Society Publications, Miscellanea, vol. 9, 1899), pp. 205 - 206.

69. PRO. ASSI., 44/ and 45/15/2/10 - 16. CalTreasBooks. vol. 9, p. 629.

following year Benjamin Mangy was charged with dealing with 50ozs of bullion and convicted. Nevertheless the family continued its business. In 1694 Arthur was indicted for dealing in 20ozs of silver clippings and acquitted and in 1695 Benjamin was accused of the same offence. An earlier bill against an Arthur Mangy of Sheffield, goldsmith, had been ignored by the grand jury, as had one against Dorothy, Benjamin's wife. The final act in the saga came in 1696. At the summer Assizes that year Arthur was tried on an indictment alleging the counterfeiting of twenty halfcrowns, shillings, and sixpences on 1 August 1695. An account of this trial is the only account of a trial at York to have been published other than those in the State Trials series. From the account which was published by the Thoresby Society from a manuscript a picture of both the procedure at Assizes (which will be analysed in a later chapter) and the methods used in coining can be garnered. The crown was represented by counsel, as was usual in such cases,<sup>70</sup> and he called as his main witness George Norcross, a confessed accomplice who, in his depositions, implicated many besides Mangy. The coining operation run by Mangy was located in a well concealed garret. One of the Aldermen who visited it described a chamber in which

there was in one corner like shelves of a closett but it proved to be the way that led into the garrett... and those boards I took to be shelves proved to be the steps into the garrett, and the passage was so strait that I was forc'd to put off my frock and to creep on my knees going in and coming out.

The method used in the production of the counterfeit coins was summed up by the judge. From a piece of thin plate which was mixed metal Mangy

cut a piece as big as a new shilling which upon a main Bawk... he stamped on one side (with exactly the face side) with an instrument and then to prevent the

-----  
70. Aaron Smith was frequently so engaged: Cal.Treas.Books, vol. 10, pp. 292 and 413.

impression from being harmed he placed a piece of soft wood betwixt the face side and the bawk and with a second instrument he made the Cross side, then with a third instrument he made nicks upon the edges.<sup>71</sup>

On the evidence presented, described by the editor of the account of the trial as weak, Mangy was convicted and hanged.

Goldsmiths were not the only prominent and respectable persons engaged in the trade. Raine cites the case of John Booth, the rector of Bothal in Northumberland, who was accused in the 1670s of clipping and melting coin, and Yorkshire furnishes another clerical example in Edmond Robinson.<sup>72</sup> Described as a clerk of Bank End or Thwrstonland, he was in 1678 accused of uttering false coin and of clipping. For the first offence he was convicted and fined £20 and on the second acquitted. On another indictment charging him with clipping he was, according to the endorsement, convicted and fined £20 - an unusual result. The explanation may lie in the fact that he was actually convicted not of clipping but of a lesser offence as Heywood, commenting on the case says "Mr Robinson (once preacher at Hulmefirth) was accused a second time for clipping and coyning, evidence not coming in clear, they fined him, kept him in prison".<sup>73</sup> Almost ten years later Robinson was still engaged in the coining trade. In 1685 he was again accused of clipping and counterfeiting and again acquitted, but in March 1691 was finally convicted. He was executed for the offence and his estates forfeited. He was not a poor man and various persons petitioned for the grant of his estate which was said to be worth £8 or £9 per annum.<sup>74</sup> In depositions made by

-----  
71. C.M. Atkinson, ed., "A Trial at York for Counterfeiting", (Thoresby Society Publications, Miscellanea, vol. 9, 1899), pp. 207 - 227.

72. Depositions, ed. Raine, pp. 189 - 190.

73. Heywood, Diaries, vol. 2, p. 261. PRO. ASSI., 44/25; 44/26 and 44/33.

74. Cal. Treas. Books, vol. 10, p. 287 and vol. 9, pp. 1420 and 1503.

Edmond Robinson's son, Benjamin, who also implicated many in his father's activities, he refers to his father having allowed 2 shillings in the pound in exchanging broad money for clipped money.<sup>75</sup>

The amounts involved in Robinson's coining activities were substantial too. As the Greenwich Hospital Newsletter reported:

We have advice from the City of York that at the last assizes held there, 14 persons were found guilty and condemned for the treasonable act of clipping and coining, among whom is one Mr Robinson, a minister and his son, it being proved against him that he had 15001 coined by his procurement.<sup>76</sup>

These coining offences raise a number of problems. Styles refers to the "several spectacular instances of juries acquitting against the evidence in capital coining cases" but also notes that "the chances of being capitally convicted on a capital coinage indictment were much higher than on an indictment for capital theft".<sup>77</sup> He compares the fact that 51% of those charged with a capital coining offence between 1732 and 1769 were convicted with 33% being convicted on a capital property offence in Surrey between 1736 and 1753, with a further 29% being convicted of a non capital property offence in that county.<sup>78</sup> These figures are very different from those for Yorkshire in the late seventeenth century. Overall 75% of those charged with a capital coining offence were acquitted compared with 38% of those charged with all thefts. The acquittal rate was much lower in relation to the non capital coining offences, around 40%. Furthermore when the 75% acquittal rate for capital coinings is contrasted with the rate of bills ignored in the period of greatest prosecution of the offence, 5%, it would seem that there was a strong divergence of

-----  
75. PRO. ASSI., 45/16/1/2.

76. CalSPDom, 1690/91 p. 329.

77. Styles, "Our Traitorous Money Makers", p. 181.

78. Styles, "Our Traitorous Money Makers", notes, p. 345.

opinion between grand and petty juries as to the propriety of convicting for the capital coinings. Coining, it seems, was much more severely condemned by the greater yeomanry and gentry who sat on grand juries than by the middling yeomanry and tradesmen and craftsmen who composed petty juries. In connection with this point it is interesting to note that the petty jury that tried and convicted Arthur Mangy was unusual in its composition, consisting as it did of six men described as Esquire and six as gentlemen, at least four of whom were J.P.s and one of whom, Henry Bouch had been active in assisting his "kinsman" Daniel Fleming in apprehending the coiners in south Westmorland and north Lancashire in the 1680s.<sup>79</sup> A tradition of acquiescence, if no more, in coining activities was not new to Yorkshire in the 1760s. The 1680s and 1690s had seen it too. Moreover the activity then was likewise well organized and had substantial citizens playing a major role in it.<sup>80</sup>

#### SEDITIONOUS WORDS

The utterance of seditious words was a misdemeanour and not a very common one. Sedition - "the inciting of people to disaffection towards the Crown could be perpetrated by violent action or by spoken or written words", but all the cases considered here were spoken and seditious acts would normally be charged as treason.<sup>81</sup> In total 211 persons were charged with uttering seditious words, fifty four at

-----  
79. Macfarlane, Justice and the Mare's Ale, p. 91.

80. Styles, "Our Traitorous Money Makers", p. 199.

81. F.G. Emmison, Elizabethan Life: Disorder, (Essex Record Office Publications, no. 56, Chelmsford, 1970), p. 39, and see J. Samaha, "Gleaning the Local Criminal Court Records: Sedition amongst the 'Inarticulate' in Elizabethan England", JSH, 8 (1975), pp. 61 - 79, where he discusses the nature of sedition in the Elizabethan period.



Quarter Sessions and 157 at Assizes. Some persons were charged more than once, and one, Thomas Darby, was charged five times, all in 1693. Most offenders were charged alone but five Assize indictments charge between two and four people each. The 1660s saw the largest number of prosecutions, fifty two at Assizes and twenty eight at Quarter Sessions, with the 1680s seeing the next largest number of prosecutions at Assizes (forty one), and the 1690s at Quarter Sessions (six). Overall twenty bills at Assizes were ignored, that is about 13%, with fifteen of them being ignored in the 1660s. At Quarter Sessions nine bills were ignored, five of them in the 1660s.

At both Assizes and Quarter Sessions the proportion of gentlemen or above, yeomen and labourers was similar, each group accounting for just over a quarter of all offenders. While labourers were the largest single group at Quarter Sessions gentlemen were at the Assizes, where they formed 31% of defendants. The role of women was small, two women being indicted in each court, but because of the different numbers prosecuted in total in the two courts their representation varied from less than 2% at Assizes to just under 8% at Quarter Sessions. Nevertheless it is obvious that this was not an offence where women and labourers were prominent, whereas the gentry were. Perhaps the latter were more confident that they could voice opinions without being prosecuted while the local J.P.s did not consider it practicable to prosecute all those in the lower ranks of society who verbally opposed the regime.

The words complained of varied according to the complexion of the government of the day. In the 1650s for example, Robert Atkinson said that he "cared not for... never a roundheaded rogue in England and

the Parliament was all rogues themselves", and John Peavor drank a health to the late king and said he "hoped the sun would once again shine on him".<sup>82</sup> In the 1660s James Fryer considered that "Cromwell and Ireton was as good as the Kinge" and John Alderson that "I lived as well when there was no kinge and I hope to doe soe againe when there will be noe kinge", while in 1666 Mathew Thomson considered that "the king is the only cause of the plague and pestilence and hath provoked God to send this judgment upon us by taxing and assessing the poor".<sup>83</sup> Charles 11 was frequently condemned as a libertine. William Brewer, for example, said "the kinge keeps whores and has bastards... The kinge is sick of the pox with using soe many whores", and Thomas Turner, emulating Charles with unfortunate consequences, travelled to London and "in that streete... where all the whores were and the biggest man in England had there lost an inch of his prick".<sup>84</sup> Some men seem to have had ideas about the necessity of Parliament, particularly in relation to demands for taxation. Christopher Peares heard that "there is a new assessment coming forth which is strange for I believe there is noe Act of Parliament for itt", while others disputed the king's claims to god given powers - "What is the kinge better than another man for Robin Bulmer [a Pontefract yeoman] is a seventh son and can cure seven evils and the king can cure but nine soe the kyng is but two degrees better than Robin Bulmer".<sup>85</sup>

By the 1680s the words complained of had changed reflecting changes in the political scene. George Travis considered that the Duke of

-----  
82. PRO. ASSI., 44/5.

83. NRO., 100/400; 98/337 and PRO. ASSI., 44/14.

84. PRO. ASSI., 44/31 and WYRO., 4/10 fol 76.

85. PRO. ASSI., 44/28 and 44/11.

Monmouth was "right heire to the Crowne"; Tedy Mursew (possibly an Irish soldier) said "here's a health to the Prince of Wales and I will fight for them [that is James II and the Prince of Wales] as long as I have any blood", while Thomas Darby said that he would "rather drink a health to King William's confusion than drink his health" and that he believed "ther is neither heaven nor hell because King William turned his father King James out of his throne". By the late 1690s William Watson was drinking "a health to King James speedy restauracion... and damme his enemies".<sup>86</sup> Some of the words uttered have religious significance. William Mandevile hoped "to see the church downe and the priests buried in their surplices for I know noe good they doe but are a great charge to the parish in washing them", while John Staveley wished to see "his Majesty converted" and added that he also "hoped to see his Majestys head converted from of his shoulders".<sup>87</sup>

On the whole though the words indicted do not appear to modern ears to have amounted to much beyond tavern boastings and certainly do not suggest the existence of a politically conscious grouping. Yet it is interesting to note the sporadic references to the need for Parliaments, even if it usually appears in relation to matters of taxation where it is likely that the objection was to paying anything rather than to the fact that it had not been properly authorized.

For many of the indictments of uttering seditious words, as in other misdemeanours, results are not known, but in those for which we have verdicts about 30% were acquitted, 20% admitted the offence, and a

-----  
86. PRO. ASSI., 44/33; 44/35; 44/40 and 44/42.

87. PRO. ASSI., 44/27 and WYRO., 4/6 fol 73.

further 50% were convicted after a trial. For those convicted the punishment was a fine, varying from £10 to 10s, as well as standing in the pillory.

#### CONTEMPT

Blackstone considered contempts briefly in his chapter on summary convictions, and divided them into direct contempts "which openly insult or resist the power of the courts, or the persons of the judges who reside there", and consequential contempts which "plainly tend to create an universal disregard of authority".<sup>88</sup> The actual offences vary considerably and the general category is rather a convenience than a truly homogenous grouping. Nevertheless their treatment together is justifiable because all the indictments charge a defendant with doing or failing to do something to the contempt of the king, the Commonwealth or the Lord Protector, depending on their date.

A total of 212 persons were charged with various forms of contempt. Some of the offences charged are in truth religious offences. Elizabeth Hutton (who was a Quaker) for example said in open court at the Assizes that the judges were like "blind beasts".<sup>89</sup> More commonly however a defendant was charged with refusing to pay either a fine or an assessment, with refusing to obey a warrant, or failing to assist a constable. Some charges related to failures to obey orders previously made by the justices in sessions, such as for the relief or settlement of paupers, or the maintenance of bastard children. The

-----  
88. Blackstone, Commentaries, vol.4, p. 281.

89. PRO. ASSI., 44/5.

largest single group of charges, involving eighty four persons, related to the failure of officials to execute warrants or to serve in local offices such as surveyor of highways, while Nicholas Daniell, a bailiff was charged with summoning four men to serve as jurors when they did not possess freehold land worth 40 shillings per annum and hence were not properly qualified to do so.<sup>90</sup> Another large group, consisting of thirty one persons, was of officials charged with the wrongful exaction of fees.

Twenty six of the bills brought for the offences were ignored, that is 12.5% and a further twelve persons were acquitted, (6%). Fines, ranging from 1d. to 40/- were imposed on the remainder: the lesser amount on three gentlemen who refused to serve as constables, the larger on another gentleman who refused to hand over monies due for poor prisoners.<sup>91</sup> In total twenty five defendants were described as of gentle status or above and only one, Elizabeth Hutton, already referred to, was a woman. For the rest, seventy nine yeomen constituted 53% of defendants, while labourers and tradesmen/craftsmen and husbandmen each accounted for about 10%. It was one of the gentlemen who was charged with failing to pay maintenance for two children, one by Elizabeth Lindley and one by Mary Clough.<sup>92</sup>

#### ESCAPE

Three offences connected with prison breaking can be distinguished:

-----  
90. WYRO., 4/16 fol 300.

91. NRO., 100/288 and WYRO., 4/16 fol 301.

92. WYRO., 4/16 fol 228.

escape, assisting an escape and negligently permitting an escape, the last perhaps more properly belonging to the category of offences of negligence by officials. Blackstone distinguished breach of prison and rescue as well as escape by a person arrested but not convicted and Dalton makes the same distinctions. The penalty for all three offences depended on the offence allegedly committed;

a rescue therefore of one apprehended for felony, is felony: for treason, treason; and for a misdemeanour, a misdemeanour also. But here as upon voluntary escapes, the principal must first be attainted before the rescuer can be punished.<sup>93</sup>

The total number of persons charged with all three offences only amounts to 181, with most, seventy five, being charged with the first, and the fewest, forty four, with the last. Most charges, about 39% of the total were brought in the 1660s and the fewest in the 1650s, and the 1680s and 1690s accounted for about 16% each. Only in the offence of assisting an escape was an average of more than two persons charged on each indictment. Overall about 23% of Assize bills and 2% of Quarter Sessions ones were ignored. This includes one bill against five men for an escape, which was returned true against one and ignored against the others.<sup>94</sup> Once again verdicts in the cases that went to the petty jury are scantily recorded, but of those that did about % were acquitted. The indictments against John Nettleton, William Pott and William Crabtree are endorsed that they were convicted and sentenced to hang. Of the two former, Nettleton had been convicted, sentenced to hang and reprieved for burglary and Pott for stealing a horse at the Assizes in July 1688. They both allegedly escaped from the custody of Marmaduke Butler, the gaoler at York

-----

93. Blackstone, Commentaries, vol. 4, pp. 130 - 131 and Dalton, Country Justice, pp. 246 - 250.

94. PRO. ASSI., 44/16.

Castle, on 30 November 1689 and were subsequently tried for the escape and again sentenced to hang in 1690. The indictment against Pott though is again marked that he was reprieved.<sup>95</sup> William Crabtree was accused in 1651 of escaping from Leeds gaol after he had been committed there on suspicion of stealing a horse. No indictment for the horse theft survives, but on the escape charge he was convicted but then pardoned.<sup>96</sup> Nathan Haythorne or Smythust has already been mentioned as involved in the largest burglary in the county in the period, that of Samuel Sunderland Esq, of £2,000. The burglary had occurred in 1674 and in 1675 Haythorne was tried and convicted for it. He was subsequently reprieved and sentenced to be transported in March 1677. There are then two indictments against him for escapes, one in July 1678 on which no result is endorsed and one in May 1679 when he was convicted, and presumably this time hanged.<sup>97</sup>

Some officials seemed rather prone to indictments for negligence. William Bellwood, for example, was accused twice of extorting excessive fees in 1677 and acquitted on both indictments. In 1683 he was charged with negligently permitting an escape which he admitted and for which he was fined 5s. In 1694, if it is still the same man, he was charged with allowing a convicted burglar to escape, which he again admitted and this time was fined the lesser sum of 3s.4d.<sup>98</sup>

Some escapes were from gaols in total disrepair. An illustration of such ruin is provided by the deposition of Peter Barber, a man frequently before the courts on charges of theft. He told a

-----  
95. PRO. ASSI., 44/36 and 44/38.

96. PRO. ASSI., 44/5.

97. PRO. ASSI., 44/23; 44/26; 44/27 and 47/20/6.

98. PRO. ASSI., 44/25; 44/31 and 44/41.

magistrate that "he did sende sufficient baile for his appearance which the Mayor {of Hedon} refused." However the gaol was "very ruinous... ye walls broaken downe in severall places" so that he thought "he was not in prison but att liberty" and therefore walked away.<sup>99</sup>

Some attempts at rescue were obviously the result of family loyalty, for example that by Mary Buckle and Thomas and Francis Buckle junior to rescue their husband and father. On the other hand Peter and Uriah Barber attempted a rescue of an apparently unrelated Nicholas Booker.<sup>100</sup> More interesting is the indictment against John Gilley and Conyers Harrison, both of Scarborough, for freeing from custody Charles Bull and Thomas Gamble, an alehousekeeper and sailor of the same town, who had been impressed for the fleet by Joseph Orram of Scalby in 1695. The bill against them was found true but no result was endorsed.<sup>101</sup>

#### PERJURY

Perjury was committed by one who, in some judicial proceeding, "swears wilfully, absolutely and falsely in a matter material to the issue or point in question".<sup>102</sup> It was a common law offence before the passage of the statute 5 Eliz c.9, and Blackstone thought most prosecutions were brought under the common law rather than under the statute. Beattie suggests that "it was frequently alleged that

-----  
99. PRO. ASSI., 45/10/1/14.

100. PRO. ASSI., 44/15 and 44/13. The Buckles admitted the offence; the Barbers were acquitted.

101. PRO. ASSI., 44/42.

102. Blackstone, Commentaries, vol. 4, p. 137.



perjured evidence was common in the criminal courts" but gives no idea of the frequency with which it was actually indicted.<sup>103</sup> The 1563 statute, though creating a new offence, of perjury by witnesses as well as by jurors, was not seen by contemporaries as being innovatory, and Coke argued that perjury by witnesses had been a common law offence prior to the passage of the statute. Perjury was seen as a serious crime as it pertained to the honour of God,<sup>104</sup> and in the eighteenth century there were suggestions that it should be made capital. It is questionable whether perjury in an affidavit fell within the statute, but whether charged under statute or common law perjury in affidavits certainly figures in the Yorkshire courts in this period.<sup>105</sup>

Over three hundred cases of perjury or its subornation were brought. Of these 204 persons were prosecuted at the Assizes and only ninety nine at Quarter Sessions. Overall the highest number of prosecutions occurred in the 1670s and the lowest in the 1650s but whereas Assizes saw the small number of prosecutions in that decade rocket in the 1660s and steadily decline thereafter, at Quarter Sessions the pattern was more erratic with the 1690s actually seeing the greatest number of persons accused. At Assizes the bills against fifty four individuals were ignored, that is about 26%, but at Quarter Sessions only eight bills (about 8%) were. At Quarter Sessions seven of the

-----  
103. Beattie, Crime and the Courts, p. 342.

104. Dalton advised witnesses to be wary in testifying for "if either they should not speak the truth, or should conceale any part of the truth, they should offend against God, the magistrat, the innocent, the commonwealth, and their owne soules": Countrey Justice, p. 274.

105. M.D.Gordon, "The Invention of a Common Law Crime: Perjury and the Elizabethan Courts", American Journal of Legal History, 24 (1980), pp. 145 - 170.

defendants for whom final verdicts are known were acquitted and thirty six persons at Assizes. This would give an acquittal rate of about 25% at Assizes and about 9% at Quarter Sessions. For those convicted the penalty imposed was normally a fine (ranging from 2d to 5s) and possibly the pillory.

Labourers and yeomen were most likely to be charged with the offence - in 38% and 32% of cases respectively, and husbandmen least likely at only 4%. Women were defendants to just under 10% of charges and tradesmen/craftsmen to just over 10%. These proportions are for Assize and Quarter Session figures taken together: when looked at separately there are no very striking differences, the most significant one being that more labourers and fewer yeomen were accused at Assizes while at Quarter Sessions the position was reversed.

Most (65%) of those prosecuted at the Assizes were alleged to have perjured themselves there compared with 44% of those charged at Quarter Sessions. On the other hand 22% of those charged at Assizes and 26% of those charged at Quarter Sessions were alleged to have committed the perjury in an action at Quarter Sessions. For the remainder 30% of those charged at Quarter Sessions had committed the offence either in an affidavit or in another court and 8% of those charged at Assizes were said to have perjured themselves in an affidavit and 4% in another court.

The perjury alleged could take many different forms. Lawrence Meynill, described as a gentleman, and at the time a prisoner for debt in York Castle, was accused of having sworn before George

Marwood, the sheriff, in 1671 that he had no estate.<sup>106</sup> The Earl of Eglinton, who had been convicted of the murder of Thomas Maddox, the Doncaster postmaster, was in the same year charged with perjury in relation to the evidence he gave at the Assizes concerning the affair, but the bill against him was ignored.<sup>107</sup> The religious persecutions of the time could give rise to perjury charges. Abraham Halliwell and John Lawson of Leeds were charged with having perjured themselves at a special sessions held in Leeds in 1674 about an illegal religious meeting held there at a house called "Sibbills". The bills against both were found true, but what happened to them is not known.<sup>108</sup> In another religious case in 1670 William Browne and Joseph Priestley, yeomen of Barnsley and Worsborough respectively, were charged and acquitted of having falsely sworn to the attendance at conventicles in Penistone of John and Richard Kenerley and Silvanus Rich and his wife Mary. At the same sessions William Browne was also accused of assaulting and falsely imprisoning Robert Taylor of Penistone and it may well be that this false imprisonment case was linked with the activities of informers and constables in attempting to stamp out dissent.<sup>109</sup>

More common than these cases were accusations of false testimony in civil suits. Anna Gleadhill and John Hanson, for example, were accused of perjuring themselves at the Assizes in an action between Agnes Gleadhill and Robert Bradforth. All the bills were ignored.<sup>110</sup> Some of the accusations seem to be part of long running, possibly

-----  
106. NRO., 100/158.

107. PRO. ASSI., 44/28.

108. PRO. ASSI., 44/22.

109. WYRO., 4/9 fols 161 - 162.

110. PRO. ASSI., 44/11 and 44/12.

familial, feuds. In 1663 Abraham Hainesworth of Bradford was indicted for uttering false coin. In 1665 Robert and John Hainesworth of Thornton were accused of assaulting Abraham and Susanna Duckworth, and in 1666 of perjuring themselves at Assizes in saying that Abraham was a coiner. All the bills were found true but no final verdicts were recorded in any of the cases.<sup>111</sup>

The subornation of perjury cases were more likely to involve false accusations of crime. Thomas Watson was charged with suborning perjury in order to clear himself of an accusation of raping Elizabeth Kellam. Watson was acquitted of the rape and the accusation of subornation was ignored.<sup>112</sup> Another case involved an allegation of rape: Samuel Ouldred was charged with suborning Susanna Lord to swear that John Calbeck had attempted to rape her. There does not appear to be a bill against Calbeck for the attempted rape but the accusation against Ouldred was traversed.<sup>113</sup> Other crimes though might be involved. Richard Roundell (described as a grocer), George Henlock and Thomas Barnes were alleged to have bribed Michael Hobson to tell Thomas Heseltine, J.P. that William Carese, Thomas Thomason and John Watson, a grocer, of Boroughbridge, had sold clipped coin. This accusation, of which all three were acquitted, may have been linked with the prosecution, several years earlier, of Richard Roundell, then described as a tapster, for practising the craft of a grocer without having been apprenticed, though this bill against him was ignored.<sup>114</sup>

-----  
111. PRO. ASSI., 44/14.

112. PRO. ASSI., 44/39 and 44/40.

113. WYRO., 4/14 fol 51.

114. PRO. ASSI., 44/37 and 44/43.

Originally perjury could only be committed by jurors: but under 5 Eliz c.9 the offence was extended to cover false testimony by witnesses. There is only one case in the Yorkshire indictments of jurors being charged with perjury. In 1692 a petty jury, the foreman of which was Robert Ashton, a Sheffield yeoman, was accused of having listened to Thomas Sharpe outside the court at Doncaster Quarter Sessions in an action alleging that Sharpe had practised the craft of grocer without apprenticeship. All the jurors were indicted; all admitted the offence; and all were fined 10d.<sup>115</sup>

#### FORGERY

Forgery, defined by Blackstone as "the fraudulent making or alteration of a writing to the prejudice of another man's right" was punishable by fine, imprisonment and the pillory and under the statute 5 Eliz c.14, certain forgeries, particularly those relating to real property, were made felony without benefit of clergy on a second offence.<sup>116</sup> The statutes making the forgery of instruments of paper credit criminal were not passed until the very end of the seventeenth or start of the eighteenth century and therefore it is anachronistic to talk of seventeenth century forgers as "white collar" criminals.<sup>117</sup> It is arguable that it should be included in the category of offences against property and the justification for

-----  
115. WYRO., 4/16 fols 294 and 295. On this occasion Sharpe's activities had paid off and he was acquitted. A few months earlier he had been charged with the same offence at Rotherham when he traversed the indictment: WYRO., 4/16 fol 269.

116. Blackstone, Commentaries, vol. 4, pp. 245 - 247.

117. Sharpe has suggested that it should be so considered but even in the period up to 1750, which he is discussing, such a categorization would be too broad for any meaningful use of the term:  
Early Modern, pp. 177 - 178.

including it here is the incidence among the forgery indictments of a number that allege the forging of a document such as an arrest warrant, the misuse of which was obviously an abuse of public justice. Dalton suggests that the offence created by 5 Eliz c.14 could not be tried by J.P.s at sessions, but in Yorkshire, some, though not many, forgery cases were so tried, though it is not clear whether they were ones that fell within the statute and all three known verdicts were acquittals.<sup>118</sup>

Forgery or destroying documents was not a common crime, only ninety persons in all being so charged, seven of whom were charged more than once, seventy eight of whom faced prosecution at the Assizes and twelve at Quarter Sessions.<sup>119</sup> The largest number were charged in the 1670s, thirty seven being charged in that decade, followed by the 1660s when twenty one were charged. The 1650s and 1680s saw almost equal numbers of prosecutions and the 1690s six only. None of the Quarter Sessions bills was ignored, but fifteen of the Assize ones were, giving a rate of bills ignored of 19%. Of those cases where results are known (only seventeen in all), ten (58%) were acquittals and the remainder verdicts of guilt for which the punishments, when noted, was a fine.

It is perhaps not surprising that labourers featured little as defendants. The crime was likely to involve writing and was often concerned with claims for money or land. Thus labourers formed only

-----  
118. Dalton, Country Justice, p. 44. For the Quarter Sessions cases see WYRO., 4/16 fol 277; 4/14 fol 75; NRO., 98/266; 98/300 and 100/188.

119. This compares with about thirty persons charged in Surrey in Beattie's sample years between 1660 and 1800: Crime and the Courts, pp. 191 - 192.

9% of defendants and women even less at 8%. The bulk of defendants (55%) were described as yeomen, but gentlemen and tradesmen/craftsmen at 13% each also played significant roles.

The documents forged varied with the most common being bonds for or discharges from debt. Jeremy Butler, indicted as a labourer of Horsforth, was accused of forging a bond between Thomas Swayne and George Hague. Hague deposed that Butler, whom he described, probably more accurately, as a yeoman, "did make and write one writeing... purporting to be a bill obligatory frome Thomas Swayne to him". Butler "did sett the marke and seale which are mentioned to be the said Thomas Swaynes thereunto" as well as those of the witnesses. The purpose of forging the deed was so that Hague could sue Swayne's wife, Mary, (Swayne himself having died) and it was "soe contrived by ye said Jeremy Butler to be a satisfaction to this Informant for Swearing for the said Jeremy Butler in a cause brought against Mathew Smith his father in law." Mary Swayne, by now remarried to Thomas Myers, was not a woman to trifle with. She was pressed to settle the suit against her but instead went to Butler's house and asked for the names of the witnesses to the deed which he refused to give. "Being persuaded that the said Bill was Counterfeit she therefore did gett an Attorney to appeare for her in the County Court where, as her attorney said the said Hague did not proceed". Hague and Mary Myers then deposed against Butler in the criminal proceedings, but despite their evidence he was acquitted.<sup>120</sup>

Other forged documents could be warrants for arrest as when Robert

-----  
120. PRO. ASSI., 44/12 and 45/7/1/32.

Wrightson and William Gray, the former a yeoman and the latter a gentleman, forged warrants for the arrests of Richard Reyner and Richard Butler respectively.<sup>121</sup> Or they might be forged with the intention of acquiring a financial benefit as was presumably the case with the will of William Lyndall a Whixley yeoman, which Richard Nottingham, Thoams Lindall, Thomas Lucas and James Jefferson were accused of forging, though all were acquitted. The fact that Thomas Lindall was a defendant and a Jacob Lindall one of the witnesses against him suggests that this might be a case where one brother attempted to disinherit another of the father's estate.<sup>122</sup> The same may be true of Robert Richmond of Sawley, who was accused of publishing a forgery in order to gain an estate of inheritance consisting of a house, a barn and eight acres of land belonging to Edward Richmond.<sup>123</sup> More intriguing are the documents forged by Jonathan Ball. A whitesmith of Watton, he was accused in 1672 of forging a document in the name of Richard Burrows and taking 5s. 2d. and £2/8/- as excise of beer and ale from Joseph Goodall and Nathaniel Hanson respectively. These documents were presumably warrants for the collection of the excise duty.<sup>124</sup>

The papers destroyed or defaced were usually warrants or other court documents. Abraham Brookesbanke and his wife Jane, for example, were accused of snatching a warrant for Abraham's arrest from the bailiff, William Backhouse, and tearing it. The Brookesbankes and others were accused at the same time of assaulting Backhouse and his son, another

-----  
121. PRO. ASSI., 44/20 and 44/23. We do not know what happened to Wrightson but Gray was acquitted.

122. PRO. ASSI., 44/25.

123. PRO. ASSI., 44/6.

124. PRO. ASSI., 44/25.



William, and probably all the charges arose out of the same incident.<sup>125</sup>

## CONCLUSION

The category of offences against the authorities, apparently in other counties minimal, was substantial in Yorkshire, representing about 15% of all offences prosecuted in the period. Not surprisingly, in view of the fact that several of the prosecuted offences were treasons, the Assizes saw a much higher proportion of offences falling within the category than did Quarter Sessions: indeed the Assizes saw over four times as many prosecutions. However, it is necessary to bear in mind that for the offence of failing to attend church the numbers prosecuted were in fact much higher than has been allowed for here and that the inclusion of all the individuals so accused would swell the Assize numbers significantly, possibly by as much as five times. Offences against the authorities, then, constituted a significant part of the work of the courts and particularly of the higher court. The great bulk of the offences, of course, related to the coinage and to religion. Treason, however, was not simply a centrally prosecuted phenomenon totally different in methods of prosecution, legal complexity and verdict from other offences and with no effects in the region. Nor was it here a crime for which only a few of the nobility or gentry were tried. Those charged, convicted and sentenced to death for political treasons in Yorkshire in the period (and the number executed for treason was a substantial proportion of all executions) came, in general, from the

-----  
125. PRO. ASSI., 44/15.

ranks of society below that of the gentry. They had been involved in the last attempt to reestablish the Interregnum regime and it is noteworthy both that they were so plainly not a noble faction and that they were punished so severely. Those nobles and gentry accused of treason were, with one exception, not found guilty by the juries of the post Restoration period. The diligence with which the Farnley Wood plotters were pursued and prosecuted illustrates how nervous both central and local government was in the early years of the reign of Charles II about the threat or potential threat of rebellion. This fear, it is argued, pervaded the minds of the governors of the county in relation not only to political treason and it was because of it that the 1660s saw so many prosecutions for offences against the authorities. Tables 23 and 24 show the fluctuations in prosecutions for offences against the authorities at Assizes and Quarter Sessions respectively.

-----  
 TABLE 23

OFFENCES AGAINST THE AUTHORITIES OVER TIME  
 AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Treason	8	102	12	3		125
Religious	11	220	12	38		281
Coining	35	58	49	139	364	645
Utter/deal	2	21	16	22	310	371
Seditious words	14	52	15	41	35	157
Contempt	7	12	10	10	2	41
Perjury	10	74	55	38	27	204
Forgery	11	19	33	10	5	78
Rescue/escape	11	59	25	12	11	118
Total	109	617	227	313	754	2020

-----

-----  
 TABLE 24

OFFENCES AGAINST THE AUTHORITIES OVER TIME  
 AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Religious	7	37	20	32		96
Coining		4			2	6
Utter/deal	3				1	4
Seditious words	16	28	2	2	6	54
Contempt	28	36	24	40	43	171
Perjury	14	7	28	15	35	99
Forgery	5	2	4		1	12
Rescue/escape	14	6	15	11	17	63
Total	87	120	93	100	105	505

-----

The numbers of prosecutions for such offences declined in the following two decades but in the 1690s again soared. The reason on this occasion though was different, for these were the coining offences. Indeed it is perhaps arguable that it was only in that decade (when the government, despite being under pressure from the exigencies of war finance, felt its position to be secure) that it was able to mount the undoubtedly centrally directed drive against the coiners. It was a central initiative that received support locally from at least some of the major county families. As Macfarlane has shown, Daniel Fleming was heavily involved in apprehending coiners and so was his Yorkshire relative, Henry Bouch. The other J.P. who figures most frequently as taking depositions relating to coining was Thomas Heseltine, the clerk of Assize, a fact which strengthens the impression of a central government initiative.

In relation to the category of offences against the authorities it is possible to see how the concerns of central government both reflected

and influenced the behaviour of those involved in the maintenance of order at a county level. The prosecution of these offences, more than any others, were centrally directed, but of course, the fears of those in central government were similar to those at a local level, though in relation to the coining offences there are signs of a divergence of opinion between the higher and lower echelons of county government.

Yorkshire then differs significantly from other counties in this period in the high numbers of offences against the authorities that were prosecuted in the county, and the reasons for the higher proportion - the earlier political treasons and religious offences and the late coinings - were both apparently peculiar to the county, or at least to the northern part of the country. This fact perhaps reflects the continuing differences of those counties well away from London and the desire of a centralising government to incorporate the county into a national pattern of justice.

## CHAPTER SIX

### BREACHES OF ADMINISTRATIVE REGULATIONS

Cases of a breach of administrative regulations were rare at Assizes, but common at Quarter Sessions. Thus at Quarter Sessions a total of 1,152 persons were prosecuted (about 15% of the total presentments)<sup>1</sup> while at Assizes 234 persons or 2.5% were. In all then just over 8% of persons appearing in both courts were charged with administrative breaches. In East Sussex the total percentage was similarly around 8%, but in Essex it was much higher at 16%, even when drunkenness and other drink offences are excluded.<sup>2</sup>

Four groups of administrative breaches can be distinguished among the Assize and Quarter Sessions proceedings: failure to maintain highways and bridges; failure to pay sums levied for a variety of other purposes; those relating to alehouses; and failure to maintain watercourses. It can be argued that all of these were analogous to breaches of economic regulations in that the neglect of such matters would usually have had direct economic repercussions on specified individuals, but this was particularly the case with the last category. Blackstone includes in his category of offences against the "public police and oeconomy", by which he means "the due regulation and domestic order of the kingdom" a general group of common nuisances. These are distinguishable from private nuisance because

- 
1. Many of the prosecutions for administrative breaches took the form of presentments rather than indictments, but the figure given is the percentage of all prosecutions.
  2. Herrup, Common Peace, p. 27, and Sharpe, Seventeenth Century, p. 183. If drunkenness is included the figure rises to over 18%.

they "annoy the whole community in general, and not merely some particular person". The group consists of: "annoyances in highways, bridges and public rivers... either positively, by actual obstruction; or negatively, by want of reparations", "disorderly inns or alehouses"; and such nuisances as the carrying on of offensive trades or manufactures; lotteries; cottages erected on the waste; making or selling fireworks; eavesdroppers and common scolds. As will have been noted two of these offences, eavesdroppers and common scolds, have already been treated in the section on offences against the peace. Two others, lotteries and selling fireworks, only became punishable at the very end of the seventeenth century and do not appear in any of the Yorkshire indictments, and the other two, offensive trades and cottages erected on the waste, will be considered in the category of economic breaches.<sup>3</sup>

In both courts the 1680s saw the largest numbers of prosecutions with 300 being presented at Quarter Sessions and sixty five at Assizes. The next busiest decade, overall and at Quarter Sessions, but not at Assizes, was the 1670s when 274 persons were charged. A study of the administrative offences shows that there were differences in prosecution rates between those two Ridings for which records have survived. For most offences the West Riding sessions, covering a larger and more populous area, saw significantly greater numbers of prosecutions than the North Riding (approximately three times as many), and the balance of the different offences between the Ridings was roughly the same for all four categories of offence previously discussed. For both administrative and economic breaches, however,

-----  
3. Blackstone, Commentaries, vol. 4, pp. 167 - 170.

there were marked pattern changes.<sup>4</sup> The North Riding, for example, saw many more prosecutions for administrative breaches than did the West. Thus of the 1,152 persons presented at Quarter Sessions for offences within the category, 622 or 54% were charged at the North Riding Sessions. This was true both overall and for each decade except the 1690s, and for each group of administrative breaches except those relating to alehouses.

#### ALEHOUSES

According to K. Wrightson "the place of the alehouse in village society in the sixteenth and seventeenth centuries was of far more than merely recreational significance", affording "a staple nutritional necessity for the mass of the population". In his view the centrality of the alehouse was reflected in its large numbers.<sup>5</sup> The law relating to alehouses recognized at least half a dozen different offences,<sup>6</sup> but the two principal ones were the keeping of unlicensed and of disorderly alehouses. Licensing, often previously regulated on a local basis, was made statutory in 1552, and, although it took longer to become established in the north and west, was nationally effective by the early seventeenth century. From then on the problem of unlicensed ale selling was endemic and widespread:

-----

4. For the changes in the pattern for economic breaches see chapter eight below.
5. K.Wrightson, "Alehouses, Order and Reformation in Rural England, 1590 - 1660", in E.Yeo and S.Yeo, eds., Popular Culture and Class Conflict 1590 - 1914 (Brighton, 1981), pp. 1 - 27. In 1647 thirty seven Lancashire villages had one alehouse for every fifty seven inhabitants and in 1644 twenty seven Essex villages one for every ninety five inhabitants. This compares with one public house for every 279 inhabitants of Leeds or for every 168 inhabitants of Manchester in 1896: ibid., pp. 2 - 5.
6. Dalton, Countrey Justice, pp. 24 - 29.

thirty townships in South Lancashire in 1647 for example had eighty three licensed and 142 unlicensed alehouses while forty Worcestershire townships between 1634 and 1638 had eighty one licensed and fifty two unlicensed alehouses.<sup>7</sup>

The authorities were apprehensive about alehouses for a number of reasons: they attracted children, servants and husbands to spend time and money away from their parents, masters and wives; served as places where prostitutes could be met and illegal games played; in times of food shortage diverted barley from being used in bread; and by encouraging the poor to congregate potentially drew them into plotting. Thus restrictions on drinking were seen as necessary to preserve law and order and the fear was that alehousekeepers would encourage both excessive drinking and gaming and other activities likely to lead to breaches of the peace. From some of the Essex presentments noted by Sharpe it seems that even gatherings of friends or relations where drink was consumed might give rise to presentments.<sup>8</sup> Nevertheless an acceptance of drinking and drunkenness appears to have been widespread in the seventeenth century and was generally considered to be a part of the good fellowship necessary to lubricate the wheels of village life. The Civil War and Interregnum, though witnessing some increased magisterial action against alehouses, saw only one statutory change affecting alehouses: the introduction of the excise in 1643. After the Restoration central government lost interest in alehouses except as a way of raising money through the levying of the excise, and initiatives in control

-----  
7. Wrightson, "Alehouses", p. 3.

8. Sharpe, Seventeenth Century, pp.52 - 53. Wrightson, "Alehouses", pp. 11 - 20, and P.Clark, The English Alehouse: a Social History, 1200 - 1830 (London, 1983), pp. 147 - 160.



passed to the local magistracy. Licensing became more formalized and the conditions imposed stricter. By the end of the century criticism of the alehouse "was increasingly muted" due partly to the declining influence of Puritan views and perhaps more significantly to the feeling among the country gentry that the alehouse no longer represented a threat to political and social order, for by the eighteenth century the nature of the alehouse had changed. It was by then likely to be larger and more comfortable with rooms with specialized functions and its keeper was better off and more likely to be a woman. Further many of the smaller alehousekeepers had been driven out of the trade during the 1690s following an increase in excise duties, a higher price for malt and the recoinage of 1696, which left many alehousekeepers with substantial amounts of the old demonetized coin.<sup>9</sup>

In the major work to date on drinking places, Peter Clark divided them into three types: inns, usually large establishments catering for the well to do traveller; taverns, "selling wine to the more prosperous, but without the extensive accommodation of inns"; and alehouses, selling ale and beer and catering for the lower orders. In the late sixteenth century Yorkshire was stated in returns to the Privy Council to have had 239 inns, twenty three taverns and 3,674 alehouses, giving an estimate of one alehouse for every eighty seven inhabitants; by the 1630s the numbers had perhaps increased by about 30% - 40%, and, despite cutbacks under the Major Generals, were recovering before 1660.<sup>10</sup>

-----  
9. Clark, English Alehouse, pp. 178 - 209.

10. ibid, pp. 5 and 42 - 51.

In Yorkshire, as in other parts of the country it was unlicensed and disorderly alehouses that provoked presentment. Among licensed alehouses there was one instance at the West Riding sessions of a prosecution for the sale of bad ale, brought in 1681 against Sara Ducker, who admitted it and was fined 2s. and one prosecution of several men as unlicensed maltsters which the grand jury ignored.<sup>11</sup> In addition the Hedon Borough sessions provide instances of one other offence, the sale of beer and ale not according to the Assize, for which twenty nine presentments were laid, charging fourteen men and four women with committing the offence between one and three times each.<sup>12</sup> Once again it was an offence prosecuted more at Quarter Sessions than at Assizes, 83% of those accused being dealt with in the former court. In contrast with their attitude towards other administrative breaches the West Riding J.P.s in this period were more concerned than their North Riding brethren about illegal alehouses, ninety four of the 107 prosecutions being brought before them. The alehouse prosecutions account for just over 9% of the administrative breaches in contrast with Essex where they, together with offences of drunkenness, amount to 76% of the category, and with East Sussex where they were almost 50%.<sup>13</sup>

There were significant variations in the levels of prosecution over the period. At the Assizes twenty one persons in all were charged, seventeen in the 1660s and one in each of the other decades. At the West Riding sessions fifty four were charged in the 1680s and thirty six in the 1690s. That this was a judicial initiative in prosecution

-----  
11. WYRO., 4/14 fol 7 and 4/9 fol 211.

12. EYRO., DDHE 5/1.

13. Sharpe, Seventeenth Century, p. 183 and Herrup, Common Peace, p. 27.

is suggested by the fact that the fifty three persons charged in the 1680s with unlicensed alehousekeeping were charged on only thirteen indictments - one of which names eleven individuals (the bill against all of whom was ignored)<sup>14</sup> - and that all of them were prosecuted at only four sittings: Skipton in July 1681 and July 1682, and Knaresborough in October 1680 and October 1681. A similar pattern of sporadic heavy prosecution can be seen in the North Riding into the eighteenth century, when, according to Cockburn an average of thirty individuals were indicted annually although "this figure might be increased by large-scale indictments of unlicensed alehouse-keepers as in 1728 when 190 were prosecuted".<sup>15</sup> The Skipton sessions was obviously particularly concerned about the offence, for in total forty five of the ninety four persons charged were prosecuted there. None of those charged was charged more than once, a situation similar to that found by Wrightson in Essex and Lancashire.<sup>16</sup> The pattern of prosecution, however, does not really coincide with that suggested by Wrightson. The 1650s for example did not see the largest numbers of prosecutions and although from the 1660s on prosecutions were sporadic it would seem that they were dependant on the whims of local prosecutors rather than on a changed perception of the dangers of alehouses by the gentry and better sort in the village.<sup>17</sup>

In these cases alehousekeeper was perhaps not a surprising addition,

-----

14. WYRO., 4/14 fol 3.

15. Cockburn, "North Riding Justices", p. 490.

16. Wrightson, "Alehouses", p. 4. Of 178 persons prosecuted over a fifteen to twenty year period almost three quarters were charged only once and only nineteen more than twice.

17. In Essex the numbers indicted for keeping unlicensed or disorderly alehouses were greatest in the period 1645 - 1655, but the 1670s also saw a substantial number of prosecutions; Sharpe, Seventeenth Century England, p. 183.

but of those prosecuted at the Assizes twelve were described as yeomen, five as labourers and only one as an alehousekeeper. At Quarter Sessions on the other hand thirty eight were described as alehousekeepers and twenty four as labourers. In addition there were three husbandmen and one yeoman. Twenty two of the defendants were women, and thus in total at Quarter Sessions women accounted for 27% of all defendants. This contrasts with the 9% of women alehousekeepers in Kent between 1590 and 1619 and similar proportions in other counties in the same period. Wrightson has commented on the fact that alehousekeepers, whether licensed or unlicensed, were usually the poor, and quite frequently women. Even so he notes that of the thirty eight persons accused of drinking offences in Terling between 1590 and 1650, one was a gentleman and thirteen of the middling sort, and Clark's work supports this view of the social status of alehousekeepers. In York itself in 1596 those engaged in the clothing, leather and food trades accounted for well over 50% of male alehousekeepers, while husbandmen and labourers featured not at all. This of course was doubtless because of the urban nature of trades in York but in Yorkshire generally the middling sort appear to be well represented, particularly in those cases that went to the Assizes.<sup>18</sup>

Altogether about 20% of bills for disorderly or unlicensed alehousekeeping were ignored and a further 20% of defendants were acquitted. For the remainder fines were imposed ranging from 2d to 20s. - the last, a steep fine being imposed in three cases only, on two labourers of Methley and Halifax and on a Harrogate widow. All

-----  
18. Wrightson, "Alehouses", pp. 2 - 3 and 7, and Clark, English Alehouse, p. 79.

these fines were imposed in 1691; two of them at Leeds sessions and the other at Knaresborough.<sup>19</sup> The 2d. fines were imposed on eight defendants, five men and three women charged at Skipton in 1681, while three others, all men, were fined 20d.<sup>20</sup>

All the drink offences, that is those relating to alehouses and that of drunkenness itself make up but a small proportion of the offences prosecuted in Yorkshire, in total less than 1%. This is in striking contrast with the situation in for example, Essex where indictments for drinking offences accounted for 14% of all indictments between 1620 and 1680, and Sharpe suggests that many more instances occurred than were actually indicted.<sup>21</sup>

#### HIGHWAYS AND BRIDGES

During the seventeenth century internal travel and trade increased putting additional burdens on the poorly maintained roads. Yorkshire, as the largest county and one which contained many miles of the principal national north-south route faced particular difficulties in ensuring that the maintenance of the highways and bridges necessary to national economic life was adequate. The J.P.s were responsible for appointing surveyors of highways who in turn were to enforce the obligation of six days statute labour by parishioners, though there is little evidence either nationally or in Yorkshire that such labour was being regularly enforced. Failure to maintain or repair highways by the communities responsible for them could result in presentment

-----  
19. WYRO., 4/16 fols 263 and 275.

20. WYRO., 4/13 fols 229 and 230.

21. Sharpe, Seventeenth Century, pp. 49 - 51.

to Quarter Sessions and the usual method of dealing with the matter there was the imposition of a large fine, the levying of which was conditional on the work being done. In addition by the 1690s the J.P.s were empowered to levy assessments on the parish to pay for the cost of highway repairs. In relation to bridges, many of which were the responsibility of the county rather than of individual villages, the levying of assessments was more common and the sums raised, certainly by the eighteenth century, were substantial: between 1700 and 1742 for example the North Riding Sessions imposed rates amounting to more than £11,000.<sup>22</sup>

In Yorkshire offences relating to non repair or obstruction of highways, bridges and watercourses were much more numerous than those relating to alehouses, forming in total about 85% of all administrative breaches, while those relating to highways and bridges alone formed 71%. This contrasts strongly with Essex and with East Sussex where highway and bridge defaults formed 24% and 31% of the administrative category respectively.<sup>23</sup> Once again the law regulated the state of highways and bridges and had created a number of offences to deal with the failure of individuals or local communities to fulfill their obligations in relation to them. The statute 2 P&M c.8 provided for the inhabitants of a village to perform work as directed by the Surveyors of Highways and failure to do so was an offence, as was failure on the part of the inhabitants of a village or an individual to repair highways, or to obstruct highways. Similar provisions applied to bridges.<sup>24</sup>

-----

22. Cockburn, "North Riding Justices", pp. 497 - 503.

23. Sharpe, Seventeenth Century, p. 183 and Herrup, Common Peace, p. 27.

24. Dalton, Countrey Justice, pp. 34 - 36 and 58 - 64.

A total of 988 individuals or communities were charged with non repair or obstruction of highways or bridges, 829 of them at Quarter Sessions. Of the Quarter Sessions presentments slightly more than half, 455, were made in the North Riding. Presentments at Assizes remained fairly constant for the first four decades but none was made in the 1690s. In the West Riding similarly presentments were roughly constant, although rising slightly in the 1690s. In the North Riding, however, fluctuations were greater with the 1670s seeing most, 135, and the 1690s fewest, only twenty three. By far the greatest number of all presentments were for non repair of highways. In total non repair of bridges resulted in 180 presentments and the blocking of highways eighty eight. Again there are differences between the courts with, for example, the West Riding Quarter Sessions seeing 166 presentments for non repair of bridges compared with 143 for non repair of highways.

The majority of presentments for these offences were brought against communities, for example "the inhabitants of Thirsk", and there is therefore little point in analysing the status of those individuals charged, even if it were to be given more frequently than it is. We can say, however, that they were almost without exception men.

Some bills for the offences were ignored but the rate was low, only about 5% and final verdicts are known in only a very small proportion of cases. Where punishments were recorded they were fines.

## WATERCOURSES

Most of the cases of blocking, polluting or diverting watercourses, which seem to have been offences causing harm to an individual rather than to the community at large, were thus in some ways more analogous to breaches of regulations for the control of economic life; nevertheless they are included here, because they were similar to those relating to highways and bridges. 203 presentments were brought, fifty four at Assizes, of which almost half (twenty six) were prosecuted in the 1680s. The North Riding Quarter Sessions saw almost twice the number of prosecutions as the West, though there were none there before the 1670s, when twenty presentments were made, rising to thirty eight in the 1680s and then falling to twenty nine in the 1690s. In the West Riding the level was steadily low for the first three decades, but then rose to twelve in the 1680s and to twenty four in the 1690s.

Unlike the highway cases most presentments for blocking watercourses were brought against individuals rather than against local communities, and women featured in about 6% of them. In one case, for example, Martha Green, an Austinley widow, led six men in entering and polluting a weir in Kirkburton. The bill against all was ignored. This may be a case of the causing of deliberate damage to an individual, in this case John Crosland for reasons associated with communal or personal grievances.<sup>25</sup> In another case - more in line with the idea of these offences as breaches of regulations for the good order of society - Thomas Oakes, a Holden yeoman, was charged

-----  
25. PRO. ASSI., 44/39.



with polluting a watercourse on Holden Common by leaving a dead horse in it. He, like Martha Green, was discharged by the grand jury.<sup>26</sup> One further case has been included within this group, although it is not strictly relevant because it is the only one of its kind. In this Hugh Smith described as Esquire and Lord of the Manor of Armyn was charged in 1659 with having stopped the ferry boat over the river Ayre to Selby. What happened to him is unknown as are the circumstances of the accusation.<sup>27</sup>

Again as with the highway offences comparatively few bills were ignored, in this case about 8%, and although final verdicts are also scantily recorded the punishment was likely to be a fine.

#### NON PAYMENTS

In addition to the groups of offences already mentioned almost sixty persons or communities were charged at the North Riding Sessions with refusing to pay assessments for lame soldiers, poor prisoners, etc., and another twelve with not repairing items such as stocks or fences and for not having a constable. The levels of these prosecutions declined from a peak of twenty in the 1660s to eight in the 1690s. The circumstances behind these offences were obviously likely to be a simple dislike of paying taxes or rates; - perhaps their greatest interest lies in the picture they provide of a highly regulated society with extensive, but often evaded, local taxation.

-----  
26. PRO. ASSI., 44/14.

27. PRO. ASSI., 44/7.

## CONCLUSION

The largest group of administrative offences, failure to repair highways and bridges, seems the least interesting. The maintenance of roads was obviously a major problem in a society in which internal and external trade was increasing and where the system for maintenance was localized and subject to considerable administrative difficulties. Nevertheless it is obvious that in Yorkshire at least the J.P.s took their responsibilities in regard to roads seriously and attempted, by prosecution, to enforce their maintenance. Similarly although the licensing of alehouses was inefficient attempts were made to improve the system although the prosecution of unlicensed alehousekeepers was an alternative resorted to only sporadically. Yorkshire does not seem to witness the general decline in the regulation of alehouses in the late seventeenth century noted elsewhere.<sup>28</sup> One of the more striking points to emerge from an analysis of both the administrative and the economic breaches is that prosecution initiatives took different forms in the different Ridings. The reasons for this are complex and difficult to discern and a discussion of them is best postponed until after the economic breaches have been considered.

Tables 25 and 26 set out the rate of prosecution over time and offence for the courts of Assize and Quarter Sessions respectively.

-----  
28. See Clark, English Alehouse, p 177.  
but it should be noted that in Essex the 1670s saw twice as many administrative prosecutions as the previous decade and more than in any other decade than the 1640s: Sharpe, Seventeenth Century, p. 183.

-----  
 TABLE 25

ADMINISTRATIVE BREACHES OVER TIME  
 AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Roads/bridges	40	39	42	38		159
Alehouses	1	17	1	1	1	21
Watercourses	4	7	8	26	9	54
Total	45	63	51	65	10	234

-----

TABLE 26

ADMINISTRATIVE BREACHES OVER TIME  
 AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Roads/bridges	138	183	207	192	109	829
Alehouses	8	6	2	55	36	107
Watercourses	8	14	24	50	53	149
Miscellaneous	10	20	16	13	8	67
Total	164	223	249	310	206	1152

-----

From the tables it is possible to see that at the Assizes the numbers prosecuted in each decade fluctuated only slightly, but this was not the position at Quarter Sessions, where considerably greater variations in the numbers prosecuted occurred. This undoubtedly reflects the fact that prosecution for administrative breaches was much more likely than prosecution for the more serious offences to be influenced by the proclivities of individual justices or groups of justices. Thus in the 1680s, the decade that saw almost 30% of all prosecutions for administrative breaches, a large proportion of the

Quarter Sessions prosecutions were the alehouse keeping ones prosecuted at Skipton. Once again though it is possible to note how prosecution towards the end of the seventeenth century is not declining significantly even for the less serious offences.

## CHAPTER SEVEN

### BREACHES OF ECONOMIC REGULATIONS

This category includes a variety of very different offences varying from the most common, practising a trade without having served a seven year apprenticeship, to subletting or erecting a cottage on the waste. All the offences charged constituted misdemeanours only, not felonies, and as with breaches of administrative regulations, they were more likely to be prosecuted at Quarter Sessions than at the Assizes. Even there though they were only a small proportion of all offences, constituting about 7% of all crimes prosecuted in the lower court, just slightly more than offences against the authorities. The offences fell into five categories: breaches of the labour code, basically as set out in the Statute of Artificers; breaches of market regulations, such as selling goods at short weight; offences relating to cottages; usury; and a small group of miscellaneous offences.

#### LABOUR CODE

The principal statute concerned with the regulation of labour was the "Act touching divers Orders for Artificers, Labourers, Servants of Husbandry and Apprentices", commonly referred to as the Statute of Artificers.<sup>1</sup> This had four principal areas of concern. It provided for a supply of labour for agriculture by requiring artificers to work in the fields at harvest time if needed and by ordaining that

-----  
1. 5 Eliz c.4.

all unmarried persons and young poor not employed in certain occupations could be directed into farm work. In an attempt to reduce mobility the statute also provided for many workers to be hired for periods of not less than one year and laid down hours of work, methods of engagement and other matters. Whereas guild control of apprenticeship had always been confined to corporate towns the Act extended the principle of a seven year apprenticeship to the nation as a whole; and finally it provided for the J.P.s to fix wages annually. We shall return to the question of wage regulation later but will initially look at the enforcement of the provisions relating to apprenticeship.

#### Apprenticeship

The regulation of entry into a craft or mystery by the enforcement of apprenticeship had been one of the purposes of the medieval guilds. There is dispute among historians about the survival of such powers within the guilds in the seventeenth century. Coleman considers that "increasing labour supply, changing patterns of demand and expanding trade; the growth of new industries and the considerable extension of rural industry organized on the putting-out system... tended to disrupt... the guilds." Nevertheless the process was slow and piecemeal and in towns such as York the guilds retained their powers into the early seventeenth century.<sup>2</sup> Similarly Wilson considers "the up and coming industries... dispersed widely over villages and countryside" were not amenable to guild control and that even in corporate towns by the late seventeenth century apprenticeship and

-----  
2. D.C Coleman, Economy of England 1450 - 1750 (Oxford, 1977), p. 74.

its enforcement by the guilds was in decline.<sup>3</sup>

This is reinforced by contemporary comments. Thus Dalton in his discussion of labourers, in The Countrey Justice, while familiar with the Act, appears more concerned with the regulation of wages and conditions of service than with the enforcement of the law against unapprenticed trading. Indeed in his remarks on it he seems rather to be noting the exceptions, thus he states that

by the Common Law no man may be prohibited to work in any lawfull Trade, for the Law abhoreth idlenesse as the mother of all evill... Also by the Common Lawe no man is prohibited to use divers Mysteries or Trades at his Pleasure... (restraint of free trade being found prejudicial to the common wealth)... For that without an Act of Parliament no man may be restrained in any manner, either to worke in any lawfull trade; or to use divers mysteries, or trades: therefore ordinances made to restraine any person therein, are against the law.<sup>4</sup>

Once again this is an offence which historians of crime have studied but little, and comparisons are accordingly hard to establish. In Yorkshire a total of 267 persons were charged with offences relating to apprenticeship.<sup>5</sup> The records of Hedon Borough sessions provide a further ten cases of unapprenticed trading, and twenty nine of trading while not freemen of the town, all of them occurring in the 1660s. However some men were prosecuted on several occasions: the twenty nine prosecutions for unfree trading, for example, were brought against only eleven men, who were prosecuted between one and four times each.<sup>6</sup> Of the 267 cases, the majority, 257, were charged with unapprenticed trading and in addition seven apprentices were

-----  
3. C.Wilson, England's Apprenticeship (Oxford, 1965), p. 136

4. Dalton, Countrey Justice, pp. 68 - 75.

5. In Essex Sharpe noted 204 offences of unapprenticed trading, i.e. about 2.4% of the total recorded offences. The Yorkshire percentage is about 1.5%: Sharpe, Seventeenth Century, p. 183.

6. EYRO., DDHE 5/1.

charged with leaving their masters and three masters with refusing to accept paupers as apprentices. Dealing with the latter two offences first, John Comeyn, a Leeds carpenter, and Samuel Ellison of Reedness were both required by the overseers of the Poor, and refused, to take an apprentice: in the case of Comeyn Anna Rhodes, pauper, aged about nine years, and in the case of Ellison, Barbara Jackson, also a pauper. It may be that the two men refused because the proposed apprentices were female, and certainly it would seem unusual that a girl, Anna Rhodes, should be taught the craft of carpentry. More probably the refusal was to accept the girls as maids and the overseers were using the statute that regulated apprenticeship to bring the prosecutions. The other case was very different. Alice Guy, a Sheffield widow, was prosecuted for refusing to provide for John Wadsworth, previously apprenticed to her dead husband.<sup>7</sup> These cases occurred respectively in 1672, 1690 and 1661; and in all cases the bills were found true. No result is known in the case of John Comeyn, while Alice Guy issued certiorari to remove the process from the West Riding Quarter Sessions and Samuel Ellison was fined.<sup>8</sup> Seven apprentices were charged with leaving their master's service, four at Quarter Sessions and three at Assizes. Of the latter Gervas Shaw, described as apprenticed to Thomas Percivall gentleman, was accused of having left his service and of spending his time being entertained at the premises of William and Ann Longfellow, innholders of Skipton in Craven, but had the bill against him ignored by the grand jury. At Quarter Sessions two of the four bills were ignored, and in the other

-----  
7. See, on women carrying on the business of their dead husbands and accordingly taking on apprentices, M.Prior, "Women and the Urban Economy: Oxford 1500 - 1800" in M.Prior, ed., Women in English Society 1500 - 1800 (London, 1985), pp. 93 - 117.

8. PRO. ASSI., 44/21. WYRO., 4/16 fol 227 and 4/6 fol 165.



cases John Bray, an Ingbirchworth labourer, was accused of leaving the service of Joseph Micklethwaite but exonerated by the petty jury, while Peter Seckar of Heaton, accused of leaving the service of Welbury Norton, Esq., admitted the offence and was fined.<sup>9</sup>

At the Assizes 147 persons and at Quarter Sessions 110, were charged with unapprenticed trading, with small variations in the numbers charged in each decade. Thus for the two courts combined the 1660s, 1670s and 1680s saw effectively the same number of prosecutions, while the 1650s and 1690s saw slightly fewer prosecutions.<sup>10</sup> The fluctuations were greater when each court is considered separately with the number of Assize prosecutions in the 1670s being twice that in the 1660s and the number of Quarter Sessions prosecutions in the 1660s being almost five times that in the 1670s. Almost a quarter of the Assize bills were ignored but only 10% of the Quarter Sessions ones, and it is only among the Assize prosecutions that a higher rate of ignored bills can be seen in the period of heaviest prosecution: in the 1670s eighteen out of fifty two bills (35%) were ignored.

Sharpe has suggested in relation to Essex that by the 1670s flexibility in occupation was coming to be seen as normal but the 1670s mark no significant change in Yorkshire. Of all prosecutions 125 occurred before 1675 and 132 afterwards and the rate of bills

-----  
9. PRO. ASSI., 44/19 and 44/26. WYRO., 4/6 fol 121 and 4/16 fols 290, 319 and 269.

10. For the period 1563 - 1642 the North Riding saw 157 prosecutions, all after 1603, and the West Riding thirty two, with most occurring before 1603: M.G.Davies, The Enforcement of English Apprenticeship: 1563 - 1642 (Cambridge, Mass., 1956), pp. 275 - 277.

ignored is, for both periods, just over 20%.<sup>11</sup>

As with grand jury verdicts so in the sex and status of offenders there are sharp differences between the two courts. Thus husbandmen constituted less than 1% of Assize defendants but almost 18% of Quarter Sessions ones, while yeomen formed almost 27% of Assize defendants but only just over 11% of Quarter Sessions ones. Similarly labourers, 27% of Assize defendants were twice as well represented at Quarter Sessions while tradesmen/craftsmen, forming only 13% of Quarter Sessions defendants, were over 34% of Assize defendants. Women, whom, it might be thought, would not figure at all, formed almost 5% of Assize and 3% of Quarter Sessions defendants.

The gentry and above formed 5% of Assize defendants but no one so described was presented at Quarter Sessions. In fact the defendants of gentle status need to be treated separately here for all save three of them were accused of practising medicine without a licence, an offence analogous to unapprenticed trading, but with very different social implications. Four of the six accused of this offence, were described as clerks, and one as a gentleman. All five were accused at the same Assizes of having practised medicine without a licence on 1 May 1676; the witness against all of them being George Neale, described as a doctor and professor of medicine. Presumably Neale was attempting to prevent his unlicensed competitors from

-----  
11. Sharpe, Seventeenth Century, p. 43. Davies suggests that the decline of the enforcement of the apprenticeship regulations "was gradual, piecemeal, and much later than the era here considered", and suggests that it was not until the eighteenth century, when common informing went into disuse and there was "an apparent change in the character of county government" that it finally decayed: Enforcement, p. 267.

poaching on his preserves. The bills against all five were found true, but only in the case of Matthew Robinson of Burneston was a final verdict, not guilty, endorsed on the indictment.<sup>12</sup> Since all were tried by the same petty jury it would seem probable that all were acquitted likewise. All the defendants were charged with having committed the offence in the same place as that given for their domiciles, these being towns and villages to the west of York, including Leeds and Middleham.<sup>13</sup> One defendant, John Marshall, was a yeoman. He stands out from the others in other ways too. He was accused of having committed the offence in 1672, the witnesses against him were Richard Feather, Frances Brough and William Wilson, and he was tried at a different session of the Assizes from the others.

In addition to these six men, Thomas Nicholson, a yeoman of Selby, was accused in 1656 of practising as a barber surgeon, a much more lowly occupation, but the bill against him was ignored.<sup>14</sup> The only other cases, included here but not properly cases of unapprenticed trading, relate to John Nightingale, a Wadsley husbandman and Richard Sinkler, an Easingwold yeoman, both accused of running unlicensed schools, the former in 1669 and the latter in 1691. The bills against both were found true, but what happened to them is not known.<sup>15</sup>

In total nine women were charged with the offence of trading without having been properly apprenticed, seven at Assizes and two at Quarter

-----  
12. A Dr. Robinson apparently founded a free school in Burneston in 1681; possibly this was the same man. S.R. Clarke, The New Yorkshire Gazetteer or Topographical Dictionary (London, 1828), p. 47.

13. PRO. ASSI., 44/21 and 44/25.

14. PRO. ASSI., 44/7.

15. PRO. ASSI., 44/17 and NRO., 102/144.

Sessions. Priscilla Walker was charged on the same indictment as her husband, Thomas, (see above) and, of the others, two were described as spinsters, two as widows and the other four (including Elizabeth Walker, charged in both 1670 and 1673) were married women. Four of the accused women, the two spinsters and one of the widows, as well as Priscilla Walker, were accused of practising the craft of a grocer. The other widow, Hanna Bailson, was accused of trading as a mercer, Elizabeth Walker as a fellmonger and the last woman, Margaret Hogg, the wife of a Bridlington brasier, as a chandler.<sup>16</sup>

In cases where an occupation was given it had some connection, more often than not with the unapprenticed trade allegedly practised, for example a tailor practising as a draper, or a silk weaver as a mercer. The crafts that were alleged to be practised illegally were varied, with examples of almost forty among the indictments. They have been grouped here into six trade categories. The commonest in the two courts together, at Quarter Sessions alone, and jointly so at Assizes was the food trade. At Assizes almost 31% and at Quarter Sessions over 40% of defendants were alleged to have been involved in that activity and grocers alone accounted for over 13% of all accusations. More grocers (twenty one in all) were prosecuted at Assizes than at Quarter Sessions where only seven were so accused, but nineteen bakers and eleven butchers helped to swell the Quarter Sessions food traders. Jointly commonest at Assizes and second most common at Quarter Sessions, was the cloth trade, and among those indicted for practising one of these crafts at Assizes were seventeen who had allegedly been trading as mercers. The construction trades

-----  
16. PRO. ASSI., 44/17; 44/28; 44/21; 44/23; 44/39 and 44/43 and WYRO., 4/10 fol 306 and 4/16 fol 269.

accounted for 13% of all prosecutions in both courts, with a rather higher percentage at Assizes alone and were closely followed at Quarter Sessions by the leather and then the metal trades, while at Assizes the metal trades accounted for about 9% of all prosecutions and the leather trades for only 2.5%. The final category was a miscellaneous one including, for example, those accused of acting as parchment makers or chandlers.<sup>17</sup>

Once again final verdicts are poorly recorded on the indictments. Of those that are known 32% were acquitted, 15% convicted and 34% admitted the offence and were fined, the sums involved ranging from 2d to £6. The remainder either traversed the indictment, compounded with the informer, were allowed a writ of certiorari and, in one case, showed indentures and was discharged.<sup>18</sup>

The recorded places of domicile and of the alleged offences differ in only 10% of cases, and in several of these the places are linked. For example in 1678 Bartholomew and Thomas Alman and William Bell, all of Thirsk, were alleged to have practised the craft of bricklaying in Marderley, the bills against all three being ignored. Six years previously Thomas Alman and William Bell had been accused of practising the bricklayers trade in Thirsk itself and those bills had been found true. This difference in outcome leads one to speculate

-----  
17. In Essex, by contrast, the food trades accounted for 60% of all prosecutions with textiles, at 19%, a poor second category: Sharpe, Seventeenth Century, p. 42. Davies, after noting considerable problems with the records, found that 21% of apprenticeship prosecutions related to the textile industry, 19% to dealing and retailing; 23% to food processing and no other occupational group accounted for more than 10% of prosecutions: Enforcement, p. 84.

18. WYRO., 4/6 fol 57.

whether the men were attempting, by practising their trade in a hamlet three miles from Thirsk, to escape the guild domination of the town; in this case, is so, successfully.<sup>19</sup> Somewhat similar may be the cases of Edward Brooke, William Lee and Richard Rackstraw of Thornhill and Richard Binns of Dewsbury alleged to have traded as butchers in Dewsbury and Thornhill respectively. In this case, however, the first defendant at least admitted the offence and was fined.<sup>20</sup>

#### The role of the informer

Here again, as in the prosecutions for other economic offences, local initiatives may be seen in the form of active professional informers. Thus of the thirty five prosecutions for the offence at Quarter Sessions in the 1660s twenty two were the result of informations laid by two men. John Robinson and William Phillips informed against fourteen men at the Pontefract sessions in 1661, against four at the same sessions a year later, and against four at the 1662 Skipton sessions. In addition Robinson also informed against four other men for offences such as engrossing corn.<sup>21</sup>

The role of the informer in enforcing the economic legislation of the period is of considerable interest and has given rise to work by various historians, though it has been less considered by historians of crime. Prior to 1624, when informers were effectively exiled from

-----  
19. PRO. ASSI., 44/21 and 44/26.

20. WYRO., 4/14 fol 30.

21. WYRO., 4/6 fols 57, 134 - 138 and 145. Davies found that overall about three quarters of apprenticeship prosecutions were the work of professional informers and she discusses their role in detail: Enforcement, pp. 40 - 76.

the Westminster courts, they were, according to M.W.Beresford, "a chief instrument for the enforcement of economic legislation and the indirect taxation of the kingdom", but even after that date they were active at Assizes and Quarter Sessions and their ability "to make money from the misdeeds of others was abolished only in 1951". Beresford was concerned with informations laid in the Exchequer and he divided them into groups according to the nature of the offence alleged. The most common were breaches of marketing and customs regulations with infractions of the labour code being much less common, but whereas customs informations were fairly steadily prosecuted, both marketing and labour code informations fluctuated considerably, giving rise to lean and fat years in the numbers of informations recorded. Beresford suggests that this was because "the craft of informing needed no seven-year apprenticeship. It was a free trade..."<sup>22</sup>

Informers were unpopular and London crowds certainly often acted against those who for example reported tradesmen for infringing regulations considered to be unjust. They were considered, as a London newspaper put it, to be idle persons who "for lucre... will never scruple to take any oath right or wrong".<sup>23</sup> No instance of a crowd punishing an informer can be conclusively identified among the Yorkshire records but they were frequently accused of extorting money unlawfully and might be prohibited from prosecuting further informations. James Phillips of Great Broughton, for example,

under the color of an informer hath committed several misdemeanours and received sums of money of several

-----  
22. M.W.Beresford, "The Common Informer, the Penal Statutes and Economic Regulation", Econ Hist Rev, 2nd series, 10, (1957 - 1958), pp. 221 - 238.

23. Beattie, Crime and the Courts, pp. 134 - 135, and see Davies, Enforcement, p. 63.

persons unlawfully: Ordered that the said James Phillips be put downe from being an informer, and that hereafter no informations be drawn in his name.<sup>24</sup>

Informers then were obviously still playing a significant role in prosecutions for economic breaches in Yorkshire at this time, and their role was recognized by the J.P.s in the control exercised by the justices over their activities.

#### Exceeding statute wages

Besides regulating apprenticeships the other main provision of the Statute of Artificers was to set wage rates. As Dalton describes the process:

Any two Justices of Peace may imprison without baile, the Master for tenne daies, and the servant, workeman, or labourer for one and twenty daies, that shal give or receive excessive wages (scz any greater wages, or other comodotie,) contrary to the rates or wages assessed by the Just. of P. at their Easter generall Sessions, and Proclamation thereof made in that country etc.<sup>25</sup>

The purpose and effects of the wages provisions in the statute have aroused strong feelings among historians. Thorold Rogers considered the system to be "a conspiracy concocted by the law and carried out by parties interested in its success... to cheat the English workman of his wages."<sup>26</sup> In a more dispassionate account, Tawney stressed the prevalence of the issue of wages assessments by the J.P.s and, since his work was published, at least thirty four assessments and reissues for Yorkshire between 1563 and 1757 have been noted, supporting his argument that the legislation did not become a dead letter until well

-----  
24. North Riding Quarter Sessions Records, ed. Atkinson, vol. 7, p. 27, and Davies, Enforcement, pp. 63 - 76, also comments on the regulation of informers.

25. Dalton, Countrey Justice, pp. 69 - 70.

26. R.H.Tawney, "The Assessment of Wages in England by the Justices of the Peace", in W.Minchinton, ed., Wage Regulation in Pre-Industrial England (Newton Abbot, 1972), p. 40.



into the eighteenth century.<sup>27</sup> Tawney however drew a distinction between the treatment of textile and of non textile (principally agricultural) wages, arguing that whereas in relation to agricultural occupations the purpose of the statute had always been to fix a maximum rate; for textile workers, the statute 1 Jas 1 c.6 empowered the J.P.s to fix minimum wages and that this policy was enforced by the Privy Council before the 1640s. After that date "the assessment of maximum wages continued, but the fixing of a minimum for artisans in the cloth manufacturing industry... fell into desuetude", and by the early eighteenth century it had been definitively decided that the Statute of Artificers "extends only to service in husbandry".<sup>28</sup> This view is supported by some Yorkshire evidence. Thus in the West Riding weavers' and spinners' wages were stationary between 1588 and 1676 and, after 1672, when a general increase in agricultural wages was permitted, woollen weavers' wages were specifically excluded from the statutory assessments.<sup>29</sup>

The enforcement of the legislation in Yorkshire was sporadic with no cases occurring in the West Riding in the period. Thus it is in the North Riding only that we can study the position. There twenty five cases occurred between 1606 and 1614, plus a further six cases of refusing to work for the assessed rates. From then until 1680 only

-----  
27. Tawney, "Assessment of Wages", pp. 206 - 234, but in Essex the period 1620 - 1680 saw no prosecutions and only one instance, a bill returned ignoramus in 1685, was found in a study of the economic history of the county up to the early eighteenth century: Sharpe, Seventeenth Century, p. 45. The Essex Justices had, however, ordered in 1684 that statute wages be properly enforced, see J.A.Sharpe, ed., "William Holcroft: His Booke" local office holding in late Stuart Essex, (Essex Historical Documents 2, Essex Record Office Publications, no. 90, 1986), pp. 93 - 94.

28. Tawney, "Assessment of Wages", pp. 69 - 78.

29. H.Heaton, Yorkshire Woollen and Worsted Industries (Oxford, 1920), pp. 116 - 117 and 313.

a handful of cases occur, but the three sessions at Helmsley, Bedale and Thirsk in January and April 1681 saw a total of sixty eight prosecutions. All of these charged both the master and the servant with respectively giving and receiving a larger wage than the rated one. Thus for example, Richard Melton of Hemsleys Ambo retained Mary Benson as his domestic servant for dairy work and agreed to give her and she agreed to accept £3 whereas the assessed rate was 40s with food and drink or 33s 4d without. These sixty eight prosecutions were made up of thirty eight for retaining maids and thirty for retaining servants in husbandry: no prosecution was brought relating to employment in the textile industry.

The background to this spate of prosecutions has been analysed in detail by R.K.Kelsall, who relates it to an epidemic in the North and East Ridings between 1679 and 1681. This resulted in a shortage of labour and the J.P.s therefore, in an attempt to prevent wages rising to their full scarcity value, issued new scales and then attempted to enforce them. Thus they first turned their attention to the problem in April 1680 when the new wage assessment was agreed to, issued and sent to the chief constables for publication by them.<sup>30</sup>

The yeomen who made up grand juries were, in principle, alive to the dangers of excessive wages. As one Worcestershire jury said in 1661

We desire that servants' wages may be rated according to the Statute, for we find the unreasonableness of servants' wages a great grievance, so that servants are grown so proud and idle that the master cannot be known from the servant except it be because the servant wears

-----  
30. R.K.Kelsall, "Statute Wages during a Yorkshire Epidemic 1679 - 1681", YAJ, 34 (1939), pp. 310 - 316. For "printing the rates of servants' wages and rules for the better observation of the Statute of the 5th of Elizth. touching servants and labourers" Robert Jackson was paid 30s: North Riding Quarter Sessions Records, ed., Atkinson, vol. 7, p. 50.

better clothes than the master.<sup>31</sup>  
Nevertheless when faced with paying excessive wages or doing without workers many yeomen preferred to pay and face the consequences. Thus of those prosecuted for retaining servants at excessive wages forty four were yeomen, thirteen gentry, two were women and the remainder were not described.

#### Other breaches of the labour code

Although no case of paying more than statute wages occurs outside the North Riding, other offences under the labour code do. Some of these offences had been created under the Poor Law rather than under the Statute of Artificers, but they relate to the obligation not to live idly and are properly treated as part of a labour code. Dalton stated that all who "being above the age of 7 yeres, and offending as hereunder mentioned, shalbe adjudged rogues, or at least shalbe punished as rogues" and then listed fifteen classes of persons, including "1 All persons... going about begging" and "5 All Pedlers, petie Chapmen, Tinkers and Glasse men wandring abroad".<sup>32</sup> Most persons apprehended under the Poor Law were of course likely to be punished without formal indictment at Quarter Sessions or Assizes so that the cases mentioned here were probably exceptional. However none of the other offences charged were numerous and thus the thirty three persons prosecuted faced six different charges. Mary Danby of Wistow was charged with refusing service with John Briggs, gentleman, in 1661 and Michael Wallis in 1691 was charged with having a false pass as a vagrant in Aberford, and having admitted the offence was

-----  
31. Tawney, "Assessment of Wages", p. 66.

32. 39 Eliz. c.4. Dalton, Countrey Justice, pp. 108 - 116.

sentenced to the pillory.<sup>33</sup> Only one man, Matthew Lockwood of Skelmanthorpe, was accused of failing to pay the wages owed to his servant, William Charlesworth. Lockwood, who admitted the offence, was described as a labourer, an unusual occupational description for one hiring men for 50s, even though that rate was below the statutory wage for, for example, a ploughman at the time.<sup>34</sup> The case of Robert Halliday, George Green and Christopher Tattershall appears to be an early form of strike. They were all described as housewrights of Halifax, and charged that, having started to mend a barn and stable of Walter Calverley Esq., for agreed wages, they stopped before the work was completed.<sup>35</sup>

Four persons were charged with failing to work, two of them at the Assizes in 1667 and the other two at Quarter Sessions. The Assize charges are of interest for although Thomas Howson was said to have been a tanner domiciled in Settle and committing the offence in Wakefield, and William Chambers a tanner of a Westmorland township committing the offence in Sheffield, the witness against both was John Atkinson, perhaps another informer. In the event in both cases the grand jury ignored the bills.<sup>36</sup>

Most common among this group of offences were the fourteen persons charged with being vagrants or rogues. Most, six, were charged in the 1660s with the 1690s seeing the next greatest number. The 1660 cases included one indictment against five persons, all called Chambers, and including two women, one a spinster and the other charged

-----  
33. WRQS., 4/6 fol 80 and 4/16 fol 300.

34. WYRO., 4/6 fol 288.

35. PRO. ASSI., 44/27.

36. PRO. ASSI., 44/16.

together with her husband. All the men were described as tinkers, and all five were convicted.<sup>37</sup> A prosecution for vagrancy could be combined with one for attempting to work. Peter Browne for example was accused at the same sessions in 1691 of selling cloth in Sheffield not being a freeman of the town and with being a vagrant in the same town, his accuser in both cases being Joseph Mower, who also accused William Wright of the same offence.<sup>38</sup>

#### MARKET OFFENCES

Market offences, with which a total of 231 persons were charged, consisted of three discernible groups of offences. The least common of these is perhaps the best known to historians, engrossing, regrating and forestalling of produce; the most common was the sale of a variety of items by unqualified persons or the sale of adulterated and underweight items. Only a very small number of prosecutions, eleven in all, were brought at the Assizes, and of the Quarter Sessions prosecutions about 70% were brought in the West Riding. Overall the 1670s saw most prosecutions, 107 in all, including eight of the Assize offences, but only two North Riding prosecutions. The 1680s was the next busiest decade and then the 1690s, but only four prosecutions were brought in the 1660s and none in the 1650s.

Engrossing etc.

Forestalling, "the buying or contracting for any merchandize or

-----

37. WYRO., 4/6 fol 42.

38. WYRO., 4/16 fols 243 and 245.

victual coming in the way to market"; regrating, "the buying of corn or other dead victuals, in any market, and selling them again in the same market"; and engrossing, "the getting into one's possession, or buying up, of corn or other dead victuals, with intent to sell them again", were all offences under 5 & 6 Edw VI c.14, and punishable by forfeiture and two months imprisonment for a first offence.<sup>39</sup>

Only nine persons were charged with engrossing, seven at the Assizes, five in the 1670s and two in the 1660s, and the two Quarter Sessions offences occurred in 1670 and 1692.<sup>40</sup> All the Assize charges related to the sale of salmon. Francis Morland, a York haberdasher, was charged twice. Both indictments charged the offence as occurring on 11 March 1674 but one alleged that the place of sale was Cawood and the other Acaster Malbis. The charges were tried at different Assizes for the Acaster Malbis one had to be tried by the Assize judges sitting for the county of the City of York and the Ainsty. Of the other defendants, four were women, one a widow and the others married.<sup>41</sup> At Quarter Sessions John Taylor, a Sherriff Hutton yeoman, and William Hardisty, a Timble yeoman, were accused of engrossing grain.<sup>42</sup>

#### Short weight

More numerous than the cases of engrossing were those charging the

-----  
39. Blackstone, Commentaries, vol. 4, pp. 158 - 159.

40. Prosecutions for this offence were more common elsewhere. Essex, for example, saw sixty eight prosecutions between 1620 and 1680, and Sharpe notes the role of the professional informer in relation to these offences: Sharpe, Seventeenth Century, pp. 41 - 43.

41. PRO. ASSI., 44/16 and 44/22.

42. NRO., 100/117 and WYRO., 4/16 fol 310.

sale of goods at false weight. In total sixty three person were so charged, fifty nine at Quarter Sessions and four at the Assizes.<sup>43</sup> Most of the Quarter Sessions prosecutions, thirty three in all, were brought in the North Riding, and all save one of them in the 1680s. All of these prosecutions related to the sale of butter. Thus at the Thirsk sessions in 1680 ten yeomen from villages on the North York Moors or Vale of Pickering were charged with selling butter, in Whitby, at false weight or in firkins not stamped with their initials or with the weight of the firkin; and fifteen firkiners from villages around Masham were charged with making firkins of incorrect weight. A year later at Richmond sessions a further six firkiners were charged and the bills against all of them ignored. In fact these prosecutions are only a part of the prosecutions for offences relating to the sale of butter that the North Riding justices dealt with in this period. Once again though the spate of prosecutions was short lived. Thus including those already mentioned, between 1674 and 1685 245 persons were charged with selling butter underweight; in firkins not properly stamped or with making firkins of incorrect weight. Apart from these however only a further ten prosecutions are recorded between 1657 and 1720, seven in the 1690s and three in the 1710s.<sup>44</sup>

Of the other prosecutions the only two brought in the 1690s were one against Daniel Greenwood, a Dewsbury labourer, who tried to sell cloth at a false weight, and one against Thomas Fairburne, a Fishlake yeoman, for selling malt at false weight. In the former the process

-----  
43. In Essex sixty six indictments were brought for the offence of using false weights. Most, almost 70%, in the period 1674 - 1680 "after the appointment of Nicholas Nicholls and his helpers to what were virtually positions of weights and measures inspectors for the county", Sharpe, Seventeenth Century, p. 44.

44. North Riding Quarter Sessions Records, ed. Atkinson, vols. 6 - 7.

against Greenwood was initially stayed but he subsequently admitted the offence and was fined 1s, and in the latter the bill was ignored.<sup>45</sup> In 1671 William Wright had brought prosecutions against four persons, three men and a woman, for selling goods at false weight. One of the defendants was Thomas Percevall, whose apprentice, Gervas Shaw, was to be charged with leaving his service a few years later.<sup>46</sup>

#### Sale of adulterated food and sales by unqualified persons

Butter does not appear only among the prosecutions relating to false weights. A further seventy persons were charged with the sale of adulterated butter. Again all the offences occur in the North Riding with forty nine prosecutions being brought in the 1670s, seventeen in the 1680s and four in the 1710s. The sale of other unsuitable goods was also prosecuted though again very sporadically, and prosecutions for the sale of items other than butter occurred more in the West Riding than in the North. In total there were 152 such prosecutions, of which twenty were brought in the North Riding. Of these, (besides the butter prosecutions mentioned above) thirteen, twelve of them in the 1690s, were for the sale of leather without examination or of shoes made partly from calf skin. The others related to a variety of goods including the sale by George Williamson of Hunton in 1662 of bad beef at Middleham, for which he was fined 2s. 6d.<sup>47</sup>

The majority of the offences of the sale of bad food or the sale of

-----  
45. WYRO., 4/16 fol 315, and PRO. ASSI., 44/41.

46. WYRO., 4/10 fol 6.

47. NRO., 98/400.



items by unqualified persons, 132, were prosecuted in the West Riding and the goods sold differed from those sold in the North Riding. Thus there were no prosecutions there relating to butter or to leather/shoes. Instead the 1670s saw forty two persons prosecuted for selling cattle, and fifty one for selling corn, while the 1680s saw twenty four persons presented for selling foreign iron wire. The occupations given for defendants to these charges illustrate the differences between the offences. All of those charged with the butter or shoe/leather offences for whom occupational descriptions are given were described as yeomen or shoemakers respectively. Of those charged with selling cattle 93% were described as husbandmen and the remainder as yeomen; of those charged with selling wheat 90% were described as husbandmen, 6% as yeomen and the remainder were widows, while of those charged with selling wire 55% were cardmakers; 32% wiredrawers, 10% labourers and 3% women.

It might be expected that offences of this type were prosecuted in courts other than Quarter Sessions and Assizes, but from Bruen's work it would appear that the manorial courts were hardly troubled with such prosecutions at all.<sup>48</sup>

#### OFFENCES CONCERNING COTTAGES

Two offences involving dwellings can be discerned. The statute 31 Eliz c.7 enacted that "no person shall erect a cottage, unless he lays to it four acres of freehold land of inheritance to be occupied therewith... and no owner or occupier of a cottage shall suffer any

-----  
48. Bruen, "Leet Jurisdiction", pp. 152 - 157.

inmates therein".<sup>49</sup> The first offence was more common than the second, giving rise to fifty eight prosecutions, thirty at the Assizes and twenty eight at Quarter Sessions. Twenty one of the Quarter Sessions prosecutions were brought in the 1690s though that decade saw no Assize prosecutions. The 1660s and 1670s saw roughly equal numbers of prosecutions but the bulk of these were Assize charges. Some individuals were prosecuted more than once. At the West Riding sessions Thomas Walker, a Birstall yeoman, was charged in December 1680 with having erected a cottage at Birstall. Over ten years later he and Richard Walker also of Birstall faced seven charges for other instances of the same offence. The witness against them in 1680 and 1691/92 was Timothy Brooke, gentleman and during the later prosecutions the defendants sued for a writ of certiorari.<sup>50</sup> Similarly at the Assizes in 1672 Sir Christopher Clapham faced six charges of having erected a cottage without four acres of land at Wakefield as well as one charge of having prevented Abraham Standraw from erecting a cottage with four acres of land attached. The witnesses to all the bills were the same - William Goodison and Samuel Smith - and all the bills relating to the erection of cottages were found true while that charging Clapham with preventing Abraham Standraw from erecting his cottage was ignored.<sup>51</sup> In total seventeen bills (30%) were ignored and in the only case where a final punishment is recorded it was a fine of 2s. imposed on Richard Carr, a Rathmell gentleman.

Of the twenty one charges brought for keeping inmates thirteen were

-----  
49. Blackstone, Commentaries, vol. 4, p. 168.

50. WYRO., 4/13 fol 235 and 4/16 fol 313.

51. PRO. ASSI., 44/20 and 44/21.

brought in the 1660s, two at Assizes and eleven at Quarter Sessions. The only other Assize prosecution was in the 1650s. Four were against women, one of whom was charged with her husband while the others were widows, presumably attempting to find some means of support. Punishment of the offence was by fine. The only gentleman charged, John Worsley of Hovingham, had the bill against him ignored as did two other men, but where results are known two were found guilty, four traversed the indictment and four more were fined. In the case of Elizabeth Readhead, one of the widows, the fine was 6d. as it was for two other defendants, while the fourth, Thomas Walker was fined 10d.

#### USURY

Usury, that other prime target of contemporary moralists, was little presented.<sup>52</sup> Dalton does not mention it but Blackstone defines usury as "an unlawful contract upon the loan of money, to receive the same again with exorbitant interest", the statutory rate having been fixed at 6% since 1650.<sup>53</sup> Only nine men in total were charged with the offence, half in the 1660s and half in the 1670s, three of them at the Assizes and the rest at the West Riding Sessions.<sup>54</sup> They consist of three yeomen, a woollendraper, an ironmonger and the cutler, George Ludlum, previously mentioned. Two of the Assize accusations related to the taking of a sum of money in return for forbearing to

-----  
52. For a discussion of both contemporary attitudes to and the practice of usury see R.H.Tawney, Introduction to Thomas Wilson, A Discourse upon Usury (London, 1925), pp. 16 - 172.

53. Blackstone, Commentaries, vol, 4, pp. 156 - 157.

54. In Essex, Sharpe found a similar lack of prosecution, only seven between 1620 and 1680, and five of the charges were brought against two Colchester men in 1677. He also found little prosecution in the church courts: Sharpe, Seventeenth Century, pp. 45 - 46.

sue for debt. Thus Thomas Cantley, a Bridlington yeoman, took £4 to forbear on a debt for £50 owed by John Johnson gentleman, while John Skaife, an East Witton yeoman, took £4 to forbear on a debt of £30 owed by Simon Wynn. Both these bills were found true but no final verdict is recorded.<sup>55</sup> In the other Assize case John Fox, a Sheffield ironmonger, was acquitted of usury to the detriment of William Taylor.<sup>56</sup> Of the Quarter Sessions prosecutions two, including one of two prosecutions brought against George Ludlum, were ignored by the grand jury, and in the others traverses were entered.<sup>57</sup>

#### MISCELLANEOUS

Finally a small group of offences which fit into no other category need to be mentioned briefly. With the exception of Thomas Heaton's case, all were brought at the Quarter Sessions. William Stead, a Morton labourer, was accused in 1691 of pasturing an infected mare on the common and traversed the indictment, and Thomasina Brooke of Mirfield was accused of keeping a gelding on the common when she had not land entitling her to do so, the bill against her being ignored.<sup>58</sup> Thomas Heaton, a Darrington yeoman, had kept a bull which gored John Nailor to death: according to one of the witnesses, Henry Fleese, Nailor had baited the bull. Heaton was fined £3/6s 8d. The depositions had been taken by John Burdett, the coroner, who was charged at the same Assize sitting with having unlawfully exacted 18s from various Darrington men, including the constable, for viewing the

-----  
55. PRO. ASSI., 44/20 and 44/23.

56. PRO. ASSI., 44/27.

57. WYRO., 4/6 fol 86; 4/10 fol 59 and 4/10 fol 41.

58. WYRO., 4/16 fols 252 and 224.

body of John Nailor and entering a verdict.<sup>59</sup> Joseph Bingley, senior of Swinton, was accused of unlawfully keeping pigs, but the bill against him was ignored.<sup>60</sup> Most of the miscellaneous prosecutions related to dogs. Nicholas Bauldwen, a Goole gentleman, for example, was charged with having kept a dangerous dog which bit Thomas Stephenson, and John Danyell, a Selby yeoman, with having kept a dog which bit a pig belonging to Richard Swan. Bauldwen traversed the indictment, but Danyell admitted the offence and was fined 6d.<sup>61</sup> Keeping unmuzzled dogs was the offence most commonly presented at Hedon Borough Sessions, a total of thirty three presentments being laid against twenty persons, mostly described as gentlemen or Mr. and including several of the Aldermen.<sup>62</sup>

#### CONCLUSION

As we have seen, the economic offences were varied and, as might have been expected, more were prosecuted at Quarter Sessions than at Assizes. Taking the two courts together, however, the category was quite substantial, accounting for 7% of all prosecutions. As with administrative offences the most interesting point to emerge is that different offences were prosecuted in the two Ridings for which records survive. Thus no prosecution for exceeding statute wages was brought in the West Riding and all the prosecutions relating to the sale of butter were brought in the North Riding. Obviously some of these differences reflect the different economic circumstances of the areas. Butter was produced in some of the Pennine dales and in

-----  
59. PRO. ASSI., 44/5.

60. WYRO., 4/16 fol 268.

61. WYRO., 4/6 fol 169 and 4/14 fol 18.

62. EYRO., DDHE 5/1.

Cleveland and the prosecutions therefore occur in the North Riding. Similarly the prosecutions for the sale of foreign iron wire were obviously connected with the trade of producing iron cards for the weavers of the West Riding. Similar explanations can be used to account for other variations between the Ridings, but they do not wholly explain the differences, which were probably also due in part to the feelings of the local magistracy as to what offences needed prosecution. The question of local prosecution initiatives and the role of the J.P.s will be considered in the next chapter. Tables 27 and 28 again show the incidence of the prosecution of the different offences over time at Assizes and Quarter Sessions.

-----  
 TABLE 27

ECONOMIC BREACHES OVER TIME  
 AT ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Labour code	10	29	58	30	32	159
Market offences		2	8		1	11
Cottages	8	12	12	1		33
Usury		1	2			3
Miscellaneous	1					1
<b>Total</b>	<b>19</b>	<b>44</b>	<b>80</b>	<b>31</b>	<b>33</b>	<b>207</b>

-----  
 TABLE 28

ECONOMIC BREACHES OVER TIME  
 AT QUARTER SESSIONS

	1650s	1660s	1670s	1680s	1690s	Total
Labour code	40	52	9	96	28	225
Market	37	2	99	63	19	220
Cottages	4	13	2	5	22	46
Usury	1	3	2			6
Miscellaneous	2	1	1	1	4	9
<b>Total</b>	<b>84</b>	<b>71</b>	<b>113</b>	<b>165</b>	<b>73</b>	<b>506</b>

-----

Administrative and economic breaches were the offences which were the most locally specific, a fact which can be seen plainly in the Quarter Sessions prosecutions. The same fact though is also apparent in the Assize prosecutions. Thus three areas, the Pennines, the coal measures and the southern Vale of York between them accounted for about three quarters of all prosecutions for breaches of economic and administrative regulations at Assizes, though less than half the population of the county lived there. The reasons for this concentration of prosecution are varied. In relation to the vale of York where just over 10% of the population of the county lived but where over 25% of all economic and administrative breaches were committed, there were undoubtedly two factors at work. Firstly this was an economically advanced area of the county, including the county town and seat of regional and local administration. In such an area economic differentiation was well developed and would be likely to give rise to a higher number of prosecutions for economic breaches, particularly perhaps as the mediaeval restrictions on for example, trading without apprenticeship came to be seen as outmoded but were still enforced by those who benefitted from them. With many of the major roads running through the area and with several market towns within it, prosecutions for administrative offences were also likely to be high. On the other hand it was probably the case that this area was not simply more criminous, but was also more closely governed with the authorities responding more speedily and effectively to potential breaches of regulations. Similar considerations would apply to the coal measures area where again there was by this time a growing dependance on industrial by-employments, many developing towns and a fairly active magistracy. In the Pennines the situation

was different and it is noteworthy that there it was only the administrative breaches that were heavily prosecuted at the Assizes. Economic breaches were underrepresented at the Assizes for this area, although, of course, the butter offences in the North Riding Quarter Sessions came partly from the Pennine area. In part this difference may reflect the concerns of the local J.P.s for the maintenance of roads and bridges in a desolate area of difficult terrain, in part perhaps the preponderance of prosecutions for administrative breaches was the result of local initiatives from the Skipton area on alehouses, a phenomenon which appears to have been very limited in scope and therefore probably reflects the proclivities of a single J.P or group of J.P.s. What is plain however, is how important were local initiatives in altering the balance of prosecutions. These initiatives were brought about both by local circumstances and no doubt by the specific concerns of individual J.P.s.

Economic and administrative breaches were undoubtedly prosecuted in the still functioning manorial and borough courts, but from Bruen's survey it would seem that strict breaches of manorial regulation formed the bulk of prosecutions there with the administrative and economic breaches discussed in the last two chapters accounting for under a quarter of all prosecutions in the three manorial courts studied by him. However these offences, more than any others, were subject to local variation so that it is hard to argue for major shifts in patterns either of behaviour or prosecution from such figures as are available. What is important, though, is the extent to which the prosecution of administrative and economic breaches were the result, not, as with offences against the authorities, of central directives but of local initiatives. This point leads to a



consideration of the role of the justices of peace as enforcers of the criminal law.

## CHAPTER EIGHT

### THE ADMINISTRATORS OF JUSTICE

Large numbers of people were involved in the administration of justice in late seventeenth century Yorkshire, attending as witnesses, defendants, jurors, J.P.s and judges at Quarter Sessions and Assizes. These tribunals, of course, represented only the final stages of a criminal prosecution, for before a defendant was proceeded against there he had to have been apprehended and either bound over to appear or committed to gaol to await its delivery. In this chapter we are concerned with the role of those men who decided upon discharge, acquittal, conviction and sentence at these two courts and with their relation and interaction with each other. The most important and least local of these men were the judges of assize.

#### The judges of assize

Throughout the seventeenth century England was divided into six judicial circuits.<sup>1</sup> Twice a year, usually in the Lent and Trinity vacations, the King's judges would ride the circuits delivering the gaols and hearing civil pleas in the towns where the Assizes were held. Usually two judges or a judge and a serjeant would ride each circuit and the normal procedure was for one to preside over the criminal or Crown side and the other over the civil or nisi prius

-----  
1. This account is taken from Cockburn, Assizes, pp. 23 - 48.

cases.<sup>2</sup> The judges themselves decided their circuits, choice being made by seniority. In the sixteenth and early seventeenth centuries the Norfolk, Midland and Oxford circuits were the most popular, probably because the fees to be earned there were greatest. After the middle of the seventeenth century the choice seems to have become more arbitrary. Judges were not supposed to ride the circuit in which lay the county of their birth, and that may have been the reason that Thomas Rokeby never rode the Northern circuit, although he rode every other circuit at least once. On the other hand Francis North, who came from Cambridgeshire, and rode the northern circuit once only, rode the Norfolk circuit at least twice, according to Cockburn, although North's brother, Roger notes that he "went but once a judge in his own country, that is the Norfolk circuit".<sup>3</sup> Roger also notes that his brother chose the Western circuit "not for the common cause, it being a long circuit and beneficial for the officers and servants, but because he knew the gentlemen to be loyal and conformable and that he should have fair quarter amongst them". As for his choice of the northern circuit on the one occasion Francis seems to have regarded it in the nature of a sightseeing holiday: "He took an opportunity... to turn by the North... {He} was curious to visit the coal mines in Lumly Park".<sup>4</sup>

The northern circuit, in which Yorkshire lay, comprised the counties

-----

2. This was not always possible. In 1695, for example Rokeby dealt with both crown and nisi prius business in Shrewsbury the town his brother judge came from: "A Brief Memoir of Mr Justice Rokeby comprising his religious journal and correspondence", ed. J.Raine, in Misc. (Surtees Society, 37, 1860), pp. 1 - 71.
3. A.Jessopp, ed., The Lives of the Right Honourable Francis North, Baron Guildford... by the Honourable Roger North, 3 vols (London, 1890), vol. 1, pp. 186 - 187.
4. North, Lives, vol. 1, pp. 150 and 173.

of Yorkshire, Durham, Northumberland, Cumberland, Westmorland and Lancashire. It was by far the longest in terms of distance covered and, by the late seventeenth century, usually the longest in terms of time required to ride it. On the northern circuit the towns where the Assizes were held did not vary, unlike the situation on say the Home Circuit, where between 1558 and 1718 Assizes were held in at least twenty one different towns in four of the five counties on the circuit. On the northern circuit the assize towns were, in reverse order: Lancaster, Appleby, Carlisle, Newcastle, Durham, York; with Hull being visited occasionally.

During the period with which we are concerned the Assizes were held twice a year, save in Lent 1659, when no judges rode the northern circuit, and in January 1664 when there was a special commission of oyer and terminer. Thus in theory judges or sergeants could have been commissioned for 200 attendances. In fact using both Cockburn's table, abstracted from the Patent Rolls, Crown office Docquet Books and Crown Office Entry Books, and the gaol calendars among the northern circuit assize records we can fill 178 of those places, with the largest gaps occurring in the 1650s. It is probable that in some of the instances where we have the name of a single judge only, only one had actually come on circuit, even if two had been commissioned. We can see this happening on other circuits: thus while Rokeby was always commissioned together with another judge, on two occasions he did not ride the circuit and on a further two occasions his colleague did not.<sup>5</sup>

-----  
5. Cockburn, Assizes, pp. 273 - 280; "Memoir of Mr Justice Rokeby", pp. 25 - 71.

Fifty judges or sergeants travelled the northern circuit in the period we are considering, but twenty three only rode it once and a further eight twice only. On the other hand five men rode the circuit nine or more times with one, Christopher Turnor, making sixteen circuits in the ten years between July 1661 and July 1670. Cockburn has suggested that as one of the less popular and remunerative circuits the northern fell to the lot of the lesser legal luminaries - the sergeants and Exchequer judges. Overall this is undoubtedly true, but the distinction is less clear than might have been expected. Thus four men chose the northern circuit while they were Chief Justice of the King's Bench, a further two while Chief Justice of the Common Pleas and five while Chief Baron. Fourteen King's Bench and fourteen Common Pleas judges chose the circuit as did seventeen Exchequer barons. Of the eight sergeants commissioned to ride the northern circuit in the late seventeenth century only Thomas Waller did so after 1661.

The 1650s and 1680s witnessed greater discontinuity in judges than the other decades. Whereas overall each judge sat 2.8 times, in the 1650s each sat 2.4 times and in the 1680s only 2.1 times. On the other hand in the most stable decade the 1670s the ten judges sat thirty seven times, an average of 3.7. The discontinuity on the bench in the 1680s was almost undoubtedly due to the attempts by the government to secure a more favourable judiciary. Andrew Marvell, no impartial observer, dated the decline in English justice from the retirement of Matthew Hale in 1676:

Alas! The wisdom and probity of the law went off for the most part with good Sir Matthew Hales, and justice is made a meer property... What French counsel, what standing forces, what Parliamentary bribes, what national oaths, and all the other machinations of wicked men have not been able to effect, may be more compendiously acted

by twelve judges in scarlet.<sup>6</sup>

Certainly from 1668 onwards Charles 11 reverted to appointing judges during his pleasure and from the late 1670s on their tenure became more insecure. In 1678 Richard Rainsford and Thomas Twisden, both quite old, and both men who had ridden the northern circuit several times, resigned, the former to be replaced by William Scroggs. In 1683 William Dolben was removed as were William Gregory, Thomas Jones and Edward Nevill in 1686. The first three had all been commissioned in the Northern circuit several times and Nevill had been once. These were not the only removals, but, with that of Richard Holloway in 1688, were the only ones that affected the northern circuit. Thomas Powell, who was to be removed in 1688, was commissioned twice on the northern circuit in the late 1680s, and Henry Bedingfield, Richard Allibone, Edward Lutwyche and Thomas Jenner, none of whom were to serve under William 111, were commissioned once each.<sup>7</sup> Reresby commented on Allibone:

Of the two judges that came down this circuit one was a papist... the first that ever sate as a judge of that persuasion. He was strict and rigid in his opinion, but indifferent equall in giveing his judgement and in the tryalls<sup>8</sup> that came before him, for he sate of the nisi prius.

In addition to presiding over Assizes, judges might be sent into the localities in special commissions. The only occasion on which such a

-----  
6. A.Marvell, Account of Popery and Arbitrary Government in England, (1677), in A.B.Grossart, ed., Complete Works... of Andrew Marvell 4 vols, (London, 1872 - 1875), vol. 4, pp. 308 and 314 - 315.

7. Account taken from A.F.Havighurst, "The Judiciary and Politics in the Reign of Charles 11", Law Quarterly Review, 66 (1950), pp. 62 - 78 and 229 - 252, and *ibid*, "James 11 and the Twelve Men in Scarlet", Law Quarterly Review, 69 (1958), pp. 522 - 546. and Holdsworth, History of English Law, vol. 6, (1937), pp. 500 - 516.

8. Reresby, Memoirs, p. 461.

commission was used in Yorkshire was that sent to try the Farnley Wood plotters in 1664. The judges were Archer, Kelyng and Turnor. Neither of the first two was a particularly senior judge but they were both senior to Turnor, who sat regularly on the northern circuit, unlike either Kelyng or Archer who had never been commissioned there previously nor were to be again. The judges would obviously have got to know well the J.P.s of the towns and counties on the circuits they rode regularly, for they would have been entertained by them and would have sat with many of them during the actual Assize hearings.

#### The justices of the peace

The Justices of the Peace were undoubtedly the backbone of county administration in the seventeenth century. Their powers depended on whether they were acting singly, with another justice, in petty sessions or in quarter sessions, but were extensive, and increasing in the period we are concerned with and even more so into the eighteenth century, as more business came to be dealt with either by a single justice or in petty sessions rather than in quarter sessions. The purpose of petty sessions might be specific or general but records of them are rare. Reresby records at least two instances when he attended, one of which, in May 1688, was obviously a special sessions "for licences of alehouses", whereas at the other "an account was taken of such matters as are usuall in such cases".<sup>9</sup> The work of J.P.s in their own houses is even harder to trace. Plainly most depositions would have been taken by the Justice or his clerk in

-----  
9. Reresby, Memoirs, pp. 496 and 471.

his own house and it is interesting to note the existence at Kildwick Hall of a room described as a "Justice Room".<sup>10</sup>

Nomina Ministrorum listing the J.P.s for the three ridings survive among the Assize records for ten years. These are 1663, 1666, 1669, 1675, 1679, 1683, 1688, 1691, 1691 and 1695. In addition the Quarter Sessions records for the West and North Ridings list those J.P.s attending each sessions and we have further information on the work of the J.P.s from the names of grand jury foremen at the Assizes and the surviving depositions which were always taken in front of a J.P.

The Nomina Ministrorum can be divided into three distinct sections. First came the peers, some of them named as officers of state, others as peers with local connections; then came the judges of Assize and other officers of state, and finally the body of working justices. The lists for the earlier years are considerably smaller and more manageable than those for later years, the big increase in the numbers of those named coming in about the 1670s. Thus it is worth comparing the earliest and the latest lists to note the differences between them, and Table 29 sets out the numbers commissioned for each riding for each of the ten years, and the large increase in all categories is evident. In the 1663 lists the first nine named peers were the same in all three commissions, consisting of such officers of state as Edward, Earl of Clarendon; John Lord Roberts, the keeper of the privy seal and Edward Earl of Manchester. In each riding four more peers were named but Richard Earl of Cork appeared in the commissions for both the East and West Ridings; and Thomas, Lord

-----  
10. Information supplied by Colum Giles.



Fairfax in those for both the North and West Ridings. The other East Riding peers were Algernon Earl of Northumberland, Heneage, Earl of Winchilsea and John, Lord Belasyse; those for the North Riding were Thomas, Viscount Fauconberg, Conyers, Lord Darcy and Conyers, and George, Lord Eure, and those for the West Riding were William, Earl of Strafford and George, Viscount Castleton. The only judges or other officials named were the two judges of Assize for the Northern Circuit, Thomas Twisden and Christopher Turnor, both of whom were named in all three commissions. As for the working justices thirty three were named for the East Riding; forty eight for the North and sixty seven for the West. A small number of men were named to more than one commission. Thus John Hotham, Thomas Hecklethwaite and Tobias Jenkyns were named in both the East and North Riding commissions and a total of 145 working justices were named for the whole county.

TABLE 29

J.P.s in commission in selected years  
by riding and type

	EAST	NORTH	WEST
PEERS			
1663	13	13	13
1666	12	15	13
1669	7	13	10
1675	11	14	14
1679	11	13	13
1683	24	23	28
1688	41	40	47
1691	25	29	40
1693	26	30	43
1695	26	29	51
OFFICIALS			
1663	2	2	2
1666	2	2	2
1669	2	2	2
1675	2	3	3
1679	4	3	3
1683	11	10	8
1688	6	6	6
1691	18	10	11
1693	17	9	6
1695	15	8	14
WORKING JUSTICES			
1663	33	48	67
1666	31	52	60
1669	27	42	54
1675	30	44	67
1679	29	46	55
1683	23	34	63
1688	36	37	64
1691	42	64	89
1693	40	67	96
1695	35	60	90
TOTAL ON COMMISSION	105	159	210

By 1695, the date of the latest commission surviving among the Assize papers the situation is much more complicated, even though the

numbers of men commissioned has fallen from its peak in 1693. Thus in 1695 twenty six peers were named for the East Riding, twenty nine for the North and a staggering fifty one for the West, including Prince George of Denmark. In total seventeen peers were named in all three commissions, including the Archbishop of Canterbury (though the Archbishop of York was named only for the West Riding) and some men with local connections such as the Marquis of Halifax and Thomas Earl Fauconberg. On the whole though these peers were men without local connections, and in fact the East and North Riding commissions were identical save for the inclusion in that for the North Riding of Charles, Earl of Winchester, John Viscount Downe and William, Lord Paulett, of whom the second named at least was a large landowner in both the North and East ridings. The commission for the West Riding differed more with the additional names being about equally divided between peers with local connections and those without. The officials by the 1690s had also been expanded and now included the Commissioners for the great seal as well as the Attorney and Solicitor General and Judges of Assize.

Although all sections of the commission had seen large increases over the forty year period that for the working justices was the smallest. Thus in 1695 those commissioned in the East Riding totalled thirty five, in the North Riding sixty and in the West Riding ninety. In total over the period 474 men had been commissioned as working justices in the three Ridings with the numbers commissioned in the West Riding at 210 being exactly twice those commissioned in the East.

Quarter Sessions for each Riding were held four times a year. The

pattern of location varied among the Ridings. In the East the meeting was usually at Beverley, occasionally at Pocklington.<sup>11</sup> In the North the October and April meetings were held in Thirsk, the January and July ones at two (very occasionally three) towns out of Helmsley, Richmond, New Malton, Bedale, Stokesley, Northallerton and very occasionally York itself or Thirsk, with Helmsley and Richmond being the most frequently visited. In the West Riding the pattern was more formalized, with one meeting being held at only one town and the other three being held at three towns each. Thus the April meeting was held in Pontefract, the July meetings at Skipton, Leeds and Rotherham; the October meetings at Knaresborough, Wakefield and Barnsley and the January meetings at Wetherby, Wakefield and Doncaster.

As in other areas attendance by the J.P.s varied considerably. On the basis of the Pipe Rolls, noting wages paid to J.P.s and the lists of attenders drawn up by the clerk of the peace, sixteen to nineteen East Riding J.P.s out of a commission of about thirty working justices attended at least one session a year in the 1660s and 1670s. These included a group of about nine who were the most active.<sup>12</sup> In the West Riding 110 J.P.s sat at the sessions studied over the period. Attendances at the different sessions during the year varied considerably. The April meeting at Pontefract always attracted the largest attendance, averaging seventeen per year. On the other hand

-----  
11. Forster, East Riding J.P.s, pp. 30 - 31. This suggestion is based on the pattern for the period 1647 - 1651, the only time for which the Quarter Sessions records survive.

12. Forster, East Riding J.P.s, pp. 31 - 32. There are difficulties in using the Pipe Rolls but the figures produced by Forster certainly appear to be plausible. The group of active men included Sir Robert Hildyard; Sir Edward Barnard; Sir Ralph Warton; Durand Hotham; William Gee; John Vavasor; John Estoft and John Heron.

the meetings at Knaresborough and Barnsley at Michaelmas and at Wetherby and Doncaster at Epiphany saw an average attendance of only six J.P.s. Overall the attendance during the 1680s was worst, with an average then of sixty nine, compared with ninety five in the 1660s and seventy seven in the 1690s. The decrease was due rather to a fall in the number of J.P.s attending, only thirty nine compared with forty seven in the 1670s, than to the making of fewer attendances by those J.P.s who did attend. Of the average attendance of about forty three J.P.s a year, about twenty seven would make two or less appearances. The most diligent might attend five times out of a possible ten sessions. An average of four J.P.s attended four or more times and eleven attended between two and four times annually. There was fairly strong continuity on the bench, with two J.P.s sitting in all four decades. On average over 55% of those sitting in the 1670s and 1680s had sat at least in the previous decade, but in the 1690s only 35% had sat previously.<sup>13</sup>

In the North Riding the sessions at Thirsk were always the best attended, averaging thirteen at Michaelmas and fourteen at Easter; the Midsummer and Epiphany sessions averaged only eight and six attendances respectively. The decline in attendance during the 1680s and its improvement in the 1690s is even more marked in the North than in the West Riding. In the North the 1680s saw an annual attendance of thirty three compared with sixty three in the 1660s and eighty in the 1690s. This improvement appears to be due to the strengthening of the bench, and it is noticeable that of those sitting in the 1690s only 20% had sat previously. This compares with

-----  
13. WYRO., 4/6 - 4/16.

over 45% of those sitting in the 1670s and 1680s having sat previously. In total eighty J.P.s attended the North Riding Quarter Sessions in the period and an average of twenty eight attended in each decade, but again only twenty did so in the 1680s compared with thirty three in the 1670s. The maximum possible attendances a year in the North Riding was six, and the most diligent four J.P.s attended four or more times. On the other hand ten J.P.s attended twice or less and four attended between two and four times annually. There do not appear to be many J.P.s who attended sessions in both Ridings, only two names appearing in both, with each of them attending the North Riding sessions once only in the 1690s.<sup>14</sup>

It is difficult to tell how long Quarter Sessions meetings actually lasted. Forster for the East Riding suggested that one to two days was usual, as did Hurstfield for early Stuart Wiltshire.<sup>15</sup> In Shropshire it appears that although between 1625 and the late 1670s they lasted two days, after that between two and four days were needed and that by the 1690s three days were usual.<sup>16</sup> In Yorkshire the pattern was for the third West Riding meeting to start one week after the first, and on the whole the dates of the North Riding meetings coincided with those of the West, with the second North Riding meeting starting also a week after the first. For example, in October 1670 the North and West Riding meeting was held on the 4th, with the third West Riding meeting starting on the 11th. In January the dates for the first West and North Riding meetings was the 10th and for the second North and third West Riding meetings, the 17th. Both Easter

-----  
14. NRO., 98 - 102.

15. Forster, East Riding J.P.s, p. 30 and VCH, Wilts, vol. 5, p. 88.

16. VCH, Salop, vol. 3, p. 97.

sessions started on 2nd May and in July the first meeting was held on the 11th and the second/third on the eighteenth. The second West Riding meeting was usually held two or three days after the first. Thus it would appear that the sittings probably lasted no longer than two days, possibly three, and on occasions judging from the amount of business recorded not more than one.<sup>17</sup>

It has long been known that the commissions of the peace were subject to manipulation by central government. Glassey has stated that the commissions "were reshuffled in an organized and, roughly speaking, simultaneous regulation on twelve occasions between 1675 and 1720" and these reorganizations can be seen to a limited extent in the Yorkshire Assize Nomina.<sup>18</sup> The most obvious reorganization in Yorkshire took place in 1688, and was most noticeable in the East Riding.<sup>19</sup> Thus of the 120 men who were named in only one of the extant commissions, half were named only in 1688. That proportion was the same when the North Riding alone is looked at: it was less in the West Riding (31%) and higher in the East Riding where about 75% of those who were named only once were named in 1688. The drastic nature of the reorganization in the East Riding can be illustrated in other ways too. Thus in the North and East Ridings nine men were named in the commissions of 1683 and 1691 but not in that for 1688 whereas in the West Riding only three men were so excluded. Even more strikingly, of the thirty six men named for the East Riding in 1688 only two, Tobias Jenkyns and Sir Watkinson Payler, had ever been

-----  
17. NRO., 100/105 - 154; WYRO., 4/9 fols 136 - 157.

18. Glassey, Justices of Peace, p. 262.

19. But see for a discussion of earlier reorganizations Forster, East Riding J.P.s, pp. 25 - 27 and "Government during the Interregnum", pp. 100 - 104.

named previously. The bench that suffered least interference in the analysed 1688 commission was that of the West Riding. Reresby however notes that the West Riding commission was remodelled in November 1688, "whereby some thirty principal gentlemen of the West Riding were left out" and others put in, including

John Eyre of Sheffield Parke, Mr Ratcliff, etc. The first can neither write nor read, the second is a bailiff to the Duchesse Dowagere of Norfolk's rents, and neither of them have one foot off freehold land in England.<sup>20</sup> It would seem therefore that the West Riding commission of 1688 that exists among the Assize papers was an earlier one, where the remodelling, although it had excluded men such as John Assheton, Henry Edmondes and Roger Portington (all of whom had been regularly in the commission since 1666 and were to be again after the Revolution), and had included Catholics such as Sir Thomas Gascoigne, Sir Philip Hungate and Sir William Tankred, had only included members of the gentry qualified by everything other than religion to sit as magistrates. Thus the West Riding commission, unlike those for the East or North Ridings, was drastically remodelled only at a very late stage. The November commission upset even so loyal a Tory as John Reresby, and the East Riding commission among the Assize papers, which excluded, among others, Sir Francis Boynton, Sir John Hotham, Sir Ralph Wharton and Sir Michael Wharton, must have similarly aroused their ire and resentment. It is plain from Reresby's comments that the objection to the remodellings was not to the inclusion of men such as Sir Thomas Gascoigne, who by every criterion save his Catholicism was entitled to be, and was, regarded as the equal of the other knights of the shire, but to the socially unqualified newcomers.

-----  
20. Reresby, Memoirs, p. 584.



Patterns of attendance by J.P.s varied considerably. If those listed in the earliest commissions of 1663 and 1666 are compared with the men who actually sat as J.P.s at Quarter Sessions in the decade we can see very strong differences between the two Ridings for which the exercise is possible. Thus in the West Riding 63% of J.P.s listed in the Nomina Ministrorum appeared at least once at Quarter Session while in the North Riding only 45% did so. During the same decade eighteen West Riding and twelve North Riding J.P.s attended the Quarter Sessions at least five times. Of these thirty men every single one was involved in the taking of depositions in the same period and nine of them sat as foremen of the Assize grand jury. These men must have known each other well simply through their regular attendance at judicial hearings: John Bielby, William Adams and Edward Jennings for example were grand jury foremen at the Assizes in 1663 and had sat together at Pontefract sessions in April 1662 as well as at nine other Quarter Sessions in 1662. The J.P.s attended Quarter Sessions effectively as judges but they also regularly attended at the Assizes either as grand jurors or simply as gentlemen of the county. Despite the impression of coherence that such regular meetings create, tensions could still arise between J.P.s. At Quarter Sessions such quarrels between J.P.s could lead to somewhat unjudicial behaviour. The quarrels between Sir Thomas Hoby and the Eures and Cholmondelys in the early part of the century have been commented on by others but Resby also got into a quarrel with Francis Jessop in 1682 and there were frequent differences between the J.P.s, for example, over how the law on dissenters ought to be

applied.<sup>21</sup>

One of the more interesting questions to arise about the work of J.P.s in the seventeenth century is how much time it involved and the comparative amount of time spent by them in acting as a single justice or in Quarter Sessions. In Yorkshire we are fortunate in having a justice's note book from the 1650s. In 1656 Captain John Pickering was sworn in as J.P. in the West Riding and from then until 1660 he kept a note book recording his activities. Pickering was never to serve in the commission after the Restoration but he was not a social upstart only advanced to office in the turmoil of the Interregnum, for he had married Deborah Eure, the sister of the sixth and seventh Barons Eure, and was therefore related to some of the most prominent Yorkshire families. Pickering was an active J.P. He attended four Quarter Sessions each year for the years he was in the commission: Michaelmas and Epiphany at Wakefield; Hilary at Pontefract and Trinity at Leeds. His notebook, however, consists more of a record of his duties outside Quarter Sessions and Assizes. The entries are a miscellany but one can see that most business (something under half) consisted of bindings over of defendants, witnesses and prosecutors to the next sessions or in a few cases to the Assizes. The next most common business was convicting individuals for swearing. In August 1658 for example John Brease, Thomas Stirk, Thomas Prince, William Pearson, Robert Walker, John Fun (otherwise Funn John) and Richard Mennell were all convicted of "p[ro]phane swearing" or cursing. Sometimes Pickering records the curse, as when

-----  
21. Forster, East Riding J.P.s, pp. 21 - 22 and "Faction and County Government", pp. 74 - 86, and for Reresby's quarrel: Memoirs, p. 271.

Thomas Prince of East Ardsley had cursed Ann Sanderson by saying "God's plagg light on her", and sometimes he records the punishment: John Breare for example, "paide 3s 4d."<sup>22</sup> When a man had been convicted a number of times the fines could be severe. Mark Allott of Emley had a warrant issued against him for the "sume of 21 6s eight pence... for the p[ro]phane swearing of 7 oathes, being 3rd 4th 5th 6th 7th 8th and 9th offences by him committed". In general the punishment was a fine or in the alternative being set in the stocks. Jeremiah Schoolefield was fined "23s 4d or 21 howers stockes". More serious or repeated offences brought further punishment. John Priestley was convicted for swearing nine oaths and

also of other disorders, and was also drunke, upon w[hi]ch a warrant was given to leuy both for drunkenness and swearing, & also mittimus to Gaole, till he find sureties for good behaviour for one whole yeare now next ensuing, & for his appearance at the Gen[e]r[a]ll sessions etc w[hi]ch shal fall next after expiration of the said year.<sup>23</sup>

Conviction appears to have depended on the oath of one witness or upon a confession. Susan Harrison was convicted of the "prophane swearing of one oath & one curse... upon the oath of Rodger Hirst & Robt Dickinson... the curse she confesd."<sup>24</sup>

After these items Pickering was kept most busy performing marriages and convicting people for drink offences, both of which formed substantial classes of business. The remainder of his work related to other miscellaneous offences such as working on Sundays, the swearing in of constables and surveyors of highways, issuing warrants and

-----

22. G.D.Lumb, ed., "Justices Note-Book of Captain John Pickering, 1656 - 1660" (Thoresby Society Publications, Miscellanea, vols. 11, pp. 69 - 100 and 15, pp. 272 - 295).  
vol. 15, p. 80.
23. Pickering, "Justices Note-Book", vol. 11, pp. 98, 75 and 95.
24. Pickering, "Justices Note-Book", vol. 11, p. 91.

controlling alehouses and the progenitors of bastard children. This account of the work undertaken by a J.P. as recorded by him is particularly useful in giving an idea of the amount of work in which he was involved that never reached courts such as Quarter Sessions and Assizes.

Detailed examination of the recognizances taken by Pickering suggests that they should have given rise to eight Assize indictments. Three are easily traced, allowing us to follow the process of prosecution and binding over. On 17 August 1657 Christopher Anderson was bound over to prosecute George Raine for stealing his heifer. Two days later Humphrey Beaumont was likewise bound over to appear at the Assizes and "to giue the best evidence he can against one George Rayne... concerning a red heifer w[hi]ch he bought of him." When the matter came to trial although Beaumont was himself charged with having been an accessory after the fact the indictment against him shows that he did not attend to face the possible consequences. Raine himself was convicted and granted clergy.<sup>25</sup> Pickering was also involved in the binding over of witnesses against those notorious robbers Joshua Moore and others. Thus Ann Poole of Kirby was so bound on 2 February 1658 and John Hamer of Lancashire on 18 February. These two were bound to indict or give evidence in respect of four of the eight robberies with which this group were charged and their names duly appear as witnesses on the indictments.<sup>26</sup> Another of the Assize recognizances granted by Pickering raises other questions. On 18 November 1656 he bound Robert Wade of Ossett to indict Thomas Jagger

-----

25. PRO. ASSI., 44/7 and Pickering, "Justices Note-Book", vol, 11, pp. 92 - 93.

26. For further details of this case see above, PRO. ASSI., 44/7 and Pickering, "Justices Note-Book", vol, 15, pp. 71 - 73.

and Jane Speight for incest; on 11 December Robert Fisher was bound over to give evidence in the same case and on 4 May so was John Tirry. An indictment exists charging Thomas Jagger with illicit carnal knowledge of Jane Speight who is described as the natural and lawful daughter of Isabel, late wife of Thomas Jagger (i.e. as his stepdaughter), and the witnesses as endorsed on the indictment are Robert Wayd and Robert Fisher. Because, when a J.P. bound over a witness to give evidence he would at the same time have taken a deposition from him we may assume that Pickering had heard the evidence to be presented against these two. At the Assizes it seems that he heard it again for the indictment against them was signed by Pickering as foreman of the grand jury.<sup>27</sup> It was not considered good practice for a committing justice to act as foreman of the grand jury, possibly a parallel of the general principle that a man should not be both prosecutor and judge. Indeed Pickering was not actually acting as such here although his dual role might still be objected to. The situation was unusual as were those noted by Cockburn where a prosecutor acted also as a petty juror.<sup>28</sup>

It might well be thought that the reason that all these cases went to the Assizes was because they all charged serious offences. However two assault cases were also sent to the Assizes. In one Richard Pelson was apparently accused of throwing a stone at Elizabeth Robinson which "brused & wounded her in the head in such sorte that she now languisheth, being in very great danger of Death thereby." Obviously a possible charge of murder should likewise have resulted

-----

27. PRO. ASSI., 44/7 and Pickering, "Justices Note-Book", vol. 11, pp. 78, 80 and 87.

28. Cockburn, Introduction, p. 60.

in an Assize prosecution but on 14 August 1657 William Garnett was bound to the sessions "to answer concerning the hurting & dangerously wounding one Will. Ellis... soe yt he is in danger of Death", and a case of attempted rape, two of witchcraft and two of arson or threatened arson were also sent to the sessions.<sup>29</sup>

Notebooks such as that of Pickering or of William Holcroft in Essex are invaluable as sources for the historian in showing how the everyday business of law enforcement was conducted. From Pickering's notebook and Sharpe's edition of Holcroft's, it is possible to see how regular was the work of the J.P.s in binding over suspects and witnesses to the next Assizes or Quarter Sessions and how the binding over was also used as an end or punishment in itself. Pickering's other business was partly specific to the period during which he was commissioned, such as the performance of marriage ceremonies and the regular appearance of summary convictions for drunkenness or profanity, but the other matters he was concerned with would also have concerned a J.P. in the later period.

The clerks of assize and of the peace

The clerkship of Assize was a profitable office, probably more profitable than that of the judge, and might sell in the mid seventeenth century for around £2,500. The clerk was responsible for the smooth running of the Assizes and headed a large staff of associates and subordinate clerks who carried out the routine drafting work.<sup>30</sup>

-----

29. Pickering, "Justices Note-Book", vol. 15, p. 290 and vol. 11, p. 92.

30. Cockburn, Assizes, pp. 70 - 85.

Five men served as clerks of Assize on the Northern Circuit during the period we are concerned with. They were John Carill (clerk between 1638 and 1657), John Flower (clerk between 1658 and 1662), Robert Benson (clerk between 1662 and 1673), Thomas Heseltine (clerk between 1674 and 1696) and William Cuthbertson who served from 1696 until the end of our period. Little information survives on any of them: indeed for Carill and Flower there is a complete blank.

Robert Benson was admitted to the Inner Temple in 1653 and was an attorney. He married well: his wife, Dorothy, was the daughter of one Tobias Jenkyns of Grimston in the East Riding and sister of another. Both Dorothy's father and brother were J.P.s and her brother served as M.P. for the city of York between 1715 and 1722. Dorothy herself married as her second husband Sir Henry Bellasysse who was involved in the taking of York from Sir John Reresby in 1688.<sup>31</sup> Benson, who seems to have come from Wrenthorpe in the West Riding, was not popular, though he was undoubtedly one of the more successful assize clerks. The Earl of Strafford described him as "an attorney and no great character for an honest man", and Reresby as "the most notable and formidable man for business of his time, one of noe birth, and that had raised himselfe... to be clerke of the peace at the Old Bailiff, to clark of assize of the northern circuit."<sup>32</sup> In 1674 Benson stood against Reresby as M.P. for Aldborough and upon both being returned the House of Commons had to decide on which should sit. Reresby states that Benson falsified the return into the crown office and so

-----  
31. J.W.Clay, ed., Familiae Minorum Gentium, (Harleian Society Publications, vols, 37 - 40, London, 1894 - 1896), pp. 537 and 928.

32. DNB Benson, and Reresby, Memoirs, pp. 90 - 91.

"lost the cause by the very act whereby he hoped to have got it... Thus it pleased God to make the weak to overcome the strong." There would have been a further trial but Benson died:

one day as he was returning... to his own chamber in Grays Inn, it pleased God to dispose of him otherwise, for as he was going up the stairs to the passage... he was seized with a fit of apoplexy, and so died without speaking one word.

According to Reresby at the time of his death Benson had been trying to obtain a judgeship, being a favourite of the then Lord High Treasurer. He amassed an estate of "2500l per annum but not without suspicion of great frauds and oppressions" and his son, who was said to have inherited an estate of £1,500 per annum, was later to be created Lord Bingley and to build Bramham Park.<sup>33</sup> Oliver Heywood relates a story of Benson that suggests that he was sometimes prepared to use his knowledge of the law to the advantage of the dissenters. In 1674 some of the J.P.s around Wakefield convicted about forty Allerthorpe men for holding a conventicle but "Mr Benson had told them that their former convictions were not legal they not having the informers and accused face to face before the justices."<sup>34</sup>

Thomas Heseltine the clerk of Assize who succeeded Benson and indeed acted as clerk for over twenty years is a much more shadowy figure. It is probable that this is because he was more closely associated with Newcastle than with York; indeed it seems likely that his daughter married the man who was to succeed him as clerk, William Cuthbertson, and in the next century George Cuthbertson, father and son succeeded each other as town clerks of Newcastle. Cockburn has suggested the existence of family interest in the clerkships of

-----  
33. Reresby, Memoirs, pp. 90 - 92, 95 - 96 and 106.

34. Heywood, Diaries, vol. 3, p. 185.



Assize and this might well be another instance of it.<sup>35</sup> Heseltine was listed in the commissions of the peace for all three Ridings from the late 1670s until 1695 save for being dropped from those for the North and East Ridings in the great reorganization of 1688. He was also active as a magistrate in taking depositions particularly against the coiners in the late 1680s and early 1690s.

T.G.Barnes' study of the clerk of the peace in Caroline Somerset has stressed the importance of the clerk's role and his need for a thorough knowledge of the law. Barnes suggests that although the clerks were not the social equals of the J.P.s they were "on the threshold of the class which they served" and that despite some evidence of the exercise of undue influence by clerks and of nepotism by them "the sum total cannot amount to a picture of flagrant corruption".<sup>36</sup>

There are about twelve clerks of the peace who can be identified in the Yorkshire records but for all save two the only information we have is their name. Of the two for whom some other information survives, Nicholas Blackbeard, was clerk for the city of York and was buried in St. Michael le Belfry with an inscription describing him as a "worthy and useful gentleman" who "with great prudence and faithfulness served his generation".<sup>37</sup> The other was John Peables of Dewsbury, who like Benson seems to have had a somewhat unsavoury reputation. He however came from a family of some status, being

-----  
35. Clay, Familiae Minorum, pp. 536 and 947 and Cockburn, Assizes, pp. 75 and 321.

36. Barnes, Clerk of the Peace, pp. 10 and 38.

37. F.Drake, Eboracum: Or, The History and Antiquities of the City of York, 1736, introduced by K.J.Allison (Ilkley, 1978), p. 340.

listed in Dugdale's Visitation and having been one of Charles 11's gentlemen of the privy chamber. As well as being clerk of the peace for the West Riding he was also listed in the commission of 1683 and had sat as a J.P. at the Leeds and Pontefract sessions in 1682. In fact he had been recommended for the commission by Reresby who described him as "my good and faithfull friend", but he died unexpectedly in 1685.<sup>38</sup> Heywood described Peables in 1673 as being a "very high man" who "hath built a fine house, made walks, bowling green &c.'" In 1684 Peables gave the charge to the grand jury at the Wakefield sessions where he

hector'd it at a strange rate ag[ains]t dissenters, saying they were traitors, giving the jury a strict charge ag[ains]t them, as for Popish priests and jesuites s[ai]th he, theres few and they are hard to find, so made light of them.

At what was presumably the same sessions though in a case against Heywood personally,

when the Clark offered to produce an inditement ag[ains]t me 14 yeares agoe, Mr Pebles quasht it and s[ai]d we will not look so far back, but forward, and told of an act of grace for faults so long agoe.<sup>39</sup>

As well as the clerks of Assize and of the peace individual J.P.s often had their own clerks, usually men with at least some knowledge of the law. Neither Reresby nor Captain Pickering appear to have employed such a man but Heywood refers routinely to a J.P.'s clerk, suggesting that it was common practice.<sup>40</sup> These clerks, together with the clerks of Assize and the peace, constituted the bureaucratic backbone of the law enforcement system. That their activities figure

-----  
38. Dugdale, Visitation, p. 367; Clay, Familiae Minorum, pp. 158 and 501; PRO. ASSI., 44/31; WYRO., 4/14 fols 46 and 71 and Reresby, Memoirs, pp. 227 and 356.

39. Heywood, Diaries, vol. 3, p. 199; vol. 2, p. 224; vol. 4, p. 111.

40. See for example his reference to Mr Copley of Batley whose "Clark dyed, one Loft... of a surfeit of drinking", in Diaries, vol. 1, p. 362.

infrequently in the materials used in this study should not detract from their importance.

### Pre-trial procedure at Assizes and Quarter Sessions

We have already seen the procedure by which the judges of Assize received their commissions, decided the circuits and were informed of the gaol lists for each gaol to be delivered; and we now turn to look at the arrangements preparatory to trial at the Assizes and Quarter Sessions.

In the period under consideration Assizes were held in York twice every year, save for Lent 1659. Separate Assizes were held for the city and the county, with the former sitting in the Guildhall and the latter in the Castle. The city Assizes were always short, with only about half a dozen to a dozen persons being dealt with, and the gaol book always states that they and the county Assizes were held, or at any rate for the county assizes commenced, on the same day. In the decade for which the gaol book survives there were, in addition to the regular biannual Assizes, a further five sittings recorded. One, in January 1664, was the special commission sent down after the Farnley Wood rising; the others, in July 1662, July 1665, August 1666 and July 1669, were all sittings held in Hull. These all commenced three days prior to the York sittings, and dealt with between two and two dozen persons. It is likely that there were gaol deliveries at Hull during the rest of the century also, but no separate evidence of these survives.

The Assizes were already something of a social occasion for the local

gentry and fairly large numbers would attend. Reresby refers, without comment, to forty J.P.s being present at the 1676 summer Assizes, and notes that in 1680, when Lady Tempest and the other Popish plotters were being tried "there was a very great appearance of gentry and others, some for business, but more for curiosity."<sup>41</sup> When he was sheriff Reresby

took a house in the Minster Yeard, wher I entertained all commers for ten days together. My friends sent me twixt two and three hundred liveries. I kept two coaches,... had my own violins ther all the assizes, gave a ball and entertainment to all the ladys of the town.

On another occasion he "kept a table. The High Sheriff and most of the gentlemen of quality in town dined with me".<sup>42</sup> The opening of the Assizes was an occasion for display and ceremony. The judges would process first to the Minster where the assize sermon would be delivered. These sermons were usually the occasion for the expression of conformist and conservative views. In an analysis of them in the period 1660 - 1720, Barbara White considered that they had little individual significance but were a contribution to the overall effect of majesty and solemnity and to the inculcation of obedience to the authorities.<sup>43</sup>

A couple of the printed Yorkshire sermons are worth commenting on. At the March 1663 Assizes Thomas Bradley had preached against the oppressors of the people, whom he classified as biters (including the usurer, the under excise-man and the lawyer) and grinders (including the "great depopulators", "insatiable purchasers [poor-chasers]" and "rack-renting landlords") and he concluded by asking "we whip beggars... we hang up sheepstealers and petty thieves; but, what do

-----  
41. Reresby, Memoirs, pp. 105 and 197.

42. Reresby, Memoirs, pp. 65 - 66 and 273.

43. B.White, "Assize Sermons 1660 - 1720" (C.N.A.A. Ph.D. thesis, 1980).

we do to those great Robbers we have spoken of?" This attack, particularly, that on the under excise-man, appears to have provoked a considerable reaction and in August Bradley preached on Caesar's Due and the Subjects Duty when he explicitly stated that the "Excise as it is here established in England, is... a Legal and just Revenue, and one of the Tributes... due unto Caesar".<sup>44</sup> A favourite image in the Assize sermons was a comparison with the courts of heaven. Samuel Drake for example advocated a fear of God and suggested "If Judge Jury and Witnesses stood in this holy awe, How like would the assizes be, for Equity, to that Grand Assize where Christ Himself is Judge", and Christopher Wyvill referred to the "Great and Generall Assize which shall be at the end of the World" where "every Man shal make his personal appearance... our own Consciences shall testifie against us... all things will be open and manifest... nothing shall avert the execution of that dreadfull Sentence, Go ye cursed into everlasting fire" and stated that for "wicked and impenitent sinners at the terrible bar of that... Tribunal... Appearance will be certaine, the Sentence of Condemnation irreversible and the Punishment consequent therupon intolerable".<sup>45</sup>

At the opening of the assizes proper the judge would give a charge to the grand jury, the principal means of propagating government policy to the local gentry. At Quarter Sessions a similar charge was given

-----  
44. T. Bradley, A Sermon preached in the Minster at Yorke at the Assizes there holden the thirtieth day of March 1663 (York, 1663) and idem, Caesar's Due and the Subjects Duty preacht August 3 1663 by way of Recantation of some Passages in a former sermon preached from the same place and Pulpitt (York, 1663).

45. S. Drake, Totum Homines; or the Decalogue in Three Words viz Justice Mercy & Humility (London, 1670); C. Wyvill, Of Christian Magistracy (York, 1697).

by one of the J.P.s. There is little evidence of the content of charges to Quarter Sessions in Yorkshire during our period. We have, however, already noted the instance when Justice Peables was strong against the Dissenters; and on several occasions Reresby gave the charge.<sup>46</sup> It seems likely that the Quarter Sessions charges often reflected the charges that had been delivered by the Assize judges.

#### The juries at the Assizes

In attempting to analyse those who served as jurors during the period we are hampered both by missing documentation - there are no surviving grand or petty jury lists for the East Riding, only two grand jury lists for the Assizes, and the assize petty jury lists are erratic in their survival - and by an embarras de richesse - almost two hundred grand jury lists and almost four hundred and fifty petty jury lists have been transcribed for the period studied. These lists thus give rise to about eight and a half thousand names, a large number to attempt to analyse in detail for part of one chapter in this thesis. In fact of course many names appear more than once as men served as petty and grand jurors at both Assizes and Quarter Sessions and some served with some regularity. The qualifications for service on the grand jury were uncertain with the authorities cited by Cockburn suggesting a range from twenty shilling freeholders to eighty shilling freeholders. By the eighteenth century Blackstone considered that grand jurors were "gentlemen of the best figure in the county".<sup>47</sup> Morrill in his work on Cheshire grand juries,

-----  
46. See above and Reresby, Memoirs, pp. 151, 185, 197 et al.

47. Cockburn, Introduction, p. 47, Blackstone, Commentaries, vol. 4, p. 299.

suggested that the sheriffs looked for them among the forty shilling freeholders. But of perhaps 4,000 such families in Cheshire, only five hundred ever served as jurors, and these men came from the lowest of three income groups defined by Morrill. Their incomes were less than half that of a group of men who served neither as grand jurors nor as J.P.s, and even further below the income of those men who formed the magistracy. Thus Morrill suggests that grand jury service was confined to a "broad spectrum of middling freeholders with incomes and status well below that of the magisterial class".<sup>48</sup> Cockburn notes that "seventeenth-century sheriffs and undersheriffs were repeatedly censured for returning unqualified men for jury service and ordered to compile new books of freeholders".<sup>49</sup> A remedy for this was to summon J.P.s for grand jury service and in Yorkshire two attempts, in 1658 and 1670, were made, though neither, according to Cockburn, was particularly successful.<sup>50</sup> Beattie, however, suggests that by the end of the mid 1670s, and especially after the divisions engendered by the Exclusion Crisis, the Surrey grand jury at least was being "invaded by the gentry of the county", and that by the mid eighteenth century grand jury foremen included baronets, knights and other men of countywide reputation, including many J.P.s.<sup>51</sup>

Only two lists of grand jurors at the Yorkshire Assizes survive. One, for July 1695, is a list of the second inquest headed by Robert Mitford Esq. and consisting besides him of three esquires and eleven men described as gentlemen, only one of whom, George Rhodes of Lotherton, appears on petty jury lists, in 1679/1680. The other list

-----  
48. Morrill, Grand Jury, pp. 15 - 18.

49. Cockburn, Introduction, p. 47.

50. Cockburn, Assizes, p. 112.

51. Beattie, Crime and the Courts, pp. 318 - 323.

is a presentment by thirty grand jurors (that is two panels of fifteen men each) of the gaol as being out of repair. This is dated March 1687 and is signed, without status being given. Nevertheless six men are recognizable as being from prominent gentry families, including Sir Miles Stapleton. Of the others again only one, Pelham Hadlesey, seems to have sat as a petty juror in March 1690.

The higher social status of these grand jurors at the Assizes was not exceptional. It is plain from the signatures to the returns of bills that foremen of grand juries were almost invariably of the upper gentry and usually themselves J.P.s. No lists of J.P.s survive among the Assize records for the 1650s but Captain John Pickering, who was sworn to the bench in 1656, also served as an Assize grand jury foreman as did Darcy Wentworth of Brodsworth, a relative of the Earl of Strafford and member of one of the most prominent Yorkshire families. In the 1660s thirty three men served as grand jury foremen at the Assizes. Of these, all save three appear as J.P.s on the surviving Nomina Ministrorum for the decade, and of the three who do not, one was on the bench by the early 1670s, Cyril Arthington was a J.P. by the 1680s (and a Henry Arthington had been in the commission in the 1660s) and Thomas Stillington, although not appearing in any of the surviving Nomina Ministrorum was shown in Dugdale's Visitation as being aged thirty six in 1665.<sup>52</sup> The thirty three men included six baronets, six knights and fourteen men described as esquires. It is therefore plain that at least the foremen of Assize grand juries were drawn, from the 1650s onwards, from those gentry families who also filled the magistracy.

-----  
52. Dugdale, Visitation, p. 215.



As already mentioned, Morrill thought that Cockburn's view of grand jurors as men who were on the whole "subservient, ignorant and conservative" was over-stated. In contrast he sees the grand jury as "a vital part of the administrative machine" and the jurors, though by no means of the higher gentry or magistracy, as men "of a certain independence in their outlook".<sup>53</sup> In his later work Cockburn has noted the practice of grand juries in reducing charges against defendants. This was a matter of concern to Zachary Babington, who in his Advice to Grand Jurors in Cases of Blood expressly argued that:

(where a person by law is to be Indicted for killing of another Person)... the Indictment ought to be drawn for Murther, and that the Grand Jury ought to find it Murther, where their Evidence is that the Party intended to be Indicted had his Hands in Blood, and did kill the other Person.<sup>54</sup>

If the reduction of charges is to be taken as evidence of independence by a grand jury then the Yorkshire grand juries fulfill the criterion, for it is by no means unusual for a bill to be found true against some only of a group of defendants, or for a charge to be reduced, for example from murder to manslaughter.<sup>55</sup> It is also likely that at least the men who sat as foremen of the the Yorkshire grand juries were able to stand up to even the most hectoring of seventeenth century judges. That J.P.s were prepared to offend the court and to argue with the judges is evident from the example of Reresby and his attempts to ensure that the Hallamshire cutlers were not liable to Hearth Tax.<sup>56</sup>

-----  
53. Morrill, Grand Jury, pp. 45 - 46.

54. Z.Babington, Advice to Grand Jurors in Cases of Blood (London, 1677) frontispiece to 2.v.

55. See above, chapter two for examples.

56. Reresby, Memoirs, pp. 104 - 105.

In cases with political significance however grand juries were not always so firm, and were apparently prepared to accept Babington's argument that their role was not to consider the evidence fully but to leave that to the petty jury. When Captain Hodgson was accused of participation in the Farnley Wood plot he was indicted before the grand jury

and the jury found it not and Sir John Armitage fetched forth lawyer Weston out of the hall, and he told the jury, they must find the indictment, for though it was an accusation, yet it was no conviction; and so the jury found it, being over-awed.<sup>57</sup>

The Yorkshire Assize grand juries were far from assiduous in making presentments of their own - the only surviving one among the Assize records being that already mentioned as signed by thirty grand jurors.<sup>58</sup> This, dated 16 March 1687, presented "yt haveing viewed the gaol where ye Sheriff usually keeps his prisoners (commonly calld Yorke Castle) we find it out of repaire".<sup>59</sup> The prison was not however to be rebuilt until 1701 - 1705, but before then the county had rebuilt, or at least refronted, the Grand Jury House in 1667 - 1668, and in 1674 had rebuilt the Moot Hall or sessions House, and in 1684 - 1685 had made the nisi prius side more capacious. The grand jury house was situated on the site of the present Crown Court, the Moot Hall on the site of the female prison, now part of the Castle Museum.<sup>60</sup> The nomenclature here is of interest for it suggests a physical separation between the place where the grand jury deliberated and that where the trial jury returned its final verdict.

-----  
57. Hodgson, Autobiography, pp. 62 - 63.

58. This lack of presentments may, of course, be due to the accidents of record survival.

59. PRO. ASSI., 44/29.

60. Royal Commission on Historical Monuments, The City of York, vol. 2, The Defences (London, 1972), pp. 64 - 65.  
Drake, Eboracum, drawing between pp. 286 - 287.

From other accounts it would seem that in York, after the opening ceremonies which were presumably held in the Moot Hall, the grand and petty juries separated, with the grand jurors walking across the courtyard to their own building. There they would have divided into two panels and considered the bills presented to them. Those found true by the grand jury would then have been carried back across the courtyard to the Moot Hall where in the Crown side the petty jury would have considered them in batches of between six and ten.

From Reresby's Memoirs it seems that the practice of sending a loyal address from the gentlemen of the county or grand jury was not uncommon. In 1683 Reresby, Sir Jonathan Jennings and Bradwardine Tindall composed an address "to congratulate {the king on} his late happy deliverye from the conspiracy", which was "soe well approved of that it was signed by all the gentlemen of the county whos occasions led them to Yorke that assizes."<sup>61</sup> It was not always so easy to procure the consent of the J.P.s or grand jurors. In 1687 the high sheriff could not get the gentlemen of the county whose appearance that year was "little" to thank the king for the "proclamation for liberty of conscience". As an alternative to the gentlemen the sheriff tried to get "an address to the same effect from the grand jurys, but they... could not agree of frameing an addresse, and one that was offered them by the high sheriff was stolne away and never seen after."<sup>62</sup>

The social status of grand jurors was in marked contrast to that of most panels of trial jurors at the Assizes. There are a large number

-----  
61. Reresby, Memoirs, pp. 311 - 312.

62. Reresby, Memoirs, pp. 461 - 462.

of surviving lists of Assize petty jurors, but the years for which they survive are erratic. Thus it has been decided to analyse in detail only a sample of the lists. The ones chosen are one year at the start of each decade. At Quarter sessions the years sampled were the two years from October to October at the start of the decade so that the sample Assize petty jury panels fall within the same period and comparisons can therefore be made. In the five years under review then forty one separate lists survive, making a possible total of 492 appearances, as all petty juries consisted of twelve men. In fact 258 men sat on these juries giving an average attendance of 1.9 each. In some years the same twelve men sat more than once, for example one list in the 1650s has "swo" (sworn) endorsed by the side of twelve names three times, presumably meaning that the same twelve men were separately sworn as jurors on three occasions at the one Assizes. This would be consistent with the pattern elsewhere. Beattie in his analysis of Surrey petty juries found that the same twelve men would be sworn to try first one batch of cases and then another. In this analysis those duplications have not been taken into account and therefore the forty one panels represent different names.<sup>63</sup>

There are some differences between the decades. In four of them, around half the men called sat on only one jury, but in the 1660s less than a quarter sat only once. It was, though, the 1670s that saw the highest number of sittings per man, almost three, with eleven men serving five times each. The only other decade in which any man served five times was the 1650s when Thomas Foster so sat. No one listed in the 1670 jurors had sat previously, though again in all

-----  
63. PRO. ASSI., 44/6.

other decades there were at least two men who had served ten years earlier.

Comparing the names of those who served on Quarter Sessions and those who served on Assize juries results in a surprising blank. Only three men appear to have served on juries in both courts: Robert Bell of Thirsk, Thomas Clough of Carlton and George Casse of Broughton. We are hampered here by the fact that we have no jury lists for the East Riding sessions, an omission the more aggravating as the two men who recorded most sittings on the Assize petty jury, William Johnson and William Micklethwaite both came from Cherry Burton in the East Riding. Johnson and Micklethwaite both sat regularly throughout the 1650s and although Johnson seems to have ceased to do so in about 1661, Micklethwaite was certainly still sitting until 1665. As has been stated previously the jury lists are missing for some years and the analysis has concentrated only on the five sample years. From the example of William Johnson and William Micklethwaite though it is obvious that jury service was more regular than it might appear from the analysis of the sample years alone, but it was undoubtedly nowhere near as regular as with the Cheshire grand juries.

Assize petty jurors were (save for the exceptional panels described below) always described as gentlemen if they were described at all. On some lists though no one is given a status description, on others only the first or first and second named are described as gentleman. The exceptional petty jury lists were those sworn to try Lady Tempest, Thomas Threng, Mary Pressick and Charles Ingleby in 1680. The three juries impanelled to try them (Threng and Pressick were tried together) consisted of thirty six men, of whom the three

foremen were all baronets; a further eleven jurors were described as Esquire and the remainder were described as gentlemen. Moreover of these gentleman jurors only one, William Stones of Danby, appears on any other surviving petty jury list. The exceptional trials of these well connected Catholics resulted in exceptional juries - they at least received trial by their peers. In the trial of Arthur Mangy for counterfeiting already referred to (see chapter five above) a petty jury of similarly high social status was impanelled, and bearing in mind what has already been said about the apparent reluctance of petty juries to convict in the coining cases, in contrast to the attitude of the grand jurors the reasons for impanelling such a petty jury to try Mangy appear fairly obvious. John Hodgson was also unlucky in the petty jury that tried him for misprision of treason in the 1660s. Its foreman was Sir Edmund Jennings and he was convicted. There are a few other petty juries both at Assizes and at Quarter Sessions consisting of a larger number of the better off and socially prominent. Several of these are special juries, those impanelled to try specified individuals rather than those impanelled to try a batch of defendants. The individuals tried by such juries were almost invariably themselves the more prominent and the inference must therefore be that special juries of higher social status were impanelled to try defendants of similar status.

Despite the humble status of petty jurors in comparison with grand jurors assize petty juries were not totally subservient either. Those gentry jurors who acquitted Lady Tempest and the other Catholics accused of complicity in the Popish plot scares were acting very much against the wishes of the judges. Christopher Tankard, to whom the Crown counsel was to object in the case of Miles Stapleton, had been

"reflected upon" by the judge in open court after he tried and acquitted Lady Tempest. He, "being a man of spirit", complained of this treatment to Reresby who organized a deputation of twenty gentlemen to the judge who "was willing to ask him pardon openly in court the next day".<sup>64</sup> More ordinary petty jurors might also be "men of spirit". William Micklethwaite of Cherry Burton, one of the more regular petty jurors was foreman of the jury that tried John Hodgson for uttering seditious words and refusing the oath of allegiance. According to Hodgson the witnesses against him, Daniel and Joseph Lyster "were like Simon and Levi, brethren in iniquity". Daniel had been bound to his good behaviour by Hodgson for keeping lewd company and after the Restoration considered that "the sun... now shines on our side of the hedge". A neighbour of Hodgson's deposed on his behalf that he had heard Lyster say "that if ever the times are changed, he would sit on Hodgson's skirts". After having acquitted Hodgson, Micklethwaite "told the judge openly on the court, that if such informers and persons were suffered to go on, there would be no living for honest men".<sup>65</sup>

#### Procedure at trial at Assizes

The procedure followed in trials at the Assizes has been fairly well described elsewhere, and will be considered here only in relation to two surviving Yorkshire accounts, which provide some unusual details.<sup>66</sup> These are the report of the trial of Arthur Mangy for counterfeiting in 1696 and Captain Hodgson's recollections of his

-----  
64. Reresby, Memoirs, p. 198.

65. Hodgson, Autobiography, pp. 52 - 53.

66. See in particular Baker, "Criminal Courts and Procedure", pp. 14 - 18.

prosecutions for treason and sedition in the 1660s. After the grand jury had deliberated on the bills those found true would be returned into court. The prisoners would then be present. Those against whom bills had been ignored were put aside to be discharged at the end of the Assizes. For those to be tried the indictment was read and the prisoner asked how he or she wished to be tried. Deliberate failure to plead in order to prevent forfeiture of land and goods on a conviction for felony or petty treason resulted in subjection to the peine forte et dure. This pressing to death was apparently still being practised in Surrey into the second half of the eighteenth century but it was rare even at an earlier date and one only man, Henry Wainwright, suffered it at the Yorkshire Assizes.<sup>67</sup> The most famous example of it in Yorkshire however comes from before our period. When Sir Walter Calverley killed his wife and youngest children in 1605 he refused to plead and suffered pressing to death in order to preserve his property.<sup>68</sup>

Legal writers noted several types of plea that could be made in felony cases. A plea of not guilty, by far the most common, was a plea to the general issue, but special pleas in abatement, i.e. where there was a mistake in the surname or Christian name of a defendant, and in bar, where a plea of autrefois acquit or autrefois convict was raised were known. Nelson also noted a demurrer, where there was a fault in the indictment but he warned of the dangers in making such a plea for "the fact is confessed as laid in the Indictment".<sup>69</sup> No

-----  
67. PRO. ASSI., 42/1 fol 172. Beattie, Crime and the Courts, pp. 337 - 338.

68. E.Hallstone, ed., Portraits of Yorkshire Worthies, 2 vols. (London, 1869), vol 1, xxvi.

69. W.Nelson, The Office and Authority of a Justice of Peace (London, 1710), and see Baker, "Criminal Courts and Procedure", pp. 34 - 35.



cases of demurrers appear among the Yorkshire Assize bills, nor were the judges always prepared to accept special pleas. Hodgson in his trial for treason wanted to raise a plea in abatement on the basis that the "addition" to his name was incorrect and accordingly "desired counsel, having several exceptions against the indictment". The judge however was not prepared to allow him counsel and told him "frowningly" to plead to the general issue.<sup>70</sup> Pleas in bar were likewise rare, but Thomas Johnson pleaded that he had been previously convicted for the same offence.<sup>71</sup>

A trial jury was usually impannelled to try about half a dozen indictments at a time. Defendants could challenge potential jurors, both for cause and peremptorily. Once again the incidence of challenges is hard to estimate but was undoubtedly small and discouraged by the judges.<sup>72</sup> Nevertheless two jury lists show potential jurors being challenged off a panel and according to the account of his trial Arthur Mangy "challenged some Leeds men".<sup>73</sup> In addition crown counsel in the case of Sir Miles Stapleton seems to have asked that at least one gentlemen be stood by although as there was no witness present to prove Stringer's objection he was sworn. There was still a lack of jurors though as Crown counsel would not move for a tales and Stapleton's trial was therefore postponed.<sup>74</sup>

Although prior to 1695 defendants in felony and treason trials were allowed counsel only on matters of law the crown was likely to be

-----  
70. Hodgson, Autobiography, p. 63.

71. PRO. ASSI., 44/23.

72. Cockburn, Assizes, p. 120.

73. PRO. ASSI., 44/21 and 44/27; "Trial at York", p. 209.

74. State Trials, pp. 317 - 318.

represented in political and other treason trials. Thus Sir Thomas Stringer appeared for the Crown in two of the Yorkshire Popish Plot trials and Aaron Smith frequently acted in the coining trials in the 1680s and 1690s.<sup>75</sup> Hodgson was aware of his right to counsel on point of law and he had found four exceptions to the indictment against him:

1st, It was not the indictment found by the grand jury: 2dly, I should have been indicted within three months after prosecution, and it was above six months: 3rdly, It ought to be grounded upon some statute, which it was not, but grounded upon the common law: 4thly, There was not a right addition to my name, and the time was not set down when the offence was committed.

It is not clear from his account whether he voiced all these exceptions himself, but in any event his request for legal assistance was refused: "neither the judge nor counsel (presumably Crown counsel) was ready to promote it". In Mangy's trial too the Crown was represented though counsel's opening speech and examination were "of commendable brevity":

My Lord, and gentlemen of the Jury here is a person Indicted for stamping or counterfeiting the King's Coyne which any man knows to be High Treason, if my Lord we prove the fact upon him and he did actually do the same we need Say no more. Cryer call Geo: Norcross.<sup>76</sup>

Prosecution witnesses, unlike those for the defence, were always sworn, a distinction noted by the author of the account of Mangy's trial. If that account is an accurate representation of procedure at other trials it would appear that most examination of Crown witnesses was done, not by Crown counsel but by the judge, counsel's role being limited to the calling of the witnesses. The judge allowed Mangy himself to question the prosecution witnesses and then to call his

-----  
75. State Trials, and for Aaron Smith see Cal.Treas.Books, and for unfavourable comments on his role in the Oates trials, R.North, Examen: or, an Enquiry into the Credit and Veracity of a Pretended Complete History (London, 1740), pp. 75 and 195.

76. "A Trial at York", p. 210.

own, though after the start of Mangy's defence a further witness for the prosecution seems to have been inserted. After Mangy was asked whether he had anything further to say for himself, the judge summed up. As the editor of the account of the trial says he confined "his criticism... to a criticism of the evidence for the defence", concluding his address thus:

Gentlemen, if you believe what has been proved against Mr Mangy be true you are to find him guilty, but on the contrary if you believe what Mr Mangy and his servants tell you and discredit the evidence for the King you are to find him not guilty, but so far as I see gentlemen it appears otherwise, but it is not I but you who must be the Judges in this case, so I shall say no more to you. It is likely that the trial jury, which, as has already been mentioned, was of unusual composition, considered only Mangy's case. After the summing up they "withdrew and in less than half an hour returned and were called over." Mangy was convicted, taken back to the Castle,

and the Court went about other business till about ten a Clock att night, when the Prisoners who had been found guilty were brought into Court and Mr Mangy sett to the Barr, having his eldest son in one hand and his eldest daughter in the other. Being asked whether he had anything to say why sentence of death should not be passed upon him, Mangy asked the judge "to remember mercy and to have pittty on my poor children of which these are eldest... thier mother att this time att the point of Death in childbed of the seaventh". The judge was unimpressed and pronounced the death sentence, but Mangy had two reprieves and his execution was deferred until October.<sup>77</sup>

The nineteenth-century editor of the account of Mangy's trial had some harsh criticisms of it and his words bear repetition:

Quite apart from any considerations based upon technical requirements or the principles of the law of evidence,

-----  
77. "A Trial at York", pp. 223 - 225.

the case as presented was defective in almost every vital particular... the man was charged with and convicted of coining twenty pieces. He might as well have been charged with and convicted of coining a thousand: the evidence, so far as it was material to the issue to be tried, consisted of a few vague allegations made by a confessed accomplice.

The judge and prosecuting counsel come in for criticism too: "the duties of the prosecuting counsel seem... to have been... discharged in the most perfunctory fashion", and

In this partial and conspicuously unfair 'summing up' the Judge... omits to point out the vague and indefinite character of the testimony of Norcross, Greaves and Nicholson, nor does he advert to the... fact that these witnesses were all... accomplices.<sup>78</sup>

These criticisms could undoubtedly have been applied to most criminal cases in the period, and indeed Mangy's trial was probably more detailed and gave the jury a better chance to consider the evidence than most others.

The Assizes for the county of the City of York and the Ainsty were of course always held separately from those for Yorkshire. The J.P.s for the city were always commissioned separately and the grand and petty juries separately impannelled. In total lists survive for fifteen special, seventeen petty, and eighteen grand juries. The surviving lists of petty jurors for the city are the original lists with more than twelve men named and those actually sworn pricked. Thus considerably more names of potential petty jurors survive for the city than the minimum number of 650 odd. In addition it seems that on occasions the city petty jury consisted of thirteen rather than twelve men, though of course this may be simply that an additional name was pricked by mistake.<sup>79</sup>

-----  
78. "A Trial at York", pp. 210, 221.

79. PRO. ASSI., 44/4 - 44.

For March 1664 the lists of J.P.s, constables, grand, petty and two special juries have survived and it is worth examining these in some detail. The J.P.s consisted of the mayor, recorder and twelve aldermen, three of whom were noted by the clerk as being "infirm" and one more not noted as present at all. There were three coroners listed, two present and the third likewise infirm; the two high constables, three of the four sergeants at arms and three of the four bailiffs were also noted as being present. Only thirteen men were sworn to the grand jury and they were all described by their crafts and consisted of two grocers and two bakers, a whitesmith, an armourer, a trunkmaker, a pinner, an instrument maker, a tailor, a joiner, a haberdasher and a chandler. Three petty jury lists exist. One is endorsed as being between the king and the prisoners at the bar; a second between the king and Nicholas Battersby and the third between the king and Brian Dawson and others. The first two juries consisted of eleven of the same men together with, in the first, Richard Mason, and in the second, Lancelot Scadlock. No occupation is given for Scadlock, but of the others one, (not the first named), is described as a gentleman, two as mercers; one each as a draper, upholsterer, tanner and milliner, with the other five being described as coming from villages within the Ainsty. The jurors impanelled to try Brian Dawson were twelve men selected from a panel which listed twenty four names, four described as gentlemen and four as merchants; two each as drapers, haberdashers and mercers and one each as a goldsmith, a yeoman, a grocer, a cordwainer, a skinner, a tanner, a draper, an innkeeper, a tailor and a chandler, but only thirteen of whom were marked as being present in court. No one on this list was sworn to the other juries nor were any of them or the other jurors present in court as part of their official duties as constable,

bailiff etc. In total therefore apart from the judges, on this occasion Thomas Twisden and Christopher Turnor, the clerk of Assize and the peace and the judges clerks if any, ten J.P.s; ten other officials; thirteen grand jurors and twenty six petty jurors were present in the court.

There are discrepancies between the documents as to the work these fifty nine people had to do. The gaol book records that the bills against two men were returned ignoramus and that a further eight people were dealt with. A list of prisoners in gaol records six people, all included among the gaol book names, and indictments against four of these survive. A further indictment, however, exists, charging Brian Dawson, an Alderman and J.P., at least until 1661, and others: the third petty jury was sworn to deal with that case. The indictments themselves are of some interest. Two indictments were actually drawn, one by the clerk of the peace for the city, Blackbeard, and one by the clerk of Assize, Robert Benson, against Thomasina Burne, charged with causing the death of Grace Hutchinson and against Nicholas Battersby, charged with sorcery. Of the other indictments those against Edward Daltry for horse theft and against Richard Redshaw senior and junior for burglary were signed by Benson and that against Brian Dawson and seven others for illegal assembly was signed by Blackbeard. All the bills were considered by the grand jury and their foreman, Thomas Tomlinson, a grocer, signed those against all save the two Redshaws as true bills. The jury sworn to try Nicholas Battersby acquitted him. That sworn to try Brian Dawson and his accomplices found Dawson and four others guilty and three not guilty, but not until the next Assizes in July 1664. Thomasina Burne was acquitted; Edward Daltry found guilty and sentenced to hang; John

Outhwaite found guilty of petty larceny only and William Hird reprieved. Two of the three men whose names appear only in the gaol book appear again in July 1664 when it is noted that they have been remanded in gaol according to prior orders.

Jury service was not particularly regular on the city panels either. Of the grand jurors who served in March 1664 eight appear never to have served again, while three served on only one other grand jury, one on two petty juries and only one man, Abraham Boyes, who served on two grand and three petty juries can be said to have been a regular juror. Similarly with those called for petty jury service eleven of them served on another panel: seven on only one other, two on two others and one, Abraham Boyes, already referred to, on five others. As for the officials only Robert Hunter, the bailiff may have served later as a grand juror.

#### Juries at Quarter Sessions

At the North Riding sessions twelve grand and six petty juries were sworn each year; and at the West Riding sessions eleven grand and ten petty juries. Frequency of attendance however does not appear to have been as marked as in Cheshire where overall between 1625 and 1659 63% of those who served at all served at least twice. At both Yorkshire Quarter Sessions for which the lists survive it seems that about 70% of men sat on a jury once only. Thus of the approximately 4,300 names of Quarter Sessions jurors recorded there would probably have been about three thousand individuals who did jury service at least once during the period.

For the West Riding the juries both grand and petty that served at the Knaresborough sessions each October were analysed in detail. Although grand juries usually consisted of fifteen men two panels at Knaresborough - in the 1670s and the 1690s - consisted of fourteen and a further two panels - both in the 1680s - consisted of seventeen men. In total therefore from the eight sittings analysed there were a possible 122 attendances. In fact a total of eighty three men sat. Fifty six of these sat on one occasion only; nineteen sat twice and only one, William Buckle sat five times. No grand jury was ever called consisting wholly of men who had had previous experience nor one where no one had had previous experience. The proportion of jurors on each panel who had experience though ranged from 13% for a jury in the 1670s to 65% for one in the 1680s. Looking at the petty jury lists at the Knaresborough sessions in the eight sample years provides nine panels, making a total of possible attendances, as petty juries invariably consisted of twelve men, of 108. Petty jurors appear to have been less regular in their attendance than the grand jurors, so that a total of eighty six men sat, sixty eight sitting once only, fourteen twice and only four on three occasions. Two petty juries appear to have consisted of men who had had no previous experience but usually between two and four men had sat at least once before and on one 1680s panel seven men had sat previously.

Only twelve men out of the total of 157 who did jury service at Knaresborough in the sample years served on both petty and grand juries and few conclusions can be drawn from the pattern of their attendance. Thus six served first on the grand jury and then on the petty jury while five served initially on a petty jury and one, Thomas Oastler, served three times - first on a grand jury then on a



petty jury and then again on a grand jury. Only one man, Robert Dickenson, served as many as four times and his service consisted of three petty and one grand jury attendance. Four of the men who served on both types of jury served just once on each. In total therefore of the 157 jurors 108, that is over two thirds, served only once and only four served four or more times.

In the North Riding the situation was similar. A total of 166 men sat at the possible 239 sittings of the grand jury in Thirsk, the panels selected for detailed analysis. Of these 118 sat once only, twenty nine on two occasions and only five men sat more than four times. Nine men sat on both grand and petty juries including Arthur hall who sat on two grand juries, then on a petty jury and again on two further grand juries. Only one grand jury consisted of men who had had no previous experience.

As in the West Riding so also in the North the petty jurors were less likely to have served previously and on the whole they served more infrequently. Thus seventy two men filled the eight four possible attendances with some 90% of them sitting once only and only one, William Doncaster, serving four times.

The West Riding lists of jurors only rarely provide details of where the men called came from, but the North Riding lists almost invariably do. Again there is a difference between grand and petty juries. Thus looking at the Thirsk panels 16% of the grand jurors were said to have come from Thirsk itself, while 47% of the petty jurors were. When locations within ten miles of Thirsk are included the difference is less for then 74% of petty jurors and 65% of grand

jurors came from within that radius. The situation is similar in panels listed for the other sessions town, though even in those panels a large proportion of jurors were said to have come from Thirsk itself. The preponderance of local jurors on petty juries is illustrated by the New Malton jury on January 1691 when all twelve men sworn were said to come from New Malton itself.<sup>80</sup> On the whole then juries were drawn from the immediate locality of the court with for example, all the men said to have come from Swaledale sitting on juries in Richmond.

A couple of the West Riding lists give the domicile of the grand jurors and it is worth comparing the two for the sessions in Leeds in July 1692 with that for Rotherham in August of the same year. Not one juror on either list was said to have come from Leeds or Rotherham itself, and while for the Rotherham sessions almost 60% of jurors came from within ten miles of the town, at Leeds 65% came from outside a similar radius.

Just as details of domicile are provided on the North Riding lists but not on the West Riding ones so too details of status are generally omitted from the West Riding panels. On most North Riding lists the foreman, or at least the first named juror, on both grand and petty juries was described as a gentleman and all the other jurors as yeomen. In the West Riding lists the first named is usually described as a gentleman but no status description is usually given for the other jurors. There were exceptions to this general pattern. One petty jury in the North Riding at Thirsk in 1671 consisted

-----  
80. NRO., 102/130.

entirely of men described as yeomen and at Richmond in 1661 the first named on both grand and petty jury lists was described as a yeoman and no occupational description was given for any other juror.<sup>81</sup> On the other hand at Skipton in 1671 the grand jury consisted of eight men described as of gentle status and at Helmsley in 1671 there were nine gentlemen on the petty jury.<sup>82</sup> There are only four mentions of occupations other than gentleman or yeoman. Thomas Morrell of Thirsk, a grand juror there in 1691 was described as a mercer; John Jackson of Thirsk was described as a tanner on a grand jury at Helmsley and on a petty jury at Stokesley and Richard Phipps, a petty juror of Thirsk was described as a shoemaker in 1681.<sup>83</sup> Richard Phipps does not appear to have served on any other juries during the years studied but a John Jackson of Thirsk was described as a yeoman on a grand jury in Thirsk in 1680 and on both a grand and a petty jury in Helmsley in 1682.<sup>84</sup> Thomas Morrell of Thirsk was described as a gentleman when he headed the petty jury in Thirsk in 1690 and two other Thomas Morrells, both described as yeomen feature in the 1690s.<sup>85</sup>

## CONCLUSION

The men who were involved in the administration of justice in seventeenth century Yorkshire came from a range of backgrounds and social groupings. It is unlikely that Prince George of Denmark ever came to Yorkshire, let alone sat with the other West Riding J.P.s

- 
81. NRO., 100/156 and 98/ 326 and 327.
  82. WRQS., 4/9 fol 196 and NRO., 100/147.
  83. NRO., 101/137; 102/15 and 212.
  84. NRO., 101/227; 238 and 102/165.
  85. NRO., 102/125.

during their sessions, but peers with connections in the county, such as Lord Downe, might attend, as did many of the gentry who had connections at court, such as Reresby himself. Many of the J.P.s were regular attenders at Quarter Sessions and at least some of them must also have been active in the petty sessions. Captain Pickering, during the term of his commission, attended both Assizes and Quarter Sessions regularly and so too did Reresby, who, in the ten years prior to mid 1688, was involved in eleven Assize and twenty one Quarter Sessions sittings. There were obviously strong social distinctions between the J.P.s and the jurors at Quarter Sessions, for although Reresby often refers to the justices staying with him or J.P.s dining together, this fraternization did not include the jurors. However, the jurors also sat with a certain regularity, and as, at Quarter Sessions, they tended to come from the area immediately surrounding the Quarter Sessions town, doubtless they too knew one another and would dine together when attending for judicial business. At the Assizes, of course, the J.P.s frequently served as grand jurors and they would socialize also with the clerks of Assize, with the judges and their clerks and presumably with the clergy who were attending for the Assize sermon. Certainly those chosen to preach the sermons were of considerable social status themselves, including, for example, the Deans of Ripon and York. Thus those involved in the administration of the criminal law comprised a number of interlocking groups, ranging from influential courtiers to obscure tradesmen and yeomen in outlying areas such as Richmond.

The network of those involved stretched further down the social scale too for it is necessary to bear in mind that at the parish level the constable would have been the most obvious representative of the

centralized system of administration, and indeed his role remained of great importance in this period. However, the constable was the least professional of all of those involved and likely to be the least educated in both general terms and in legal matters, for he usually served only by the year whereas the other administrators of the criminal law were likely to serve fairly regularly, if sporadically, and thus to develop at least a certain knowledge of the law and of legal practice. Undoubtedly the local tradesmen and yeomen who sat as jurors at Quarter Sessions in Richmond would have been likely to have been influenced and intimidated by the J.P.s who were also sitting there and even the more substantial men who sat as grand and petty jurors at the Assizes might have been intimidated by the majesty of the spectacular and awe-inspiring figures of the judges of Assize. Nevertheless the constant inculcation of the need for impartial judging probably also had an effect and it is clear from the proportion of ignored bills and acquittals that prosecutors had to satisfy a body of men who were aware of the legal standards of proof. On the whole, of course, such behaviour did not bring juries into conflict with the bench in this period but a belief in the duty of jurors to consider and weigh the evidence, and come to decisions based on it, could be a strong motivating factor in the more political cases, and it is noteworthy that among the Yorkshire records there are, despite the vagaries of record survival, two examples of such conflict in the cases of Captain Hodgson and the Popish Plotters. The ideology of jury impartiality and deliberation could on occasion become a weapon to be used against a centralizing government.

In a sense then there was a duality about the system. In theory there

existed a national law code administered by centrally appointed judges who were able to mould prosecution by their exhortations to the J.P.s assembled at the Assizes. In practice the enforcement of the national law code depended crucially on the participation of large numbers of men in the localities, many of comparatively humble status. In many ways the pattern of prosecution in Yorkshire in the late seventeenth century reflects the interaction of these two contasting forces. Whereas the importance of a centrally directed prosecution initiative can be illustrated in the patterns of prosecutions for offences against the authorities, in the prosecution of administrative and economic breaches the importance of local initiatives and prejudices is displayed. To a great extent, however, such local initiatives would be tolerated and accepted by the central authorities for on the whole they concerned the mionor offences. It was those offences which might affect the security of national government or finance with which the central authorities were most concerned. The relationship between central and local government in the enforcement of the criminal law in this period was far from an unequal one, each depending on the other for the maintenace of local and national stability.

## CONCLUSION

Historians of crime have so far concentrated on the late sixteenth and early seventeenth centuries and the eighteenth century. Very little work has looked consistently at the period between the Restoration of the monarchy in the 1660s and the start of the Whig Ascendancy in the 1710s. The neglect of this half century has not been confined to historians of crime for, by comparison with other periods, it has only been in the last few years that an intensive rethinking of the politics of the age has begun. Some of that work has stressed the continuity of the problems faced by the governments of the Restoration with those faced by the governments of the Interregnum and thus with earlier periods too.<sup>1</sup> On the other hand the late seventeenth century has also been seen as a period of comparative stability when contrasted with the turmoil of the Civil Wars and thus as a prelude to the quiet calm of the eighteenth century. The late seventeenth century is a period of vital importance in attempting to understand the development of a political and social system that was to sustain the shocks of major industrial change without succumbing to what, by the late eighteenth century, was seen as "foreign" revolutionary political ideas and fervour. One aspect of this development was the importance of the ideology of law and order, a theme which has been analysed in some detail by writers such as D.Hay and E.P.Thompson. The ideology discussed by them, which formed the basis for much of the political theory of the period, in many

-----  
1. See for example, A.M.Coleby, Central Government and the Localities, Hampshire, 1649 - 1689 (Cambridge, 1987).

ways contrasts with the radical criticism of the law and the calls for its reform propounded during the Interregnum suggesting that the late seventeenth century is thus an important watershed and reasons for the changes in attitude towards the law and in the machinery of its enforcement are to be found within that period. If so the need for an intensive analysis of the patterns of crime and the enforcement of the criminal law in the late seventeenth century is clear and it is hoped that this thesis will enable links to be made with both earlier and later periods.<sup>2</sup>

Of course the lacunae in the records posed considerable problems, the Yorkshire Assize records effectively commence in the 1640s; they stop in 1697/8 and only recommence in about 1723. It would be a valuable exercise to contrast the earlier fifty years with that from the 1720s but such a comparison was beyond the scope of the present work. Nevertheless by concentrating on the period immediately prior and subsequent to the Restoration a gap in the detailed study of crime in the early modern period has perhaps been filled.<sup>3</sup>

That this thesis has examined the records of a northern county is perhaps also significant, for again, to date, most historical research on crime has concentrated on counties much closer to London and it is useful to provide a corrective to such metrocentric work. It is a truism that every county is unique: what is perhaps more

- 
2. See, for example, Hay and others, eds., Albion's Fatal Tree; E.P.Thompson, Whigs and Hunters: the origin of the Black Act (London, 1975) and D.Veall, The Popular Movement for Law Reform, 1640 - 1660 (Oxford, 1970).
  3. The work of Bennett on Yorkshire in the immediately preceding period to that studied in this thesis is particularly useful here.



important is the ways in which a county like Yorkshire, which itself contained many different forms of agricultural and social organization, was similar to other counties in England. During the Civil Wars the county was divided in its loyalties; by the later seventeenth century it already had well developed textile and metal extracting and processing industries and those industries were to expand further in the eighteenth century, yet agriculture remained the predominant means of livelihood; its towns ranged from the provincial capital of York to small market towns and hamlets; it had a wide diversity of religious opinion. In all these ways, and many more, Yorkshire resembled many other areas of the country and it is not surprising that the patterns of crime within the county also fall within a broadly national pattern.

This concluding chapter will analyse and attempt to explain the overall patterns of crime in Yorkshire and relate them to the patterns established elsewhere. The problem has four major aspects. The first is the chronological distribution of crime in the county, and, in particular the significant rise in prosecutions in the 1660s and 1670s, the fall in the 1680s, and further rise in the 1690s. The second is the prima facie connection between types and amount of crime and geographical, agricultural and social areas. In relation to both of these the extent to which the patterns established for Yorkshire differed from or were similar to those for other counties will be discussed and reasons for the similarities and differences advanced. The third aspect is the role of the enforcers of the criminal law and the extent to which their responses to crime or to perceptions of criminality governed rates of prosecution and conviction. In particular here the response of grand and petty juries

to the increase in prosecution and the direct correlation between that increase and the proportion of bills ignored by the grand jury will be analysed and explained. The fourth aspect is a demonstration of the sophistication of the legal theory behind the practice in the criminal courts as illustrated particularly by the crime of asportation and the difference between felonies and misdemeanours, and the apparently high proportion of prosecutions for misdemeanours in Yorkshire.

The introduction to this thesis discussed at some length the many problems associated with attempts at statistical analysis of crime patterns in the early modern and even in the modern period. All those reservations need to be borne in mind throughout what follows. Despite them, however, it is possible to use the data obtained for crime prosecuted in Yorkshire in the second half of the seventeenth century to arrive at some conclusions about its fluctuation over time and space and how those charged with the enforcement of the law both reacted to and helped to create these fluctuations.

#### Chronological distribution

The amount of missing material particularly dogs attempts to see a change in prosecution rates over time. There is no way of establishing whether and if so how many bundles of indictments have been lost. But apart from the obvious gaps - no Assizes were held in winter 1659, and the records do not exist after 1696/7 - the impression gained from the number of grand jury foremen at each Assizes is that the survival is fairly even throughout the period. Moreover at Quarter Sessions where the records are complete a pattern

not identical but with sufficient similarities to that at the Assizes is apparent, supporting the view that the Assize record survival is at least fairly uniform throughout the period we are concerned with.

Table 30 and figures 4, 5, <sup>and 7 and Appendix 4</sup> and 6, set out the patterns of prosecution over time in both courts. At the Assizes then the numbers of persons prosecuted in the 1660s was double that in the 1650s and the 1670s saw a further, though very slight, increase. In the 1680s the numbers prosecuted fell by over one third but in the 1690s they rose again by about 10%. At Quarter Sessions the number of those prosecuted likewise peaked in the 1670s but the increase in the previous decade had been smaller than at the Assizes. In the 1680s the numbers prosecuted dropped by about 10% and in the 1690s by almost a further 20%. The pattern for the different categories of offences at Quarter Sessions and Assizes (though always more marked in the latter court), was similar which gives further support for the idea that the Assize records have survived fairly evenly. Thus the largest group of offences, those against property, rose at both Quarter Sessions and Assizes in the 1660s. At Assizes there was a further rise in the 1670s followed by a decline thereafter while at Quarter Sessions the 1670s saw a slight increase and the 1680s the same number prosecuted as in the previous decade, followed by a decline in the 1690s. It should, of course, be borne in mind that the records for the last two or three years of the century are missing. Those years saw widespread harvest failure and it might therefore be expected that prosecutions for crimes against property would have risen then. In both courts the figure for the 1690s was below that for the 1650s. Offences against the person rose at Assizes in the 1660s and then fell in the three succeeding decades. At Quarter Sessions there was a rise in the 1670s

and fall thereafter and again in both courts the number of persons charged in the 1690s was less than in the 1650s.

-----  
 TABLE 30

PERSONS PROSECUTED BY DECADE

Decade	Assizes	Quarter Sessions	Both
1650s	1098	1160	2258
1660s	2652	1596	4248
1670s	2349	1708	4057
1680s	1694	1554	3248
1690s	1704	1194	2898
Total	9497	7212	16709

-----

If offences against property and the person show one pattern, offences against the peace and against the authorities show a slightly different one. At the Assizes offences against the peace rose sharply in the 1660s, fell slightly in the next decade and sharply in the one after and then rose again in the 1690s. At Quarter Sessions too the 1660s saw almost twice as many prosecutions as the 1650s and the 1670s a further slight increase. In the 1680s the numbers prosecuted dropped sharply rising again in the 1690s. In both courts the numbers charged in the 1690s were higher than in the 1650s. For offences against the authorities the numbers at Quarter Sessions are too small to have much significance save that the 1690s saw one and a half times as many prosecutions as the 1650s. At Assizes this category was subject to large fluctuations, with the number prosecuted in the 1660s being twice that of the 1650s, falling slightly in the 1670s and even more slightly further in the 1680s before increasing threefold in the 1690s. The number of prosecutions in that decade was over six times as great as in the 1650s.

The pattern that has emerged therefore is of a rise in both courts and in all categories of crime in the 1660s, with that decade and the 1670s witnessing very high levels of prosecutions. In the 1680s the number of prosecutions fell but in the 1690s while offences against property and the person continued to fall, offences against the peace and the authorities rose again in both courts. In that decade Quarter Sessions prosecutions overall also continued to fall while at the Assizes they rose, a difference accounted for almost wholly by the massive increase in prosecutions for crimes against the authorities particularly coining at the Assizes in the 1690s. Comparisons with other counties are notoriously difficult. Nonetheless it is worth noting that in Essex the 1660s and 1670s saw a sharp decline in felonies over the previous twenty years, while in Surrey the period 1660 - 1699 saw fewer crimes than the succeeding forty year periods.<sup>4</sup> Certainly the fact that prosecutions in Yorkshire peaked in the 1660s and 1670s appears to differ from patterns found elsewhere and might suggest a society not yet as stable as that in a county such as Essex.

Before considering the reasons for this pattern it is necessary to look at another aspect of the problem. This aspect ties up with the third point to be considered in this conclusion but will be set out and discussed here on one level, and, in relation to the role of the enforcers of the criminal law, elsewhere. The aspect to which reference is being made is, of course, the proportion of bills ignored by the grand juries. At both Quarter Sessions and Assizes

-----  
4. Sharpe, Seventeenth Century England, p. 183; Beattie, Crime and the Courts, pp. 90, 115, 131 and 182.

grand juries sat to consider the bills preferred against defendants. The role of these grand juries, who were always of higher social status than the petty or trial juries, and always consisted of more than twelve persons, was to decide, to put it in modern terms, whether there was a case to answer. That is the grand jury in theory would have heard, or at least heard of, the evidence of the prosecutor and on the basis of that alone would decide whether it was legally sufficient to found an indictment. By the eighteenth century it has been suggested that the work of the grand juries was consistently a "matter of course, a ceremony, matter of form", but this was not the case in the seventeenth century when writers such as Zachary Babington attacked the presumption of grand juries in ignoring bills or reducing the charges in them and when struggles between judges and jurors over the functions of the grand jury were not unknown.<sup>5</sup>

Most discussion of the grand jury and their return of ignoramus bills has concentrated on the offences of treason/sedition and murder, but at the Assizes and Quarter Sessions grand juries in Yorkshire were regularly ignoring bills in all categories of offence. Overall indeed about 15% of all bills presented at Assizes and Quarter Sessions were ignored, and it is thus possible to see that the role of the grand jury in considering the cases brought before them by prosecutors was far from minimal but on the contrary had a substantial impact on the

-----  
5. Cockburn, Introduction, p. 52, quoting A Guide to Juries (1703), p. 41. This quotations is also cited by Baker in "Criminal Courts and Procedure", p. 20, where however, he also refers to the fact that around 1800 grand juries were regularly ignoring about one in seven bills. For the struggles between judges and juries see Green, Verdict according to Conscience, generally and for the dispute between Kelyng LCJ and Sir Hugh Windham, pp. 214 - 221.

amount of business dealt with by the trial jurors. The rate at which bills were ignored was, however, uniform neither throughout the period, nor among the different categories of offences, nor between the two courts nor between felonies and misdemeanours. To consider the last two differences first: the Assize grand juries always ignored a greater proportion of misdemeanour bills than felony bills while at Quarter Sessions the position was reversed. A possible explanation for this is perhaps that on the whole those felony cases prosecuted at Quarter Sessions were the weaker ones, while on the other hand, Assize grand juries were impatient of the vast mass of petty misdemeanours brought before them and threw out those that were at all shaky. The most striking differences though were the fluctuations over time and between categories of offence. The 1660s saw a doubling of the proportion of bills returned ignoramus, and thereafter the proportion fell until in the 1690s at 8% it was less than it had been in the 1650s. As for the categories of offences the rates suggest that both for offences against the authorities and the peace the fluctuations were (though following a similar pattern) sharper than those for offences against property and the person. Table 31 sets out the bills ignored at Assizes over the period.

-----  
 TABLE 31

BILLS IGNORED AT THE ASSIZES

	1650s	1660s	1670s	1680s	1690s	Total
Bills presented	1098	2652	2349	1694	1704	9497
Bills ignored	123	591	411	239	143	1507
True bills found	975	2061	1938	1455	1561	7990
Proportion of bills ignored	11.2%	22.3%	17.5%	14.1%	8.4%	15.1%

-----

What appears to have occurred then is that the 1660s saw both a significant rise in the number of prosecutions initiated and a more than proportionate rise in the number of bills ignored by the grand jury. The result of these two phenomena was that the difference between bills presented and true bills found was higher in the 1660s than in any other decade. Conversely in the 1690s the difference between bills presented and bills found was less than in any other decade. These facts now have to be considered in the light of changes in the incidence of the categories of crime.

Criminal prosecutions in our period were of course always brought in the name of the crown, but there was no police force or prosecution service responsible for the mechanics of prosecution so that for many offences in effect prosecution relied upon the the grievance felt by a victim. This was a problem recognized by contemporaries who attempted to ensure the attendance of prosecutors and witnesses at trial by requiring them to enter into recognizances to do so. Peter King has shown, however, that sanctions against a victim who, having entered into a recognizance to prosecute, failed to do so were imposed in only a small percentage of cases so the sanction was probably not effective.<sup>6</sup> King's work related principally to crimes against property but it will be argued that the factors governing the prosecution of property offences applied equally to crimes against the person. In both categories the victim knew he had suffered loss or harm and was likely to feel victimized. The crimes were direct in

-----  
6. King, "Decision Makers", p. 27.

As King says the key decision maker at all stages of the eighteenth century criminal process was the prosecutor. Thus in 12% of the cases studied by King prosecutors failed to appear but in less than 1% of them was the recognizance forfeited.



their consequences and in many cases victim and perpetrator would have been known to each other and the crime might well have involved a direct and personal confrontation. On the other hand, for many of the offences against the peace or the authorities the situation was different. There the "victim" was less likely to be an individual suffering direct physical or economic harm after a personal confrontation with the perpetrator and was more likely to be an abstraction such as "the king's peace". The most obvious example of such an impersonal victim occurs in the treason cases where the victim was the state, but the same rationale would apply in the coining offences where the only way in which a specific individual would have been harmed was if a false coin tendered by him was refused. To an extent this was true also in the offences of riot and unlawful assembly, where, although a specific individual might have been the victim of an assault or an attack upon property, the true victim was the due order of society. There is thus a distinction to be made between crimes which had a direct personal victim and thus a potential prosecutor and those where the harm suffered was more to the authority of the state than to any individual. The discussion that follows therefore will distinguish between the more "private" offences such as theft and assault and the more "public" ones such as coining.

With these considerations in mind it is possible to confront the dual problem: why did prosecutions peak in the 1660s and 1670s and at the same time grand jurors refuse to endorse a greater proportion of bills? The explanation suggested will be presented on several levels for there were undoubtedly both national and local factors at work.

The period of the civil wars and Interregnum was one of considerable dislocation in county and national government. Quarter Sessions and Assizes were disrupted at times and the composition of the bench substantially altered on at least one occasion.<sup>7</sup> With this disruption went a low level of prosecution in the courts of Quarter Sessions and Assizes. In this period the proportion of "private" prosecutions was highest and this suggests that the county rulers either did not feel the need to encourage prosecution of the more "public" offences or were unwilling to do so. This view would perhaps fit in with the theory advanced by A.M.Coleby in relation to Hampshire, that Interregnum governments had little effect on moral reformation or the enforcement of religious policy, although these were both matters where the government was anxious to intervene.<sup>8</sup>

With the Restoration there was a "restoration of central control over the localities" as well as an increasing support for the government by the local gentry, upon whose co-operation any initiatives from the centre would depend for their success. Coleby has stressed how the attack on religious dissent in the 1660s and 1670s in Hampshire was the result of initiatives from the centre, and in Yorkshire a part of the increase in prosecutions in this decade is definitely attributable to a marked rise, both absolutely and proportionally in the "public" offences which of course include prosecutions for

- 
7. See C.G.F.Forster, "County Government in Yorkshire during the Interregnum", Northern History, 12 (1976), pp. 84 - 104. where he states that Quarter Sessions were heavily disrupted between 1642 and 1645/6 but that on the whole there were no special problems relating to the maintenance of law and order in the 1640s and 1650s. Nonetheless, despite some continuity (about 22% of J.P.s served continuously between 1646 and 1660) the bench was extensively remodelled in the 1640s, in 1653 and again in 1660.
  8. Coleby, Hampshire, pp. 52 - 63.

attendance at unlawful religious meetings. The "public" offences accounted for 11% of prosecutions in the 1650s but 29% in the 1660s. A centralizing state buttressed by local support thus helps to explain the rise in prosecutions in Yorkshire in the 1660s. However the "private" offences, although declining as a proportion of the whole also rose absolutely. The reasons for this increase are harder to explain. In part it may be accounted for by a feeling among the victorious royalists that "the sun now shines on our side of the hedge" and that now was the time to settle old scores through the medium of the law courts. An example of such feeling is the prosecution of Captain Hodgson by the Lyster brothers already referred to. So a local gentry encouraged by the government to increase prosecutions for "public" offences was likely to do so for "private" offences as well. Further it is possible that many of the property offences charged in the 1660s were the result of long felt insecurity about the safety and sanctity of property engendered by the instability of the civil war and Interregnum years.

This sharp rise in prosecutions in the 1660s and 1670s did not occur in Essex, the only county with which it is possible to make the comparison. There, in the sixty year period studied by Sharpe, prosecutions rose steadily to the 1650s, fell sharply in the next decade before rising again to the level they had been at in the 1640s in the 1670s. Moreover the pattern in Essex for the the different categories of offence was also different, for both offences against property and the person (the "private" offences) fell consistently and sharply from the 1650s to the 1670s while offences against the

peace were almost twice as frequent in the 1670s as in the 1650s.<sup>9</sup> The difference between the counties may be partly accounted for by the existence in Yorkshire prior to 1641 of the Council in the North. The major work on this court was that of R.R.Reid first published in 1921, where the criminal jurisdiction of the Council is mentioned but the volume of its business not discussed at all, and it is therefore difficult to make useful comparisons. Nevertheless its commissions enabled the Council to try all criminal business and it met regularly four times a year to do so after it had disposed of its civil business. It is likely that its work concentrated on offences against public justice and public peace and that it was a court able to proceed not only on indictment but also on an information laid by the Attorney for the Crown, and therefore more likely than the other courts with which we have been concerned to come into conflict with the local gentry. Indeed it was probably this conflict, though not simply over the criminal process of the Council, that "roused the opposition of the Yorkshire gentry to what they regarded as merely an instrument of royal despotism".<sup>10</sup> The Council in the North was of course a prerogative court with a jurisdiction and procedure analogous to that of Star Chamber. The business of Star Chamber had certainly been increasing in the late 1620s and 1630s and there had also been a decline in the proportion of "violent outrages" and an increase in offences of libel, scandal, fraud and conspiracy.<sup>11</sup> The

-----  
9. Sharpe, Seventeenth Century, p. 18.

10. R.R.Reid, The King's Council in the North (first published 1921, reprinted Wakefield, 1975), pp. 280 - 296. For a limited analysis of the other regional prerogative court see, P.Williams, The Council in the Marches of Wales (Cardiff, 1958), where he mentions the Council's criminal business and shows the fines levied which in around 1600 amounted to perhaps £2,000 per annum, mostly imposed for misdemeanours.

11. H.E.I.Phillips, "The Last Years of the Court of Star Chamber 1630 - 1641", TRHS, 21, (1939), pp. 103 - 131.

abolition of Star Chamber according to Matthew Hale had had severe repercussions for he was reported to have said

quite openly at an Assize at Cambridge (as a Gentleman of great quality, who was then on the Bench, assured me) that he believed since the pulling down of that Court, there had bin in few years more perjuries and frauds unpunished, than there had bin in an hundred years before.<sup>12</sup>

It is therefore suggested that the practical abolition of the Council in the North in 1641 resulted in prosecutions in the 1640s and 1650s running at a level well below that for the 1660s as those who might normally have been prosecuted escaped detection and/or punishment. In the 1650s two petitions by the grand jury for the reestablishment of the Council had been presented and several more were to be in the early 1660s. The reasons for this were doubtless at least twofold, both to revive the original purpose of the Council of bringing speedier and easier justice to those living away from London, and also in the hope that the reestablishment of the Council would lead to increased prosperity for the city and county of York. Among those pressing for the reestablishment was Dr Thomas Bradley who preached the assize sermon in March 1663, arguing that the only reason he could see against it was "that as the great City of London (the very belly of the Kingdom) hath engros't unto itselfe all the trading, so that other (her sister of westminster) would do the like by the Law, and so make of them both two great Monopolies". This sermon aroused resentment at the highest levels for the king himself told Bradley that he "thought it was my duty to preach conscience unto the people, and not to meddle with State-affaires", but the arguments in favour of the Council, and probably even more importantly the apprehension

-----  
12. Sir Philip Warwick, Memoires of the Reign of King Charles 1 ... the Happy Restauration of King Charles 11, (London, 1701), p. 175.

induced by the Farnley Wood plot, led to the introduction in 1664 of a bill for the establishment of a court with Star Chamber jurisdiction. For reasons unknown, however, the bill was later dropped.<sup>13</sup>

The suggestion that the abolition of the Council in the early 1640s had resulted in a decline overall in criminal prosecutions which only picked up in the 1660s when the prospect of its revival was finally quashed and men turned to the other available courts gains some support from the comparative rates of increase in the different categories of crime. The Council in the North like Star Chamber probably dealt with a greater proportion of prosecutions for offences against the authorities and against the peace than did Assizes and Quarter Sessions and it was these two categories that increased most significantly in the 1660s. The number of prosecutions for offences against the authorities and the peace increased by almost three and a half times while the increase of prosecutions for offences against property and the person was less than two-fold.

If these suggestions have gone some way towards explaining why prosecutions rose so sharply in the 1660s and remained at that high level into the following decade we have not yet tackled the question of why grand juries in the same period were throwing out so large a proportion of bills. These grand juries were very far from being rubber stamps, for in the 1660s something approaching a quarter of all bills presented to them were ignored by the grand jury at the

-----  
13. See C.B.Knight, A History of the City of York (2nd ed, York, 1944), pp. 462 and 484; Reid, Council in the North, pp. 449 - 458, and Bradley, A Sermon preached... 30 March 1663, and Caesar's Due and the Subject's Duty.

Assizes. Certainly in that decade the grand jury ignored almost twice as many bills as in the 1650s and almost three times as many as in the 1690s.

One possible reason is suggested by the high numbers of prosecutions. In the atmosphere of the 1660s with government encouragement of prosecutions for "public" offences in, for example, religious matters, the settling of scores left over from the 1650s and with a desire by the county gentry to reestablish their authority and the sanctity of the law, prosecutions were perhaps being brought in circumstances that would in the previous decade have been ignored or treated as resolvable by arbitration or other informal methods.<sup>14</sup> The grand jurors (that semi professional body of men, some of them J.P.s but most of them of a status below that of the magistracy) do not appear to have been reconstituted in the same way as the bench itself was, so that although some of the foremen of grand juries, such as John Pickering, do not appear as foremen in the 1660s, others, such as Darcy Wentworth, do. As regular jurors they would have been familiar with the law and the requirements necessary for establishing a case sufficient to go to a trial jury and in the 1660s with the increase in prosecutions the evidence adduced often failed to meet these standards.

Certainly at this period there was little governmental control of grand juries. The increased numbers of J.P.s serving on them does not

-----  
14. For this compare the comments of A.Fletcher on that remarkably assiduous J.P., Henry Townshend, whose "motivation in 1661 - 1663 probably included a strong element of the determination of erstwhile royalists at the Restoration to re-establish monarchical authority", Reform in the Provinces, p. 153.

seem to have occurred nationally until the late 1670s or 1680s although we must remember that in Yorkshire J.P.s were serving as grand jurors from the 1650s on.<sup>15</sup>

By the 1680s the atmosphere of the 1660s had gone and prosecutions for both private and public offences were declining steeply. The lengthy reign of Charles II, despite the political turmoil created by the Exclusion Crisis and Popish Plot, had induced a feeling of security in the stability of the regime and of those who supported and benefited from it. Such increased confidence on the part of the governors of the countryside meant that they could afford to slacken the formal means of control of crime. Informal means of control were also growing in this period, and the suggestions put forward by Wrightson and Levine in terms of the division of the poor into the respectable and the unrespectable poor by the end of the seventeenth century could likewise have contributed to a decline in levels of prosecution as the disreputable poor came to be controlled by sanctions other than the criminal courts.<sup>16</sup> In addition it is fairly generally accepted that the seventeenth century saw a decline in the incidence of violence and thus of the prosecution of violent offences. The reasons for this decline are complex and have been discussed at length elsewhere but perhaps their effect can be seen in the drop in the numbers of prosecutions for offences against the peace and the person in the 1680s.<sup>17</sup>

-----  
15. The clerk of Assize was not above trying to manipulate juries though. In 1664, at the time of the Farnley Wood plot trials, Benson wrote that he "being informed that many fanatics were summoned to serve on juries, hasted to York, and got their names put out and others summoned". CalSPDom, 1663-4, p. 423.

16. See Wrightson and Levine, Terling, pp. 177 - 185.

17. See for example the debate between Sharpe and Stone in P&P.



The general decline in prosecutions is seen to reverse in the 1690s; and this although the Assize records are missing for almost three years of that decade. However, within the general pattern, private prosecutions continue to decline and it is only public ones that rise. Clearly new forces are at work to bring about this novel differentiation between the "public" and "private" sector. Thus the general factors we have already enumerated for a decline in prosecutions by the 1680s continue to apply to the private offences into the 1690s and indeed on into the eighteenth century. On the other hand we see in relation to the public offences a rise in prosecutions caused principally, but not entirely, by a massive rise in prosecutions for coining. Coining was an activity of major concern to the national government of the 1690s as William III attempted to pursue his continental wars and needed to find methods of financing them. The attempts to prosecute and stop coining, which was damaging to the national economy, were centrally directed and organized, that is there was a national initiative in prosecution as the Mint and Treasury officials encouraged J.P.s in the localities to investigate coining rings and punish not only the coiners themselves but also those who dealt in clipped or counterfeit coin. Central government, increasingly concerned with public economic activity, was attempting to regulate it and this attempted regulation met with support from the governors in the localities. Thus the J.P.s were active in attempting to prosecute coiners. Thomas Heseltine, the clerk of Assize, for example, (probably one of the J.P.s in closest touch with the judicial policy makers) was especially zealous in taking depositions from some of those who turned King's Evidence. In addition we can see the extent to which the J.P.s and major gentry,

who by now certainly constituted the majority of grand jurors, supported the initiative by the low rate of bills for coining ignored by them. Overall of course the rate of ignored bills in the 1690s was the lowest of any of the decades studied at about 8.5%, but for coining offences alone the rate of bills ignored fell to under 4%. The chronological pattern of crimes prosecuted in Yorkshire in the second half of the seventeenth century is thus both similar and dissimilar to that apparently seen elsewhere. It is likely however that detailed study of other areas into the later period might show greater similarities with Yorkshire though the high incidence of "public" offences may be unique to the northern counties.

#### Regional differences

In chapter one we discussed at some length the nine distinct areas of Yorkshire noting the significant differences between them in terms of patterns of agriculture, manorial organization, industrial development, wealth and religion. As was there stated Yorkshire was a large county and the geographical and socio-economic differences between the nine defined areas in the seventeenth century were significant, and to a considerable extent were reflected in the discernible patterns of crime in them. That this was so is perhaps surprising for although it has been suggested for example that "an increasing crime rate is the invariable price of material progress" and that correlations exist between "patterns of crime, patterns of punishment, the attitudes of ruling groups to such matters, and broader socio-economic change" much recent work had argued that such

general notions have been over-simplifications.<sup>18</sup> Moreover those historians who have carried out the most detailed local studies of patterns of crime, although they have been aware of the potential for analysing these in terms of geographical differences with their consequent socio-economic distinctions, do not appear to have found such correlations.<sup>19</sup> T.C.Curtis, for example, compared Quarter Sessions prosecutions in Cheshire, a settled rural agricultural area with Middlesex, an expanding urban industrial area. He also noted three distinct geographical types. These were the 'highland' type where pasture was most important agriculturally, settlement was in hamlets or isolated farmhouses, manorial discipline was weak while family or clan loyalty was strong and most land had either been enclosed by the late sixteenth century or was to be enclosed painlessly thereafter. A second and similar category was the 'forest' type where there were more extensive common lands, thinly scattered nucleated villages and a high proportion of poor migrants. In strong contrast to these two was the 'lowland' type which practised mixed farming in a landscape of nucleated villages with a highly developed manorial system. Common rights here were highly prized and enclosure painful. Seventeenth century Cheshire was mostly of the 'lowland' type but there were areas of forest or highland. Curtis however found no clear statistical pattern of how crimes related to the different geographical areas.<sup>20</sup> Similarly S.C.Pole noted two settlement types in eighteenth century Somerset, the fielden lowlands where nucleated

-----  
18. Sharpe, Early Modern England, pp. 168 - 169, referring to, for example, the work of V.A.C.Gatrell, "The decline of Theft and Violence in Victorian and Edwardian England", Gatrell et al. eds., Crime and the Law, pp. 238 - 338.

19. It should of course be remembered that 'highland' and 'lowland' are geographer's terms and have no historical or sociological content at all.

20. See Curtis, "Aspects" pp. 198 - 243.

settlements were often "closed" and the uplands consisting of large "open" parishes with dispersed settlement and an economy based on industry or pastoral farming. Once again though the crime patterns could not be clearly correlated with the settlement types.<sup>21</sup>

As in Somerset and Cheshire the distinction between 'highland' and 'lowland' types can be seen in Yorkshire. Of the nine areas defined in chapter one the Pennines, the coal measures and millstone grit and the Blackmoors all obviously fall into the former category. Equally the southern Vale of York, the northern Vale of York and Vale of Pickering, the Don and Trent valleys, the magnesian limestone belt and Holderness all fall into the latter. The Wolds are more difficult to classify for although they stand high physically the economy and social structure there was far from being a typical 'highland' one; for example no industry existed, the farms were among the wealthiest in the county and manorial organization was strong. The Wolds therefore really need to be considered as falling also within the 'lowland' type of settlement. There are thus three 'highland' and six 'lowland' areas in the county.

There are problems in arguing from such figures as do exist. For this regional analysis only the Assize records could be used, for the Quarter sessions records do not exist for the East Riding and therefore regional comparison based on Quarter Sessions records would be invalid. In order to compare the comparative criminality of the

-----  
21. S.C.Pole, "Crime, Society and Law Enforcement in Hanoverian Somerset" (Cambridge University Ph.D. thesis, 1983), pp. 6 - 106, but see Sharpe, Seventeenth Century, pp. 198 - 210 for a discussion of the correlation between crime and the weaving areas of the county.

different areas some objective standard needs to be adopted and the obvious one is population, but the difficulties in estimating the population of the county, discussed in chapter one, are greatly increased when population figures for separate areas are sought. Nevertheless on the basis of Purdy's figures the proportion of population in each of the nine geographical areas has been estimated and compared with the proportion of all crimes committed in those areas. These figures are set out in Table 32. The figures show considerable differences. So, for example only 4% of all crimes were committed in the northern Vale of York and the Vale of Pickering although almost 12% of the population of the county lived there, whereas in the millstone grit and coal measures where 20% of the population lived over 33% of crimes were allegedly committed. Overall in the three highland areas the percentage of crimes committed was higher than their respective proportion of population and in five of the lowland areas the percentage of crimes committed was lower than the population would have suggested. An amount of crime excessive in relation to population in the highland areas would fit in with theories about the comparative lawlessness of such marginal communities. In the more settled, more densely populated and more governed villages of the lowland areas crime was less of a problem both because methods of resolving disputes other than at Quarter Sessions and Assizes existed, and because the resident squirearchy in such ordered villages knew they had little to fear from popular discontent. In the highlands on the other hand where resident gentry and J.P.s were much more thinly spread, fear of popular discontent among independent minded men in dual employment may have been more widespread, and alternatives to prosecution such as arbitration less readily available.

-----  
 TABLE 32

CRIMES COMMITTED COMPARED TO POPULATION

Area	%age of population	number of crimes	%age of crime
Pennines	15.8	1274	20.5
N.Vale of York	11.5	248	4.0
Blackmoors	7.1	463	7.4
Wolds	7.8	168	2.7
Holderness	6.1	256	4.1
S.Vale of York	11.4	1149	18.5
Don/Trent valley	4.7	124	2.0
Mag limestone	14.8	453	7.3
Coal Measures	20.8	2091	33.6
Totals	100.0	6226	100.1

-----

This promising theory is slightly spoiled by the fact that the Southern Vale of York does not fit the pattern. This area, consisting of prosperous lowlands and of course the city itself, should, because of its proximity to York itself, have been most easily controlled from the seat of county government, and therefore have had, like other lowland areas a crime rate low in comparison with its share of population. Instead, although only 11% of the population of the county lived there, 18% of all crimes were committed in the area. The explanation for this discrepancy in the pattern probably lies in the fact that the Vale of York had a higher proportion of crime committed there simply because of the influence of the city itself, both in increasing opportunities for criminal behaviour and in provoking a response from the authorities to it. The proximity of the courts at York must also have made prosecution easier. The influence of a large city on rates of crime can be seen elsewhere, for example Beattie shows how the crime rate for "urban" Surrey was considerably higher

than that for "rural" Surrey and he attributes this in part to the temptations and anonymity provided by London.<sup>22</sup>

If these regional differences are significant then there should also be regional differences in the proportion to the whole of each of the six types of offence studied. Table 33 sets out the figures. For four of these categories - offences against the person, the peace, and economic and administrative breaches - no differences between regions can be perceived. However, in two of the 'highland' areas, that is those areas where the proportion of crimes committed was higher than the proportion of population living there, property offences were below the average and offences against the authorities significantly higher than the average. Similarly in three of the lowland areas offences against property were a significantly higher proportion and offences against the authorities a significantly lower proportion than the average. Once again the pattern does not hold for the southern Vale of York, nor yet for Holderness or the coal measures and millstone grit area.

-----  
22. Beattie, "Pattern of Crime", pp. 92 - 95.

-----

TABLE 33

PROPORTION OF CRIME PROSECUTED BY AREA AND TYPE

Area	Person	Peace	Property	Auths	Admin	Econ
Pennines	18.4	23.8	19.5	26.0	20.2	5.5
N.Vale of York	3.9	3.9	4.2	1.2	5.8	1.7
Blackmoors	5.9	8.8	6.0	11.6	6.7	3.9
Wolds	3.6	1.9	3.2	1.2	3.8	4.4
Holderness	5.4	6.6	3.8	0.8	1.9	4.4
S.Vale of York	18.8	14.1	17.4	23.5	24.0	27.7
Don/Trent	3.2	1.7	2.3	0.4	0.0	2.8
Limestone	6.5	5.2	9.1	6.3	1.9	9.9
Coal Measures	34.3	33.9	34.5	29.1	35.6	38.6
Totals	100.0	99.9	100.0	100.1	99.9	100.0

-----

The exception of the last two areas suggests a possible reason for the apparent differences between the regions within Yorkshire. Coining is the offence for which the most striking regional pattern can be observed. Almost 90% of all coining offences occurred in three areas which between them accounted for less than 45% of the population of the county. If coining offences are ignored then firstly the discrepancy between crime and population is lessened in every area except that of the southern Vale of York, and secondly although the difference is small in some areas, the proportion of crimes against property and crimes against the authorities is affected even more. The result is the removal of coining offences from the calculations nullifies any significant pattern between regions and types of offence. In Yorkshire, as in Cheshire, Somerset and Essex geography does not appear to correlate with patterns of crime, although in Yorkshire a first glance suggests a strong correlation and it may well be that the differences that emerge on a closer examination of the figures are susceptible of explanation. If this were so it would be a striking difference between Yorkshire and



other counties that have so far been studied.

### Status of defendants

The status of those accused of crime as shown on the indictments or detailed in the depositions has been discussed throughout this thesis but has not been one of its major concerns. It is though worth noting the overall figures and Tables 34 and 35 do that. Perhaps the most surprising result is that those described as labourers apparently formed less than 40% of all defendants and that gentlemen and above formed almost 7%. To an extent this probably reflects the fact that gentlemen were more likely to be accurately described on an indictment than labourers but it perhaps serves as a useful corrective to the view that the courts were wholly concerned with regulating the poor alone. It also of course suggests that popular participation in the enforcement of the law was considerable and not unwarranted.

---

TABLE 34

STATUS OF DEFENDANTS AT ASSIZES AND QUARTER SESSIONS

	Assizes	Q.S	Both
Labourers	3083	1674	4757
Gentlemen	546	250	796
Husbandmen	153	361	514
Yeomen	1885	709	2594
Trade/craftsmen	1163	678	1841
Spinsters	334	252	586
Widow	136	105	241
Wife	384	325	709
Women	854	682	1536
Total	7684	4354	12038

---

TABLE 35

PERCENTAGE OF PERSONS ACCUSED BY STATUS

	Assizes	Q.S.	Both
Labourers	40.1	38.4	39.5
Gentlemen	7.1	5.7	6.6
Husbandmen	2.0	8.3	4.3
Yeomen	24.5	16.3	21.5
Trade/craftsmen	15.1	15.6	15.3
Women	11.1	15.7	12.8
Total	99.9	100.0	100.0

The enforcers of the criminal law

One of the perennial problems facing the student of crime at any period is the extent to which the fluctuations in the numbers of those prosecuted for any specific offence or for all offences are a reflection of fluctuations in criminality or in prosecution. Similar problems affect patterns of conviction and levels of sentencing. Nowadays, with a national prosecuting service, if not a national police force, discrepancies in prosecution are small and for those more serious offences tried at the Crown Court, centrally appointed judges, aware of the tariff that applies to crimes, usually impose sentences that fall within that tariff. However, even today significant differences in sentencing remain in the magistrates' courts. Thus one of the major problems in discussing patterns of crime in the seventeenth century Yorkshire is to decide the extent to which those patterns reflected alterations in behaviour on the part of the criminal or on the part of the prosecutor.

It has already been suggested in the discussion on the chronological

and regional differences in the patterns of crime that many of the discrepancies turned on the differing perceptions of the governors of the county community at different periods and in different areas. That this was so is perhaps best illustrated by the difference between the number of prosecutions for murder which, allowing for the small absolute numbers, remains at a fairly steady level over lengthy periods of time, with, to take an extreme example, non-attendance at church, an offence which in Yorkshire gave rise to a mere handful of cases in the 1690s but to thousands in the 1660s. Obviously the factors at work in causing the fluctuations in the latter lay in the views of those involved in the prosecution and enforcement of the law not in a substantial decrease in lawless behaviour, and the role of the enforcers of the law is thus of considerable importance.

There were, of course, as has been discussed in an earlier chapter, various levels of enforcement, ranging from the bottom rung, that of the constable, to the judges of Assize. The role of constables in initiating prosecutions or responding to pressures brought by the victims of an offender has been discussed at length by Joan Kent who has found the constables to be, despite local variations and the pressures of community feeling, "often reliable agents of the state in implementing its economic and social policies and in enforcing law and order".<sup>23</sup> Constables have been but little discussed in this thesis but their role should not be overlooked even if it could be suggested that they had comparatively little effect by the late seventeenth century in contributing to levels of prosecution. Kent's work, the most comprehensive to date on the constables, stops in

-----  
23. Kent, English Village Constable, p. 297.

1642, but it is fairly widely accepted that the importance of their role was declining by then. A detailed analysis of the constables, which would have necessitated study on a parochial level, has not been attempted here. However such evidence as has been considered, that is principally the depositions, suggests that the role they played was similar to that outlined by Kent.

Much more important was the role of the jurors, the justices and the clerks of the peace and of Assize. The discussion earlier in this chapter on the ways in which jurors were actively involved in mitigating the criminal law by ignoring bills and returning acquittals and partial verdicts should make the historian alert to the importance of the role of the jury. In this connection the work of T.A.Green on jury nullification is especially important. He has argued persuasively that during the seventeenth century disputes between judges and juries established that the jury was to try issues of fact but not of law, despite the difficulties often encountered in separating the one from the other. By the end of the seventeenth century, however, the principle of non-coercion of the jury by the bench had been established and from then on the jury's ability to find merciful verdicts was assimilated into the ideology of the law. The cases on which Green based his argument are, not surprisingly, the more political ones, particularly the trials of John Lilburne and of William Penn, but the dispute also turned on the role of juries in finding sympathetically in homicide cases.<sup>24</sup> In Yorkshire too it is plain that in some of the more political trials arguments effectively occurred between judge and jury and that jury nullification in other

-----  
24. See Green, Verdict according to Conscience, throughout.

cases was also acceptable. It will be remembered that the rate of ignored bills returned was greatest in the 1660s and 1670s, the period during which the struggle between bench and jurors was perhaps at its most intense, particularly over the prosecution of conventicles, and was lowest during the 1690s by which time it is likely that with the political tensions lessened and the jurors having won their battle for independence, an increasingly centralized legal bureaucracy came to recognize that they could in practice rely on the jurors to return but a small proportion of nullifying verdicts that went contrary to the joint interests of the governors of the country and the county.

The J.P.s too, who themselves, of course, often served as jurors at the Assizes played a vital role in the enforcement of the criminal law. The Marian statutes had laid considerable responsibilities on them in relation to the bailing of suspects and the gathering of evidence and some J.P.s undoubtedly acted as detectives in searching out crimes and criminals. The most striking example of such a man was Daniel Fleming, the Lancashire J.P., studied by A.J. Macfarlane,<sup>25</sup> but it is plain that the more active J.P.s in Yorkshire played similar roles in attempting to marshal evidence against an accused. Reresby, for example, was diligent in attempting to discover the Scotchmen suspected of treason, and Gower in attempting to incriminate as many as possible in the Farnley Wood plot. By the 1690s the emphasis had shifted from treason per se to the treasonable offences of coining and here the role of Thomas Heseltine, the J.P. and clerk of Assize, was central in taking the depositions of informers from which

-----

25. See Macfarlane, The Justice and the Mare's Ale.

undoubtedly many prosecutions arose.

## The sophistication of the criminal law and its practice

Historians have on the whole viewed the early modern period as a dark age in the criminal law, a period when justice was as nasty, brutish, and short as life and most trials were a mere formality prior to conviction and execution. Throughout this thesis this view has been challenged for it has been shown that jurors were by no means wholly subservient to the judges who presided over the trials and furthermore that the judges and clerks who were, in large part, responsible for ensuring the running of the criminal justice system, were aware of the limitations imposed in the securing of convictions by the criminal law itself and the evidence presented in court. The criminal law by the early modern period was not a black hole into which all defendants would fall and be consumed. There was sufficient interest in it for cases involving technical points to be argued and in practice the technicalities of the law were always present in the minds of prosecutors and judges, of necessity mitigating the law's apparent harshness and rigidity. Thus in relation to the crimes of homicide and the appropriation of property it is possible to see plainly how conscious prosecutors and judges were of the requirements of the law and how jurors likewise reflected the concern for finding true bills against defendants.

It has already been demonstrated that distinctions were made in the drawing up of indictments between murder and manslaughter so that almost 3% of defendants charged with homicide faced a manslaughter charge from the beginning, while a further 1% had an initial charge

of murder reduced to manslaughter by the grand jury and a further 8% by the petty jury. Judges, clerks and grand and petty jurors were thus aware of the distinctions in the degree of culpability in cases of homicide and routinely made distinctions in practice.

Even more striking was the distinction routinely made by contemporaries but ignored by historians between asportation and larceny. This is a distinction which needs to be pursued country-wide, for it will be remembered that asportation, the charge of taking away goods unlawfully but not feloniously, that is treating the offence as a misdemeanour, has not been discussed by other writers at all. It is possible, of course, that outside Yorkshire prosecutors ignored the existence of the offence of asportation and tried to turn such cases into felony charges. That, in Yorkshire, the clerks regularly and routinely made the distinction shows, however, an awareness of the legal technicalities distinguishing the two offences. On the other hand, if Yorkshire was not unique and if this distinction has been missed or ignored by historians of crime then several problems arise. Distinctions in the criminal law which were well appreciated by contemporaries are blurred and as a result comparison between Yorkshire and other counties becomes difficult because a misleading impression has been given that late seventeenth century criminal law was primitive and unsophisticated.

The distinction between asportation and larceny was between a misdemeanour and a felony. In the discussion that follows the asportation cases have, of course, been included among the misdemeanours. In Yorkshire there were a significant number of these cases, almost one thousand in all, and if they were to be included

among felonies the percentage of those so accused in both courts would rise to 41%. This is a figure which approaches the overall figure for East Sussex, and it may therefore be that were the asportation charges available or distinguished then the figures for the proportion of misdemeanours to felonies in East Sussex and elsewhere would be closer to those for Yorkshire.

The distinction between felonies and misdemeanours (one that no longer exists in English law) was important in the seventeenth century and has been recognized as important by historians of crime. Like so many aspects of English law it was not straightforward. It was not simply the case as some historians have suggested that felonies were the serious offences and misdemeanours the trivial ones. As the learned judge in *Rex v Smith* said

Originally all felonies (except petty larceny) were punishable with death, but not a misdemeanour... Felonies... include murder, suicide, manslaughter, burglary, housebreaking, embezzlement, larceny and bigamy; while some of the better known misdemeanours are perjury, conspiracy, fraud, libel, blasphemy, bribery, false pretences, riot and assault. It cannot... be said that all felonies are more repellent crimes than all misdemeanours; for it is a felony to steal a penny, but only a misdemeanour to defraud a man of a million pounds... Perjury... may cause the death of an innocent person, yet it is only a misdemeanour; while it is a felony to keep a horse slaughterer's yard without a licence. Embezzlement is a felony but fraud a misdemeanour. To carry off a young woman is sometimes one and sometimes the other.<sup>26</sup>

The distinction between the two types of offence though often technical was important for, of course, the punishment for felony was theoretically death while that for a misdemeanour was usually a fine. It has been realized for some time that, despite legal theory, most

-----  
26. A.P. Herbert, "Misleading Cases", in Punch or the London Charivari, October 11, 1933, p. 402.



felons did not suffer the death penalty. Benefit of clergy was one means by which the penalty might be mitigated and the lengthy pursuit of a pardon another. Nevertheless the impression has been given that certainly at the Assizes by far the greatest numbers of persons accused were charged with felonies, and therefore at any rate in theory faced a possible death sentence.<sup>27</sup> In Yorkshire at least that was not the case. A considerably higher proportion of defendants was charged with felony at the Assizes (46%) than at Quarter Sessions (17%) but in any event the proportion of defendants in both courts charged with felonies was only 33%. These figures are much less than the 90% of Assize defendants said to have faced felony charges on the Home Circuit in the reigns of Elizabeth and James 1 and considerably below the 53% of such defendants at Quarter Sessions and Assizes in East Sussex between 1590 and 1640. Table 36 sets out the overall figures and Table 37 the numbers of felonies and misdemeanours by crime categories.

-----  
 TABLE 36

FELONIES AND MISDEMEANOURS AT ASSIZES AND QUARTER SESSIONS

	Assize	Q.S.	Both
Felony	4328	1228	5556
%age	(45.6)	(17.0)	(33.3)
Misdemeanour	5169	5984	11153
%age	(54.4)	(83.0)	(66.6)
Total	9497	7212	16709

-----  
 27. See Beattie, Crime and the Courts, p. 451, where he says that "the principal offences dealt with at the Assizes were felonies", and the tables in Cockburn, Introduction, pp. 175 - 197, which show 240 more felons than persons arraigned. The difference, of course, is accounted for by those persons who pleaded guilty before arraignment of whom there were some 1,500 so that we can work out that fewer than 10% of Assize defendants on the Home Circuit in the years Cockburn studied appear to have been charged with misdemeanours.

TABLE 37

INDICTED OFFENCES - FELONY OR MISDEMEANOUR

	Assizes	Q.S.	Both
Person			
felony	627	8	635
misdemeanour	734	1207	1941
Property			
felony	2911	1214	4125
misdemeanour	1219	1734	2953
Authorities			
felony	790	6	796
misdemeanour	1230	499	1729
Peace			
misdemeanour	1545	886	2431
Administrative			
misdemeanour	234	1152	1386
Economic			
misdemeanour	207	506	713

It is not easy to make sense of what appears to be the evidence for the data with which the Yorkshire material can be compared is scanty, particularly for the later seventeenth century. It may be that the difference between Yorkshire and elsewhere can be accounted for by large lacunae in the Home Circuit records pre 1640. Alternatively it may be that there was a shift during the seventeenth century not only away from a high prosecution rate but also towards the increased prosecution of misdemeanours rather than of felonies. However, it should be borne in mind here that the largest single category among the misdemeanours was assault so that such a shift might be at variance with other work suggesting a decline in violence during the seventeenth century.

The possibility that earlier historians have not differentiated

between felonious and non felonious asportations receives some support from an analysis of the proportions of the different categories of felonies in other counties. The only available comparisons are with the table of indictments in Sharpe's work on Early Modern England. With these we can place the offences in the categories used in this thesis and from that see that the proportion of property felonies ranged from 77.4% at the Sussex Assizes between 1559 and 1625 to 87.1% at the Norfolk and Suffolk Assizes between 1734 and 1737. Crimes against the person ranged from 7.6% at the Hertfordshire Assizes between 1559 and 1625 to 18.3% at the Essex Assizes between 1620 and 1680; and offences against the authorities were in all cases under 3%. The proportions of felonies prosecuted at the Yorkshire Assizes were rather different with property offences accounting for 68.8%, offences against the person for 16% and offences against the authorities for 15.2%. In Yorkshire property offences were comparatively few and offences against the authorities comparatively common and since the majority of felonies fall within the property category it is this factor that kept the proportion of misdemeanours to felonies committed in Yorkshire higher than elsewhere. It should be noted here too that the situation at Quarter Sessions was the reverse of that at the Assizes, for in Yorkshire property felonies made up over 97% of all felonies prosecuted at the Quarter Sessions compared with 74% at Cheshire Great Sessions between 1580 and 1709 and 93% at Middlesex sessions between 1550 and 1625.<sup>28</sup>

In looking at felony alone the proportion of the categories of offence is thus very different in Yorkshire from elsewhere, with a

-----  
28. Sharpe, Early Modern England, p. 55.

consistently higher proportion of felonies against the authorities and a considerably lower proportion of property felony. The explanation for this may lie in the dual factors of a failure by earlier writers to differentiate between felonious and non felonious takings away of property, thus increasing the proportion of property felony elsewhere and the high incidence in Yorkshire of coining offences which there increase the proportion of felonies against the authorities.

It seems likely therefore that the most significant difference between Yorkshire and elsewhere was in the high numbers of coining prosecutions in this period and that were other studies of the late seventeenth century properly to differentiate between asportation and larceny the striking differences between Yorkshire and elsewhere in the proportions of misdemeanours to felonies and the lower rate of property felonies would lessen. Certainly it would seem that the legal subtleties taken for granted by seventeenth-century jurists have not always been properly appreciated and a misleading view has gained currency of seventeenth-century criminal law as undeveloped and undifferentiated.

This thesis has been concerned with a number of linked points. The actual pattern of prosecution of crime in late seventeenth-century Yorkshire can be explained only by analysis on a number of levels: the economic and social circumstances that gave rise to criminality and how they altered over the period; the reaction of those charged with the implementation of the criminal law both to what they perceived as criminality within the community and to what central government directed their attention to; the ways in which the day to

day practice of the criminal law was able to make fine distinctions between the types and gravity of offences; and the ways in which those charged with enforcing the law were themselves conditioned by the ideology of the law to react to the charges preferred against defendants.

Overall it is possible to see that, to a great extent, the pattern of crime in Yorkshire was similar to that in other counties at a slightly later or slightly earlier date. Nevertheless Yorkshire was in many ways distinctive. It had a strong preponderance of crime committed against the authorities, as well as a much lower proportion of serious property crime; it saw a marked increase in prosecutions in the 1660s, a decade that elsewhere has been regarded as seeing a return to stability and a comparatively low level of prosecution; the role of Yorkshire jurors has been commented upon also and in particular the way in which their perception of the law led to an increase in bills ignored in the same decade that prosecutions themselves rose in numbers. Several of these points themselves tie up with a major theme of this work: that the criminal law and procedure were themselves developing and interacting with changes in the social and economic sphere to produce changes in patterns of prosecution, trial and conviction,

There are a number of ways in which researchers can approach the problems of crime in the past. The social history approach, attempting to uncover the mentality of both prosecutors and defendants is an attractive one and has produced interesting and valuable work. Nevertheless in analysing patterns of prosecution the legal framework ought not to be neglected and the work of legal

historians illuminating the legal dimensions of the criminal law and prosecution process should not be lost sight of. Future work by historians needs to bear constantly in mind the constraints and freedoms permitted by the criminal law itself and the procedure in the criminal courts for, without such detailed legal knowledge there is a danger that the subtleties of the law will be overlooked and the nature of the relationship between the enforcers of the law and the defendant in a criminal trial misunderstood.

APPENDIX ONE

CLASSIFICATION BY BLACKSTONE:

GOD AND RELIGION:

Apostacy  
Heresy  
V established church a.reviling ordinances  
b.non conformity  
Blasphemy  
Swearing  
Witchcraft  
Religious imposters  
Simony  
Sabbath breaking  
Drunkenness  
Lewdness

LAWS OF NATIONS:

Violation of safe conduct  
Violation of rights of ambassadors  
Piracy

AFFECTING THE SUPREME EXECUTIVE POWER:

Treason           compassing death  
                      violating companion  
                      levying war  
                      adhering to enemies  
                      counterfeit seals  
                      counterfeit money  
                      kill Chancellor etc  
                      re papists  
                      re coinage  
                      re Protestant success

Felonies injuring King's prerogative  
                      re coinage  
                      v. Council  
                      serve foreign prince  
                      embezzle armour  
                      desert in wartime

Praemunire       introduce foreign  
                      power  
                      various

Misprisions and contempts  
                      m. of treason  
                      m. of felony  
                      conceal treasure  
                      maladministration  
                      v. prerogative  
                      v. government  
                      v. title  
                      v. palaces

OFFENCES AGAINST THE COMMONWEALTH AND PUBLIC POLITY:

Public Justice    embezzle records  
                    re gaolers  
                    obstruct process  
                    escape  
                    breach of prison  
                    rescue  
                    take reward  
                    receive stolen goods  
                    theft bote  
                    barratry  
                    maintenance  
                    champerty  
                    compound informations  
                    conspire to indict  
                    perjury  
                    bribery  
                    embracery  
                    false verdict  
                    negligence  
                    oppression by J.P.s  
                    extortion

Public Peace        riot  
                    unlawful hunting  
                    threaten  
                    destroy turnpike  
                    affray  
                    riot, rout  
                    tumultuous petition  
                    forcible entry  
                    going armed  
                    spread false news  
                    false prophecies  
                    challenge to duel  
                    libels

Public Trade        owling  
                    smuggling  
                    fraud bankruptcy  
                    usury  
                    cheating  
                    forestalling  
                    regrating  
                    engrossing  
                    monopolies  
                    non apprenticed trade  
                    seduce artisans

Public Health      disobey re plague  
                    unwholesome groceries



Public Police and Economy

clandestine marriage  
bigamy  
idle soldiers/sailors  
egyptians  
nuisances re:  
highways  
trades  
inns  
lotteries  
cottages  
fireworks  
eavesdroppers  
scolds  
idleness  
sumptuary laws  
gaming  
destroy game

PERSON:

Homicide

justifiable  
ex necessity  
for justice  
to prevent crime  
excusable  
misfortune  
self defence  
felonious  
self murder  
manslaughter  
voluntary  
involuntary  
murder  
parricide  
petty treason

Non fatal

mayhem  
abduction  
rape  
sodomy  
assault  
battery  
wounding  
false imprisonment  
kidnapping

AGAINST HABITATIONS OF INDIVIDUALS:

Arson  
Burglary

AGAINST PRIVATE PROPERTY:

Larceny

simple  
compound  
ex house  
ex person  
pickpocket  
robbery

Mischief

destroy powder  
blackmail

Forgery

The scheme is taken from Blackstone, Commentaries, vol. 4.

CLASSIFICATION BY ARCHBOLD

OFFENCES UNDER THE THEFT ACT 1968:

Theft  
Robbery and assault intending to rob  
Burglary and aggravated burglary  
Remove articles from open places  
Take conveyance without authority  
Abstraction of electricity  
Theft of mail etc  
Obtain by deception  
False accounting  
Offences re companies  
Suppression of documents  
Blackmail  
Handling stolen property  
Going equipped to steal

OTHER OFFENCES AGAINST THE PROPERTY OF INDIVIDUALS:

False personation  
Cheating  
Offences re companies  
Offences under Banking Act 1979  
Forgery  
Criminal damage  
Firearms  
Offensive weapons

OFFENCES AGAINST THE PERSONS OF INDIVIDUALS:

Homicide  
Child destruction, infanticide  
Attempt to procure abortion  
Assault, battery, wounding  
Offences re children  
False imprisonment and kidnapping  
Offences re driving of vehicles  
Sexual offences

OFFENCES AGAINST THE CROWN AND GOVERNMENT:

- High Treason
- Treason felony
- Attempt to injure sovereign
- Piracy
- Terrorism
- Genocide
- Immigration
- Offences v Foreign Enlistment Act
- Coinage offences
- Sedition
- Inciting to mutiny
- Illegal training and drilling
- Prohibition of quasi military
- Offences re public stores
- Disclosure of government secrets
- Disclosure of information
- Misconduct by officials
- Conceal treasure trove
- Customs and Excise offences

DANGEROUS DRUGS

OFFENCES AGAINST RELIGION AND PUBLIC WORSHIP:

- Blasphemy
- Blasphemous libel
- Disturb public worship

OFFENCES AGAINST PUBLIC JUSTICE:

- Escape
- Breach of prison
- Rescue
- Embracery
- Compound offence
- Contempt of court
- Pervert course of justice
- Effect public mischief
- Obstruct coroner
- Bribery of public officials
- Misconduct of officers of justice
- Administer unlawful oaths
- Perjury
- Offences akin to perjury

OFFENCES AGAINST THE PUBLIC PEACE:

- Unlawful assembly
- Rout
- Riot
- Affray
- Offences re entering property
- Unlawful eviction
- Pound breach and rescue of distress
- Threats to murder etc
- Defamatory libel

OFFENCES AGAINST PUBLIC TRADE:

Under bankruptcy law  
Frauds on creditors  
Re rels between workmen and employers  
Re Finance Acts  
Re civil aviation

OFFENCES AGAINST PUBLIC MORALS AND POLICY

Bigamy  
Public nuisance  
Incorrigible rogues  
Refuse to execute public office  
Abuse re honours  
Prevention of Corruption Acts

CONSPIRACY, INCITEMENT AND ATTEMPT TO COMMIT CRIME:

Conspiracy  
Soliciting and inciting  
Attempting

PRINCIPALS AND SECONDARY PARTIES:

Principals  
Aiders and abettors  
Counsellors and procurers  
Assisting offenders  
Misprision of treason

The scheme is taken from Archbold, Criminal Pleading.

CLASSIFICATION IN THIS THESIS

OFFENCES AGAINST THE PERSON:

Homicide                   murder  
                                 manslaughter  
                                 infanticide  
  
Assault  
Sexual                       rape  
                                 buggery  
                                 sodomy  
                                 bigamy  
                                 incest  
                                 adultery  
                                 fornication  
  
Witchcraft  
Defamation

OFFENCES AGAINST THE PEACE:

Unlawful assembly  
Unlawful assembly/property  
False imprisonment  
Miscellaneous   duelling  
                                 barratry  
                                 egyptians  
                                 scolding

OFFENCES AGAINST PROPERTY:

Theft  
Asportation  
Robbery  
Pocketpicking  
Burglary/house breaking  
Non felonious breaking and entering  
Damage property arson  
                                 other damage  
Fraud and extortion  
Forcible entry and disseisin  
Poaching and game offences

OFFENCES AGAINST THE AUTHORITIES:

Treason  
Religious                   adhere to see of Rome  
                                 non attend Church  
                                 refuse oaths  
                                 attend illegal meet  
                                 disturbance in church  
Coining                     counterfeit  
                                 clip  
                                 utter  
                                 deal in false coin  
  
Seditious words  
Contempt  
Escape and rescue  
Perjury  
Forgery

**ADMINISTRATIVE BREACHES:**

Fail to repair highways  
bridges  
watercourses  
Alehouses disorderly  
unlicensed  
Miscellaneous fail to pay

**ECONOMIC BREACHES:**

Labour code apprenticeship  
exceed statute wage  
others  
Market engross, forestall  
sale at short weight  
sale of adulterated  
Cottages keep inmates  
erect on waste  
Usury  
Miscellaneous

APPENDIX TWO

POPULATION OF YORKSHIRE BY WAPENTAKE

EAST RIDING

	Total households	Estimated Population
Beverley	748	3,366
Buckrose	1,419	6,386
Dickering	2,236	10,062
Bainton	1,009	4,541
Holme	1,084	4,878
Hunsley	1,348	6,066
Wilton	953	4,289
Holderness Middle	1,183	5,324
South	997	4,487
North	1,141	5,135
Howdenshire	1,072	4,824
Hullshire	275	1,238
Ouse and Derwent	1,243	5,594
Kingston on Hull	1,369	6,161
<b>Total</b>	<b>16,097</b>	<b>72,351</b>

CITY OF YORK

<b>Total</b>	<b>2,121</b>	<b>9,545</b>
--------------	--------------	--------------

WEST RIDING

	Total households	Estimated population
Agbrigg	4,892	22,014
Ainsty	1,146	5,157
Barkston Ash	2,207	9,932
Claro	3,902	17,559
Morley	5,302	23,859
Osgoldcross	2,735	12,307
Skyrack	2,166	9,747
Staincliff and Ewcross	5,671	25,520
Staincross	1,639	7,375
Strafforth/Tickhill	6,314	28,413
Ripon Liberty	666	2,997
Leeds town	1,157	5,207
liberty	734	3,303
<b>Total</b>	<b>38,869</b>	<b>174,911</b>



NORTH RIDING

	Total Households	Estimated Population
Allertonshire	1,075	4,838
Birdforth	1,951	8,779
Bulmer	2,753	12,389
Gilling East	1,176	5,292
Gilling West	2,511	11,299
Hallikeld	912	4,104
Hang East	1,270	5,715
Hang West	2,122	9,549
Langbarugh	4,080	18,360
Whitby Strand	1,650	7,425
Pickering Lyth	2,284	10,278
Ryedale	2,286	10,287
<b>Total</b>	<b>24,070</b>	<b>108,315</b>

The figures are taken from Purdy, "Hearth Tax".

APPENDIX THREE

PERCENTAGES OF HOUSES WITH HEARTHES

NORTH RIDING

wapentake	non - charge	1 - 2 hearths	3 - 5 hearths	6 - 9 hearths	10+ hearths
Allertonshire	21.4%	80.0%	15.9%	3.0%	1.2%
Birdforth	23.6%	87.4%	10.4%	1.4%	0.8%
Bulmer	19.9%	89.4%	7.2%	2.4%	1.1%
Gilling East	31.6%	81.5%	14.6%	2.9%	1.1%
Gilling West	24.2%	83.7%	13.0%	2.1%	1.2%
Hallikeld	25.1%	86.1%	10.8%	1.8%	1.3%
Hang East	19.2%	86.5%	10.9%	1.4%	1.2%
Hang West	23.1%	89.9%	8.1%	1.7%	0.4%
Langbarugh	25.4%	89.0%	8.6%	1.9%	0.5%
Pickering Lyth	22.1%	94.0%	4.4%	1.2%	0.4%
Rydale	28.1%	87.5%	10.2%	1.8%	0.5%
Whitby Strand	27.8%	79.4%	18.1%	1.9%	0.6%

EAST RIDING

Buckrose	31.4%	91.8%	5.7%	1.5%	0.9%
Dickering	35.2%	85.7%	11.7%	2.1%	0.6%
Bainton	29.2%	89.1%	8.3%	1.5%	1.1%
Holme	14.1%	91.0%	6.9%	1.4%	0.8%
Hunsley	14.4%	85.3%	11.9%	2.3%	0.6%
Wilton	23.2%	90.7%	6.8%	2.0%	0.4%
Middle	14.7%	82.7%	14.2%	2.3%	0.9%
North	19.5%	90.1%	8.2%	1.1%	0.7%
South	24.5%	86.6%	11.2%	1.6%	0.7%
Howdenshire	18.2%	83.0%	14.5%	2.2%	0.3%
Hullshire	14.5%	77.0%	17.9%	3.4%	0.8%
Ouse & Derwent	18.6%	85.7%	10.6%	2.8%	1.0%
Beverley	27.8%	57.0%	32.4%	9.4%	1.1%
Kingston on Hull	19.1%	50.0%	35.0%	12.1%	3.1%

WEST RIDING

Agbrigg	7.2%	79.6%	16.7%	2.9%	0.8%
Ainsty	2.7%	88.4%	8.5%	1.3%	1.8%
Barkston Ash	8.2%	75.5%	20.1%	2.9%	1.4%
Claro	8.7%	87.3%	10.1%	1.9%	0.7%
Morley	9.8%	73.4%	22.6%	3.3%	0.6%
Osgoldcross	12.7%	74.9%	20.1%	3.9%	1.1%
Skyrack	7.7%	79.1%	17.4%	2.2%	1.3%
Staincross	5.9%	71.2%	23.1%	4.7%	1.0%
Strafforth	12.3%	71.7%	22.8%	4.1%	1.5%
Ripon town	11.4%	84.7%	11.2%	3.2%	0.8%
Leeds town	3.5%	67.3%	25.8%	6.2%	0.7%
Leeds liberty	7.2%	77.5%	18.4%	2.7%	1.5%

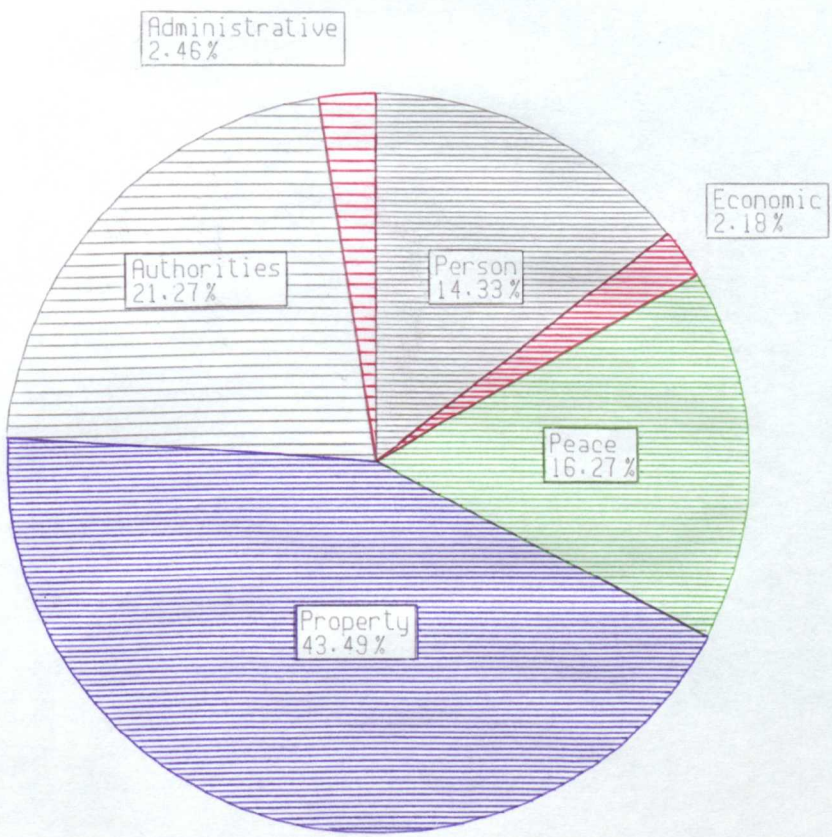
The figures are taken from Purdy, "Hearth Tax".

APPENDIX FOUR

PERSONS INDICTED AT ASSIZES BY CRIME CATEGORY AND QUINQUENNIUM

Period	Person	Peace	Property	Auths	Admin	Econ	Total
1650 - 1654	97	49	229	56	16	8	455
1655 - 1659	129	84	337	53	29	11	643
1660 - 1664	153	188	552	297	24	11	1207
1665 - 1669	232	308	513	320	39	33	1445
1670 - 1674	180	229	623	82	19	44	1177
1675 - 1679	136	226	597	145	32	36	1172
1680 - 1684	134	142	400	133	39	21	869
1685 - 1689	139	95	375	180	26	10	825
1690 - 1694	111	182	330	401	6	28	1058
1695 - 1699	68	42	174	353	4	5	646
<b>Total</b>	<b>1361</b>	<b>1545</b>	<b>4130</b>	<b>2020</b>	<b>234</b>	<b>207</b>	<b>9497</b>

# Persons indicted at Assizes by crime category



Raw Data	Count
Administrative	1361
Economic	207
Peace	1545
Person	4130
Property	2020
Authorities	234

FIGURE I

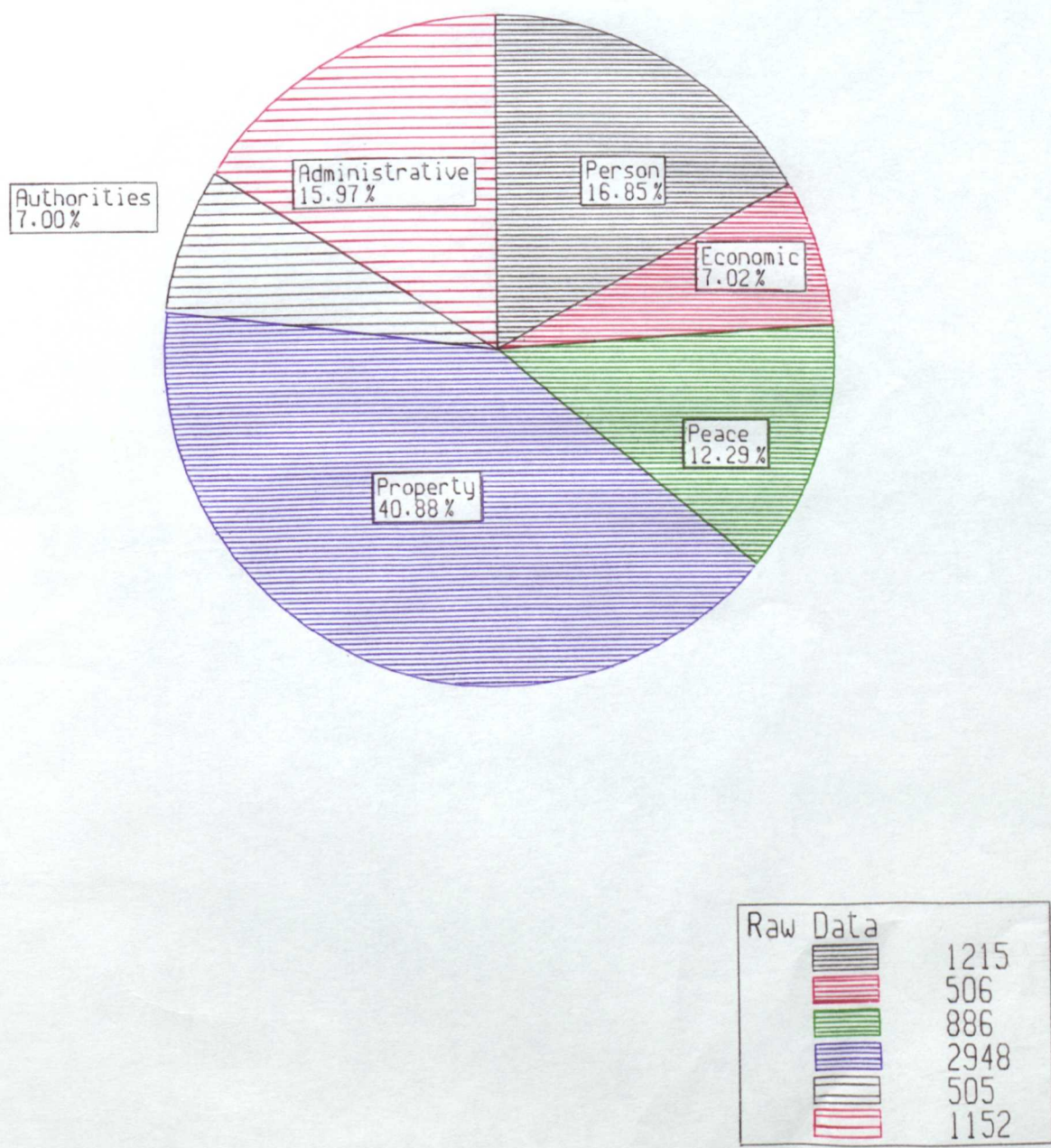


FIGURE 2

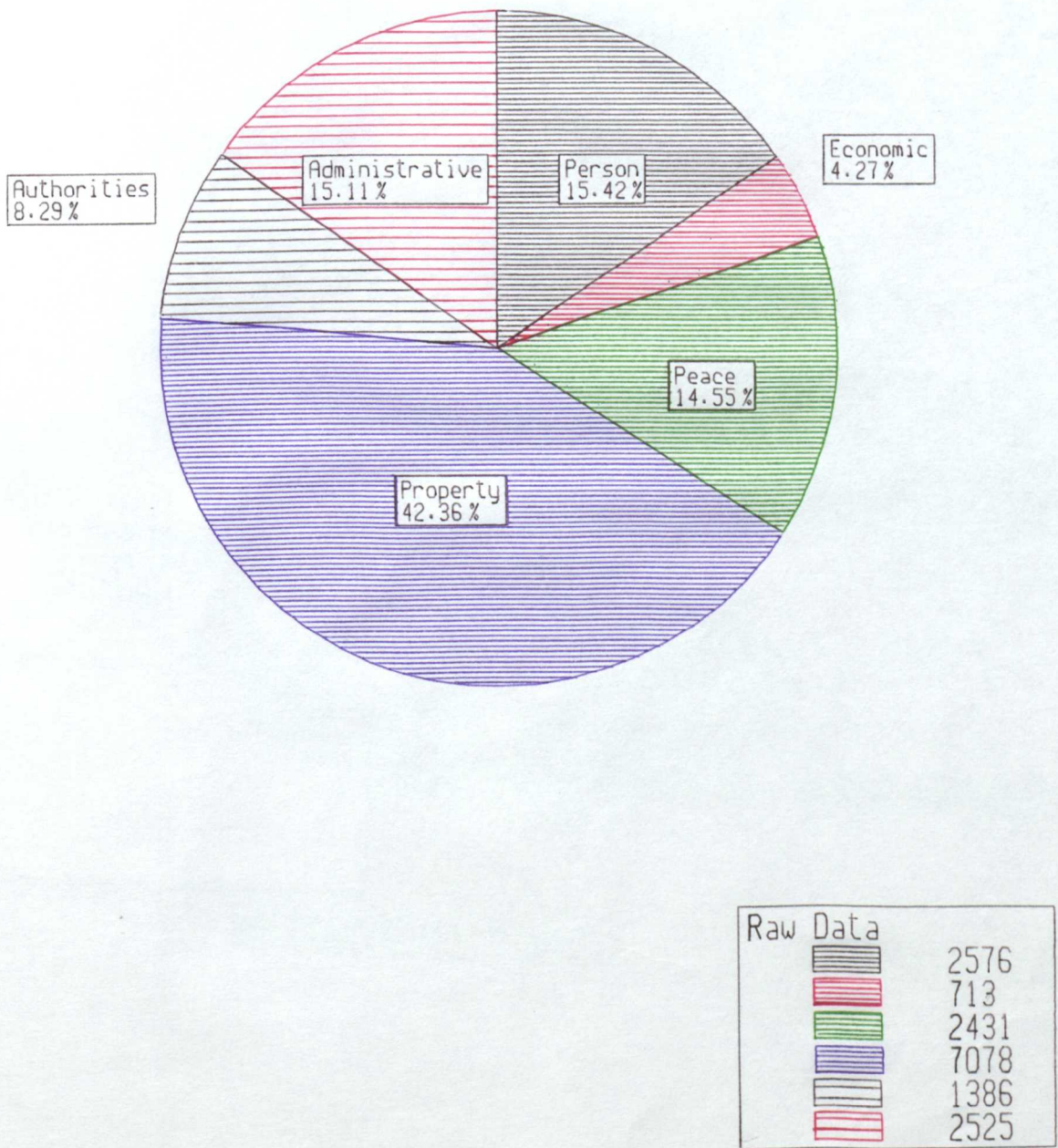


FIGURE 3

# Persons indicted at Assizes by decade

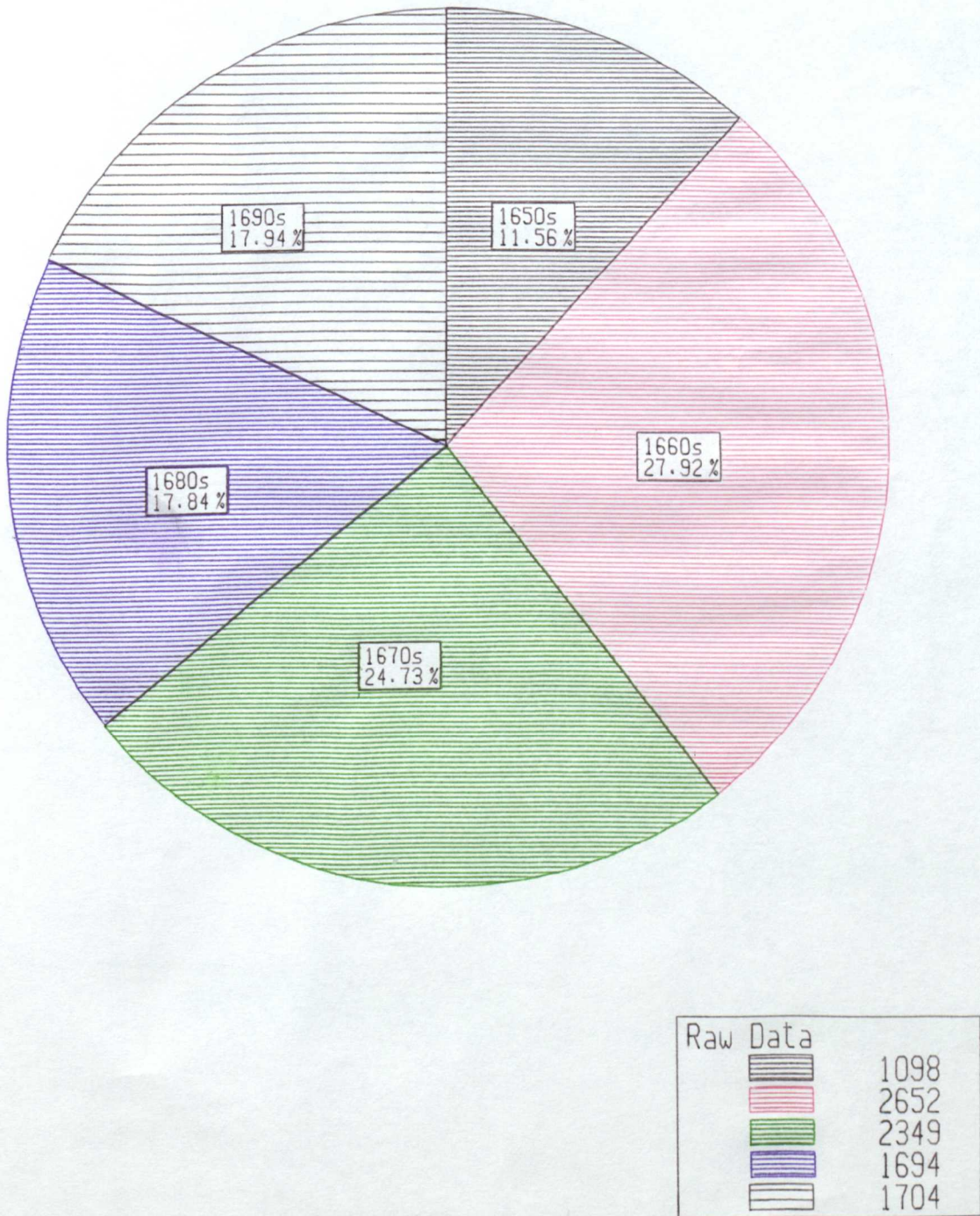
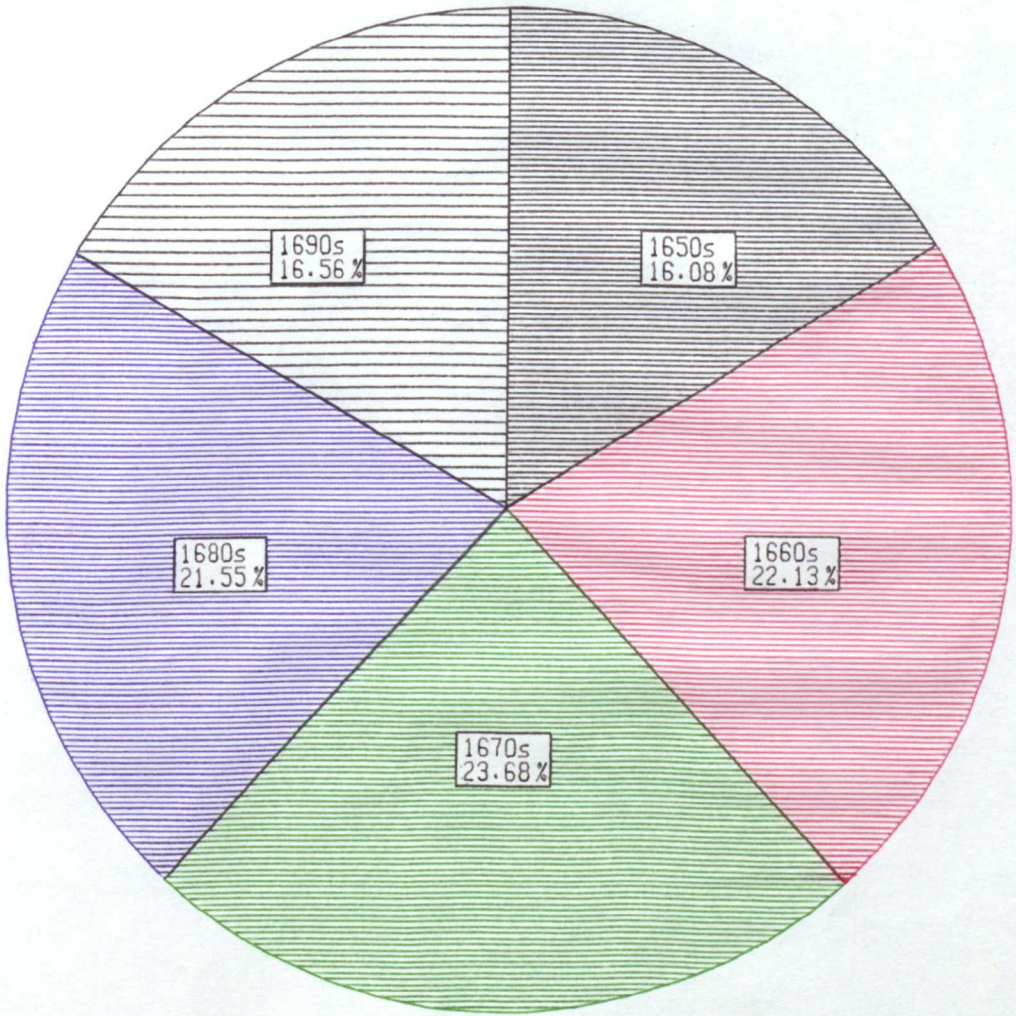


FIGURE 4



# Persons indicted at Quarter Sessions by decade








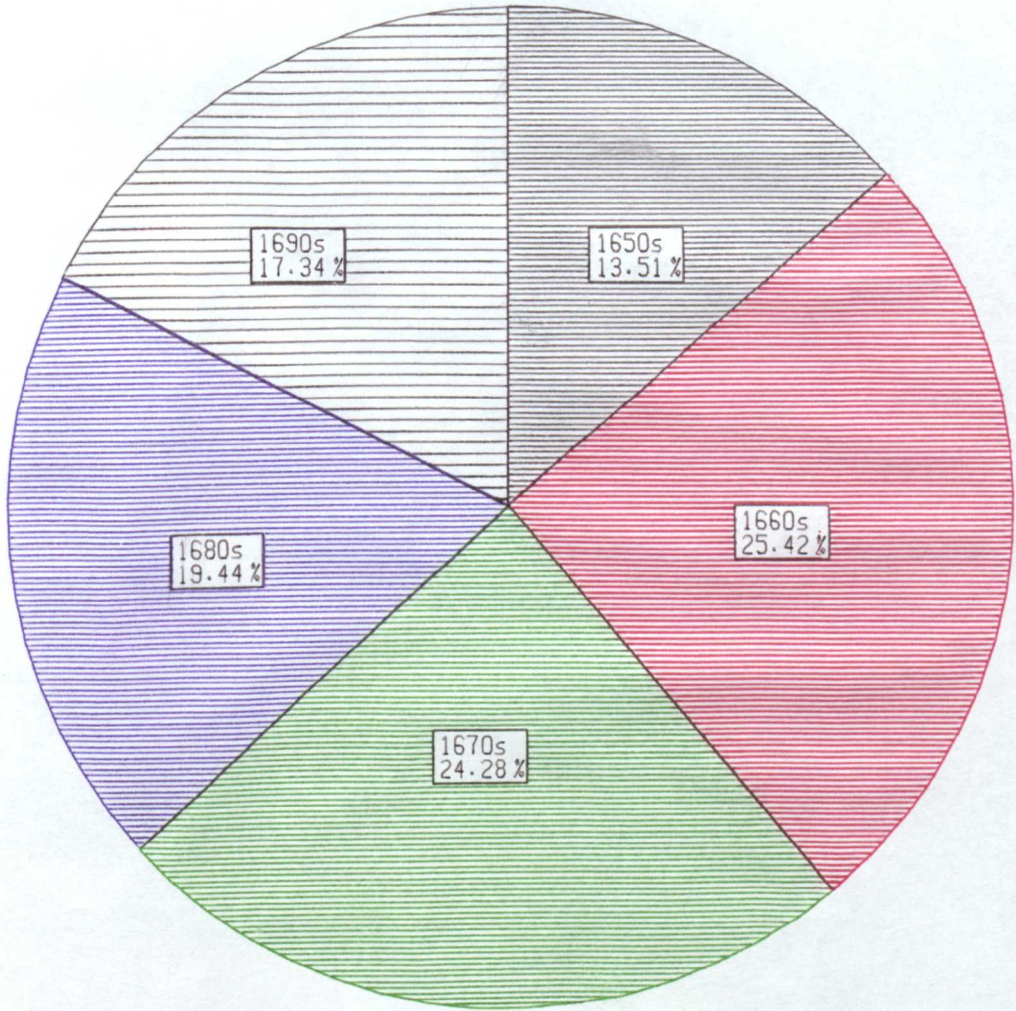
Raw Data	
	1160
	1596
	1708
	1554
	1194

FIGURE 5








Raw Data	
	2258
	4248
	4057
	3248
	2898

FIGURE 6

# PERSONS INDICTED AT ASSIZES BY QUINQUENNIUM

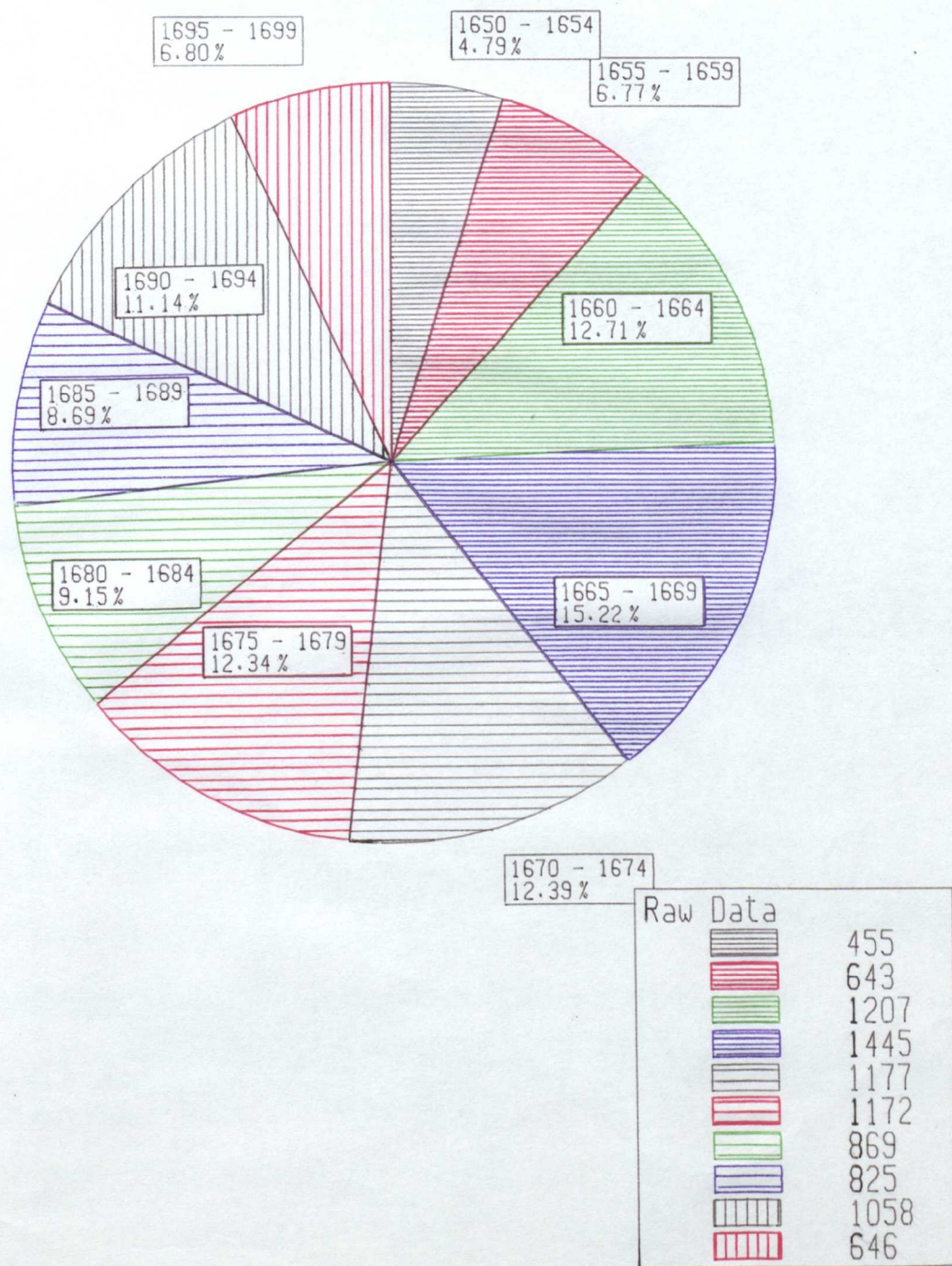


FIGURE 7

464a

## BIBLIOGRAPHY

### PRIMARY MANUSCRIPT MATERIAL

#### Public Record Office, Chancery Lane:

ASSI. 44/5 -/44	Northern Circuit Assize Files
ASSI. 45/5 -/17	Northern Circuit Depositions
ASSI. 42	Northern Circuit Gaol Books
ASSI. 47/14	Special Cases
ASSI. 47/15	Miscellaneous Pleadings
ASSI. 47/20	Northern Circuit Miscellaneous
KB. 9/846 -/932	King's Bench Ancient Indictments
KB. 15/58	King's Bench Indictments Index Book
PL. 27/1	Palatinate of Lancaster Depositions

#### East Yorkshire Record Office, Beverley:

DDHE. 5/1	Hedon Borough Muniments: Quarter Sessions and Court Leet Books
DDBL.	Legard Papers
QS. 1	Sessions Order Books, 1647 - 1651

#### North Yorkshire Record Office, Northallerton:

Mic 98 - 102	Microfilms of Quarter Sessions Books
Mic 1127	Scarborough Quarter Sessions bundles

#### West Yorkshire Record Office, Wakefield:

QS. 4/6 -/16	Quarter Sessions Indictment Books
QS. 10	Quarter Sessions Order Books
QT. 1	Liberty of Ripon Quarter Sessions Books
QD. 1/709	Quarter Sessions: Miscellaneous

### CONTEMPORARY WORKS RELATING TO THE LAW

C.M. Atkinson, ed. "A Trial at York for Counterfeiting" (Thoresby Society, Miscellanea, vol. 9, 1899), pp. 207 - 227

Babington, Z. Advice to Grand Jurors in Cases of Blood (London, 1677).

Bernard, R. A Guide to Grand Jurymen (London, 1630).

Blackerby, S. The Justice of Peace His Companion (London, 1722).

Blackstone, Sir W. Commentaries on the Laws of England 4 vols, (vols 1 and 2, 4th. edition, Dublin, 1771; vols 3 and 4, 3rd edition, Dublin, 1770).

Clayton, J. Reports and Pleas of Assises at York (London, 1651).

Dalton, M. Country Justice 1619 Classical English Law Texts, ed. P.R. Glazebrook (London, 1974).

Filmer, Sir R. An Advertisement to the Jury-Men of England touching Witches (London, 1653).

- Firth, C.H. and Rait, R.S. eds. Acts and Ordinances of the Interregnum: 1642 - 1660 3 vols (Holmes Beach, Florida, 1972).
- Hale, M. Historia Placitorum Coranae 2 vols, (London, 1736).
- Hargrave, F. ed. A Complete Collection of State-Trials and Proceedings for High-Treason and other Crimes and Misdemeanours 4th. edition, 11 vols (London, 1776 - 1781).
- Keble, J. An Assistance to Justices of the Peace for the Easier Performance of their Duty (London, 1689).
- Kelyng, J. A Report of Divers Cases in the Pleas of the Crown (London, 1708).
- Lambarde, W. Eirenarcha, or the Office of Justices of Peace 1581/2 Classical English Law Texts, ed. P.R.Glazebrook (London, 1972).
- Lumb, G.D. ed. "Justices Note-Book of Captain John Pickering" (Thoresby Society, Miscellanea, vol. 11, 1904), pp. 69 - 100 and (Thoresby Society, Miscellanea, vol. 15, 1909), pp. 71 - 80 and 277 - 295.
- Nelson, W. The Office and Authority of a Justice of Peace (London, 1710).
- Nourse, T. Compania Foelix (London, 1700).
- Raine, J. ed. "A Brief Memoir of Mr Justice Rokeby comprising his religious journal and correspondence" (Surtees Society, Miscellanea, 37, 1860), pp. 1 - 71.
- Rayner, J.L. and Crook, G.T. eds. The Complete Newgate Calendar 5 vols (London, 1926).
- Sheppard, W. A Sure Guide for his Majesties Justices of Peace (London, 1669).
- OTHER CONTEMPORARY WORKS
- Atkinson, J.C. ed. North Riding Quarter Sessions (North Riding Record Society, vols. 6 - 8, 1888 - 1890).
- Besse, J. ed. A Collection of the Sufferings of the People call'd Quakers...1650 - 1666 3 vols (London, 1733 - 1738).
- Bloody News from Yorkshire (London, 1674).
- Bradley, T. A Sermon preached in the Minster at Yorke at the Assizes there holden the thirtieth day of March 1663 (York, 1663). Caesar's Due and the Subjects Duty (York, 1663)
- Browning, A. ed. Memoirs of Sir John Reresby (Glasgow, 1936).

Calendar of Assize Records Home Circuit Indictments,  
Elizabeth 1 and James 1 11 vols. (London, 1975 -  
1985).

Calendar of State Papers Domestic

Calendar of Treasury Books

Chesterman, A. de M. ed. "A Brief Account of the Drainage of the  
Levells of Hatfield Chase and Parts Adjacent in the Countys  
of York Lincoln and Nottingham" by G.Stovin, YAJ, 37 (1951),  
pp. 385 - 391.

Clay, J.W. ed. Familiae Minorum Gentium (Harleian Society  
Publications, vols. 37 - 40, London, 1894 - 1896).

Collins, F. ed. Register of the Freemen of the City of York, 1559 -  
1759 (Surtees Society 102, 1900).

Comber, T. The Nature and Usefulness of Solemn Judicial Swearing  
with the Impiety and Mischeif of Vain and False Swearing  
(London, 1682).

Drake, F. Eboracum: Or, the History and Antiquities of the City  
of York, 1736, introduced by K.J.Allison (Ilkley, 1978).

Drake, N. A Sermon against False Weights and Balances preached  
at Sheffield (London, 1697).  
A Sermon against Bribery preached at York (York, 1695).

Drake, S. Totum Homines: or the Decalogue in Three Words viz  
Justice, Mercy and Humility (London, 1670)  
The Civil Deacons Sacred Power (London, 1670).

Dugdale, W. The Visitation of the County of Yorke begun in AD 1665  
and finished in AD 1666 (Surtees Society, 36, 1859).

Dunn Macrae, W. ed. The History of the Rebellion and Civil  
Wars in England, by Edward Earl of Clarendon, 6 vols,  
(Oxford, 1888).

Grossart, A.B. ed. Complete Works... of Andrew Marvell 4 vols  
(London, 1872 - 1875).

Historical Manuscripts Commission, 14th Report, Appendix Part IV,  
Manuscripts of Lord Kenyon (London, 1894).

Hunt, R.D. ed. "Henry Townshends 'Notes of the Office of Justice of  
Peace', 1661 - 1663"( Worcestershire Historical Society  
new series, vol. 5, 1967), pp. 68 - 137.

Jackson, C. ed. The Diary of Abraham de la Pryme (Surtees Society,  
vol. 54, 1870).

Jessopp, A. ed. The Lives of the Right Honourable Francis North,  
Baron Guildford... by the Honourable Roger North 3 vols  
(London, 1890).

- Johnson, J. The Judge's Authority or Constitution (Cambridge, 1670).  
Nature Inverted or Judgment turned into Gall (Cambridge, 1670).
- Lister, J. ed. West Riding Sessions Records (Yorkshire Archaeological Journal Record Series, vols. 3 and 53, 1888 and 1915).
- Margerison, S. ed. "Memorandum Book of Sir Walter Calverley, Bart" (Surtees Society, Yorkshire Diaries, vol. 77, 1883), pp. 43 - 148.
- Morehouse, H.J. ed. "A Dyurnall, or Catalogue of All my Accions and Expences From the 1st of January, 1646 - Adam Eyre" (Surtees Society, Yorkshire Diaries, vol 65, 1875), pp. 1 - 118.
- North, R. Examen: or, an Enquiry into the Credit and Veracity of a Pretended Complete History (London, 1740).
- Peyton, J.S. ed. Minutes of Proceedings in Quarter Sessions held for the parts of Kesteven in the County of Lincoln, 1674 - 1695 (Lincoln Record Society, vols. 25 and 26, 1931).
- Raine, J. ed. Depositions from the Castle of York relating to offences committed in the northern counties in the seventeenth century (Surtees Society, 40, 1861).
- Stainforth, W. An Assize Sermon preached August 3 1685 (York, 1685).
- Turner, J.H. ed. The Rev Oliver Heywood B.A. 1680 - 1702, His Autobiography, Diaries, Anecdote and Event Books 4 vols (Brighouse and Bingley, 1881 - 1885).  
Autobiography of Captain John Hodgson edited by Ritson, J. and Scott, Sir W. (Brighouse, 1882).
- Warwick, Sir P. Memoires of the Reign of King Charles (London, 1701).
- Whiteman, A. ed. The Compton Census of 1676: A Critical Edition Records of Social and Economic History, New Series, 10 (1986).
- Whiting, C.E. ed. Autobiographies and Letters of Thomas Comber (Surtees Society, vols, 156 and 157, 1946 and 1947).
- Wyvill, C. Assize Sermon. (London, 1686)  
Of Christian Magistracy. (York, 1697)

#### SECONDARY WORKS ON GENERAL SOCIAL HISTORY

- Appleby, A.B. "Disease or Famine? Mortality in Cumberland and Westmorland 1580 - 1640" EconHR 2nd series, 26 (1973), pp. 403 - 432.

- Arkell, T. "Factors in Estimating Population Totals from the Hearth Tax" LPS 28 (1982), pp. 51 - 57.
- Baker, A.R.H. and Butlin, R.A. eds. Studies of Field Systems in the British Isles (Cambridge, 1973).
- Beckingsale, B.W. "The Characteristics of the Tudor North" Northern History 4 (1969), pp. 67 - 83.
- Beresford, M.W. "The Common Informer, the Penal Statutes and Economic Regulation" EconHR, 2nd series, 10 (1957 - 1958), pp. 221 - 238.
- Bossy, J. The English Catholic Community (London, 1975).
- Braithwaite, W.C. The Second Period of Quakerism (Cambridge, 1961).
- Burke, V. "The Economic Consequences of Recusancy in Elizabethan Worcestershire" Recusant History 14 (1977 - 1978), pp. 71 - 77.
- Challoner, R. Memoirs of Missionary Priests, (London, 1924).
- Chambers, J.D. Population, Economy and Society in Pre-industrial England (Oxford, 1972).  
The Vale of Trent 1670 - 1800, A Regional Study of Economic Change EconHR Supplements, 3 (1957).
- Charlesworth, A. ed. An Atlas of Rural Protest in Britain: 1558 - 1900 (London, 1983).
- Clark, P. The English Alehouse: A Social History 1200 - 1830 (London, 1983).
- Clark, P. and Slack, P. eds. Crisis and Order in English Towns, 1500 - 1700 (London, 1972).
- Clarke, J.D.C. English Society, 1688 - 1832 (Cambridge, 1985).
- Clarkson, L.A. The Pre Industrial Economy in England 1500 - 1750 (London, 1975).
- Coleby, A.M. Central Government and the Localities: Hampshire 1649 - 1689 (Cambridge, 1987).
- Coleman, D.C. Economy of England 1450 - 1750 (Oxford, 1977).
- Corfield, P. The Impact of English Towns, 1700 - 1800 (Oxford, 1982).
- Coward, B. The Stuart Age (London, 1980).
- Craig, Sir J. The Mint: A History of the London Mint 287 - 1946 (Cambridge, 1953).
- Darby, H.C. ed. A New Historical Geography of England (Cambridge,



- 1973).
- Davies, C.S.L. "Peasant Revolt in France and England: A Comparison" AgHR 21 (1973), pp. 122 - 134.
- Davies, M.G. The Enforcement of English Apprenticeship, 1563 - 1642 (Cambridge, Mass., 1956).
- Davis, R. The Rise of the English Shipping Industry in the Seventeenth and Eighteenth Centuries (Newton Abbot, 1972).
- Edwards, D.E. "Were Hunger Rioters Really Hungry? Some Demographic Evidence" P&P 71 (1976), pp. 70 - 75.
- Elliott, B. "A Leicestershire Recusant Family" Recusant History 17 (1984 - 1985), pp. 173 - 181.
- Emmison, F.G. Elizabethan Life: Disorder (Essex Record Office Publications, no. 56, Chelmsford, 1970).
- Fisher, F.J. ed. Essays in the Economic and Social History of Tudor and Stuart England (Cambridge, 1961).
- Fletcher, A. Reform in the Provinces: the Government of Stuart England (London, 1986).
- Fletcher, A.J. and Stevenson, J. eds., Order and Disorder in Early Modern England (Cambridge, 1985).
- Glass, D.V. "Gregory King's Estimates of the Population of England and Wales, 1695" Population Studies 3 (1949 - 1950), pp. 338 - 374.
- Goose, N. "English Pre-Industrial Urban Economies" Urban History Yearbook (1982), pp. 24 - 30.
- Gray, H.L. English Field Systems (Cambridge, Mass., 1915).
- Hammond, J.L. and B. The Village Labourer (London, 1911).
- Harris, T. London Crowds in the Reign of Charles II: Propaganda and Politics from the Restoration until the Exclusion Crisis (Cambridge, 1987).
- Hobsbawm, E.J. Primitive Rebels (Manchester, 1959).
- Holderness, B.A. Pre-Industrial England (London, 1976).
- Horwitz, H. Parliament, Policy and Politics in the Reign of William III (Manchester, 1977).
- Hoskins, W.G. Provincial England (London, 1963).  
 "Harvest Fluctuations and English Economic History, 1480 - 1619" AgHR 12 (1964), pp. 28 - 46.  
 "Harvest Fluctuations and English Economic History, 1620 - 1759" AgHR 16 (1968), pp. 15 - 31.

- Jones, D.W. War and Economy in the Age of William III and Marlborough (forthcoming).
- Kenyon, J.P. The Popish Plot (London, 1972).
- Kerridge, E. The Agricultural Revolution (London, 1967).
- Larner, C. Enemies of God: The Witch-hunt in Scotland (London, 1981).
- Larner, C. ed. Witchcraft and Religion: The Politics of Popular Belief (Oxford, 1984).
- Lennard, R.V. "English Agriculture under Charles II" EconHR 4 (1932), pp. 23 - 45.
- Lindley, K. Fenland Riots and the English Revolution (London, 1982).
- Manning, B. "The Peasantry and the English Revolution" Journal of Peasant Studies 2 (1975), pp. 133 - 159.
- Miller, J. Popery and Politics in England, 1660 - 1668 (Cambridge, 1973).
- Minchinton, W. ed. Wage Regulation in Pre-Industrial England (Newton Abbot, 1972).
- Orwin, C.S. and Orwin, C.S. Open Fields (Oxford, 1938).
- Parkes, J. Travel in England in the Seventeenth Century (Oxford, 1925).
- Patten, J.H. "The Hearth Taxes 1662 - 1689" LPS 7 (1971), pp. 14 - 27.
- Prior, M. ed. Women in English Society, 1500 - 1800 (London, 1985).  
"Women and the Urban Economy: Oxford 1500 - 1800" in  
Prior, ed. Women in English Society, pp. 93 - 117.
- Ramm, H.G., McDowall, R.W. and Mercer, E. Shielings and Bastles  
(Royal Commission on Historical Monuments, London, 1970).
- Reid, R.R. The King's Council in the North (first published 1921,  
reprinted Wakefield, 1975).
- Reay, B. ed., Popular Culture in Seventeenth-Century England  
(London, 1985).
- Roebuck, P. "Post Restoration Land Ownership: the Impact of the  
Abolition of Wardship" JBS 18 (1978), pp. 67 - 85.
- Rowlands, M. "Recusant Women 1560 - 1640" in Prior, ed.  
Women in English Society, pp. 149 - 180.
- Schofield, R.S. "News from the Cambridge Group for the History of  
Population and Social Structure: Crisis Mortality" LPS  
9 (1972), pp. 10 - 22.

- Sharpe, J.A. Early Modern England: A Social History, 1550 - 1760 (London, 1987).
- Spenceley, G.F. "The Origins of the English Pillow Lace Industry" AgHR 21 (1973), pp. 81 - 93.
- Stone, L. The Crisis of the Aristocracy (Oxford, 1965).
- Tawney, R.H. Religion and the Rise of Capitalism: An Historical Study (London, 1929).  
 "The Assessment of Wages in England by the Justices of the Peace" in Minchinton, ed. Wage Regulation, pp. 37 - 92.  
Introduction to Thomas Wilson, A Discourse upon Usury (London, 1925).
- Thirsk, J. ed., The Agrarian History of England and Wales, vol. V.i. (Cambridge, 1984).
- Thomas, K. Religion and the Decline of Magic (London, 1971).
- Twigg, G. The Black Death: A Biological Reappraisal (London, 1984).
- Victoria History of the Counties of England:  
 R.B.Pugh and E.Crittall, eds, Wiltshire, vol. 5 (1957)  
 G.C.Baugh, ed. Shropshire, vol. 3 (1979).
- Willan, T.S. The English Coasting Trade 1600 - 1750 (Manchester, 1938).
- Williams, P. The Council in the Marches of Wales (Cardiff, 1958).
- Wilson, C. England's Apprenticeship (Oxford, 1965).
- Wrightson, K. English Society 1580 - 1680 (London, 1982).
- Wrightson, K. and Levine, D. Poverty and Piety in an English Village: Terling 1525 - 1700 (London, 1979).
- Wrigley, E.A. and Schofield, R.S. The Population History of England 1541 - 1871: A Reconstruction (London, 1981).
- Yeo, E. and Yeo, S. eds., Popular Culture and Class Conflict 1590 - 1914 (Sussex, 1981).
- SECONDARY WORKS ON YORKSHIRE
- Allison, K.J. The Making of the English Landscape: the East Riding (London, 1976).
- Armitage, E. "Halifax Gibbet Law" Halifax Antiquarian Society Papers (1948), pp. 1 - 16.
- Atkinson, D.H. Ralph Thoresby the Topographer, His Town and Times 2 vols. (Leeds, 1885 - 1887).
- Aveling, J.C.H. Catholic Recusancy in the City of York, 1558 -

- 1791 (St. Albans, 1970).
- Aveling, H. "The Catholic Recusants of the West Riding of Yorkshire, 1558 - 1790" (Leeds Philosophical and Literary Society, vol 10, part 6, 1963), pp. 229 - 256.  
Northern Catholics (London, 1966).
- Baker, J.B. The History of Scarborough (London, 1882).
- Beier, A.L. Masterless Men: The Vagrancy Problem in England 1560 - 1640 (London, 1985).
- Beresford, M.W. "Glebe Terriers and Open Fields in Yorkshire" YAJ 37 (1948 - 1951), pp. 325 - 368.
- Betteridge, A. "A Study of Halifax Administrative records 1585 - 1762" (Leeds University Ph.D. thesis, 1979).
- Brooks, F.W. York and the Council of the North (Borthwick Papers, no. 5, 1954).
- Carroll, R. "Yorkshire Parliamentary Boroughs in the Seventeenth Century" Northern History 3 (1968), pp. 70 - 104.
- Chadwick, S.J. "The Farnley Wood Plot" (Thoresby Society, Miscellanea, vol. 15, 1909), pp. 122 - 126.
- Chapman, J. "Parliamentary Enclosure in the Uplands: The Case of the North York Moors" AgHR 24 (1976), pp. 1 - 17.
- Clarke, S.R. The New Yorkshire Gazeteer or Topographical Dictionary (London, 1828).
- Cliffe, J.T. The Yorkshire Gentry (London, 1969).
- Dale, B. Yorkshire Puritans and Early Nonconformity (Bradford, 1909).
- Darwin, K. "John Aislabie 1670 - 1742" YAJ 37 (1948 - 1951), pp. 262 - 324.
- Eccles, R. "Notes on Halifax Gaols" Halifax Antiquarian Society Papers (1922), pp. 89 - 104.
- Faithorn, R.M. "Nonconformity in Late Seventeenth-Century Yorkshire" (Leeds University M.Phil. thesis, 1982).
- Fieldhouse, R. "Some Evidence of Surviving Open Fields in the Seventeenth Century Pennine Dales and the Gradual Elimination of Communal Agriculture" YAJ 54 (1982), pp. 111 - 118.  
"Parliamentary Representation in the Borough of Richmond" YAJ 44 (1972), pp. 207 - 216.
- Fieldhouse, R. and Jennings, B. A History of Richmond and Swaledale (London, 1978).

- Fletcher, J.S. Yorkshiremen of the Restoration (London, 1921).
- Forster, G.C.F. "Faction and County Government in Early Stuart Yorkshire" Northern History 11 (1976), pp. 70 - 86.  
 "County Government in Yorkshire during the Interregnum" Northern History 12 (1976), pp. 84 - 104.  
 "Government in Provincial England under the later Stuarts" TRHS 5th series 33 (1983), pp. 29 - 48.
- Francois, M.E. The Social and Economic Development of Halifax 1558 - 1640 Proceedings of the Leeds Philosophical and Literary Society (Leeds, 1966).
- Fraser, D. ed. A History of Modern Leeds (Manchester, 1980).
- Gee, H. "The Derwentdale Plot, 1663" TRHS 3rd series 9 (1917), pp. 125 - 142.
- Giles, C. Rural Houses of West Yorkshire 1400 - 1830 West Yorkshire Metropolitan County Council and Royal Commission on Historical Monuments, Supplementary Series, 8 (London, 1986).
- Gillett, E. and MacMahon, K.A. A History of Hull (Oxford, 1980).
- Hailstone, E. ed. Portraits of Yorkshire Worthies 2 vols (London, 1869).
- Harris, A. The Rural Landscape of the East Riding of Yorkshire 1700 - 1850 (Oxford, 1961).  
 "The Lost Villages and the Landscape of the Yorkshire Wolds" AgHR 6 (1958), pp. 97 - 100.
- Harvey, J.C. "Common Field and Enclosure in the Lower Dearne Valley: A Case Study" YAJ 46 (1974), pp. 110 - 127.
- Heaton, H. The Yorkshire Woollen and Worsted Industries from the Earliest Times up to the Industrial Revolution (Oxford, 1920).
- Hey, D. The Rural Metalworkers of the Sheffield Region: A Study of Rural Industry before the Industrial Revolution Leicester University Occasional Papers, 2nd series, no. 5 (1972).  
Yorkshire from A.D. 1000 (London, 1986).  
 "The Pattern of Nonconformity in South Yorkshire 1660 - 1851" Northern History 8 (1973), pp. 86 - 118.  
 "A Dual Economy in South Yorkshire" AgHR 17 (1969), pp. 108 - 119.
- Jackson, M. Hull in the Eighteenth Century (London, 1972).
- Jennings, B. ed., A History of Nidderdale (Huddersfield, 1967).
- Jones, A.K. "The Maps of Yorkshire printed in the period 1577 - 1857 as sources of topographical information" (Leeds University Ph.D. thesis, 1981).
- Kelsall, R.K. "Statute Wages during a Yorkshire Epidemic, 1679 -

- 1681" YAJ, 34 (1939), pp. 310 - 316.
- Kirby, J.W. "Restoration Leeds and the Aldermen of the Corporation 1661 - 1700" Northern History 22 (1986), pp. 123 - 174.
- Kitson Clark, E. "The Leeds Mace" (Thoresby Society Publications, Miscellanea, vol. 9, 1899), pp. 205 - 206.
- Knight, C.B. A History of the City of York 2nd. ed. (York, 1944).
- Lister, J. "Halifax Gibbet Law" Halifax Antiquarian Society Papers (1910), pp. 1 - 19.
- Long, W.H. "Regional Farming in Seventeenth-Century Yorkshire" AgHR 8 (1960), pp. 103 - 114.
- McDonnell, J. ed., A History of Helmsley, Rievaulx and District (York, 1963).
- Marshall, W. The Rural Economy of Yorkshire, 2 vols. (2nd ed., London, 1788 and 1796).
- Miall, J.G. Congregationalism in Yorkshire (London, 1868).
- Palliser, D.M. Tudor York (Oxford, 1979).
- Pearce, D. "Yarm and the Butter Trade" Cleveland and Teeside Local History Bulletin 9 (1970), pp. 8 - 12.
- Pickles, M.F. "Agrarian Society and Wealth in Mid-Wharfedale 1664 - 1743" YAJ 53 (1981), pp. 63 - 78.
- Purdy, J.D. "The Hearth Tax Returns for Yorkshire" (Leeds University M.Phil. thesis, 1975).
- Quinn, J.F. "York Elections in the Age of Walpole" Northern History 22 (1986), pp. 174 - 197.
- Raistrick, A. West Riding of Yorkshire (London, 1970).
- Roebuck, P. Yorkshire Baronets, 1640 - 1760: Families, Estates and Fortunes (Oxford, 1980).
- Royal Commission on Historical Monuments, The City of York, vol. 2, The Defences (London, 1972).
- Ruston, A.G. and Witney, D. Hooton Pagnell: The Agricultural Evolution of a Yorkshire Village
- Smith, D.E. "Otley: A Study of a Market Town during the late Seventeenth and Eighteenth Centuries" YAJ 52 (1980), pp. 143 - 156.
- Twyford, A.W. and Griffiths, A. eds. Records of York Castle: Fortress, Court House and Prison (London, 1880).
- Unwin, R.W. "Tradition and Transition: Market Towns in the Vale of

York, 1660 - 1830" Northern History 17 (1981), pp. 72 - 116.

Victoria History of the Counties of England:

Yorkshire, W.Page, ed. 3 vols. (1907 - 1913).

North Riding, W.Page, ed. 2 vols. (1914 - 1923).

East Riding, K.Allison, ed. 5 vols (1969 - 1984).

City of York, (1961).

Walker, J.W. "Records Relating to a Seventeenth Century Parliamentary Election" YAJ 34 (1938 - 1939), pp. 25 - 34.

"The Yorkshire Plot, 1663" YAJ 31 (1932 - 1934), pp. 348 - 359.

Wilson, B.M. "The Corporation of York 1580 - 1660" (York University M.Phil. thesis, 1967).

Wyatt, D.K.J. "Performance and Ceremonial in Beverley pre 1642" (York University, D.Phil. thesis, 1983).

Young, A. A Six Months Tour through the North of England, 4 vols. (London, 1771, reprinted 1967).

#### SECONDARY WORKS ON LAW AND LEGAL INSTITUTIONS

Archbold, Criminal Pleading, Evidence and Practice 42nd. edition, eds., S.Mitchell and P.J.Richardson (London, 1985).

Bailey, V. "Bibliographical Essay: Crime, Criminal Justice and Authority in England" Bulletin of the Society for the Study of Labour History, 40 (1980), pp. 36 - 46.

Baker, J.H. Legal Records and the Historian (London, 1978).

An Introduction to English Legal History 2nd. ed. (London, 1979).

The Legal Profession and the Common Law: Historical Essays. (London, 1986)

"Male and Married Spinsters" American Journal of Legal History, 21 (1977), pp. 255 - 259.

"Criminal Courts and Procedure at Common Law 1550 - 1800" in Cockburn, ed. Crime in England, pp. 15 - 48.

Baker, J.H. and Milsom, S.F.H. eds. Sources of English Legal History: Private Law to 1750 (London, 1986).

Barnes, T.G. The Clerk of the Peace in Caroline Somerset, (Leicester University Occasional Papers, 14, 1961).

Beattie, J.M. Crime and the Courts in England 1660 - 1800 (Oxford, 1986).

"The Pattern of Crime in England 1660 - 1800" P&P 62 (1974), pp. 47 - 95.

"Towards a Study of Crime in Eighteenth Century England: A Note on Indictments" in P.Fritz and D.Williams, eds., The Triumph of Culture: Eighteenth Century Perspectives (Toronto, 1972), pp. 299 - 314.

"The Criminality of Women in Eighteenth-Century England" JSH 8 (1975), pp. 80 - 116.

"Crime and the Courts in Surrey 1736 - 1753" in  
Cockburn, ed. Crime in England, pp. 155 - 186.

- Bellamy, J.G. The Law of Treason in England in the Later Middle Ages (Cambridge, 1970).  
The Tudor Law of Treason: An Introduction (London, 1979).  
Crime and Public Order in England in the Late Middle Ages (London, 1973).
- Beloff, M. Public Order and Popular Disturbances 1660 - 1714 (Oxford, 1938).
- Bennett R.A.H. "Enforcing the Law in Revolutionary England: Yorkshire c1640 - c1660" (London University, Ph.D. thesis, 1987).
- Berg, M. ed., Manufacture in Town and Country before the Factory (Cambridge, 1984).
- Black, S.F. "Coram Protectorate: The Judges of Westminster Hall under the Protectorate of Oliver Cromwell" American Journal of Legal History 20 (1976), pp. 32 - 63.
- Blatcher, M. The Court of King's Bench 1450 - 1550: A Study in Self-Help (London, 1978).
- Brewer, J. and Styles, J. eds., An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries (London, 1980).
- Brooks, C.W. Pettyfoggers and Vipers of the Commonwealth, The Lower Branch of the Legal Profession in Early Modern England (Cambridge, 1986).
- Brown, B.J. "The Demise of Chance Medley and the Recognition of Provocation as a Defence to Murder in English Law" American Journal of Legal History 7 (1963), pp. 310 - 322.
- Bruen, N. "Leet Jurisdiction and Social Regulation in Seventeenth-Century Yorkshire: The Courts of Coxwold, Otley and Marske (1633 - 1664)" (York University, M.A. thesis, 1984).
- Cameron, I.A. Crime and Repression in the Auvergne and the Guyenne, 1720 - 1790 (Cambridge, 1981).
- Carter, J.M. Rape in Medieval England (London, 1985).
- Cockburn, J.S. ed., Crime in England 1550 - 1800 (London, 1977).  
A History of English Assizes 1558 - 1714 (Cambridge, 1972).  
"Early Modern Assize Records as Historical Evidence" Journal of the Society of Archivists, 5 (1975), pp. 215 - 231.  
"The Northern Assize Circuit" Northern History 3 (1968), pp. 118 - 130.  
"The work of the Assizes for the Northern Circuit in the Eighteenth Century" (Leeds University Ph.D. thesis, 1970).  
"The work of the Quarter Sessions for the North Riding



- of Yorkshire 1690 - 1750" (Leeds University M.A. thesis, 1965).
- "The North Riding Justices 1690 - 1750: A Study in Local Administration" YAJ, 41 (1965), pp. 481 - 515.
- "Seventeenth Century Clerks of Assize - Some Anonymous Members of the Legal Profession" American Journal of Legal History, 13 (1969), pp. 315 - 332.
- "The Nature and Incidence of Crime in England 1559 - 1625: A Preliminary Survey" in Cockburn, ed. Crime in England, pp. 49 - 71.
- Curtis, T.C. "Some Aspects of the History of Crime in Seventeenth-Century England with Special Reference to Cheshire and Middlesex" (Manchester University Ph.D. thesis, 1973).
- "Quarter Sessions Appearances and their Background: A Seventeenth-Century Regional Study" in Cockburn, ed. Crime in England, pp. 135 - 154.
- "Explaining Crime in Early Modern England" in Criminal Justice History, vol. 1 (1980), pp. 117 - 138.
- Edwards, V.C. "The Case of the Married Spinster: An Alternative Explanation" American Journal of Legal History, 21 (1977), pp. 260 - 265.
- Ewen, C.L. Witch Hunting and Witch Trials (London, 1929).
- Faller, L.B. Turned to Account, the Forms and Functions of Criminal Biography in late Seventeenth and Eighteenth Century England (Cambridge, 1987).
- Forster, G.C.F. The East Riding Justices of Peace in the Seventeenth Century (East Yorkshire Local History Series 30, 1973).
- "The North Riding Justices and their Sessions 1603 - 1625" Northern History 10 (1975), pp. 102 - 125.
- Foss, E. The Judges of England 1660 - 1714, vol. 7 (London, 1864).
- Gatrell, V.A.C., Lenman, B. and Parker, G. eds., Crime and the Law: The Social History of Crime in Western Europe since 1500 (London, 1980).
- Given, J.B. Society and Homicide in Thirteenth-Century England (Stanford, 1977).
- Glassey, L.K.J. Politics and the Appointment of Justices of the Peace 1675 - 1720 (Oxford, 1979).
- Glazebrook, P. "Misprision of Felony - Shadow or Phantom?" American Journal of Legal History 8 (1964), pp.
- Gleason, J.H. The Justices of the Peace in England, 1558 - 1640: A Later Eirenarcha (Oxford, 1969).
- Gordon, M. "The Invention of a Common Law Crime: Perjury and the Elizabethan Courts" American Journal of Legal History 24 (1980), pp. 145 - 170.

- Green, T.A. Verdict According to Conscience: Perspectives on the English Criminal Jury Trial 1200 - 1800 (London, 1985).  
 "The Jury and the English Law of Homicide 1200 - 1600"  
Michigan Law Review 74 (1976), pp. 414 - 499.
- Hammer, C.I. "Patterns of Homicide in a Medieval University Town: Fourteenth-Century Oxford" P&P 78 (1978), pp. 3 - 23.
- Hanawalt, B.A. Crime and Conflict in English Communities 1300 - 1348 (Cambridge, Mass., 1979).
- Havighurst, A.R. "The Judiciary and Politics in the Reign of Charles 11" Law Quarterly Review 66 (1950), pp. 62 - 78 and 229 - 252.  
 "James 11 and the Twelve Men in Scarlet" Law Quarterly Review 69 (1953), pp. 522 - 546.
- Hay, D. "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts" P&P 95 (1982), pp. 117 - 160.  
 "The Criminal Prosecution in England and its Historians"  
Modern Law Review 47 (1984), pp. 1 - 29.  
 "Crime, Authority and the Criminal Law: Staffordshire 1750 - 1800" (Warwick University Ph.D. thesis, 1975).
- D.Hay, P.Linebaugh, J.G.Rule, E.P.Thompson and C.Winslow, eds.,  
Albion's Fatal Tree: Crime and Society in Eighteenth-Century England (London, 1975).
- Herrup, C.B. "The Common Peace: Legal Structure and Legal Substance in East Sussex 1592 - 1640" (Northwestern University Ph.D. thesis, 1982).  
 "Law and Morality in Seventeenth Century England" P&P 106 (1985), pp. 102 - 123.  
The Common Peace: Participation and the Criminal Law in Seventeenth-Century England (Cambridge, 1987).  
 "New Shoes and Mutton Pies: Investigative Responses to Theft in Seventeenth-Century East Sussex" HJ 27 (1984), pp. 811 - 830.
- Hill, L.M. "The Two-Witness Rule in English Treason Trials: Some Comments on the Emergence of Procedural Law" American Journal of Legal History 12 (1968), pp. 95 - 111.
- Hoffer, P.C. and Hull, N.E.H. Murdering Mothers: Infanticide in England and New England 1558 - 1803 (London, 1981).
- Hogan, B. "The Criminal Attempts Act and Attempting the Impossible" Criminal Law Review (1984), pp. 584 - 591.
- Holdsworth, W. A History of English Law, 16 vols (London, 1903 - 1965).
- Ingram, M.J. "Communities and Courts: Law and Disorder in Early-Seventeenth-Century Wiltshire" in Cockburn, ed. Crime in England, pp. 110 - 134.

- Ives, E.W. and Manchester, A.H. eds., Law, Litigants and the Legal Profession (London, 1983).
- Jones, W.J. The Elizabethan Court of Chancery (Oxford, 1967).
- Kent, J. "The English Village Constable 1580 - 1642: The Nature and Dilemmas of the Office" JBS 20 (1981), pp. 26 - 49.  
The English Village Constable 1580 - 1642: A Social and Administrative Study (Oxford, 1986).
- Kershaw, I. "The Agrarian Crisis in England 1315 - 1322" P&P 59 (1973), pp. 3 - 50.
- King, P.J.R. "Decision Makers and Decision Making in the English Criminal Law, 1750 - 1800" HJ 27 (1984), pp. 25 - 58.
- King, W.J. "Leet Jurors and the Search for Law and Order in Seventeenth-Century England: Galling Persecution or Reasonable Justice?" Histoire Sociale - social history 13 (1980), pp. 305 - 324.
- Knafla, L.A. ed., Crime and Criminal Justice in Europe and Canada (Calgary, 1981).  
Law and Politics in Jacobean England (Cambridge, 1977).  
"'Sin of all sorts swarmeth': Criminal Litigation in an English County in the early Seventeenth Century" in Ives and Manchester, eds. Law and Litigants, pp. 50 - 67.
- Landau, N. The Justices of the Peace 1679 - 1760 (London, 1984).
- Langbein, J.H. "Albion's Fatal Flaws" P&P 98 (1983), pp. 96 - 120.  
"The Criminal Trial before the Lawyers" University of Chicago Law Review 45 (1978), pp. 263 - 316.  
Prosecuting Crime in the Renaissance: England, Germany, France (Cambridge, Mass., 1974).
- Larner, C. "Crimen Exceptum? The Crime of Witchcraft in Europe" in Gatrell et al. eds. Crime and the Law, pp. 49 - 75.
- Lenman, B. and Parker, G. "The State, the Community and the Criminal Law in Early Modern Europe" in Gatrell et al. eds. Crime and the Law, pp. 11 - 48.
- Levack, B. The Witch Hunt in Early Modern Europe (London, 1987).
- Linebaugh, P. "Crime in London 1700 - 1750" (Warwick University, Ph.D. thesis, 1975).
- Macfarlane, A. The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England (Oxford, 1981).  
Witchcraft in Tudor and Stuart England: A Regional and Comparative Study (London, 1970).  
"Witchcraft in Tudor and Stuart Essex" in Cockburn, ed. Crime in England, pp. 72 - 89.
- Malcolmson, R.W. "Infanticide in the Eighteenth Century" in Cockburn, ed. Crime in England, pp. 187 - 209.

- Marchant, R.A. The Church under the Law: Justice, Administration and Discipline in the Diocese of York 1560 - 1640 (Cambridge, 1969).
- Morrill, J.S. The Cheshire Grand Jury 1625 - 1649: A Social and Administrative Study (Leicester University Occasional Papers, 3rd. series, 1, 1976).
- Munsche, P. B. Gentlemen and Poachers: The English Game Laws 1671 - 1821 (Cambridge, 1981).  
 "The Game Laws in Wiltshire, 1750 - 1800" in Cockburn, ed. Crime in England, pp. 210 - 228.
- Oaks, R.F. "'Things Fearful to Name': Sodomy and Buggery in Seventeenth-Century New England" JSH 12 (1978), pp. 268 - 281.
- Phillips, D. Crime and Authority in Victorian England: The Black Country 1835 - 1860 (London, 1977).
- Phillips, H.E.I. "The Last Years of the Court of Star Chamber, 1630 - 1641" TRHS 21 (1939), pp. 103 - 131.
- Pole, S.C. "Crime, Society and Law Enforcement in Hanoverian Somerset" (Cambridge University, Ph.D. thesis, 1983).
- Prest, W. ed. Lawyers in Early Modern Europe and America (London, 1981).
- Radzinowicz, Sir L. A History of English Criminal Law and its Administration from 1750, 5 vols (London, 1955 - 1968).
- Roberts, S.K. "Initiative and Control: The Devon Quarter Sessions Grand Jury, 1649 - 1670" BIHR 57 (1984), pp. 165 - 177.  
 "Jury Vetting in the Seventeenth Century" History Today 32 (February, 1982), pp. 25 - 29.  
 Participation and Performance in Devon Local Administration 1649 - 1670 (Exeter University, D.Phil. thesis, 1980).  
Recovery and Restoration in an English County: Devon Local Administration, 1646 - 1670 (Exeter, 1985).
- Robson, R. The Attorney in Eighteenth Century England (Cambridge, 1959).
- Rubini, D.A. "The Precarious Independence of the Judiciary 1688 - 1701" Law Quarterly Review 83 (1967), pp.
- Ruff, J.R. Crime, Justice and Public Order in Old Regime France: The Senechausees of Liborne and Bazas 1696 - 1789 (London, 1984).
- Ruggiero, G. Boundaries of Eros, Sex Crime and Sexuality in Renaissance Venice (Oxford, 1985).
- Rule, J.G. "Social Crime in the Rural South" Southern History 1 (1979), pp. 135 - 154.

- Samaha, J. Law and Order in Historical Perspective: The Case of Elizabethan Essex (London, 1974).  
 "Hanging for Felony: The Rule of Law in Elizabethan Colchester" HJ 21 (1978), pp. 763 - 782.  
 "Gleanings from Local Criminal Court Records: Sedition among the 'Inarticulate' in Elizabethan England" JSH 8 (1975), pp. 61 - 79.  
 "The Recognizance in Elizabethan Law Enforcement" American Journal of Legal History, 25 (1981), pp. 189 - 204.
- Shapiro, B.J. Probability and Certainty in Seventeenth-Century England (Princeton, 1983).  
 "Law Reform in Seventeenth Century England" American Journal of Legal History, 19 (1975), pp. 280 - 312.
- Sharp, B. In Contempt of all Authority: Rural Artisans and Riot in the West of England, 1586 - 1660 (London, 1980).
- Sharpe, J.A. Crime in Early Modern England 1550 - 1750 (London, 1984).  
Crime in Seventeenth-Century England: A County Study (Cambridge, 1983).  
 "Domestic Homicide in Early Modern England" HJ 24 (1981), pp. 29 - 48.  
 "The History of Violence in England, Some Observations" P&P 108 (1985), pp. 206 - 215.  
Defamation and Sexual Slander in Early Modern England: The Church Courts at York, Borthwick Papers 58 (1980).  
 "The People and the Law" in Reay, ed. Popular Culture, pp. 204 - 270.  
 "Enforcing the Law in the Seventeenth-Century English Village" in Gatrell et al eds. Crime and the Law, pp. 97 - 119.  
 "Crime and Delinquency in an Essex parish 1600 - 1640" in Cockburn, ed. Crime in England, pp. 90 - 109.
- Sharpe, J.A. ed. "Wm Holcroft: His Booke" local office holding in late Stuart Essex (Essex Historical Documents, 2, Essex Record Office Publications, no. 90, 1986).
- Simpson, H. "The Office of Constable" EHR 40 (1895), pp. 625 - 641.
- Smith, L.B. Treason in Tudor England (London, 1986).
- Soman, A. "Deviance and Criminal Justice in Western Europe 1300 - 1800: An Essay in Structure" in Criminal Justice History, vol. 1 (1980), pp. 1 - 28.
- Stephen, Sir J.F. A History of the Criminal Law of England, 3 vols. (London, 1883).
- Stone, L. "Interpersonal Violence in English Society 1300 - 1980" P&P 101 (1983), pp. 22 - 33.
- Styles, J. "'Our Traitorous Money Makers' the Yorkshire Coiners and the Law". Brewer and Styles, eds. An Ungovernable People, pp.

Sugarman, D. ed., Legality Ideology and the State (London, 1983).

Thompson, E.P. Whigs and Hunters: The Origins of the Black Act (London, 1975).

"Eighteenth-Century English Society: Class Struggle without Class" JSH 3 (1978), pp.

"Patrician Society, Plebian Culture" JSH 7 (1984), pp. 382 - 405.

"The Moral Economy of the English Crowd in the Eighteenth Century" P&P 50 (1971), pp. 76 - 136.

Tyler, P. "The Church Courts at York and Witchcraft Prosecutions, 1567 - 1640" Northern History 4 (1969), pp. 84 - 110.

Veall, D. The Popular Movement for Law Reform 1640 - 1660 (Oxford, 1980).

Walters, J. "Grain Riots and Popular Attitudes to the law: Maldon and the crisis of 1629" in Brewer and Styles, eds. An Ungovernable People, pp. 47 - 86.

Walters J. and Wrightson, K. "Dearth and the Social Order in Early Modern England" P&P 71 (1976), pp. 22- 42.

Weiner, C. "Sex Roles and Crime in Late Elizabethan Hertfordshire" JSH 8 (1975), pp. 38 - 60.

"Is a Spinster an Unmarried Woman?" American Journal of Legal History, 20 (1976), pp. 27 - 31.

Weisser, M. Crime and Punishment in Early Modern Europe (Sussex, 1979).

"Crime and Punishment in Early Modern Spain" in Gatrell et al. eds. Crime and the Law, pp. 76 - 96.

White, B. "The Assize Sermon 1660 - 1714" (C.N.A.A. Ph.D. thesis, 1980).

Wrightson, K. "Infanticide in Earlier Seventeenth-Century England" LPS 15 (1975), pp. 10 - 22.

"Alehouses, Order and Reformation in Rural England, 1590 - 1660" in Yeo and Yeo, eds. Popular Culture, pp. 1 - 27.

"Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth-Century England" Brewer and Styles, eds. An Ungovernable People, pp. 21 - 46.