Crime, Histoire & Sociétés / Crime, History & Societies

Vol. 4, n°2 | 2000
Varia

Criminal Justice in Provincial England, France and Netherlands, c. 1880-1905 : some Comparative Perspectives

Wim Mellaerts

Electronic version
URL: http://journals.openedition.org/chs/823
DOI: 10.4000/chs.823
ISSN: 1663-4837

Publisher
Librairie Droz

Printed version
Date of publication: 1 June 2000
Number of pages: 19-52
ISBN: 2-600-00477-7
ISSN: 1422-0857

Electronic reference
Wim Mellaerts, « Criminal Justice in Provincial England, France and Netherlands, c. 1880-1905 : some Comparative Perspectives », *Crime, Histoire & Sociétés / Crime, History & Societies* [Online], Vol. 4, n° 2 | 2000, Online since 02 April 2009, connection on 02 May 2019. URL : http://journals.openedition.org/chs/823 ; DOI : 10.4000/chs.823

Criminal Justice in Provincial England, France and Netherlands, c. 1880-1905: some Comparative Perspectives

Wim Mellaerts[1]

The article presents the findings of a comparative study of criminal justice in three provincial towns (Ipswich, Caen and Maastricht), c.1880-1905. It identifies and analyses varying patterns in the judicial treatment of a selected number of medium-range crimes (common property crimes, minor violent crimes) and low-ranking offences (e.g., public drunkenness). The comparative perspective allows us to reveal perspectives that are usually under-exposed and gain a better insight into three wider questions: (i) the relationship between criminal justice and the development of the modern state; (ii) the rationalisation of government; and (iii) the cultural meaning of criminal justice. The purpose of the article is to suggest further lines of enquiry, especially in relation to the ideology of «British justice», the view of French criminal justice as controlled rather than controlling, the relationship between rationalisation and bureaucratisation in the sphere of criminal justice, and the symbolical role of criminal justice for the nation-state.

Cet article présente les résultats d'une recherche comparative portant sur trois villes de province (Ipswich, Caen et Maastricht) vers 1880-1905. Il identifie et analyse différents modèles de traitement judiciaire d'un certain nombre d'infractions de gravité moyenne (délinquance banale contre les biens, petites violences) ou faible (par ex. l'ivresse publique). La démarche comparative permet de mettre en lumière des aspects généralement peu apparents et de mieux comprendre trois questions plus générales : (i) la relation entre la justice pénale et le développement de l'État moderne; (ii) la rationalisation de l'activité gouvernementale; (iii) la signification culturelle de la justice pénale. L'article a pour objectif d'indiquer d'autres pistes d'investigation, en particulier à propos de l'idéologie de la «justice britannique», de la vision d'une justice française contrôlée plutôt que contrôlant, de la relation entre la rationalisation et la bureaucratisation de la sphère de la justice pénale et le rôle symbolique de cette dernière dans l'État-nation.

In a recent survey Xavier Rousseaux points to several ways forward in historical research on criminal justice[2]. Although it deals with medieval and early

[1] Wim Mellaerts is Lecturer at the Department of Dutch, University College London, United Kingdom. Latest publication: «*In the Shadow of Justice: Popular Uses of the Law in Urban Normandy, c.1880-1905*» French History, 2000, 14/2. Current research deals with Dutch criminal justice in the late 19th century and the relationship between criminal and civil justice in late 19th century England, France and Netherlands. The author would like to thank the anonymous reviewers for helpful comments on an earlier version of this article; and Clive Emsley for his interest and advice.

[2] Rousseaux (1997).

modern times, his essay provides an entry into current theoretical debate about modern criminal justice. It is more or less conventional wisdom that changes to criminal law and policing, greater state involvement in prosecution and adjudication and a revolution in state punishment allowed for an unprecedented degree of interference in people's everyday lives. A transformation of the socio-economic order which intensified with industrialisation and rapid urbanisation is inextricably linked with these reforms. However, Rousseaux' essay stresses that they are also connected with a set of other factors.

One of these is the process of state formation. State involvement in criminal law and criminal justice reached new heights for many continental European countries by the close of the French Revolution and is recognised as a central feature of the rise of the modern state. Another factor is the development of « rational-bureaucratic » forms of administrative control. Judicial administrations were structured according to specific models, notably of a legal (e.g., inquisitorial vs. accusatorial regimes) and political variety (e.g., a centralised or decentralised model of government). The cultural representation of criminal justice is a third factor. The notion that law and justice convey powerful messages which may serve ideological functions has been carried further by neo-marxist historians, cultural theorists and legal anthropologists who have developed theories about its role in constructing collective identities[3].

This article seeks to show how theorising about criminal justice in a comparative framework can help in asking questions about the nature of the modern liberal state, the modernity of administration and the creation of « imagined communities » in the late 19th century[4]. Our study builds on empirical research on the prosecution and court system at base and medium level. These were aspects of law enforcement that, like policing, were revolutionised during the 19th century. Research in this domain, let alone comparative research, remains to be further developed, especially for the latter decades which heralded a new phase in criminal justice reform in France, England and the Netherlands[5]. Our investigation is largely based on three case studies of criminal justice in a provincial urban setting. Although historians tend to insist on the individuality of each town, the comparative approach serves a useful purpose in that allowing us to more clearly define those peculiarities that say something significant about criminal justice in France, England or the Netherlands as a whole. Ipswich, the setting of the English case study, was a middle-sized provincial town (50 to 69000 inhabitants), situated in an agricultural county. The town had a sizeable manufacturing industry but large numbers remained employed in the traditional trades. Caen (40 to 45000 inhabitants), also the centre of a rich agricultural region, was very much a town of commerce and artisanal enterprise. Finally, Maastricht (30 to 36000 inhabitants) was situated in a predominantly agrarian province (Limburg) in the Catholic South of the Netherlands but was dominated by manufacturing industry.

An excellent starting-point for a discussion of the social and political roles of criminal law and criminal justice, as well their cultural meaning in late 19th-century

---

3 Knafla, Binnie (1995, pp. 8-13).

4 The expression « imagined community », originally reserved to refer to forms of solidarity based on national identity, has become common currency.

5 Emsley (1996); Lévy (1996); the history of modern criminal justice in the Netherlands remains under-researched: exemplary studies are Manneke (1993); and van Ruller, Faber (1995).

society is provided by a survey of state involvement in criminal justice. As suggested earlier, criminal justice reform combined to strengthen control over crime against property and against the person. Moving away from «middle-ranking» crime (definable as *délits* or their Dutch and English equivalents), the second part of the article compares the judicial treatment of «low-ranking» offences (i.e. minor violations or, in the English context, summary offences of a «non-criminal nature») and raises certain generally neglected questions about the rationalisation of judicial administration. In spite of the limitations of our evidence and the different socio-economic structures of the towns studied, a number of conclusions can be drawn from our case studies.

1. – CRIMINAL JUSTICE AND MEDIUM-RANGE CRIME

The extension of the scope of criminal law was conditional on the co-operation of public institutions that were not state bureaucracies (e.g., a municipal police force), as well as that of important sections of the population. The participatory nature of criminal law has been a classic focus in much writing on early modern England[6]. The literature on the English tradition of decentralised legal administration and the continental pattern of centralised, bureaucratic law enforcement is vast and well known. The latter part of the equation will therefore take first place. The considerable influence which members of the public continued to have on the successive stages of law enforcement in modern times is particularly under-researched in French and Dutch historiography. We will limit ourselves to two major types of middle-ranking offences.

Policing medium-range crime

Research by Jennifer Davis has found that in later 19th-century London private individuals instead of the police were responsible for reporting the great majority of minor property crime, as well as for detecting most offenders[7]. Our findings generally confirm this picture. They are based on an analysis of cases of larceny, embezzlement, and receiving stolen goods, committed in the towns of Ipswich, Caen and Maastricht and prosecuted in the local courts between 1880 and the mid-1900s[8]. As for Ipswich Table 1 gives a breakdown of all cases for four years, in total 297. Under legislation passed between 1847 and 1879, an average of 85% of those prosecuted for one of these offences was tried at the lowest level, in the local magistrates' court.[9] The case study of Caen is based on a compilation of samples over four years

---

6 A notable example is King (1984).

7 Davis (1985, ch.5).

8 A prosecuted case has been taken to mean every single prosecuted charge of larceny, embezzlement or receiving stolen goods; this does not allow differentiation between offenders having several charges to their name, nor does it measure the number of offenders involved in every prosecuted charge.

9 This study is based on witnesses' depositions in cases tried by the magistrates' court (under the Summary Jurisdiction Act of 1879) and in the odd case of larceny tried by a higher court over the years 1882, 1890, 1898 and 1904 – the last year that is currently properly inventoried; source: S[uffolk] R[ecord] O[ffice], I[pswich] B[orough] R[ecords], C8/8 Papers (April 1882, July 1882, Oct.1882, Jan.1883); (April 1890, July 1890, Oct.1890, Jan.1891); (April 1898, July 1898,

which cover three-quarters of all prosecuted cases[10]. Included in this total are 351 cases of larceny (*vol*), embezzlement (*abus de confiance par salarié*) and receiving stolen goods (*recel*) processed by the Correctional Court of Caen[11]. Similarly, the Dutch case study is based on five samples from the Arrondissemental Court of Maastricht[12]. Although our samples contain over 80% of all prosecuted offences, their size is comparatively small (131)[13].

Despite its focus on prosecuted crime only our analysis does allow us to identify certain general trends. On average 78 and 71% respectively of the English and French cases studied were « victim-reported », that is, reported either by the victim –true of most cases- or by someone who clearly acted on the victim's behalf. A tiny number were reported by a third party. A third, more significant category includes crime discovered by the police, sometimes directly whilst on duty in the streets, sometimes indirectly as a result of an interrogation or property search of a person held in custody on account of some other offence. On average 20 and 22% respectively fall into this category. It is very likely that the share of « police-discovered » offences was even smaller in relation to the totality of recorded small property crimes. The Maastricht pattern is not as straightforward. On average 60% of the cases studied were « victim-reported », with offences discovered by the police averaging 35%.

Oct.1898, Jan.1899); (April 1904, July 1904, Oct.1904, Jan.1905); this data has been checked against the registers of the magistrates' court (SRO, BB 15/2/1/2 to 26) and the calendars of the court of Quarter Sessions (SRO, IBR, C8/2, Rolls II, 361 to 448); the classification scheme draws on Steer (1980, p.67, 73); for more information on each category see appendix; for an application see Davis (1985, ch.5).

10 Our material is drawn from *dossiers de procédure* for the years 1879, 1894, 1902 and 1910, checked against the court registers (*minutes du tribunal correctionnel*). For the decade 1882-1892 hardly any dossiers have been preserved; in addition, none of the other years can be entirely reconstituted; source: A[rchives] D[épartementales du] C[alvados], U 4406, 4408, 3107, 3228, 2956, 2820, 2802, 3347, 2805, 4407 (for 1879); U 3083, 3238, 3360, 3402, 3283, 3017, 3139, 2992, 3309, 3235 (for 1894); U 2808, 2985, 3188, 3349, 3342, 3316, 3267, 3424, 3405, 3435, 3428, 3386 (for 1902); U 2912, 3000, 3024, 3210, 3055, 3241, 3294, 3298, 3299, 3449, 3390, 3071 (for 1910); for the court registers see ADC, series U 2275.

11 By larceny we have understood both the misdemeanour (*délit*) of common larceny (*vol simple*) and the felony (*crime*) of larceny as an employee (*vol par un domestique ou homme de service à gages*), the overwhelming majority of which were routinely sent for trial to the Correctional Court; the felony of *abus de confiance par salarié* was also routinely « correctionalised »; *recel* was a misdemeanour in French law; on correctionalisation see also Santucci (1986, p.248, 257).

12 Included are cases of common larceny (*eenvoudige diefstal*), larceny as an employee (*diefstal in dienstbaarheid*), embezzlement (*verduistering in persoonlijke dienstbetrekking*), and receiving stolen goods (*heling*); under the 1886 Penal Code all medium-range offences and more serious crimes– henceforth bracketed together as *misdrijven* –were heard by Arrondissemental Courts only.

13 None of the surviving archives of prosecutorial offices in the Netherlands seem to have preserved procedural dossiers; our case study relies on official reports (*processen-verbaal*) of the municipal police as an alternative source; by checking offences reported to the local police against data from the court registers of corresponding years I have been able to compile samples; 1886 and preceding years have been left out given the introduction of a new Penal Code in 1886; source: G[emeente] A[rchief] M[aastricht], Archief v.d. Commissaris van Politie, Nrs.108 & 702 (for 1890); Nrs.637, 704, 714 (for 1894); Nrs.710 & 719 (for 1898); Nrs.637, 638, 723 (for 1902); Nrs.639, 640, 728 (for 1906); for the court registers see R[ijks] A[rchief] L[imburg], Arrondissementsrechtbank Maastricht, Strafvonnissen, Nrs. 491-493, 499-501, 510-513, 522-525, 534-537.

Table 1: Reporting, discovery and detection of prosecuted common property offences, Ipswich (1882, 1890, 1898, 1904); Caen (samples from 1879, 1894, 1902, 1910); Maastricht (samples from 1890, 1894, 1898, 1902, 1906).

	Ipswich				Caen				Maastricht				
Reporting & discovery of crime	1882	1890	1898	1904	1879	1894	1902	1910	1890	1894	1898	1902	1906
1. crime reported by victim	66 *(84.6)*	31 *(67.4)*	64 *(80.0)*	76 *(81.7)*	35 *(70.0)*	62 *(68.9)*	71 *(71.0)*	84 *(75.7)*	8 *(44.4)*	13 *(54.2)*	21 *(60.0)*	16 *(84.2)*	21 *(60.0)*
2. crime reported by other	1	–	–	1	6	5	3	6	–	2	–	1	3
3. crime discovered by police													
a. directly	5	12	12	13	3	14	19	12	4	4	6	1	5
b. indirectly	6	3	4	3	6	9	7	9	6	5	8	1	6
TOTAL	78	46	80	93	50	90	100	111	18	24	35	19	35
Detection techniques:													
4. interviewed in other connection	1	1	3	4	3	2	3	3	4	5	8	–	3
5. search of property	3	3	1	1	3	9	–	5	–	1	1	–	–
6. offender caught in the act by police	3	4	5	4	1	8	4	3	–	2	3	1	2
7. identity known from outset	53 *(67.9)*	21 *(45.6)*	36 *(45.0)*	39 *(41.9)*	35 *(70.0)*	50 *(55.5)*	63 *(63.0)*	77 *(69.4)*	6 *(33.3)*	8 *(33.3)*	9 *(25.7)*	8 *(42.1)*	11 *(31.4)*
8. description from victim etc.	2	–	4	7	2	11	5	4	–	3	4	5	2
9. at scene/search of area	1	1	–	–	–	1	1	1	–	–	–	–	–
10. ready access/obvious motive	–	–	4	–	–	–	–	–	–	–	–	–	–
11. house–to–house enquiries	2	1	4	3	–	–	1	1	–	–	–	1	1
12. offender gave himself up	–	–	1	1	–	–	–	1	–	–	–	–	1
13. pawnbroker's action	6	1	–	3	1	1	1	2	–	1	–	–	–
14. trap	2	2	2	3	–	–	–	–	–	–	–	–	–
15. scene of crime examination	–	–	1	–	–	–	–	–	–	–	1	–	–
16. placesofdisposal	3	4	5	7	2	–	2	2	1	2	4	3	10
17. stop/search	–	5	8	8	–	6	15	9	4	2	3	–	3
18. information	–	–	–	3	2	–	3	2	1	–	–	–	–
19 .local police knowledge	–	–	1	1	–	–	1	1	2	–	1	–	–
20. unclear	2	3	5	9	1	2	1	–	–	–	1	1	2
TOTAL	78	46	80	93	50	90	100	111	18	24	35	19	35

Source: see notes 9, 10 and 13.

Notes: all percentages are shown in italicised form and placed in parentheses; for more information on the classification scheme see appendix;
sample sizes:
Caen: 1879: sample of 50 cases (total = 70 cases)/1894: sample of 90 cases (total = 116 cases)/1902: sample of 100 cases (total = 128 cases)/1910: sample of 111 cases (total = 147 cases).
Maastricht: 1890: sample of 18 cases (total = 21 cases)/1894: sample of 24 cases (total = 29 cases)/1898: sample of 35 cases (total = 37 cases)/1902: sample of 19 cases (total = 26 cases)/1906: sample of 35 cases (total = 37cases)

Further in line with Davis' work our evidence also highlights the key role of private individuals in detecting thieves and embezzlers. Listed in the table are various strategies most likely to lead to arrest and prosecution. Regarding Ipswich this table reveals that in approximately 54% of cases studied the perpetrator's identity was either known to the victim from the outset or elicited following suspicions raised by the victim or following a description from the latter[14]. The sample from Caen shows an average of 70%. Again, Maastricht's score is the lowest with an average of 44%. Only a small number of the cases in Ipswich and Caen (15 and 12% respectively) was successfully solved by the police through some sort of special expertise[15]. The percentage for Maastricht turns out to be relatively high (27%). The peculiarity of the Dutch case throws up a series of questions addressed further on. For our purposes it is important to observe that the « typical » theft or embezzlement that reached the authorities in Ipswich or Caen was a « victim-reported » crime committed by someone who was either known to or suspected by the victim from the outset.

Perceived as a lesser threat to social order, minor violent crime was even more likely to be policed by members of the public. Generally speaking, our analysis of assault cases heard by the Ipswich magistrates' court, the Correctional Court of Caen and the Arrondissemental Court of Maastricht corroborates existing work on London. Similarly, our findings confirm the suggestion that the victim behind most prosecutions was a working person[16]. This stands in direct contrast with common property crime: in approximately eight out of every ten prosecutions the court in each town acted on behalf of members of the local middle-class groups[17]. This last conclusion contains few surprises.

Prosecution and trial in Ipswich

The following stages of law enforcement remain to be analysed in much greater detail, partly because the policing of public order offences has been central to English historiography of this period. The point here is to scrutinise prosecution arrangements with respect to medium-range crime in Ipswich. Only the generalities of prosecution are well known. There was no formal system of state prosecution in late 19th century England, so far as the vast majority of crimes was concerned. Though the expense of prosecuting felonies (e.g., larceny) and certain misdemeanours was largely paid from public funds, the victim or someone acting on his/her behalf was still legally responsible for initiating (i.e. lodging a complaint with a magistrate and possibly applying for a summons) and forwarding most prosecu-

---

[14] See categories 7 and 8 of Table 1.

[15] See categories 16 to 19 of Table 1 ; on police skills and novel detection techniques see Emsley (1987, p. 191).

[16] The English case study is based on the summary offence of common assault; the French sample includes the misdemeanour of *coups* or *coups et blessures*, as well as assault and wounding of a parent or guardian, the only type of assault that was legally a felony but in practice repeatedly correctionalised; the Dutch sample includes both the charges of *mishandeling* or *mishandeling en verwonding* and the distinct offence of assault (and wounding) of a parent, spouse or child – both were heard by the Arrondissemental Court; see Mellaerts (1997, ch. 3); see also Davis (1989, pp. 413, 417-419).

[17] The analysis is based on compilations of greater numbers of cases than those analysed for Table 1 ; for details and classification criteria see Mellaerts (1997, ch. 2).

tions. Research suggests that without acquiring new legal powers either to prosecute or to compel a party to do so, the local police were increasingly managing prosecutions for felonies, largely due to their extensive powers of arrest. In brief, a policeman was obliged by law to arrest anyone whom he saw in the act of committing a felony –in which case the police themselves were authorised to prosecute-, or any person positively charged with a felony by a victim or a third party. The latter scenario appears to have been much more common: the victim or another person called an officer to have the suspect arrested and the officer brought the former before a magistrate to lodge a complaint in order to start proceedings. Thus, what was legally a private prosecution amounted in practice to a semi-public prosecution[18].

Criminal records reveal little about prosecution practices. Nevertheless, the notion that victims of property crime tended to rely on the police lending a hand in prosecution, is confirmed by two pieces of evidence. One is that on average only 8% of minor property offenders tried by Ipswich magistrates were discharged. This is surprisingly low given prosecution was rarely preceded by a distinct, formal preliminary hearing (designed to consider *prima facie* evidence and possibly a referral to a higher trial court). We will see just how stark the contrast is with prosecutions for assault[19]. The low discharge rate as well as the high proportion of prosecutions for minor property crime brought by or on behalf of middle-class people (in contrast with assault prosecutions) can only be fully explained if one takes on board the new function of the police as «clearing-house» for most felony prosecutions. Basically, the police tended to apply a great measure of discretion before backing a private individual to take the matter further.

Any suggestion that victims were per definition bent on outright prosecution, let alone conviction, has been dispelled by research that has emphasised the diversity of public attitudes towards crime and justice. The important question is to what degree victims were effectively in charge of initiating prosecution given the involvement of the police. Instances where the aggrieved party's formal consent was required for prosecution (ie. the procedure of lodging a complaint with a magistrate) constitute the overwhelming majority of cases and form the focus of our study[20]. One conclusion is that when called to arrest a suspect, the police tended to exercise pressure on the victim depending on the suspect's identity (and especially on this person's criminal record) as well as the specific nature of the crime. In one case, a chemist had a 13 year-old paper-boy arrested for shoplifting. After a night in police custody the chemist let the youth off, provided he never enter his shop again. However, proceedings followed because the police, the prosecuting shopkeeper claimed during cross-examination, wanted him to. It is likely they had been motivated by the fact that the offender already had several convictions to his name[21]. In a similar case, the

---

[18] Hay, Snyder (1989a, pp. 34-39, 42-45); Emsley (1987, pp. 147-150); Taylor (1998, pp. 577-580); *Stone's Justices' Manual* (1891, pp. 126-129); Radzinowicz (1956, pp. 57-82); Radzinowicz, Hood (1968, p. 165).

[19] Virtually all criminal proceedings for indictable offences began in the magistrates' court; following legislation passed between 1847 and 1879 local JP's evolved from examining magistrates into trial judges with respect to most minor property crimes; on the preceding period see Hay (1983, pp. 178-179); Hay (1989b, p. 380).

[20] It is estimated that on average only five percent of all prosecutions for minor property crime were formally in the hands of the police; the analysis is based on the samples used for Table 1.

[21] SRO, IBR, C8/8 Papers, Box 47 [Jan.1882] and S[uffolk] C[hronicle], 19 Nov.1881, Suppl. p. 2 (Th.Waller).

landlord of a public house who had caught a 12 year old attempting to steal money, handed him over to a constable « with the intention of frightening him ». Again, he ended up prosecuting the boy, in this instance for attempted larceny. It is likely that the police encouraged him to do so on account of the youth's record as « one of the worst young criminals they had in Ipswich »[22]. Clearly, the other side of the coin is that it was possible to have someone arrested, cautioned and even undergo a spell of detention in a police cell, without the matter going any further[23].

The Ipswich police also seem to have applied considerable pressure if they had been involved in tracing the suspect or had been near the scene of the crime. In a case of the second type, a builder found himself prosecuting a slater, employed by another builder, for stealing 24 slates. At the time of the incident, the builder explained to the court, he did not think that the person charged had any felonious intent by taking some slates. He claimed that he « would not have instituted proceedings had not the constable been with him »[24].

Once a complaint for a felonious offence had been lodged with a magistrate, there was less room for manipulating the criminal process. Legally, magistrates could not consent to a withdrawal from prosecution. In practice, however, a prosecution would drop if the private prosecutor offered no evidence, provided the police did not apply pressure or prosecution was not pursued under a different guise (e.g., if the police decided to bring another victim in the case before the court)[25]. The overall impression is that compromise was more of an option if the police were not involved in prosecution; if the offence was relatively minor and the accused without criminal record; and in the case of a dispute between a parent and child[26]. We have also systematically analysed all charges of larceny and embezzlement recorded in the court registers of 1886 -our analysis shows that a mere 6% were withdrawn[27]. One might speculate that the finding that so few withdrew from prosecution at this point supports the notion that a majority of proceedings were initiated with the real consent of the victim. Clearly, we need further proof to substantiate this assessment. We believe that analyses of trial proceedings can also provide some clues. First, however, let us briefly consider prosecution practices in the field of minor violent crime.

There is nothing very new about the finding that most prosecutions for common assault were « private » in the true sense of the word. Because police powers of arrest were limited in the case of misdemeanours, most proceedings tended to be initiated

---

22 SC, 18 Sept. 1880, Suppl. p. 2 (H.Sergeant); it was common for the police to inform complainants of an offender's record and reputation (see, e.g., SC, 5 Sept. 1885, Suppl. p. 3 (Th.Bradbrook *et al.*)).

23 The ease with which a suspected thief could be arrested and taken into custody on flimsy evidence is also documented by those few cases which gave rise to civil actions for illegal arrest and false imprisonment (see, e.g., SC, 7 March 1891, p. 7 (H. Bennett v. R.D. Fraser and Gilbey)).

24 SC, 20 March 1897, p. 6 (E.A.Keys); for an example of the first category see SRO, IBR, C8/8 Papers, Box 66 [Jan.1895] and SC, 3 Nov. 1894, p. 3 (E. Baldwin).

25 As explained in SC, 9 March 1889, Suppl. p. 3 (E. Daniels).

26 See SC, 14 April 1883, Suppl. p. 3 (F. Allen), SC, 14 April 1883, p. 6 (J.T. Clements), SC, 3 Nov. 1888, p.6 (A. Allard), SC, 17 Nov. 1894, p. 7 (E.W. Cross), SC, 16 Jan. 1897, p. 6 (H.R. Baker), SC, 10 Sept.1898, p. 7 (J. Price), SC, 17 June 1899, p.3 (H.W. Riches and P.W. Tait), SRO, IBR, BB 15/2/1/22, under nr. 231 (A.E. Watling), E[ast] A[nglian] D[aily] T[imes], 5 Aug. 1904, p. 3 (Ch.W. Osborne).

27 SRO, BB 15/2/1/5&6; the absence of relevant depositions makes any interpretation a hazardous enterprise; newspaper coverage provides some information.

without police interference (i.e. in addition to lodging a complaint with the court, applying for a summons which was within the reach of nearly all)[28]. Excluded from our analysis are assault-related disputes that ended in a prosecution for a public order offence. The notion that prosecution was relatively easy and accessible is corroborated by evidence suggesting that rates of cases thrown out of court were considerably higher than in the case of small property crime[29]. Further evidence lies in the fact that there was relatively more room for manipulating criminal procedure in its further stages. Various private prosecutors were only interested in intimidating the accused with a court appearance or having him or her cautioned by the court. What is novel about our analysis is that evidence suggests that, even during this period, the local magistrates were prepared to allow prosecutors to compromise in nearly all common assault cases. It was customary for the court to comply with such a request, provided both parties agreed to a withdrawal and the accused paid the cost of the summons. In jurisprudence this remained a matter of dispute[30]. I would take issue with research that suggests that the judicial tendency to treat assault cases as a private concern was radically transformed after the late 18th century. Unfortunately, the vast majority of cases, dealt with by the local JP, has not yet been subjected to detailed analysis[31].

This brings us to the question of private individuals' input (victims and third parties) in trials. Magistrates' courts occupied a central position among trial courts in late 19th-century English society. The large shift of medium-range criminal business from higher courts to the lowest court was a shift away from trial by jury – still advocated as a cornerstone of the constitution which supposedly inculcated a belief in « British justice » - as well as, in most cases, from decision-making by a legal professional.[32] As in most other English towns, the lowest criminal court in Ipswich was in the hands of unpaid, untrained and locally selected JPs. They were men of local standing, Liberals as well as Conservatives[33]. Proposals to introduce a professional local magistracy, appointed, salaried and promoted by central government, were

---

28 The police were only entitled to arrest an offender if they had witnessed the act or had seen obvious marks of violence on the victim; see Radzinowicz, Hood (1968, p. 175, 198); Davis (1989, p. 413, 417); Woods (1985, p. 169); note also a certain reluctance on the part of the police to arrest assailants when it was in their power to do so (see SC, 20 July 1889, p. 6 (J. Fozzard); SC, 27 May 1882, p. 7 (R. and J. Harvey); summonses could be granted free of charge provided there was sufficient evidence of injuries (see SC, 29 July 1899, p. 7 ([Anon.])).

29 My estimate is based on prosecutions for assault, as well as aggravated assault on women and children and applications for sureties of the peace – a singular English sanction applicable against persons who are threatening to attack someone physically- brought in 1886 and 1902 (source: SRO, BB 15/2/1/5&6, 22&23): in 1886 29 out of 114 cases were dismissed, in 1902 22 out of 92.

30 For an explicit reference to magisterial custom see SC, 5 April 1884, Suppl. p. 2 (F. Playford and C.A. Martindale); *Stone's Justices' Manual* (1891, p.133); note also that faced with such a request in the case of an indictable violent crime (e.g., malicious wounding) the court occasionally met a victim half-way by reducing the charge to a common assault (see, e.g., SC, 16 Oct.1897, p. 3 (W. Sheppard); I[pswich] J[ournal], 15 Dec.1899, p. 6 (A. Blyde)).

31 King (1996, pp. 46-47, 72) does agree that much more research is required; see also Landau (1999).

32 On official thinking on the symbolical qualities of the jury system see, e.g., Emsley (1987, p. 162); Behlmer (1994, pp. 236-237).

33 See *Steven's Directory of Ipswich, 1894* and various other local directories; from 1893 the Ipswich bench counted 10 Liberals, 14 Conservatives and one Liberal Unionist (SC, 25 March 1893, p. 5); on the local élite see also Hills (1988).

partly defused due to a persistent belief in a tradition of involving local élites in law enforcement[34].

Unfortunately, there is insufficient evidence to establish with any certainty whether trial proceedings for minor property crime were actually conducted by the private prosecutor or by the police acting on the latter's behalf. Was there anything of real substance to the formal part of the private prosecutor in trial procedure? The real significance of this procedural feature can be read, in as far as magistrates cared to motivate their judgement and the local press recorded the hearing, from those instances where a prosecutor interceded on the accused's behalf and the sentence was tempered in view of the prosecutor's action. Although this phenomenon has been noted by others, it has scarcely been seriously analysed for this period[35]. The same goes for the way in which trial procedure allowed third parties to intervene. Magistrates were generally known for their flexibility in applying the rules of evidence[36]. We find that both a leniency plea and a submission of evidence testifying to the accused's good character were devices which, depending on the social status of the person intervening (e.g. an employer, a clergyman, a landlord) could substantially affect sentencing. In the case of property crime the most likely beneficiaries were minor, first offenders.

In a typical case, magistrates decided to fine a waiter convicted of embezzling a small sum instead of jailing him in view of the defendant being a first offender, the prosecutor's desire not to press the charge unduly, in addition to character statements received « from several places »[37]. Even if the bench favoured an exemplary punishment, an intercession by the private prosecutor on the accused's behalf might still be a weighty consideration. To give one example, sentencing a van foreman to one month imprisonment for a minor theft from his employers, the court stated that « the sentence would have been more severe but for the company's suggestion of a light sentence »[38]. On various occasions a person who enjoyed some social status, particularly an employer, came forward to testify to the accused's good character or statements or letters to that effect were submitted to the bench[39]. The suggestion that victims, particularly in the case of minor, casual offences committed by first offenders, were given some leeway can also be used to improve our understanding of prosecution practices.

Finally, the evidence regarding minor violent crime shows unsurprisingly that the say of private prosecutors was more far-reaching. Usually the court was prepared to meet a prosecutor's request of leniency by recording a fine. In a few instances victims gave to understand that they preferred the assailant to be bound over to keep

---

34 Radzinowicz and Hood (1986, pp. 618-624); Emsley (1987, pp. 154-162).

35 Some reference to solicitations of private prosecutors and third parties is made by Radzinowicz and Hood (1986, p. 726), and Skyrme (1991, p. 272); a more substantial description of the intercession by private prosecutors or victims of crime in adjudication is presented by Davis (1989).

36 Despite the growing complexity of the law of evidence, magistrates' courts were known to adopt a commonsensical and less rule-based approach; see *Report of the R.C. on Divorce and Matrimonial Causes*, vol.I, P[arliamentary] P[apers] 1912-13 (Cd.6479) XVIII, q.11,409 (testim. of Percy T. Pearce, repres. of Plymouth Incorp. Law Society); Waddy (1925, p. 18); Page (1936, pp. 30-31).

37 SC, 31 Aug.1895, p. 6 (F. Krauter).

38 SC, 20 April 1889, Suppl. p. 2 (Ch. Read).

39 SC, 18 Nov. 1893, p. 6 (H. Stacey); SC, 21 Oct. 1893, p. 7 (R. Gair); SC, 21 Sept. 1895, p. 3 (J.H. King and A. Palmer).

the peace – a well-established sanction in English law – rather than seeing him/her punished. What transpires is that this strategy was most likely to be allowed in assault cases related to a family dispute. In one such instance, the father of a labourer prosecuting his son intimated that he did not want to press the charge, but « all he wanted was to get him out of his house, for when he was at home he was always upsetting it ». The court decided to bind over the defendant on the understanding that he left the house[40]. Evidence further suggests that this sort of arrangement was always allowed in spouse abuse cases, provided they did not constitute an aggravated assault[41]. For a fuller understanding it is extremely useful to place these findings in a comparative perspective.

Prosecution and trial in Caen

Following the radical departure from a long-standing tradition under the Constituent Assembly, the Napoleonic régime returned to a strong system of State prosecution[42]. The state prosecutor's office was responsible for initiating and forwarding most publicly funded criminal prosecutions[43]. Although private citizens were legally entitled to bring private proceedings in the Correctional Court under the supervision of the Public Prosecutor (*Procureur de la République*), provided they bore the cost, in practice people generally relied on state prosecutors taking action.[44] That being the case, short of lodging a complaint with the police or directly with the prosecutor's office (*parquet*), the victim bore no formal responsibility in the criminal process, except when it came to certain singular crimes such as adultery. In other words, the decision to bring a case into a trial court, which in this period was more often made by the Public Prosecutor than by judges sitting in private, was not conditional on the victim registering a formal complaint with either of these agencies.

However, prosecution practices on the ground in Caen were much more complex. First of all, a word of caution about the relationship between police and *parquet* is important. Our evidence has confirmed the observation made by several historians that in spite of the stipulations of French criminal procedure, Police Commissioners and Inspectors exercised a measure of discretion in referring reported misdemeanours and felonies to the *parquet*[45].

---

40 SC, 28 Jan. 1888, p. 6 (R. Snell); for other examples see SC, 15 May 1886, Suppl. p. 2 (A. Lockwood); SC, 16 Jan. 1890, p. 6 (J.E. Golding); SC, 8 Oct. 1891, p. 6 (A. Daniels); SC, 13 Aug. 1898, p. 7 (W.J. Rainer); EADT, 17 March 1896, p. 2 (J. Hughes).

41 Based on an extensive reading of newspaper coverage of domestic violence cases brought before the Ipswich magistrates' court; note that even in the case of an indictable violent crime (e.g., malicious wounding) magistrates could take into account the complainant's desire not to press the charge, as a result of which the charge could be reduced to a summary offence, the case could be tried on the spot and the offender could be bound over (see SC, 12 Sept. 1896, p. 7 (H. Smith)).

42 Martin (1990, pp. 137-142); Schnapper (1991, pp. 377-378).

43 The exception are a series of offences prosecuted by other administrative bodies.

44 Half of all private prosecutions were for slander, mostly relating to press offences; see Schnapper (1991, pp. 378-387).

45 It has been observed that when drawing up an official report (*procès-verbal*) Commissioners and Inspectors exercised some discretion, probably with the permission of the *parquet*, because they had to ascertain whether the act amounted to an offence before forwarding the case to the Public Prosecutor (note that within the municipal police only senior police officials exercised these powers of investigation); see Lévy (1985, p. 64); Bernard (1987, p. 131); Santucci (1986, p. 25).

Again, for reasons outlined before, our focus is on small property cases where it was the victim who informed the authorities[46]. Although legally immaterial, the victim's consent seems to have been, under certain circumstances, a significant consideration even beyond this stage. For example, in one instance the Public Prosecutor decided not to initiate proceedings against a maid charged with stealing 40 fr. from her employer, considering, according to the primary sources, the complaint had been retracted and financial restitution had been offered[47]. Something more about this practice can be inferred from evidence on correctional sentencing in Caen. The reason is that there appears to have been an inverse correlation, at least in the 1900s, which was a period when a suspended sentence (*sursis*) was an appreciable penalty in dealing with (deserving) first offenders, between its application and the *parquet*'s willingness to take on board the complainant's opinion about prosecution[48]. Therefore, judging from the evidence on suspended sentencing, we would suggest that the weight of an intervention by the owner hinged, among other things, on the suspect being a first offender and having offered restitution or compensation. We have also analysed a mixed bag of cases prosecuted despite the retraction of the complaint. This tends to show, rather unsurprisingly, that another major precondition was the small value of the goods appropriated[49].

There is also plenty of evidence from the *parquet* records suggesting that in minor embezzlement cases proceedings were only initiated with the consent of the aggrieved party. Occasionally an employer put a case of embezzlement in the hands of the Public Prosecutor on the express understanding that no proceedings be started if the money embezzled was returned within a set number of days[50]. The records also include various examples of theft committed by a domestic servant or charwoman where proceedings were stopped due to a retraction of the complaint and restitution[51]. The notion that embezzlement and employee theft constituted a distinct category is corroborated by evidence suggesting that this type of consideration was acted upon by the police. The overall impression is that rather than having to register a complaint with a senior police official and seeing it referred to the *parquet*, if the matter was to be taken any further, employers brought employees to the police station only for the police to supervise and sanction some kind of arrangement between the parties[52].

---

46 The police were the main agency in urban areas responsible for reporting offences to the prosecutor's office; on the basis of prosecuted cases (see note 10) it is argued that offences witnessed by a police officer, most of which were quay pilferings, constituted only a tiny fraction of those known to the police.

47 ADC, U 2593, 6 Sept. 1902 (F. Vallet); the *parquet* archive provides our primary source material.

48 Dossiers of prosecuted cases (*dossiers de procédure*) contain a statement concerning or reference to the withdrawal of the complaint, if this had occurred; there is a concentration of such statements or references in the dossiers of the sample years 1902, 1906, and 1910, and very few in those of the sample years 1879, 1894 and 1898 (see note 17).

49 See, e.g., ADC, U 3228, 16 Aug. 1879 (A. Coupey); ADC, U 3083, 25 Jan. 1894 (V. Lemonnier); ADC, U 3402, 26 April 1894 (M. Dervillet); ADC, U 3188, 4 Aug. 1902 (Vengeon); ADC, U 2876, 26 Feb. 1906 (Chistel).

50 See, e.g., ADC, U 2538, 31 May 1883 (D. Blanchard); ADC, U 2541, 16 June 1884 (P. Doux); ADC, U 2555, 7 June 1890 (Gravent and Albert); ADC, U 3049, 11 Jan. 1906 (Jousse).

51 See, e.g., ADC, U 2540, 7 Jan. 1885 (H. Saudin); ADC, U 2593, 6 Sept. 1902 (F. Vallet); ADC, U 4430, [1909] (Cadet).

52 Sometimes in the form of an IOU; see, e.g., ADC, U 3267, 11 Dec. 1902 (Lebourgeois); ADC, 2U/119, [1906] (Girodias); ADC, U 4430, [1909] (Cadet).

It would be even more misleading to assert that complainants in cases of assault had no say once the *parquet* had been informed. In one instance, describing their visit to the police station, the two parties involved reportedly said that «*[il] nous a été répondu que c'était notre affaire, Mr. le commissaire ajoutant qu'il fallait que nous le prévenions si nous ne voulions pas donner suite au procès*»[53]. Based on the available evidence, it is our contention that the public prosecution was prepared to halt the criminal process if the relevant complaint was withdrawn, provided the violence inflicted was «*sans gravité*». This term seems to have covered all but serious wounding[54].

Moving on from prosecution arrangements to court hearings, the most striking difference with the English case is that private citizens, including men of local standing, were formally virtually excluded. It is a commonplace that the French Revolution, with the exception of a period of radical experimentation, and particularly the Napoleonic régime furthered the subordination of the judiciary to the power of the state.[55] More important for the purposes of analysis is the fact that correctional cases were conducted by the public prosecution. Victims could only formally participate as anything other than a witness in a capacity as civil litigant (*partie civile*) bringing simultaneously an action for monetary damages against the accused. Extremely few were able to do so and the only known instances were assault proceedings[56]. To be sure, this does not mean that the complainant's opinion made no impact at all on sentencing. This was marked in assault cases related to a family dispute. In one such instance, having reported her 21 year-old son, a woman day labourer called on the Public Prosecutor «*de lui donai la loi Béranger quil ne recommencera pas*». In the event, the court granted her wish for a suspended sentence (*loi-Bérenger*)[57]. Furthermore, there is evidence suggesting that the victim's views could affect the reduction of a charge of assault to a minor violation and could thus indirectly influence the severity of the sentence[58]. What is implied is that for an accurate comparison with the English case, we need to include the offence of *violences légères* (a scuffle) which was tried by the *tribunal de simple police* (Police Court), the lowest criminal court. Contrary to the letter of the law, this minor violation covered a huge range of acts of aggression. For instance, it was common practice for the public prosecution to redefine an assault case as one of *violences légères*[59]. In the final analysis, however, the qualitative difference with the English

---

53 (My emphasis); ADC, U 2541, 3 June 1884 (A. Manchon and V. Tourmente).

54 Cases of wounding involving the use of a weapon appear to have been prosecuted irrespective of a victim's opinion (see, e.g., ADC, U 2797, 21 June 1906 (Bouchard)).

55 Lévy, Rousseaux (1991, pp. 117-122); Martin (1990, pp. 157-162); Badinter (1989).

56 That is, cases where the victim brought a civil suit for damages concurrently with the criminal proceedings brought by the state; in 1879, 1894, 1898, 1902, 1906 and 1910 on average only one prosecution for assault or assault and wounding was supported by a civil claim; note that witnesses were only to give oral evidence if they were called by the presiding judge, see Martin (1990, p. 176).

57 [Original spelling] ADC, U 3435, 19 June 1902 (Lance); for other such instances see ADC, U 3299, 30 June 1910 (Lemoine); ADC, U 2976, 26 July 1906 (Brisset); ADC, U 2275/110 [1906] (Dacier); ADC, U 3024, 3 Oct. 1910 and U 2275/118 [1910] (Féret).

58 The input of complainants in this matter is suggested particularly by ADC, U 2636, 30 Nov. 1889 (Catherine).

59 See Hélie (1920, pp. 548-549); Cambuzat (1879, p. 502); some examples from Caen are ADC, U 2542, 2 Sept. 1886 (M. Chaignard); ADC, U 2517, 10 Aug. 1886 (A. Thierry); ADC, U 2636, 30 Sept. 1891 (Clérisse); ADC, U 2637, 7 July 1892 (J. Ruault); ADC, U 2517, 13 Aug.1886 (L. Bertrand).

case lies in the fact that the victim's opinion was not formally, nor systematically, nor publicly articulated, nor were trial judges allowed as much room to accommodate private interests. To further our analysis we will now present the Dutch case which displayed many similarities with the French case.

Prosecution and trial in Maastricht

One year after the country's annexation by the French Empire in 1810, the Napoleonic legal codes and administration were introduced in the Netherlands[60]. The new state prosecution bureaucracy replaced a polycentric, republican system of public prosecutors who represented the interests of a local or provincial authority. Despite alterations in 1838 and 1886, the essentials of the French system were kept in place. A significant change was that private citizens relied by law exclusively on public prosecutors, that is, with the exception of certain crimes (e.g., tax offences) prosecuted by other government departments. The impact of annexation on law, the court system and the judiciary was equally revolutionary and long-lasting. An indication of the growing distance between the two legal systems was that following legislation in 1877 regarding Cantonal Judges, those at the bottom of the judicial hierarchy, all Dutch judges were legally educated[61].

In view of the legal and institutional similarities in policing, prosecution and trial, we have decided to concentrate on two features distinguishing the Dutch from the French case. Firstly, as with French historiography, Dutch writing has now incorporated the idea that the police which was the main agency reporting offences to the Public Prosecutor (*Officier van Justitie*), displayed a degree of discretion in dealing with crimes that reached them[62]. What we would add is that its scale was much larger in Maastricht than in Caen. One of the pieces of evidence is that more than eight out of every ten cases of minor property crime sent on by the municipal police to the prosecutor's office ended in a prosecution, which calls for an explanation along the lines suggested[63]. Further proof can be deduced from a preserved set of police case books that include reported thefts that were never recorded on an official form (*proces-verbaal*), let alone sent on to the prosecutor's office[64]. On a day-to-day basis, substantial powers were delegated from the judicial authorities to the municipal police.

Second, it is crucial to analyse major variations in prosecution rates for minor property crime. During this period rates were on average three times lower in

---

60 Note that the region of Limburg, including Maastricht, was a special case in that it had been integrated into France already in 1794.

61 van Boven (1990); Bosch (1992, pp. 19-23); on the prosecution of tax offences see Wortel (1991, pp. 29-30).

62 See, e.g., Faber (1993, pp. 13, 16, 19); in Maastricht a proportion of criminal complaints were referred to the prosecutor's office by other agencies, in particular the *Koninklijke Maréchaussée*, a small state police unit which was deployed especially to police rural vagrancy.

63 In 1890 16 prosecutions were instituted out of a case-load of 22 complaints of theft, embezzlement, or receiving stolen goods, referred by the Maastricht police to the Public Prosecutor attached to the local Arrondissemental Court, in 1894 the rate was 21:25, in 1898 32:36, and in 1906 35:43; we have excluded 1902 as a sample year given it includes an exceptionally high number of juvenile thefts, most of which remained unprosecuted; for sources: see note 13.

64 Police case books have been preserved for the early 1880s and the 1900s; for an example see GAM, Arch.Comm.v.Pol., Nr. 46 («*Dagboek*», [1882]).

Maastricht than in Caen: 8.7 per 10,000 inhabitants, which is broadly in line with a national trend, compared with Caen's 23.7[65]. This leads us into an apparent paradox: how can we explain the coexistence in the Dutch case of comparatively low prosecution rates for minor property crime with a model of local policing (e.g., powers of arrest, professionalism, patrolling and surveillance) and prosecution levels for violent crime and for petty public order offences that were similar to Caen's[66]? A plausible, partial explanation may lie in differences in the «true» incidence of certain kinds of property crime, yet we would like to develop a supplementary hypothesis, building on figures presented earlier[67]. Judging from Table 1, an above average proportion of prosecutions for minor property crime in the Dutch case were for offences discovered by the police. In addition, a study of detection techniques reveals that a peculiarly high proportion of prosecutions (53%) concerned cases where the suspect had been traced either by the police or using a technique that implied their involvement[68]. In short, in dealing with a «typical» theft or embezzlement (a «victim-reported» crime committed by someone who was either known to or suspected by the (middle-class) victim from the outset) the police and judicial authorities in Maastricht appear to have been more inclined to consider prosecution «inexpedient»[69]. The question that arises next is why this should have been so. At the same time, our findings will be placed in a wider, interpretative framework.

State and local community

Over the past decade the integrative role of law and justice has become a major research topic. It is clear that, historically, the rise of the nation-state was accompanied by the expansion of «state law» and royal justice. Criminal justice has increasingly been interpreted as a mechanism that served to reinforce the power of the sovereign in the eyes of the population[70]. The picture that emerges is that partly due to the country's major political crises and early democratisation, governments particularly in Third Republic France used law and judicial action as critical instruments to constrain regionalisms and the influence of traditional local élites and assert the moral authority of the nation-state[71]. It is obvious that judicial centralisation in

---

65 The analysis is based on court registers and covers all minor property offences committed in the towns of Caen and Maastricht and processed by local courts (for definitions see notes 10&11); sources: see notes 9 and 12; the figures for Maastricht are as follows: (1890) 6.5/10,000 (32,292 inhab.), (1894) 8.7/10,000 (33,149 inhab.), (1898) 10.8/10,000 (34,006 inhab.), (1902) 7.4/10,000 (35,199 inhab.), (1906) 10.1/10,000 (36,504 inhab.); for Caen: (1879) 17.5/10,000 (39,864 inhab.), (1894) 26.3/10,000 (44,087 inhab.), (1898) 21.8/10,000 (44,459 inhab.), (1902) 28.5/10,000 (44,830 inhab.), (1906) 24.5/10,000 (45,201 inhab.); for national trends see criminal statistics.

66 Patterns of judicial repression of petty public order offences are discussed in the second part of this article.

67 For a personal view of the «true» amount of larcenies and burglaries in Maastricht see *Notulen van de gemeenteraad van Maastricht*, 1902, p. 515.

68 In the French case, by comparison, on average only 27% of prosecutions fall into these categories; by detection techniques that implied police involvement we understand those mentioned in categories 4 to 6, 9 to 12, and 14 to 19 of Table 1.

69 Both French and Dutch state prosecutors of this period were repeatedly urged by their superiors to seriously consider the desirability of initiating prosecution; see, e.g., Badinter (1992, p. 302); Faber (1993, p. 16).

70 Lévy, Rousseaux (1991, pp. 114-124).

71 Rosanvallon (1990, pp. 97-109); Schafer (1997, pp. 1-13).

France and the limited discretionary powers of judges were about much more than the set of factors usually mentioned (e.g., usefulness in dealing with civil disorder; a concerted process of unifying law and legal administration; ideologies of popular sovereignty and parliamentary supremacy)[72].

Historians are now much more aware that centralisation was a drawn-out process, extending well after the 19th century[73]. Drawing on our own case study, we believe due attention should be given to two points. First, the municipal police, which was in the first place a local government institution, was arguably one of the major constituent agencies of criminal justice. Secondly, to dispel generalisations about French criminal justice more emphasis also needs to be placed on the major role of private citizens in law enforcement, instead of concentrating on the legal powers of public officials. In particular, our study proposes that individuals rather than the police were responsible for channelling the majority of minor property and violent crime to the authorities, as well as for detecting most suspects in these areas. Although victims rarely bore legal responsibility further in the criminal process, our contention is that in practice there was a degree of flexibility which allowed complainants to express their opinion as to whether proceedings should be initiated and to substantially influence the decision, provided the offence in question was relatively minor and the guilty party a first offender. We have suggested that in the case of assault there is no need for such a qualification. As far as trial proceedings are concerned, although complainants were formally virtually excluded and the court was given very little leeway to take on board their opinion, to claim that the former had no say at all would be incorrect.

To assess the Dutch case let us start by identifying the process of state formation. The accepted view is that the period 1798-1830 was a decisive accelerating phase (e.g., major internal transformations resulting from the Batavian Revolution (1795) and French intervention). However, partly because major political divisions only emerged after 1870 and the franchise was (only) extended in phases after 1887, a major impetus for more intensive state intervention was largely absent for much of the 19th century[74]. Historians have started to substantiate the notion that judicial centralisation lagged behind the French pattern[75]. Our own observation is twofold. First, we need to theorise the extent to which even in this period legal powers regarding medium-range crime were delegated, on a day-to-day basis, from judicial officials to police officers. Secondly and more interestingly, we would suggest that the nature of the Dutch state carries a considerable burden of explanation for variations in prosecution levels for common property crime that existed between Maastricht and Caen. Faced with a « typical » theft or embezzlement (reported by or on behalf of a middle-class person) the judicial authorities and senior police officials in Maastricht were, it is argued, less inclined to detracting from existing informal sanctioning or regulation procedures, thereby affirming the power of state sanctions and the state at large, so long as these informal techniques reflected the local

---

72 On political conformity within the judiciary and judicial handling of political crime see, e.g., Royer, Martinage, Lecocq (1982, pp. 365-375); Tanguy (1990).

73 Lévy, Rousseaux (1991, p. 124).

74 See, e.g., de Bruin (s.d.); te Velde (1994, pp. 49-52); Dudink (1994, pp. 132-135); for a comparative view see de Swaan (1988).

75 Faber, van Ruller (1997).

community's hierarchical character of (e.g., restitution or compensation, whether or not sanctioned by the police).

The English political classes, for their part, were extremely apprehensive about greater state intervention and about extending the « bureaucratic system »[76]. With our case study of small property and violent crime in turn-of-the-century Ipswich we have tried to stress two points. We have mainly emphasised that private individuals continued to play a considerable formal and practical role in running the system. Notably, in the majority of cases the victim was still formally responsible for initiating proceedings; furthermore, the impression is that police pressure was scarcely brought to bear on potential prosecutors in the case of minor, casual property crime committed by first offenders and in most cases of assault. In addition, the significance, in comparative terms, of the formal participation of the private prosecutor in a trial lies in the fact that he/she was able to substantially influence sentencing decisions, even if proceedings for property crime were often effectively conducted by the police. Interestingly, trial procedure even allowed third parties to voice their opinion about the preferred judicial outcome.

The political argument against centralisation was reinforced by a certain ideology of justice, recently again articulated by Carolyn Conley. She argued that criminal courts, using their discretionary powers, tended to administer justice in a way that was in keeping with the local community's values and priorities (e.g., social reputation, common interests) and suggested that officials took care that they were being seen to do so[77]. Unfortunately, what is not stressed is that the image of a « community-based » system of criminal justice is at odds with that commonly described by historians of Victorian Britain. In line with British sociological thinking about the criminal law and E.P. Thompson's and Douglas Hay's analyses of 18th-century English criminal law, historians have tended to argue in favour of an ideology of fair and correct « British justice » (adherence to abstract, legal principles; observance of complex rules of procedure), which is seen as a major factor in generating popular support for « law » as a basic form[78].

However, the judicial style of the Ipswich magistrates' court was significantly different from that in higher criminal courts, as well as from that in the Caen and Maastricht courts discussed so far. Again, the comparative perspective provides some useful insights. Historians would agree that magistrates' or police courts which were largely unsupervised, were peculiar institutions in that they applied unwritten principles external to the case on a wide scale and dispensed summary justice with little concern for procedural niceties[79]. Arguably, magistrates were not overly concerned about presenting « justice » as being associated with the application of the law (the substantive and formal criminal law), which is also suggested by the court's notorious lack of judicial ritual[80]. Contemporaries noted that ordinary

---

76 Thane (1990, pp. 1-2, 35-36, 47).

77 Conley (1991, pp. 6, 16, 41-42, 203-204).

78 Harris (1993, pp. 10-11, 213-214); McKibbin (1990, pp. 24, 38); Johnson (1993, p. 166); an exemplary sociological study is Carlen (1976, esp. pp. 38, 63, 128).

79 Davis (1984); Emsley (1987, pp. 154-162); Conley (1991, pp. 12, 19); Radzinowicz, Hood (1986, p. 741); Skyrme (1991, pp. 221, 316-317); *Report R.C. Divorce*, vol.I, q.980 (testim. of Justice Bargrave Dean, Divorce Court judge), q.2900 (testim. of Charles H. Pickstone, County Court registrar, Bury (Lancs.)).

80 In contrast with the rules of ceremony and degree of solemnity of English higher courts and the Caen and Maastricht courts discussed; the argument draws on Rouland (1988, pp. 460-462).

people «[did] not look upon [the police court] as a legal place so much»[81]. Our proposition is that a weightier ideology was articulated around the notion of justice as being based on a consensus within the local community. Two analytically different aspects of this ideological agenda have to be separated out. One, well-known side of the argument refers to the accommodation of popular or commonsensical ideas of crime and justice (vide Conley)[82]. This exercise could be genuine but could just as well be designed merely *to give the impression* that justice was done in accordance with popular notions. The other side of the argument, to do with the role of private individuals at successive stages of law enforcement, has remained under-developed. A sound analysis of this theme depends on integrating our findings with a study of the lowest tier of criminal justice.

2. – CRIMINAL JUSTICE AND «CONSENSUAL» CRIME

There is now an extensive body of research describing the way the criminal law in the mid-19th to the turn of the century was extensively moving beyond protecting property and person and suppressing long-standing public order offences such as vagrancy into areas of life where there was least value consensus. Activities such as drinking, street trading, gambling and prostitution became the objects of a disciplinary enterprise which bore to a very large degree on working-class culture[83]. This aspect of criminal justice squares with revisionist historiography in so far as the law was no longer primarily enforced by the courts but by, amongst others, the new, reorganised police, meting out their own «justice»[84]. The argument generally goes that they were instrumental in law enforcement given the extremely wide scope for legitimate arrest, their use of techniques of cautioning and move-on as well as physical force, and the deployment of preventative strategies. Clearly, this thesis applies most to one range of «consensual» offences, namely those against public order and public morality (e.g., public drunkenness).

The danger is that one fails to analyse and theorise about the part played by criminal courts in enforcing what French and Dutch law defined as minor violations (*contraventions*; *overtredingen*) and English legal historians as summary offences of a «non-criminal nature»[85]. There are historians who have noted a process of «administratisation» of the lowest tier of criminal justice, starting in the mid- to late 19th century[86]. Implied is that the low scale of punishment, combined with a range of other factors, contributed to the rise of a criminal justice machine that was routine,

---

81 *Report R.C. Divorce*, vol.I, q.7643 (testimony of Theodore W. Fry, stipendiary magistrate of Middlesborough); note also the observation of a Dutch lawyer working in London that the audiences of London police courts were wholly unaware of the fact that the presiding magistrates were actually lawyers, see Kropveld (1910, p.41).

82 The Ipswich magistrates described justice as «the quintessence of common sense» (Ipswich Corporation, *Proceedings of meetings of the Town Council, 1902-1903*, p.2).

83 The 17th and 18th centuries saw the first moves towards increased control over «consensual» offences such as drunkenness, speeding with a cart, uttering profane oaths, etc.; see, e.g., Landau (1984); Faber (1983, pp. 95-96); Farge (1983, pp. 84-86).

84 See, e.g., Emsley (1991, p. 70); Bernard (1987, pp. 128, 132); Manneke (1993, pp. 7, 92).

85 Radzinowicz, Hood (1986, p. 119).

86 See, e.g., Wiener (1990, pp. 257, 264).

impersonal and bureaucratic. This approach is part of the debate about the «modernity» of judicial administration, particularly about the rationalisation of judicial procedure. The best-known aspect of this process is the generalisation, in France and the Low Countries, of an inquisitorial criminal procedure, whilst England maintained its long-standing tradition of accusatorial criminal justice. The growing delegation of law-enforcement functions from law courts to the police and new administrative bodies is another well-known facet of procedural rationalisation[87].

The following paragraphs serve to describe the procedures and practices of the Dutch Cantonal Court (*Kantongerecht*), the French Police Court, and the English magistrates' court in the light of this analysis. We begin by examining the pace of the criminal process, with further sections drawing into the equation the question of the public character of criminal procedure and prosecution levels.

Speed of justice

Assessing and comparing the pace of justice is a difficult task. However, starting with a study of criminal procedure, there is no doubt that the pace of the English variant was extremely rapid. Under summary jurisdiction procedure cases could be directly brought into court to be tried. Those arrested were either released at the police station on their own recognizances to appear in the court or kept in custody - in case of a disturbance of public order- provided they were brought before the court within 24 hours[88]. If no arrest had been made, the police would lay an information before a magistrate and the accused would either come into court voluntarily or be summoned to appear, generally about a week later[89]. In Maastricht and Caen minor violations were always deferred to the public prosecution which was responsible for summoning the accused[90]. However, to understand why the time span between the reception of a charge by the judicial authorities and court proceedings was comparatively greater in these two places, two other factors have to be considered. One was that the relevant courts sat only once a week, the other refers to a tendency of prosecutor's offices to «hoard up» cases that were similar in nature. It is estimated that in the Netherlands the average length of time was one month[91]. The French evidence is as yet too impressionistic to make any strong assertions[92].

---

87 See, e.g., Schnapper (1991, pp. 379-380); Wortel (1991, p. 30); Bosch (1992, pp. 25-26); Arthurs (1985).

88 For instance, an outfitter was tried and convicted of public drunkenness only one day after his arrest; he was the only person to have been tried on that day, see SC, 25 May 1889, p.6 and SRO, BB 15/2/1 (W.T. Poppy); see *Stone's Justices' Manual* (1891, pp. 39, 129).

89 The latter draws upon observations about metropolitan police courts, see Gamon (1907, p. 97).

90 In France proceedings were generally initiated with a simple warning notice instead of a summons which tended only to be used when the accused defaulted, see Dalloz (1894, v° *procédure criminelle*, pp. 464-465).

91 According to A.J. Rethaan Macaré, Public Prosecutor of Haarlem, in *H[andelingen der] N[ederlandse] J[uristen-]V[ereeniging]*, 1895, 26, p. 198.

92 No Police Court registers have been preserved of Caen, but those of Elbeuf, a Norman textile town of some 20,000 inhabitants, suggest that cases of disorderly behaviour and scuffles were heard within a similar length of time as in Maastricht: see, e.g., A[rchives] D[épartementales de la] S[eine] M[aritime], 4 U 2255, *Justice de Paix d'Elbeuf, Jugts.de simple police*, 5 June 1900 (Dorival); *ibid.*, *«Enquêtes en matière de simple police'* (1900-1906), 6 Aug. 1901 (Potel), 4 Feb. 1902 (Poulard), and [Oct. 1904] (Nehr).

Secondly, moving on to trial procedure, rapidity was a common feature. In a wide range of «consensual» offences, proof of criminal intent, a basic legal principle, was less important, occasionally even immaterial and police evidence alone constituted sufficient proof[93]. Significant for our further argument is the idea that procedure was generally simplified, be it to varying degrees. Magistrates dispensed with much of the procedural complexities of higher courts, whereas trial procedure in the Cantonal Court and in the Police Court was, by comparison, nominally fairly sophisticated. One of these rules, that of rendering motivated decisions, could force judges to reserve judgement until the following hearing[94]. This is known to have been common in the Netherlands[95]. Although this requirement tended to lengthen the criminal process, the pre-judgement stages of Dutch and French petty trials were surprisingly swift regardless of their relatively elaborate rules. We will develop this point in the next section.

As for the final stage of the criminal process, the enforcement of a sentence, our emphasis lies on enforcement procedures for fines. French and Dutch figures suggest that on average nine in ten of those convicted of a minor violation were fined[96]. For the English case we cannot rely on aggregate figures but research points in the same direction[97]. Historians have observed that English magistrates tended to be unwilling to allow those fined either an extension of payment or payment by instalments[98]. Legally, they were bound to first levy a distress on the goods of a fine defaulter in the case of a petty public order offence before resorting to a custodial alternative. A legal loophole, however, allowed them to send fine defaulters to prison immediately after a judgement, a practice that appears to have been routine in Ipswich[99]. The French and Dutch enforcement procedures were, by comparison, time-consuming. Dutch law allowed all defendants two months' time to pay. Given few paid and most were as a result ordered to be imprisoned, court hearing and punishment were usually separated by a period of at least three months[100]. French

---

93 With regard to the former see, e.g., Wiener (1990, pp. 263-264); Vidal (1903, p. 318); van Hamel (1884, p. 268).

94 Hélie (1920, p. 203); van der Feltz (1896, p. 437).

95 van der Feltz (1896, p. 437); Cnopius (1896, p. 270); A.J. Rethaan Macaré in *HNJV*, 1895, 26, pp. 198-199.

96 On France see Perrot, Robert (1989, p. clii); report presented by M. Du Mouceau (Public Prosecutor of Beaune) to the International Penitentiary Congress, in: *Actes* (1906, p. 94); similar figures can be found regarding the Police Courts of the arrondissement of Caen in the 1900s (see ADC, U 8879, draft of *Statistique criminelle* [1905&1909]); for Dutch practices see *Crimineele Statistiek* (1909, p. xlii).

97 We have analysed all convictions for petty public order offences (public drunkenness, drunk and disorderly behaviour, offences under the licensing laws, breach of the peace, wilful damage, and offences under local Acts regulating behaviour in public places (e.g., using obscene language) tried in Ipswich in 1886 -it shows that three-quarters of convicted defendants were fined; source: SRO, BB 15/2/1/5&6 [1886].

98 Radzinowicz, Hood (1986, pp. 649-651); see also *Howard Association Report*, 1896, pp. 10-11; *Howard Association Report*, 1906, pp. 22-23.

99 By law the distress procedure which was compulsory in case of a summary offence of a non-criminal nature, could be ignored if it appeared that the defendant either had no goods or would be harmed more by the procedure than by imprisonment (see *Stone's Justices' Manual* (1891, p. 51)); see, e.g., SC, 16 April 1892, p. 7 (H. Smith).

100 van der Does de Willebois (1891, pp. 90-91); Cnopius (1896, p. 269); van der Feltz (1896, p. 440); van Hamel (1884, p. 270); A.J. Rethaan Macaré in *HNJV*, 26, 1895, p. 199.

defendants, for their part, with the exception of juveniles, were legally not entitled to an extension of payment, nor to payment by instalments. However, due to the amount of red tape to do with enforcing sentences, which involved the Public Prosecutor's and the tax collector's offices, fine defaulters could be committed to prison usually only several weeks after the trial. Again, most of those convicted by Police Courts ended up as fine defaulters[101]. To sum up this first section, differentials in terms of criminal procedure, the pronouncement of a judgement, and the enforcement of a sentence combined to make « low justice » decidedly fast-track in Ipswich when compared to the two continental cases.

Justice and publicity

In direct connection with these differences it is essential to scrutinise the public character of court proceedings. To start with, magistrates court hearings of cases involving « consensual » offences were per definition more likely to be subject to a fair amount of public and press attention given the institution's central role in processing medium-range crime[102]. A second factor that affected the public character of court proceedings refers to the balance between its oral and written components. Let us merely point out here that evidence was given orally in Ipswich, whereas in Caen and Maastricht this was also submitted in written form, the official report (*procès-verbal*; *proces-verbaal*), the significance of which becomes clear in the light of a short survey of the use of trial by default[103].

The majority of those prosecuted in Ipswich for a « consensual » offence were present at the hearing. As has been mentioned before, some were brought to court in custody. Provided the offence was punishable only by a fine, magistrates could try the remainder by default, unless they issued a new summons or a warrant[104]. However, we would argue that those summoned or released on their own recognizances had an interest in attending. For one thing, the procedures for enforcing fines and for arranging an alternative method of payment acted as incentives[105]. Secondly, from a comparative perspective one might speculate that there was a greater sense among the accused that what they would say in their defence, would receive the court's attention[106].

---

101 Reports presented by R. Demogue, M. Dubois, M. Du Mouceau, and J.-A. Roux to the Internat. Penitent. Congress, in: *Actes* (1906, pp. 25-26, 41, 102-104, 112-113); Dalloz (1893, v.° *peine*, pp. 708-709); technically speaking, fine defaulters were imprisoned for non-payment of a debt (*contrainte par corps*).

102 On popular attendance and press coverage see, e.g., Davis (1984, pp. 316-317); Behlmer (1994, pp. 232-235); and D'Cruze (1999, pp. 51-52); with reference to the Ipswich magistrates' court see, e.g., SC, 29 Jan. 1887, Suppl. p. 2 (R. Manning) and SC, 16 Sept. 1893, p. 7 (W. Adams).

103 On the presentation of evidence in the Dutch and French cases see Hélie (1920, pp. 201, 204, 212-213); van der Feltz (1896, p. 437); van Swinderen (1884, p. 47).

104 Even in very petty cases magistrates were entitled to issue an arrest warrant; in one such instance, the Ipswich magistrates did so in order to proceed against a person charged with wilfully ringing a door bell (see SRO, BB 15/1/1/1, Ipswich Petty Sessions, Minute book, 20 Feb. 1879); see also *Stone's Justices' Manual* (1891, p. 37).

105 To be allowed time to pay an accused had to be present and put his/her case – often without success; see, e.g., SC, 16 April 1892, p. 7 (H. Smith) and SC, 3 April 1886, Suppl. p. 1 (M.A. Nunn).

106 Reference could be made to instances of juveniles prosecuted for throwing stones in which parents successfully made a case for the bench to be lenient and impose a smaller fine or another penalty, see SC, 16 Oct.1886, Suppl. p. 3 (W. Smith); SC, 16 Jan. 1897, p. 6 (W. Pulham); SC, 13 March 1897, p. 3 (L. Haddock).

Levels of trial by default were much higher in Caen and Maastricht. Judging from the available evidence, which is restricted to the latter years of this period, the average proportion of Police Court cases heard by default within the arrondissement of Caen as a whole was one in three – in the specific cases of public drunkenness and disorderly behaviour more than two in five[107]. And attendance levels at *urban* Police Courts are known to have been generally lower than at *rural* Police Courts[108]. The Dutch case, for its part, is more conclusive and more marked. Nationally, trial by default rates rose consistently from 60 to over 85% over this period[109]. The fact that none of the accused were brought to court in custody and the nature of fine enforcement procedures are part of the explanation. In addition, we would propose that in the eyes of the accused it was very difficult, if not impossible, to set up a defence[110]. The Dutch evidence is unequivocal about the impact of such levels of trial by default on the conduct and public nature of court hearings. They generally consisted of little more than the calling of the accused's name and the application of a prescribed penalty. The official report was often not even read over, which merely served to convey the futility of putting one's case as a defendant[111]. This subversion of trial procedure inevitably contributed to the lack of public attention which Cantonal Court hearings attracted. Public attendance was virtually nil by the start of the First World War[112]. The impression is that French Police Courts, for their part, were just as swift in hearing default cases, the effect of which on trial procedure, its oral character and, ultimately, on popular attendance and public attention is likely to have followed a similar pattern[113].

A further conclusion is that the progressive «emasculation» of trial procedure was also a result of the great push of criminal business in the French and Dutch lowest courts. Some of it was to do with operational and procedural differences (e.g., periodicity of hearings, timing of the pronouncement of a judgement) but a major factor behind heavy case-loads was doubtless high prosecution rates.

Prosecution levels

In view of the extensive jurisdiction of English magistrates published statistical data on overall prosecution rates cannot be used for comparative purposes. However, it is noteworthy that in this period on an annual basis on average one person for every 90 of the population of Ipswich was prosecuted in the magistrates' court[114]. A reliable basis of comparison is provided by the combined rates of prosecution for public drunkenness, drunk and disorderly behaviour and breach of the

---

[107] The published judicial statistics aggregate this type of information; the estimates are drawn from two drafts of arrondissemental judicial statistics of 1905 and 1909 prepared by the *parquet* of Caen (see ADC, U 8879, draft of *Statistique criminelle* [1905&1909]); for definitions of these offences see note 119.

[108] Pujo (1894, p. 142); [Kahn] (1921, p. 239).

[109] van der Does de Willebois (1891, p. 97); Centraal Bureau voor de Statistiek (1986, p. 21).

[110] See, e.g., Faure (1882, p. 321).

[111] van der Does de Willebois (1891, pp. 82, 89); van der Feltz (1896, p. 436).

[112] Briët (1915, p. 51); on popular attendance at Cantonal Court proceedings in the 1890s see van der Does de Willebois (1891, p. 84); Karsten in *HNJV*, 1895, 26, p. 118.

[113] Pujo (1894, p. 141-142); Dalloz (1894, v° *procédure criminelle*, p. 467).

[114] Table 2.

peace. Annually on average one inhabitant of Ipswich for every 380 was prosecuted for one of these offences which were among the most significant petty public order offences[115].

Table 2: Prosecutions in the magistrates' court of Ipswich, 1880-1905 (*).

	Nr. of persons prosecuted	Population (**)	Ratio to population
1880	795	48001	1 in 60
1881	693	50546	1 in 71
1882	583	51199	1 in 88
1883	704	51853	1 in 74
1884	674	52506	1 in 78
1885	505	53160	1 in 105
1886	478	53813	1 in 113
1887	505	54467	1 in 108
1888	581	55120	1 in 95
1889	621	55774	1 in 90
1890	647	56427	1 in 87
1891	685	57081	1 in 83
1892	761	58036	1 in 76
1893	760	58991	1 in 78
1894	792	59946	1 in 76
1895	652	60901	1 in 93
1896	796	61855	1 in 78
1897	639	62810	1 in 98
1898	677	63765	1 in 94
1899	716	64720	1 in 90
1900	737	65675	1 in 89
1901	754	66630	1 in 88
1902	684	67360	1 in 98
1903	766	68090	1 in 89
1904	693	68821	1 in 99
1905	597	69551	1 in 116

(*) = all persons proceeded against summarily, i.e. either for an indictable offence or for a non-indictable offence.

(**) = population figures are based on census figures for 1871, 1881, 1891, 1901, and 1911 (73932).

Source: figures in the second column are from *Judicial Statistics*, 1880-1905 (PP 1881-PP 1907)

[115] *Judicial Statistics*, 1880-1905 (PP 1881-PP 1907); after 1898 these public order offences were classified in one statistical category.

Table 3: Prosecutions in the Police Court of Caen, 1886-1905.

	Nr. of prosecutions	Population (*)	Ratio to population
1886	1465	47711	1 in 33
1887	1769	47788	1 in 27
1888	1823	47866	1 in 26
1889	1888	47943	1 in 25
1890	1404	48020	1 in 34
1891	1743	48098	1 in 28
1892	1104	48286	1 in 44
1893	1686	48474	1 in 29
1894	2440	48662	1 in 20
1895	2082	48850	1 in 23
1896	1760	49038	1 in 28
1897	1928	49226	1 in 26
1898	2638	49414	1 in 19
1899	2013	49602	1 in 25
1900	2103	49790	1 in 24
1901	1307	49978	1 in 38
1902	1380	50166	1 in 36
1903	1278	50354	1 in 39
1904	891	50542	1 in 57
1905	1180	50730	1 in 43

(*) = approximation of the population covered by the ressort of the Police Court of Caen (i.e. the *cantons* Caen-Ouest and Caen-Est, see note 115); the exact population is known for 1884 (47556), 1891, and 1906 (50919) (see *Annuaire administratif du département du Calvados*); population estimates for intermediate years have been derived from these three figures.

Source: figures in the second column are from *Compte général de l'administration de la justice civile en France*, 1886-1905, heading «*Justices de Paix –Jugements de simple police*».

By 1880 most criminal cases processed by French courts, were dealt with by *Juges de paix*[116]. Nevertheless, French case studies usually fail to properly scrutinise the latter's vast criminal business or, if they do, rely exclusively on aggregate data[117]. Within the jurisdiction of the Caen Police Court each year saw on average one prosecution for a minor violation for every 31 inhabitants. Measured in terms of persons prosecuted, the ratio to population is likely to be a few points lower[118]. A valid comparison with the English case can be made on the basis of prosecution

[116] Minor violations represented 70% of all court cases; based on national figures (covering the quinquennium 1876-1880) computed from Perrot, Robert (1989, pp. cxxxviii, cxlviii, cliii).

[117] Santucci (1986); Chatelard (1981); Désert (1981, pp. 237-238, 308-309, 311) relies on published criminal justice statistics – however, figures regarding the criminal jurisdiction of individual Police Courts are comprised in the civil justice statistics from 1886 onwards.

[118] Table 3; the ressort of the *Tribunal de Simple Police* of Caen, the cantons Caen-Ouest and Caen-Est, consisted of the town of Caen, combined with 11 small *communes*, with town dwellers making up 87 to 91% of the total population of the jurisdiction; published figures do not allow us to establish the relation between the number of prosecutions and the number of accused; however, unpublished data show that in 1905 and 1909 in the arrondissement of Caen the latter figure was on average about 10% higher than the former (see ADC, U 8879).

Table 4: Prosecutions in the Cantonal Court of Maastricht, 1880-1905.

	Nr. of prosecutions	Population (*)	Ratio to population
1880	372	45732	1 in 123
1881	311	46212	1 in 148
1882	876	46691	1 in 53
1883	651	47170	1 in 72
1884	677	47650	1 in 70
1885	747	48129	1 in 64
1886	534 (**)	48608	- (**)
1887	843	49087	1 in 58
1888	710	49567	1 in 70
1889	701	50046	1 in 71
1890	879	50553	1 in 57
1891	746	51059	1 in 68
1892	603	51566	1 in 85
1893	820	52073	1 in 63
1894	883	52580	1 in 59
1895	905	53086	1 in 59
1896	1436	53593	1 in 37
1897	1491	54100	1 in 36
1898	2228	54606	1 in 24
1899	1778	55113	1 in 31
1900	1708	56088	1 in 33
1901	1602	57062	1 in 35
1902	1781	58037	1 in 33
1903	2095	59011	1 in 28
1904	2265	59986	1 in 26
1905	2502	60961	1 in 24

(*) = approximation of population covered by the ressort of the Cantonal Court of Maastricht (i.e. the *kanton* of Maastricht, see note 123); population estimates are based on census figures for 1879 (45253), 1889, 1899, and 1909 (64859).

(**) = figures only apply to the first eight months of the year due to the introduction of the new Penal Code in September 1886.

Source: figures in the second column are from *Gerechtelijke Statistiek*, 1880-1899; *Crimineele Statistiek*, 1900-1905.

levels for public drunkenness (*ivresse publique*) and for disorderly behaviour (*bruit et tapages injurieux ou nocturnes*)[119]. Again, we have to rely on limited archival documentation. Evidence from Rouen, where overall prosecution rates for minor violations in proportion to the population were roughly similar to Caen's, shows an

[119] The correspondence between these two charges and the English offences of drunkenness, drunk and disorderly behaviour, and breach of the peace has also been noted in Perrot, Robert (1989, pp. xcvi-xcvii); note that the figures presented do not include a number of cases of public drunkenness tried by the Correctional Court which was entitled to do so either when public drunkenness was committed in conjunction with a correctional offence or following two previous convictions for the same offence within the same year (*récidive d'ivresse*).

average ratio of 1:62 for the mid-1890s[120]. Another, less reliable, piece of evidence, from Caen this time, suggests a ratio of about 1:110 for the mid- to late 1900s[121]. In sum, prosecution for these types of offence appears to have been up to four times more likely in Caen than in Ipswich.

The Dutch case, finally, is in line with the French case[122]. By 1880 the Maastricht Cantonal Court tried on average one minor violation for every 123 inhabitants within its jurisdiction, which would rise to one for every 65 between 1882 and the mid-1890s and one for every 30 from 1895, largely due to a sustained effort to implement the 1881 law on public drunkenness. Again, rates of persons prosecuted are likely to be a few points lower[123]. Between 1882 and the mid-1890s on average one case of public drunkenness or disorderly behaviour was heard for every 71 inhabitants. From 1895 the ratio rose to 1:53[124]. Prosecution for either of these offences was, we suggest, about six times more likely in Maastricht during the period studied than in Ipswich.

When trying to explain these variations, it is right to insist on the impact of certain procedural differences[125]. To start with, the burden carried by the Ipswich police of having to go to court to give evidence in the case of a wide range of «consensual» offences acted as a disincentive to report and prosecute such offences[126]. Secondly, whereas minor violations could be prosecuted on police evidence alone, in Ipswich the burden of proof was greater for certain categories of «consensual» offences (e.g., the offence of obstruction of footpaths and highways)[127]. At the same time, procedural variations reflected differing cultural assumptions about the precise function of law courts in this area of criminal justice. This is the subject of the final section which draws together the three strands of our discussion.

---

120 The ratio of prosecutions to population (minor violations) in the city of Rouen was 1 to 35 in 1893 and 1 to 37 in 1895 (3122 and 3012 minor violations resp. for approximately 112000 inhabitants); see ADSM, 5 M 276, dossier 1893 Rouen & dossier 1895 Rouen.

121 Based on unpublished aggregate statistics covering the arrondissement of Caen; the supposition is that given the Police Court of Caen took up 60% of all Police Court business within the arrondissement, at least 60% of all cases of public drunkenness and *tapages* were likely to have been handled by the Caen Police Court (see ADC, U 8879, draft of *Statistique criminelle* [1905&1909]).

122 Following the introduction of the new Penal Code prosecutions for minor violations represented over 80% of all Dutch criminal cases; based on national figures of prosecutions brought in Cantonal Courts and Arrondissemental Courts from 1886 to 1890; see Centraal Bureau voor de Statistiek (1986, p. 15).

123 Table 4; the jurisdiction of the Cantonal Court of Maastricht, the *kanton* of Maastricht, included the town and 14 small municipalities, with the inhabitants of Maastricht making up 62% of the total population of the ressort.

124 The charges of public drunkenness (*dronkenschap op de openbare weg*) and disorderly behaviour (*nachtelijke geruchten*) correspond with the same charges in French law; the figures represent numbers of minor violations committed in the town of Maastricht; source: *Verslag van de toestand van de gemeente Maastricht*, 1880-1905.

125 In addition, more research is needed to determine the comparative costs of prosecution and the financial limits within which the judicial system had to operate; for some English research in the field of middle- and high-ranking offences see Taylor (1998); their effects are likely to have been less significant in the field of «consensual» crime given prosecution and court costs were relatively low.

126 Petrow (1994, p. 217).

127 Ipswich Corporation, *Proceedings of the Town Council, 1902-1903*, pp. 69-70; SRO, DB 32/12, Watch Committee minutes (1881-87), 8 Oct.1886; SRO, DF 3/1, Ipswich Borough Police, Police Order Book (1881-89), 9 Oct. 1886.

Evaluation

This comparative survey demonstrates that prosecution for «consensual» crime was much less regular in Ipswich than in either Caen or Maastricht. In addition, we have tried to show in the case of Ipswich that «low justice», from its first until its last stages, was fast-track and that court hearings at this level were public events. Against this background and given the concentration of this amount of judicial business in one institution, it is easier to grasp why, in the words of one observer, Canon Barnett, a social reformer, the magistrates' court functioned as «the visible representative of 'justice'» and «the very centre of observation and information»[128]. He was convinced that «[p]eople [...] largely owe to the police-court their conception of justice»[129]. What is clear is that the judicial processing of «consensual» crime only served to strengthen the view that criminal justice had little to do with the application of abstract, legal principles and sophisticated rules of procedure.

The notion of «administratisation» has proved to be especially useful in describing the Dutch and French cases. Striking is that probably due to the slower pace of the criminal process and the waning of the public character of court hearings, «the deterrent and cautionary effect [of the court] ha[d] been lost entirely», to use the words of a Dutch observer who went on to assert that «people know a neighbour has been charged, but perhaps they will never learn about the outcome»[130]. In a typical case from Caen, having lodged a complaint against a neighbour, a working-class woman inquired with the *parquet* how her case stood, only to discover that her case had already been followed up and that the offender had been convicted by the Police Court[131]. The limited moral educative role of this court and the Maastricht Cantonal Court is likely to have served to reinforce existing prosecution levels which were strikingly high in comparative terms. It adds a critical comparative note to the thesis put forward, amongst others, by Howard Taylor that the English criminal justice machine was increasingly guided by routine and by impersonal, bureaucratic considerations[132].

We would also like to put forward the hypothesis that «administratisation» of «low justice» was particularly advanced in the Dutch case, which is consistent with two important episodes in Dutch legal history. One was the rejection by the Dutch political class of a jury system, which was perceived as a symbol of distrust of the magistrature. The other was the late introduction of fully public trial proceedings in 1848. Both innovations had been introduced in the Netherlands by the French in 1811 but were discontinued in 1813[133].

---

128 Gamon (1907, pp. vii-viii); see also Behlmer (1994, p. 232).

129 Gamon (1907, p. xiii); some thirty years later another observer of magistrates' courts again emphasised their impact on popular perceptions, suggesting that they were «with few exceptions the only law court the poor man ever knows and those, therefore, from which he derives his sole experience of the justice under which he lives», Page (1936, p. 37).

130 van Hamel (1884, p. 271); see also Bool (1887, p. 121); Cnopius (1896, p. 269).

131 ADC, U 2542, 2 Sept. 1886 (M. Chaignard).

132 Taylor (1998, pp. 588-589) emphasises how prosecution levels and prison sentences with respect to «serious» crime were increasingly guided by budgets and bureaucratic norms.

133 Trial proceedings begin with the hearing of testimony and presentation of evidence and conclude with the declaration of a verdict; in the Netherlands only the final stages of a trial (i.e., concluding statements and declaration of verdict) had been public before 1848; see Bossers (1987).

A further reason why « administratisation » was more in evidence in Maastricht and Caen refers to the subversion of dominant notions of procedural fairness. According to Dutch legal voices Cantonal Court hearings left a distinct impression on the public of a sham or a public sale, which made it virtually impossible to keep up the appearance of « justice »[134]. Proposals were debated in both countries at the end of this period either to simplify trial procedure or to direct more criminal business to administrative bodies; one impetus behind such suggestions was a desire to better uphold prevailing ideals of formal legal justice[135]. It is at least arguable that further « administratisation » of « low justice » may have been seen as useful in that it allowed higher criminal courts alone to feed into the public image of criminal justice. By contrast, given the openness of English summary procedure and the flexibility of English criminal law, perceptions of English magisterial justice were never quite so directly at odds with the image of justice conveyed by the English higher criminal courts[136]. At this point we need to integrate these insights with our findings regarding the middle tier of criminal justice.

3. – CONCLUSION

In the end, a few preliminary conclusions can be drawn from our comparative analysis of the English case study. We suggest it has put in proper perspective the notion of « community-based » justice which seems to have represented a more significant ideal than the presumedly pre-eminent ideology of fairness and adherence to the rules[137]. They embodied two competing tendencies in official thinking about justice. It was not only, as has so often been claimed, a matter of accommodating the values of the « respectable » sectors of the local community. We have argued that it was just as much about the ways in which private individuals participated or *were seen to be participating* in law enforcement. As far as « middle justice » is concerned, further research is needed to corroborate our hypothesis that for the majority of routine cases of property and violent crime known to the Ipswich police and magistrates around the turn of the century private individuals, both victims and third parties, played a considerable role in policing, prosecution and adjudication. There is a rather misleading overemphasis in current research on the role of police and magistrates. Equally important, in the case of « low justice », a neglected area of research, we have stressed how in comparative terms the court was much more subject to public scrutiny, which fits in with the English tradition of an accusatorial judicial procedure for deciding medium-range crime. Crucially, our argument has

---

134 van der Does de Willebois (1891, p. 82); van der Feltz (1896, p. 436).

135 For such proposals see van Hamel (1884, pp. 298-299); Briët (1915, p. 51); [Kahn] (1921, pp. 241-242).

136 These points draw upon McBarnett (1981, pp. 143-153, 166-167); this leads to a refinement of E.P. Thompson's argument that the very articulation of economic, political or cultural interests in law acted as a constraint upon such interests and that, in order for criminal justice to serve an ideological function, the ideals of « justice » and judicial rhetoric had to be lived up to, imposing further restraints upon law enforcement agents and other participants in the legal process; we would suggest that the French and Dutch cases offer better illustrations than the English case. The relative malleability of English law seems to have enabled those participating in magisterial justice to a greater degree to appear to uphold dominant ideals of justice.

137 Their pre-eminence is assumed by writers such as McKibbin (1990, pp. 24, 38).

been that law-enforcement agents in Ipswich attempted to realise the ideal of justice as being administered with broad approval from the local community, in order for it be convincing. In this light, our study proposes that more attention should be devoted to the significance of local criminal justice institutions as a source of integration among a town's «decent and respectable citizens», which included many better-off working men[138]. Until now social historians have tended to concentrate on various other public bodies, cultural enterprises and associational life as foci of social cohesion[139].

Our case study of turn-of-the-century Caen clearly demonstrates the limitations of the common view of the French criminal justice machinery as being «typical» (in a Weberian sense) of a highly autonomous state bureaucracy. To start with, we have re-emphasised the role of the municipal police in the early stages of law enforcement but in particular we have reviewed evidence substantiating the notion that private citizens were actively involved in policing much medium-range crime and in initiating its prosecution. The second part of the article, then, explored the theme of rationalisation in judicial administration. Given the fundamental difference between inquisitorial and accusatorial regimes, perhaps it is not surprising that we have observed that a process of «administratisation» was at work in the area of «low justice» both in Caen and in Maastricht. Interestingly, however, the French Police Court appears to have been more open to outside scrutiny than its Dutch equivalent. This also opens a perspective from which to examine the nature of correctional and Assizes trials[140]. Although several general studies have taken on board this alternative view of French state institutions, particularly in the context of the Third Republic, research is still too narrowly focused on the influence exerted by local élites rather than on, what our case study has tried to analyse, various, more complex ways in which groups further down the social scale affected the day-to-day working of administrative bodies[141].

At the same time, we have further developed the notion that the criminal justice system served a much more significant ideological function for the state in Caen than in Maastricht. In particular, the hypothesis has been put forward that this can help explain variations in prosecution levels for minor property crime between the two towns which were very similar in terms of its system of policing and judicial disapproval of violent crime and public disorder. Clearly, more detailed local research is required. Another fascinating feature of the Dutch case is that in comparative terms judicial agents seem to have been less concerned about symbolic displays. A major factor is that modern Dutch society never experienced a massive crisis of public confidence in the judiciary or other sections of state officialdom. The political climate was such that instead of public scrutiny the procedures and rules alone were seen as what guided and legitimated the actions of those running the system. More comparative research will have to establish the strength of the early modern roots of judicial rationalisation[142]. Our approach may perhaps be fruitful in

---

138 E.g., SC, 17 Oct. 1891, p. 6; EADT, 14 June 1904, p. 5.

139 See, e.g., Smith (1982, pp. 225-247); Morris (1990, pp. 318-331); Hills (1988).

140 On the cultural meaning of the spectacle of courtroom proceedings in mid-19th century France see Fisher Taylor (1993, pp. xviii-xxi, 5-6, 106).

141 See, e.g. Tombs (1996, pp. 99-101, 104); Burdeau (1989, pp. 188, 198, 333-334); Rosanvallon (1990, pp. 80-81).

142 Unfortunately, Faber (1983, pp. 270-279) does not raise any comparative questions.

investigating the procedures and administrative practices developed by other Dutch bureaucracies of this period.

APPENDIX

Further information regarding Table 1: the fourth and fifth categories refer to indirect police detection. An offence was detected either in consequence of the interrogation of the accused by the police following his/her arrest for some other offence or in consequence of a successful search of the home or lodgings of a person arrested for some other offence. In the cases falling into the eigth category suspicions of the victim or a description from the victim were crucial to tracing the suspect. The ninth category is reserved for cases where the offender was still at the scene of the crime or was arrested in an immediate search of the area. Cases belonging to the tenth category are such that the opportunity to commit the offence in question was limited to a number of persons. Classes 11 and 13 include cases where the offender was detected either due to a description obtained from inquiries or as a result of a pawnbroker (or a second-hand dealer) calling the police. In cases included in the fourteenth category the arrest was a result of observations kept or a trap set by the police, usually after a spate of thefts. Categories 16 to 19 refer to direct police detection. That is, inquiries were obtained from second-hand dealers, pawnbrokers, receivers, etc.; a suspect was stopped and searched in the street; information was obtained from local criminals; or police knowledge of criminals or associates was crucial in tracing the suspect.

Wim Mellaerts
Department of Dutch
University College London
Gower Street
London WC1E 6BT, U.K.
w.mellaerts@ucl.ac.uk

REFERENCES

Actes du Congrès pénitentiaire internationale de Budapest, sept.1905, vol.2, Budapest/Bern, 1906.

Arthurs, H.W., «*Without the Law*». *Administrative Justice and Legal Pluralism in 19th-Century England*, Toronto/Buffalo, Univ. of Toronto Press, 1985.

Badinter, R., Introduction. Naissance d'une justice, *in* Badinter, R., (Ed.), *Une autre justice. Contributions à l'histoire de la justice sous la Révolution française*, Paris, Fayard, 1989, pp. 9-25.

Badinter, R., *La prison républicaine (1871-1914)*, Paris, Fayard, 1992.

Behlmer, G., Summary justice and working-class marriage in England, 1870-1940, *Law and History Review*, 1994, 12, pp. 229-275.

Bernard, M., La réorganisation de la police sous le Second Empire (1851-1858): «des bras infatigables», *in* Vigier, P. *et al.*, *Maintien de l'ordre et polices en France et en Europe au XIXe siècle*, Paris, Créaphis, 1987, pp. 122-132.

Bool, J., *De politie, haar wezen en organisatie in Frankrijk, Duitschland, Engeland en Nederland*, The Hague,1887.

Bosch, A.G., De ontwikkeling van het Openbaar Ministerie in de 19de en 20ste eeuw, *in* Schalken, T.M. *et al.*, (Eds.), *Magistraat met beleid. De Officier van Justitie en zijn omgeving*, Arnhem, Gouda Quint, 1992, pp. 15-31.

Bossers, G., *«Welk eene natie, die de* jurij *gehad heeft, en ze weder afschaft!» De jury in de Nederlandse rechtspraktijk, 1811-1813*, Delft, Eburon, 1987.

Briët, C., De procedure van het kantongerecht volgens het ontwerp wetboek van strafvordering, *Tijdschrift voor Strafrecht*, 1915, 26, pp. 50-66.

Burdeau, F., *Histoire de l'administration française du 18e au 20e siècle*, Paris, Montchrestien, 1989.

Cambuzat, F., De la compétence du juge de paix en matière de simple police, *Revue critique de législation et jurisprudence*, new series, 1879, 8, pp. 498-503.

Carlen, P., *Magistrates' Justice*, London, Martin Robertson, 1976.

Centraal Bureau voor de Statistiek, *Honderd jaar strafrecht in statistieken, 1886-1986*, The Hague, Staatsuitgeverij, 1986.

Chatelard, C., *Crime et criminalité dans l'arrondissement de Saint-Étienne au 19e siècle*, Saint-Étienne, Centre d'Études Foréziennes, 1981.

Cnopius, A.A., De overtredingen betreffende de veldpolitie in de praktijk, *Tijdschrift voor Strafrecht*, 1896, 9, pp. 255-271.

Conley, C.A., *The Unwritten Law. Criminal Justice in Victorian Kent*, Oxford, O.U.P., 1991.

Crimineele Statistiek over het jaar 1907, The Hague, 1909.

Dalloz, M.D., *Répertoire méthodique et alphabétique de législation..., Supplément*, vol.12 & 14, Paris, 1893 & 1894.

Davis, J., A Poor Man's System of Justice: the London police courts in the second half of the 19th century, *Historical Journal*, 1984, 27, pp. 309-335.

Davis, J., *Law-breaking and Law Enforcement: The Creation of a Criminal Class in Mid-Victorian London*, Ph.D. thesis, Boston College, 1985.

Davis, J., Prosecutions and their context: the use of the criminal law in later-19th century London, *in* Hay, D., Snyder, F., (Eds.), *Policing and Prosecution in Britain, 1750-1850*, Oxford, Clarendon Press, 1989, pp. 398-419.

D'Cruz, S., Sex, violence and local courts. Working-class respectability in a mid-19th century Lancashire town, *British Journal of Criminology*, 1999, 39, 39-55.

de Bruin, R., De opbouw van een nieuwe staat. Bestuurlijk-politieke veranderingen tussen 1780 en 1815, *in* Fritschy, W., Toebes, J., (Eds.), *Het ontstaan van het moderne Nederland. Staats- en natievorming tussen 1780 en 1830*, Nijmegen, Sun, s.d., pp. 123-156.

Désert, G., Aspects de la criminalité en France et en Normandie, *Cahier des Annales de Normandie*, 1981, 13, pp. 221-316.

Dudink, S., Le libéralisme et la politique sociale aux Pays-Bas, 1870-1900. «La fraternité conformément aux principes économiques», *in* Stuurman, S., (Ed.), *Les libéralismes, la théorie politique et l'histoire*, Amsterdam, Amsterdam U.P., 1994, pp. 129-135.

Emsley, C., *Crime and Society in England, 1750-1900*, London, Longman, 1987.

Emsley, C., *The English Police. A Political and Social History*, Hemel Hempstead, Harvester Wheatsheaf, 1991.

Emsley, C., Albion's Felonious Attractions: reflections upon the history of crime in England, *in* Emsley, C., Knafla, L.A., (Eds.), *Crime History and Histories of Crime. Studies in the Historiography of Crime and Criminal Justice in Modern History*, Westport, Conn./London, Greenwood Press, 1996, pp. 67-85.

Faber, S., *Strafrechtspleging en criminaliteit te Amsterdam, 1680-1811. De nieuwe menslievendheid*, Arnhem, Gouda Quint, 1983.

Faber, S., OM-richtlijnen: geen nieuw verschijnsel, *in* van de Bunt, H.G., Roording, J.F.L., Verpalen, M.J.M., (Eds.), *Richtlijnen van het Openbaar Ministerie*, Nijmegen, Ars Aequi Libri, 1993, pp. 5-23.

Faber, S., van Ruller, S., Integration and unification of the Dutch penal system; some historical remarks, *in* Rousseaux, X., Lévy, R., (Eds.), *Le pénal dans tous ses États. Justice, États et Société en Europe (XIIe – XXe siècles)*, Brussels, Facultés universitaires Saint-Louis, 1997, pp. 143-151.

Farge, A., Un regard historique: pathologie et créativité urbaines aux XVIII^{e}-XIX^{e} siècles, *Archives de politique criminelle*, 1983, 6, pp. 78-92.

Faure, A., De l'extension de la compétence des juges de paix, *Revue critique de législation et de jurisprudence*, new series, 1882, 11, pp. 296-323.

Fisher Taylor, K., *In the Theatre of Criminal Justice. The Palais de Justice in Second Empire Paris*, Princeton, Princeton U.P., 1993.

Gamon, H.R.P., *The London Police Court To-day and To-morrow*, London, 1907.

Harris, J., *Private Lives, Public Spirit. A Social History of Britain, 1870-1914*, Oxford, O.U.P., 1993.

Hay, D., Controlling the English prosecutor, *Osgoode Hall Law Journal*, 1983, 21, pp. 178-179.

Hay, D., Snyder, F., Using the criminal law, 1750-1850: policing, prosecution, and the State, *in* Hay, D., Snyder, F., (Eds.), *Policing and Prosecution in Britain, 1750-1850*, Oxford, Clarendon Press, 1989a, pp. 3-52.

Hay, D., Prosecution and power. Malicious prosecution in the English courts, 1750-1850, *in* Hay, D., Snyder, F., (Eds.), *Policing and Prosecution in Britain, 1750-1850*, Oxford, Clarendon Press, 1989b, pp. 343-395.

Hélie, F., *Pratique criminelle des cours et tribunaux. Résumé de la jurisprudence sur les codes d'instruction criminelle et pénal*, 3rd rev. ed., vol.1, Paris, 1920.

Hills, P., *Division and Cohesion in the 19th-Century Middle Class: The Case of Ipswich, 1830-1870*, Ph.D. thesis, Univ. of Essex, 1988.

Johnson, P., Class law in Victorian England, *Past and Present*, 1993, 141, p.147-169.

[Kahn, P.], Rapport de M. Paul Kahn sur les modifications de procédure en matière de simple police, *Revue pénitentiaire et de droit pénal*, 1921, 45, pp. 238-252.

King, P., Decision-makers and decision-making in the English criminal law, 1750-1800, *Historical Journal*, 1984, 27, pp. 25-58.

King, P., Punishing assault: the transformation of attitudes in the English courts, *Journal of Interdisciplinary History*, 1996, 27, pp. 43-74.

Knafla, L.A., Binnie, S.W.S., Beyond the state: law and legal pluralism in the making of modern societies, *in id.*, (Eds.), *Law, Society and the State. Essays in Modern Legal History*, Toronto, Univ. of Toronto Press, 1995, pp. 3-33.

Kropveld, D.C.J.H., De Londensche politie-magistraat in de praktijk, *Tijdschrift voor Strafrecht*, 1910, 21, pp. 40-61.

Landau, N., *The Justices of the Peace, 1671-1760*, Berkeley, Univ. of California Press, 1984.

Landau, N., Indictment for fun and profit: a prosecutor's reward at 18th-century Quarter Sessions, *Law and History Review*, 1999, 17, pp. 507-536.

Lévy, R., Un aspect de la mutation de l'économie répressive au XIX^{e} siècle: la loi de 1863 sur les flagrants délits, *Revue historique*, 1985, 274, pp. 43-77.

Lévy, R., Crime, the judicial system and punishment in modern France, *in* Emsley, C., Knafla, L.A., (Eds.), *Crime History and Histories of Crime. Studies in the Historiography of Crime and Criminal Justice in Modern History*, Westport, Conn./London, Greenwood Press, 1996, pp. 87-108.

Lévy, R., Rousseaux, X., État et justice pénale : un bilan historiographique et une relecture, *International Association for the History of Crime and Criminal Justice Bulletin*, 1991, 14, pp. 106-149.

Manneke, N., *Uit oogpunt van policie. Zorg en repressie in Rotterdam tussen 1870 en 1914*, Arnhem, Gouda Quint, 1993.

Martin, B., *Crime and Criminal Justice under the Third Republic. The Shame of Marianne*, Baton Rouge/London, Louisiana State U.P., 1990.

McBarnett, D.J., *Conviction, Law, the State and the Construction of Justice*, London, Macmillan, 1981.

McKibbin, R., Why was there no Marxism in Britain ?, *in* McKibbin, R., (Ed.), *The Ideologies of Class. Social Relations in Britain, 1880-1950*, Oxford, O.U.P., 1990, pp. 1-41.

Mellaerts, W., *Dispute Settlement and the Law in Three Provincial Towns in France, England and Holland, 1880-1914. A Cross-National Comparison*, Ph.D.thesis, UEA, 1997.

Morris, R.J., *Class, Sect and Party. The Making of the British Middle Class, Leeds 1820-1850*, Manchester, Manchester U.P., 1990.

Page, L., *The Justice of the Peace*, London, 1936.

Perrot, M., Robert, P., (Eds.), *Compte général de l'administration de la justice criminelle en France pendant l'année 1880 et rapport relatif aux années 1826 à 1880*, reprint of 1882 ed., Geneva/Paris, Éd. Slatkine, 1989.

Petrow, S., *Policing Morals. The Metropolitan Police and the Home Office, 1870-1914*, Oxford, Clarendon Press, 1994.

Pujo, A., The court of simple police, *in* Coll., *The Paris Law Courts. Sketches of Men and Manners*, translated from the French, London, 1894, pp. 140-143.

Radzinowicz, L., *A History of English Criminal Law and its Administration from 1750*, vol.2 : *The Enforcement of the Law*, London, Stevens & Son, 1956.

Radzinowicz, L., Hood, R., *A History of English Criminal Law and its Administration from 1750*, vol.4 : *Grappling for Control*, London, Stevens & Son, 1968.

Radzinowicz, L., Hood, R., *A History of English Criminal Law and its Administration from 1750*, vol.5 : *The Emergence of Penal Policy*, London, Stevens & Son, 1986.

Rethaan Macaré in *HNJV*, 1895, 26, pp. 198-199.

Rosanvallon, P., *L'État en France de 1789 à nos jours*, Paris, Seuil, 1990.

Rouland, N., *Anthropologie juridique*, Paris, P.U.F., 1988.

Rousseaux, X., Crime, justice and society in medieval and early modern times : thirty years of crime and criminal justice history, *Crime, Histoire & Sociétés / Crime, History & Societies*, 1997, 1, pp. 87-118.

Royer, J.-P., Martinage, R., Lecocq, P., *Juges et notables au XIX^e siècle*, Paris, P.U.F., 1982.

Santucci, M.-R., *Délinquance et répression au XIX^e siècle. L'exemple de l'Hérault*, Paris, Éd. Économica, 1986.

Schafer, S., *Children in Moral Danger and the Problem of Government in Third Republic France*, Princeton, Princeton U.P., 1997.

Schnapper, B., L'action pénale, le ministère public et les associations. Naissance et contestation d'un quasi-monopole (XIX^e-XX^e siècles), *in* Schnapper, B. (Ed.), *Voies nouvelles en histoire du droit. La justice, la famille, la répression pénale (XVI^e-XX^e siècles)*, Paris, P.U.F., 1991, pp. 375-391.

Skyrme, T., *History of the Justices of the Peace,* vol.2: *England, 1689-1989*, Chichester, Barry Rose and the Justice of the Peace, 1991.

Smith, D., *Conflict and Compromise. Class Formation in English Society, 1830-1914. A Comparative Study of Birmingham and Sheffield*, London, RKP, 1982.

Steer, D., *Uncovering Crime: the Police Role. Royal Commission on Criminal Procedure*, London, H.M.S.O., 1980.

Stone's Justices' Manual, 26th ed., London, 1891.

Swaan de , A., *In Care of the State. Health Care, Education and Welfare in Europe and the USA in the Modern Era*, Oxford, O.U.P., 1988.

Tanguy, J.-F., La plus grande épuration de la France contemporaine, *in* Coll., *Répression et prison politiques en France et en Europe au XIX^e siècle*, Paris, Créaphis, 1990, pp. 127-144.

Taylor, H., Rationing crime: the political economy of criminal statistics since the 1850s, *Economic History Review*, 1998, 51, pp. 569-590.

te Velde, H., Le libéralisme néerlandais et la nation au dix-neuvième siècle, *in* Stuurman, S., (Ed.), *Les libéralismes, la théorie politique et l'histoire*, Amsterdam, Amsterdam U.P., 1994, pp. 47-59.

Thane, P., Government and society in England and Wales, 1750-1914, *in* Thompson, F.M.L., (Ed.), *The Cambridge Social History of Britain, 1750-1914*, vol.3, Cambridge, C.U.P., 1990, pp. 1-61.

Tombs, R., *France, 1814-1914*, London, Longman, 1996.

van Boven, M.W., *De rechterlijke instellingen ter discussie. De geschiedenis van de wetgeving op de rechterlijke organisatie in de periode 1795-1811*, Nijmegen, Gerard Noodt Instituut, 1990.

van der Does de Willebois, W.E.T.M., De strafrechtspleging bij de kantongerechten, *Tijdschrift voor Strafrecht*, 1891, 5, pp. 76-98.

van der Feltz, A.A. baron, De kantonale strafrechtspleging, *Tijdschrift voor Strafrecht*, 1896, 9, pp. 415-458.

van Hamel, G.A., Is vereenvoudiging van het strafgeding voor den kantonrechter wenschelijk? Zoo ja, in welken zin?, *HNJV*, 1884, 15, pp. 261-334.

van Ruller, S., Faber, S., *Afdoening van strafzaken in Nederland sinds 1813. Ontwikkelingen in wetgeving, beleid en praktijk*, Amsterdam, V.U. Uitgeverij, 1995.

van Swinderen, P.J., Is vereenvoudiging van het strafgeding voor den kantonrechter wenschelijk? Zoo ja, in welken zin?, *HNJV*, 1884, 15, pp. 336-369.

Vidal, G., Considérations sur l'état actuel de la criminalité en France et caractères de la criminalité moderne, *Recueil de l'Académie de législation de Toulouse*, 1903, 51, pp. 237-342.

Waddy, H. Turner, *The Police Court and its Work*, London, 1925.

Wiener, M.J., *Reconstructing the Criminal. Culture, Law, and Policy in England, 1830-1914*, Cambridge, C.U.P., 1990.

Woods, D., Community violence, *in* Benson, J., (Ed.), *The Working Classes in England, 1875-1914*, London, Croom Helm, 1985, pp. 165-205.

Wortel, J., *Vervolgen in belastingzaken*, Deventer, Kluwer, 1991.