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BLACK LANTERNS, &
MOVEABLE GOODS

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The Transformation of Edinburgh's Underworld in the Early Nineteenth Century*

NOTORIOUS MURDERS,
BLACK LANTERNS, &
MOVEABLE GOODS

*The Transformation of Edinburgh's Underworld
in the Early Nineteenth Century*

DEBORAH A. SYMONDS



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*For my Uncle Mike, Michael Pukish,
Who has taught me a thing or two.*

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Preface

This book began when I read William Roughead's *The Murderer's Companion*, because I wanted to read about nineteenth-century Edinburgh after working in earlier Scottish records for many years. I knew the streets where his Scots murderers had lived; I had lived in the neighborhood in the 1970s, before the coal soot on the buildings was sandblasted off for the tourists and the greater glory of the Enlightenment. I finished Roughead in a few hours, and began making notes. I was not ready to leave the old alleys near the Grassmarket, nor the peddlers, street sweepers, or doctors at Surgeons' Hall. This book is the result of various felonies committed in Edinburgh in 1828, William Roughead's elaboration of several of them, a great deal of work, scholarly and less so, done on the history of crime, the efforts of archivists at the National Archives of Scotland, and my own attachment to Edinburgh's Old Town.

In research that goes on for years, there is as much forgetting as there is discovery, and this preface will be a short, sharp attempt to remember all those people and institutions who contributed to this book, and to my ability to think, and to travel. I can begin by mentioning the old reliables. First, the Drake University Center for the Humanities, and the Arts and Sciences Dean's Faculty Travel Budget, which together have paid for much of my research and travel. Second, my partner Melissa Cano, who has repeatedly saved me from becoming an antiquarian rather than a historian. Third, my dear friends Marney Queen and Julia Johnson, who have never failed to supply a front door key, room, and much board for all my visits to Edinburgh, and have not yet found a way to declare my fairly regular visits a char-

itable contribution. Fourth, my friend and mentor Elizabeth Fox-Genovese, who always makes me see more than I had the day before; and Eugene D. Genovese, who may be the only person who truly knows what NSRV means. To paraphrase Virginia Woolf from *A Room of One's Own*, money, a room, good food, and good company are the foundation of all good work. For *all* those included in the “good company,” you know, I hope, who you are.

I have the pleasure of thanking the readers of this manuscript for their adroit and professional comments, which have made this a much more sturdy, pointed, and accessible book. And Michael J. Carley, the former director at the University of Akron Press, has been timely, congenial, and forthright in getting this book out of my hands, as has Amy Freels, the production coordinator. I must also thank a number of Drake students who have been excellent research assistants on this project, most recently Kandis Meinders and Michaela Waszgis, who worked on anatomists, and over several years Monica Black, Michal Piszczuk, Jessica Tarbox, Hanssen Wendlandt, and Jeri Krutsinger, who worked on Edinburgh newspaper reports of crime.

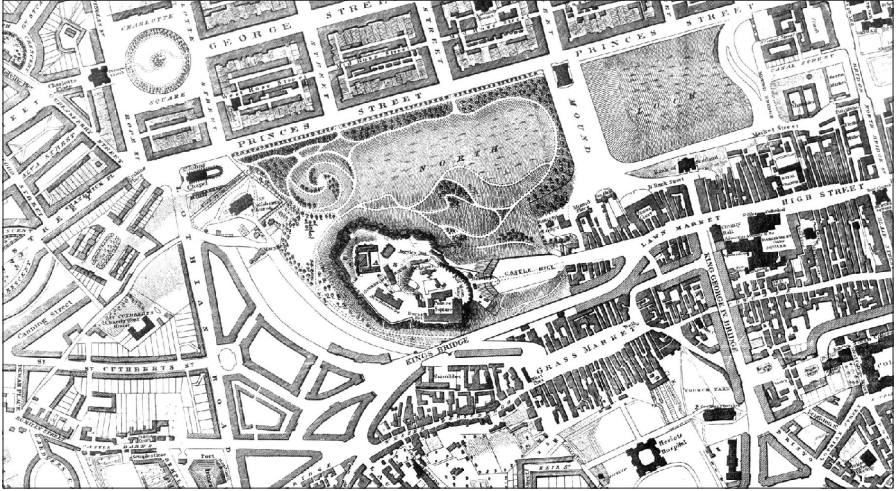
But I am most indebted to the staff of the National Archives of Scotland, both at Register House and West Register House, as well as the staff of the National Library of Scotland, and the Edinburgh City Library. I have found the staffs of all these institutions to be unfailingly adept and professional. I have particularly relied on the help and advice of Robert Gibb, Register House, who has helped with aspects of this project and with several others that have not yet seen the light of day. I am also in debt to Ruth Jones and Ian Sommerville at West Register House for finding an elusive single-page document. We conventionally mention the record keepers, the archivists, and the librarians who make our work possible, but I think we do not do them justice. Without their work over the centuries there would be no sources, and no history.

Of course, errors and misjudgments are my responsibility; indebtedness is no excuse for inattention to one's craft.

Prologue

After dark on a spring evening in 1828, three people equipped with a “dark lantern” and some skeleton keys broke into a storage cellar in Whiskey Row, in an old street called the Cowgate in Edinburgh’s Old Town. The thieves were looking for tea but had to content themselves with hams, double Gloucestershire cheeses, raisins, orange peel, figs, and candles. They carried these away one box at a time, in a bed tick, to the nearby house of Elizabeth Allan and James Wood in Blackfriar’s Wynd. Suddenly the three were interrupted. When one Bertram the Cowfeeder came down the street, the last of the thieves coming out of the cellar, Alexander Reid, fled, leaving two double Gloucestershire cheeses and two hams under Bertram’s cart in the street. As he burst back into Allan and Wood’s house at five o’clock that morning he cursed, complaining of his colleagues’ “damned carelessness in not keeping a look out for the watching.”¹

It was very much a neighborhood crime, possibly overly ambitious, for not only were they caught, they seemed to have little idea of how to dispose of their goods. They ate one of the hams, some of the raisins, and a little orange peel. James Wood, landlord to one of the thieves, sold their candles and a cheese to Christian McKay, a widow who kept a small grocery shop in the ground floor of the same building. She later admitted to police that she, too, had one of the hams, but said she providently “laid it aside” when she heard about the cellar. The three thieves, David Adams, Alexander Reid, and Margaret Robertson, had been meeting for more than a week at Elizabeth Allan and James Wood’s upper-story house, where Robertson lived. On the night in question, Allan testified, the thieves met there, Adams



A map of Edinburgh's Old Town.

showed Maggie Robertson some keys, Reid asked her to file them, and then they went out. Allan testified that Reid and Adams were “for 8 days before that time talking about a Cellar in the Whiskey Row which they said would be Easily done.” The cellar, probably beneath a post office building, was rented by a grocer named Mr. Rymer, possibly the same grocer who figures in chapter 3.

It was not as easily done as they thought. The police record refers to the three as “bad characters,” but not as practiced, habitual thieves. It listed David Adams’s occupation as watchmaker and Alexander Reid’s as laborer. Maggie Robertson may well have been at Allan and Wood’s house not as a boarder, but as a servant. If they were bad characters, they nonetheless seem to have found congenial neighbors willing to profit from stolen goods. Neither Allan nor Wood turned them in, and Wood helped dispose of some of the food in Christian McKay’s shop at the bottom of the stair. The police found the neighborhood couple who hid their dark lantern—probably one with a dark glass, or some cover for the flame—for them afterwards. They were young. Maggie Robertson was sixteen, Adams twenty-nine, and Reid twenty-one, and inexpert, but well-connected enough on that street to be far from innocent or starving thieves in 1828.

This story is not remarkable, and that is why I have chosen it. This book examines an exceptional series of brutal and by now fairly well known murders. But the questions about crime that arise have only a little to do with horror or exception, and everything to do with the typical structures of the criminal underworld of Edinburgh in 1828. The first question is, what does the criminal underworld look like in 1828; the second, does it change in or around 1828? It does, and the change tells us how the criminal underworld was a kind of shadow economy that was necessarily transformed by the continuing capitalist transformation of the much larger public economy.

We begin with Margaret Robertson, and her relation to Reid and Adams. In 1828 she was sixteen, had been in jail once, and had lived with Elizabeth Allan and James Wood in Blackfriar's Wynd, off the High Street, since January. She hardly could have been the leader of the gang, nor is it likely that they could not have filed the keys without her—although it is possible that she alone had that skill. Nonetheless, the question of why she was there at all would seem to loom large. Unlike other women, she was not skilled in the resetting of goods—the sale of stolen bits and pieces, usually to a pawnshop owner—nor did she have the interpersonal skills of a “girl of the town,” stealing watches from drunken gentlemen who were expecting something quite different to happen.² And she was apparently not married to either Adams or Reid. Given her role in the theft, she could as easily have been male.

Margaret Robertson exists for us as a question that unfortunately cannot be answered. But she is also one of a number of women from Edinburgh's Old Town and its westward outgrowth, the West Port, who were jailed and tried in 1828 for theft, reset, or murder. From their lives we can begin to reconstruct Edinburgh's underworld, and speculate on how it was changing in the 1820s. Of particular use will be the fairly well documented lives of the infamous murderers, Lucky Log, Helen M'Dougal, William Hare, and William Burke. Log and M'Dougal worked alongside their husbands, Hare and Burke, and shared in their notoriety when their string of sixteen murders was discovered. Neither woman would hang, but both, along with their hus-

bands, so enraged the public that an eager press gleaned scraps of biographical information before, during, and after the trial. It is this trial and the surviving documentation that make 1828 an important year, and it is with this year and this trial, and all that it can tell us about this neighborhood, that we will begin.

NOTORIOUS MURDERS,
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The Cowgate ran east from the Grassmarket and lay at the heart of the network of wynds and closes that housed the poorer residents.

Introduction

1828 might seem an inauspicious year to choose as the basis of a discussion of anything so grand as a transformation, which certainly implies that something very old has been markedly superseded. There were no great acts of Parliament, no treaties, no great riots or famines in 1828. No European wars began or ended. Yet the larger world outside the closes and wynds (alleys) of Edinburgh's Old Town was changing rapidly in the wake of Waterloo, the great battle of 1815 that stopped Napoleon, but could not stop liberal democracy or economic revolution on the Continent or in Great Britain. The Scottish and English Reform Acts came in 1832, and the long-argued reform of the Scots burghs in 1833. These pillars of the modern British state extended the vote to urban, male, upper-middle-class householders, created new parliamentary districts reflecting the growing importance of industrial cities, and ended the self-perpetuating paternal powers of burgesses in Scottish towns. The mere possibility of such political reform had so provoked the popular author, lawyer, and public figure Sir Walter Scott that he made his conservative loyalties excessively clear, and was hissed at the Jedburgh election of 1831 by critics who yelled "Burke Sir Walter!" This was a direct reference to the notorious murderer William Burke, caught three years before, whose name became a synonym for death by suffocation. Of course, old Sir Walter's world of Scots lords, clan chiefs, and gentlemen who knew their place and gloried in it was not dead yet. Scott had spent his life trying to prove that through his novels, and, rather ironically, in the carefully staged parade of a kilted King George IV through Edinburgh in 1822.¹ But Scott died in 1832, and the transformation that was eroding

nobility and elevating the factory manager and the Royal Exchange—in a word, property—did not. Those alive in the year 1828 and living in Edinburgh would, without riot, Parliament, famine, treaty, or war, feel that transformation's effect.

In 1830, as E. J. Hobsbawm said, nothing was clearer than the inability of the great conservative Metternich to stop the clamoring for democratic institutions. Equally clear was the development of an industrial and capitalist economy, for which growth, not merely production, was now a goal. As the British historian Harold Perkin put it in 1969,

The Industrial Revolution, however, was more than an expansion of commerce, more than a series of changes in the technology of certain industries, more even than an acceleration of general economic growth. It was a revolution in men's access to the means of life, in control over their ecological environment, in their capacity to escape from the tyranny and niggardliness of nature.²

If that suggests the magnitude of the social and economic changes afoot, the timing of this economic and political transformation is simply illustrated. Adam Smith died in 1790, the year that the Forth & Clyde Canal began the linkage of Glasgow and Edinburgh; Karl Marx was born in 1818, and in 1822 the Union Canal continued the Forth & Clyde into Edinburgh. The canals were ultimately a curiosity of development, outweighed by good roads, railroads, harbor improvements, and big ships. But they are telling, nonetheless, if one recalls the urgency with which good engineers in many countries worked on the design of routes, locks, and aqueducts for fifty years.³ In the years between Smith's death and Marx's birth came more than canals; these were the years of Revolution and warfare in France, and ultimately across the Continent. Along with the wars came demand for the materials of war, and the means of transporting them.

If ever there was a period when the smell of something new was in the air, it must have been in 1828, after half a century of Enlightenment in Edinburgh. More important, this timing was international, rather than regional. The Enlightenment, which was both a material

and a philosophical undertaking, produced increasing supplies of zeal, Bills of Rights, the bridges of James Telford, and violent upheaval in France. It sent Mary Wortley Montagu to Turkey, James Bruce to East Africa, and finally, George IV marching through Edinburgh in a kilt and bloomers. Its proponents made better clocks, factories, hogs, schools, prisons, governments, carriage fringe, armies, and books. The old order, agricultural and hierarchical, could not stand the shock. Wary peasants took to the roads; hereditary conservatives like Sir Walter Scott railed with horror at the loss, the change, and the license. Others called it liberty.⁴

Between 1815 and 1833 Scotland and much of the Western world, its empires and its ex-empires, were to reconstruct themselves. Those British hallmarks of the new era, the Reform Acts, the abolition of slavery, and the repeal of the English Corn Laws, reflect not only internal changes in the British political economy, but a re-creation of Britain's place in the nineteenth-century world economy. Slavery in the remaining British colonies, and in Britain, ended between 1833 and 1838. This mattered most in the Atlantic world, where there were more than a few Scots. Further east, the old and rarely honorable East India Company would slowly be reshaped between 1766 and 1857, as Britain replaced its literate freebooters with government bureaucrats. And all this mattered to Scots, and to Scotland, for Scots figured prominently in this wider world, finding careers and money that had never been available to them at home in virtually every nook and cranny of the British imperial world.⁵

In 1828 Scotland was no provincial corner of the world. It was still distinct from England, had generated the Scottish Enlightenment, bred Adam Smith, profited greatly from New World sugar and tobacco, generated a movement for the abolition of slavery, and repealed the servile status of its miners. Throughout the nineteenth century, Scots would do much of the sometimes dubious work of empire, fighting, planting, converting, ruling, and bribing, then returning home with fortunes. Many less fortunate Scots would be shipped to the New World wholesale during the notorious clearances of high-

land estates, or as indentured servants, or fighting for no more pay than the king's shilling. Consider again the cellar that was robbed in 1828 by Adams, Reid, and Robertson. The teas they were looking for came from India, Sri Lanka, or China, the hams probably from Virginia, and the oranges perhaps only from Spain. The Old Town of Edinburgh may at first appear to have been a decaying corner of an antique, northern British city, but that would be a great misapprehension.

In 1828 Edinburgh was still the capital, albeit no longer a political one, of a country much engaged in a world economy that was both glamorous and vile. Thus, what we are seeing in poor neighborhoods of Edinburgh, chiefly the older, early modern part of town, known literally as the Old Town in 1828, was the wandering, fighting, drinking, thieving, and disorder that accompanied the migrations of enormous numbers of smallholders, peasants, cottagers, and landless laborers toward wages. The resultant jumble of demobilized soldiers after 1815, Irish migrants, Gaelic-speaking highlanders, and lowland Scots continued to move, following seasonal work and demand for domestic servants, or shuffling back and forth between the different economies of Edinburgh and Glasgow. If some were miserable, others were probably hopeful, and kept an entrepreneurial eye out for any small opportunity. Migration, and the need for labor, including Irish Catholic labor, were sufficient to provoke the passage of a very unpopular Catholic Emancipation act in London in 1829. By 1844, Scotland was trying out its new Poor Law, designed to deal with the wandering poor, as they moved out of the villages where they were born, and toward a future that was not yet clear to anyone.⁶

Edinburgh in the 1820s could be seen as a city still balancing at the very end of the early modern era, when the great social and economic changes of that era were about to be abetted by changes in government, and in those who controlled the structures of government. And here, with the word government, we come up against a great dilemma in Scots history: whether Scotland constitutes a nation or merely a region within the politically united Great Britain of 1828. The usual an-

swer to this might be to recite the chronology of the political union, beginning with Elizabeth I leaving her crown to her Scottish relative, making him James VI and I, in 1603. This would be followed by the Act of Union in 1707, creating a single Parliament in London, and the defeat of persistent Jacobite rebels who attempted, in 1715 and in 1745, to bring back a Stuart monarch and undo the Union. But this answer begs the question by relying on the obvious.

What is perhaps less obvious is an old Scottish problem, that of weak central authority, which strengthened the nobility in their regional kingdoms. Whether one absorbs one's history from *Braveheart*, *Rob Roy*, or standard texts, it becomes clear that, to steal a line from Arthurian as well as Jacobite mythology, the king was often over the water. Because of that absence, Scotland developed other strengths—a national church that rivaled government at times as a source of order, a banking system separate from the Bank of England, and a widespread, popular interest in Scottish law and the Scottish courts. But for our purposes it is enough to point out that between the 1640s and the 1740s, some Scots used the English to subdue the Stuarts, the Kirk, and certain Scots noble houses. Scotland was not taken or colonized. It was the Scots Parliament, with some bribery and coercion, that wrote and ratified the Act of Union.

If they found it more efficient to have their governing done for them in London, they did not put it in those words. But by waving goodbye to a resident king in the seventeenth century, and by sending away the Parliament in the eighteenth, an act that was seen as a national tragedy by many in 1707, Scots got some peace in the later eighteenth century. Edinburgh became a center of Enlightenment learning, wealthy tobacco merchants rebuilt Glasgow, the Kirk moderated its principles, and Scots made great fortunes throughout the British Empire. It seems doubtful that the Stuart pretenders to the throne could have done more.⁷

But someone had to represent central authority in Scotland, and London first entrusted direct local power and the privilege of patronage to the hands of a noble family, the Campbells of Argyll. But

when they failed to forestall or contain the Jacobite uprising of 1745, they were replaced by a family of Edinburgh lawyers named Dundas. A precedent was established by which the lawyer raised to the office of lord advocate (attorney general for Scotland) would act unofficially as a sort of secretary of state for Scotland, assuming many of the powers of the old Scots Privy Council which had been abolished in 1707. From the ascendancy of the Dundas family through 1828, when one William Rae held the office, the lord advocates who acted as the agents of the London government in Scotland all were, at least while in office, resolute Tories. Nonetheless, despite their conservative allegiances, these men were lawyers, bourgeois gentlemen whose very access to power was new in Scotland, and they showed the flexibility of conservatives soon to make their peace with a rapidly changing society in the Reform Act of 1832.⁸

The lord advocate came to represent Crown authority in Scotland, and that meant that any criminal case might suddenly, especially during the explosive years of the French Revolution, become a political affair. Scots Whigs who could not openly criticize the government could always hope to embarrass its chief representative in court, especially if his ineptitude threatened to set loose a dangerous miscreant or hang a harmless citizen. There were always talented Whig lawyers ready to take on the lord advocate in these years, men who would take a case without payment, merely for the joy of beating the government's man in the courtroom. These men were interested both in moderate political reform, and in their own advancement, and saw both blocked by Tory placeholders with talents far inferior to their own. With Enlightenment figures like Henry Erskine, Francis Jeffrey, and Henry Cockburn snapping at various lord advocates' heels, it is little wonder that Edinburgh courtrooms sometimes attracted great audiences. The law had always been a popular diversion in Scotland, and by the late eighteenth and early nineteenth centuries, it was a political forum as well. In Edinburgh, crowds attended two kinds of learned and discreetly political gatherings: the Sunday sermon and the High Court of Justiciary.

Crime

Much has been written about crime already, especially in the tradition of the great criminal narratives. Much of that was contemporary and some marginally fictional, offering little more than dramatized horrors, recalling muck-raking reports on the evils of the slums, Engels's *Conditions of the Working Class in England*, the careers of notorious English highwaymen, the fictional Moll Flanders, or the real Moll Cutpurse. Crime—outside the older sociological discussion, which goes back to Beccaria, and then the Enlightenment and the Panopticon, not to mention the Book of Genesis—is merely a pastime, until it is studied as an integral part of a complex society. It makes no sense apart from the development of the rule of law, which in turn depends upon those who make the law, who in turn have themselves been elevated to their position by some political system, social order, and economy.

Some of the best work on crime has taken shape as studies of particular problems, or cases, as they played out in courtrooms. For example, E. P. Thompson's *Whigs and Hunters*, Christina Lerner's *Enemies of God*, or Natalie Zemon Davis's *Return of Martin Guerre* have been particularly effective. These books are not about crime as a topic, but about instances of change and conflict, as they happened to be recorded in court cases. Other studies of topics largely salvageable through trial or police records, secular or religious, such as prostitution, witchcraft, illegitimacy, infanticide, militia riots, and grain riots, have also proven valuable insofar as they address complex behavior, with ties to economic, cultural, and social change. What this recent work has shown is that records of crime, once the territory of retired lawyers and other gentlemen antiquarians with an eye for the ghostly or bizarre, can be a rich and usable source for historians.⁹

But the growth of the history of crime, like other forms of social history over the last few decades of the twentieth century, has produced an overwhelming amount of information, and historians' abilities to theorize about what it means have not caught up with the in-

flux of information. This is partly due to the appearance of the personal computer, with its ability to sort vast amounts of quantifiable data, like that provided by indictments, convictions, and cases heard over the years, stretching on for a century or more. As the records have been coded and tabulated, we know more, but with less certainty than the men who wrote happily about their favorite criminals.¹⁰

What we have gotten from the union of the old criminal narratives with social history has been various. While hardly predominant, English Marxists, following from Marx's insight into the uses of the law to defend and create new forms of property, have investigated the creation of laws enforced to the disadvantage of ordinary people. But this indictment of English law, giving us the term social crime—*theft, poaching, or riot committed by decent people, in the face of famine or the loss of traditional perquisites—accounts for only a small portion of the work done on crime.*¹¹

Much of the work done has been that of unearthing and presenting to the public what evidence we have of the incidence and nature of crime in the past. It is hardly surprising that societies much concerned with their own crime rates would produce historians who demonstrate to us that past societies were also plagued by theft, arson, rape, murder, and so forth. But, to paraphrase G. R. Elton, who raised this question many years ago, what are we talking about when we describe crime? Crime, in the abstract, understood as the breaking of laws, is as old as law, religious or secular, and thus potentially ever-present, and more a matter for moralists than historians. There are no societies, past or present, without crime, and there may be pickpockets in heaven. If crime is continuous, and history is about change, how are historians to make use of criminal court records? The English Marxists who gave us "social crime" hit upon an aspect of crime that changes—the letter of the law—and thus were studying local responses to change, albeit a change imposed from above, by Parliament. Other historians of crime, working quantitatively, have looked to changes in the incidence of various crimes and taken those changes as the problems they must explain. Implicitly, statistics of crime have

come to be seen as part of a misery index, as variables dependent on their connection to some quantifiable source of misery, such as famine, unemployment, or new markets that pull goods away and drive up prices.¹²

The problem with all this is that it still leaves criminals outside history, continuing old practices, poaching, thieving, burning down a barn, and gleaning while their social superiors and their economies change around them, goading them to steal more, or punishing them for it more often. This timeless aspect of the criminal is also due to the nature of court records, which reduce the complex squabbles collected there to formulaic instances of those categories of crime that the law of one period or another recognized. And it is precisely that tendency to the formulaic, which suggests the timeless, that historians must dismantle by reconstructing from the anecdotal evidence, not how many thefts, but what was stolen from whom, by whom, and how it was stolen, and how it reentered the economy. The point should be to discover how crime and criminals change over time.

With criminals caught in the headlights of the law, frozen and looking much alike, it is no surprise that several historians remarked in a coauthored piece that “In all societies before the present century, in short, criminals were probably very much more tradition-bound in their practices than many historians suggest. Most stole for one ancient and enduring reason: to survive.”¹³ This tendency to find change only among the ranks of the rulers, or the state of the economy, while the ruled flail away, stealing to keep body and soul together, rests on an over-simple assumption. This assumption stipulates that social criminals for English Marxists, and that criminals in general for the somewhat quantitative social historian, are linked to the economy through short-term economic failures and other troubling changes, but do not control or innovate within that economy. They are hangers-on, living from hand to mouth: men collect firewood, urban children steal a few pieces of coal, women trade sex for a loaf of bread, all of them driven to commit crimes by persons, forces, or innate characteristics beyond their control. It seems to be true, at least

in the British literature, that when times get hard, more people steal. But even more steal anyway, and the suggestion that they do so simply to survive begs the real question, which is why so many chose to survive in that way.

Engels may well deserve more credit for coining the phrase “social crime” than he has gotten, for although he did not use it directly, he certainly had written down something of the concept by 1844 in *The Condition of the Working Class in England*:

The clearest indication of the unbounded contempt of the workers for the existing social order is the wholesale manner in which they break its laws. If the demoralisation [*sic*] of the worker passes beyond a certain point then it is just as natural that he will turn into a criminal—as inevitably as water turns into steam at boiling point.¹⁴

This is not quite as sophisticated a definition as has been offered by twentieth-century historians, but it does suggest that the point in time, as well as the site at which people become ungovernable marks something more than a sudden lapse into criminal behavior. Engels went on to call it “social war,” while later historians called it “social crime,” or “socio-political crime” and described the typical examples, like grain rioters or Wilksite radicals, as people who were not breaking the law, but attempting to negotiate what the law said, and ultimately, how they should be governed. When these arguments work, the erstwhile lawbreakers cease to be criminals, and become proto-citizens, participants in the governing process who do not have suffrage.¹⁵

If some laws may usefully be broken as part of the process of creating a more just—at least from the particular perspective of the rioter, protestor, or poacher—system of laws, we begin to see, as Marx believed that he saw, that the law, and consequently justice, are relative to the particular societies in which they exist, and change as society changes. But this skepticism about the law—“the Marxian critique of justice,” in fancier words—was older than Marx. The Scots lawyer Sir George Mackenzie, the right-hand man of Charles II in Scotland, had remarked in the late seventeenth century that there was the law, and then there was justice, and any man who thought they were the same

thing was a fool. Mackenzie was, of course, skeptical, or pragmatic, only about the law, reserving to justice its existence, if only as an ideal.¹⁶

But what does this skepticism about the law, as a means of administering justice, do to our ability to understand crime? It forces us to reconsider what the law is—and recognize that the law in Scotland, as in virtually every other Western country, consisted of many layers of law, from common, old, and traditional understandings to recent statutes. The law, never so unified and rational as the word suggests, was also very variably enforced, as many historians of crime have found. Over centuries, neighbors, elders of the Kirk, landlords, magistrates, sheriffs, police officers, prosecutors, judges, juries, and lawyers had a great deal of personal freedom in the often lengthy process of investigation and trial, and the law was often trampled on, bent, and disregarded. In other words, what Marx attempted to describe systematically, Charles II's lawyer knew intuitively: the law is a tool in the hands of human beings, sometimes in one hand, and sometimes representing a group interest.

This altogether healthy skepticism about law, at least for Mackenzie in the seventeenth century, as a sure means of securing justice, has developed in the late twentieth century into a horror at the thought that any institution should exercise power over anyone. What this influential argument, expressed by Foucault and others, and perhaps ultimately rooted in Rousseau's *Émile* and nineteenth-century anarchism, implies about criminal history is that criminal law is a purely pragmatic tool in the hands of lawmakers and law enforcers, who use law not to defend the rights of citizens, but to selectively punish the dangerous, the disaffected, and the rebellious. Thus, what perhaps began as a little worldly skepticism about the law has extended into a scathing critique of law, and implicitly, a defense of all criminals as social criminals. Whether this was what Engels had in mind seems doubtful, and it has not been historians of crime who have pushed the debate in this direction.¹⁷

But if the law is more than a pragmatic tool, then the Enlightenment scholars who wrote about universal law must have been right to

argue that certain principles were beyond party interest, and were indeed universal. And it does seem that the practice of criminal history implicitly rests on recognizing that those two kinds of law, the pragmatic tool and the universal principle, coexist, generating two kinds of crime, the social and, for lack of a better term, the antisocial. It would seem that since Engels wrote in 1844 about the lawbreakers in revolt, the business of criminal history has been to sort out these two kinds of crime, and force us to confront the larger philosophical questions of whether or not we find the laws broken to have been just, or not, and whether those breaking the laws saw themselves as moral, or not.

Habite [sic] and Repute

To quote another historian, the concept of social crime does “not explain why the poor murdered each other, raped each other, or stole from each other.” Most criminals, at least as the literature on early modern England has developed, were of this latter sort, breaking laws that protected the lives and property of other people like themselves. And there is still a good deal of work to be done on these people—the petty thieves, various rogues, and sometimes murderers who, at their most dangerous, caught the eye of eighteenth- and nineteenth-century popular writers. This book is an attempt to follow the trail laid for us many years ago when William Roughead wrote “that Sir Walter Scott had a passion for reading murder trials” and “that Tennyson and Jowett once sat up a whole night discussing—murder.” If we can resurrect the old antiquarians’ untrained insight, that the lives of the ordinary, antisocial majority of criminals were important objects of study, and combine it with the insights of modern historians who place crime in a political and economic framework, we can reconstruct something of the lives of those who were called criminals “habite [sic] and repute” in Scots courtrooms in 1828. More importantly those ordinary criminals, both the occasional murderer and the more common thief, allow us to see both crime and the economy in a new light.¹⁸

The Shadow Economy

Men and women lived by theft, assault, murder, and the disposal of stolen goods, and they had the help of neighbors who were no more honest than they had to be. These people are the object of this study, not because they possessed any special culture or curious vocabulary, but because it is among the habitual thieves of a city that change in the criminal economy—not in the laws—will be found. If re-creating a criminal underworld, like that of Charles Dickens's Fagin was our only goal, this would be shallow antiquarian social history. But the ultimate goal is to describe a shadow economy, replete with criminals who are active, calculating, economically aware agents of something the older writers would have called evil, and possibly of change. To view them in that way is a compliment that has not been paid to them—especially to the women—in many years. And it is something very different from the more common suppositions that the law changes, the enforcement of the law changes, and the economy changes, but that the poor and the ordinary people who break the law muddle along pathetically and violently from century to century.¹⁹

Women as Criminals

Much has been written, at least for England, about the static nature of women's roles in crime, and the reluctance of juries, and even neighbors, to see them formally tried or severely punished. And there is some truth to those findings. In the late Middle Ages 10 percent of all criminals were women, as they were some years later in Elizabethan Essex. For 140 years before 1800, broken down by kinds of property crime, women constituted from 8.5 percent to 34.3 percent of the recorded criminals in Surrey and Sussex; and finally, in Scotland in 1828, they made up 20 percent of those investigated for all sorts of serious crime by the Lord Advocate's Department.²⁰

Those figures of 10 to 20 percent seem generally confirmed, but it is important to understand that crime is a difficult topic, affected by modern notions of what constitutes crime. None of the figures given

above, by reason of their dates or the authors' choices, touch on the great witch hunts of the early modern period. And infanticide, which was a subject of the second study quoted, was given as a crime separate from the number of general homicides. These two crimes—witchcraft and infanticide—must have accounted for many of the women brought to trial between the late Middle Ages and the early nineteenth century. And if we look at the numbers of violent crimes committed by women in Surrey between 1660 and 1802—to quote from that noted and thorough study—we find ninety-five homicide indictments, about a tenth of which were charged to women. But if we add to that the number of infanticide indictments, which is again ninety-five, and consider violent crimes as a whole, we see that over 50 percent of all violent crimes were attributed to women through the indictment process. Even without reviewing the literature on witch hunts for England and Scotland, the point is simple. Overviews of female criminality, as that criminality was perceived by past society, must take into account not only the usual offenses that we now recognize as criminal, but also the very old crimes of witchcraft and child murder. Women did not rob travelers or brawl with the frequency of men in England, but they were, all the more ironically, seen as exceptionally dangerous at times, and prosecuted quite viciously. That truism of standard criminal history, that women were consistently treated mildly, rarely convicted, and even more rarely hanged, is not always true, and a criminal history of women from 1500, or earlier, to 1900, will fluctuate wildly in what it shows us about women.²¹

To reconstruct a brief outline of women's criminal acts in Scotland—some morally justifiable to us, others simply felonious—one would begin by identifying who had authority to define crimes of various sorts. In the early modern world, that would have included the state, local landed magnates of varying degrees, and the church. Leaving aside all the civil cases heard by the central civil court, and various city magistrates, which are interesting but essentially different from criminal law, we are left with serious crimes prosecuted by the state in 1690: homicide, infanticide, witchcraft, arson, kidnapping,

false coining, bestiality, notorious adultery, incest, rape, deforcement (interfering with government officials), riot, and many kinds of theft. As the eighteenth century began, witchcraft ceased to be a believable crime; infanticide was increasingly difficult to prosecute; and bestiality, incest, and adultery disappeared as capital crimes by the later decades of the century. Church courts continued to shame and fine adulterers, fornicators, parents of illegitimate children, and those who attempted to marry outside its control, notably Episcopalians. Landowners' courts, sometimes known as baron courts, settled disputes among tenant farmers on estates and tried to enforce the landlords' rights to labor and to control the distribution and use of land by their tenants. As cities grew, urban courts and some means of policing the streets grew with them. The godly discipline that John Knox might have enforced in Edinburgh in the sixteenth century was long gone, swamped by population growth and religious controversy. By 1828, citizens of Edinburgh taken up by the police for petty crimes might be sentenced by the city magistrates, or by a police court, and sent to either a house of correction or a prison. More serious crimes—those that are the subject of this study—were tried before the High Court of Justiciary, and those convicted might be imprisoned, transported, or hanged.

Women as well as men living in Scotland in 1828 would have known some of this, even if memory of the old crimes, such as witchcraft, which in Scotland was preponderantly a woman's crime, had faded. Infanticide was re-created by a new statute in 1809 as concealment of pregnancy and was no longer a capital crime. But women also figured as social criminals, protesting publicly and with some force against grain exports and the enclosure of common land during the Napoleonic wars. Of course, they also figured as what would have been called common criminals, but because no systematic studies of crime in medieval, early modern, or modern Scotland exist at this time, we have primarily English studies to use as a guide to women's participation in most kinds of crime. Those suggest that most women, like men, were principally indicted for theft of various kinds,

especially housebreaking. They were apt to be young, between fifteen and thirty-four in the early modern period, and stealing in urban rather than rural areas. Women were less likely to rob persons, a particularly male career, and more likely to break into houses. They stole food and textiles. They were sometimes prominent as receivers of stolen goods, and as counterfeiter; in the early modern period, the ratio of women to men in these crimes in Surrey and Sussex was higher than in any other crime, excepting, presumably, witchcraft and infanticide.²²

Where does this information, much of it drawn from English studies, leave us with regard to Scots in 1828? The witch hunts were long over, and infanticide, unless it could be proven with direct evidence as a murder, was a minor offense. Prostitution, the next specifically woman's crime to be defined by the courts, was an even more minor offense, handled by the recently instituted Edinburgh Police Establishment. Presumably "girls of the town" were not rare on the city streets, but some, at least, preferred to steal, and exchanged sex for a payment only as a last resort. Other women, for the most part younger, stole, while a few, who were older and married, handled the resale of stolen goods. Few of these women worked alone, so we are really examining, not numbers of women engaged in various branches of crime, but the common methods of organization—household, group, gang—used by the men and women who supplied the shadow economy.²³

The Household Organization of Crime

Women were no more absent from the shadow economy than they were from the larger economy, and in 1828 men and women carried on thieving in concert, often through a rough kind of household organization. Just as the larger society had relied on household production for centuries, so did the inhabitants of the shadow economy, who lived in both worlds. The following brief summary of the particularly nasty case that draws our attention to the year 1828 also illustrates the workings of a criminal household. In that year, in Edinburgh's West

Port, seventeen lodgers, visitors, and traveling peddlers died while in the company of Willie Hare, Lucky Log, William Burke, and Nelly M'Dougal. Sixteen of these people were murdered, and the bodies packed up and sold, generally by both couples working together. The last murder was committed on Halloween, and discovered the day after; the trial took place on Christmas Eve, and scandalized and terrified the city. These exploits, eventually ascribed chiefly to the two men and the anatomist who bought the bodies, provoked a great deal of writing, as people tried to come to terms with what had happened. Early rumors and transcripts of the trial were soon, and continually, replaced by fiction, ranging in quality from Robert Louis Stevenson's *Body-Snatchers* to popular plays and verse.

Burke's the butcher, Hare's the thief,
And Knox the boy who buys the beef.²⁴

On Christmas Eve in 1828, the High Court of Justiciary in Edinburgh convened before a full house to try William Burke for three murders, and Helen M'Dougal for one. Mary Paterson, James Wilson, and Mary Docherty, the three mentioned in Burke's indictment, had been killed by Burke and his friend William Hare, with much help from their wives, Helen M'Dougal and Lucky Log, for the purpose of selling the bodies to the popular anatomy lecturer Dr. Robert Knox. Knox, like other anatomists, had almost no legal access to corpses for research or teaching, and bought "resurrected" bodies from gangs who dug in churchyards. Burke and M'Dougal were tried alone, because the only witnesses who could give direct evidence against them were their colleagues, William Hare and his wife, Lucky Log. They gave that evidence in return for immunity from prosecution, and the subsequent trial horrified and mesmerized the city, not least because it was apparent that Log and Hare were also guilty. Burke, Hare, and Dr. Knox have since become notorious, representing for many terrified citizens the logical outcome of the grave-robbing that provided Edinburgh medical schools with corpses for dissection. Their notoriety obscured Log's complicity in a business that began

in her lodging house, and continued to thrive under M'Dougal and Burke's roof, with considerable help from M'Dougal. Lucky Log and Helen M'Dougal were just as guilty as their husbands, as members of the mobs demanding blood knew in 1828 and early 1829. And their contribution to what began as a household enterprise frames much of the following examination of the men and women in the shadow economy, or underworld, of Edinburgh.²⁵

The extraordinary series of sixteen murders that the four carried out in 1828 forces us to examine the peculiar economic, cultural, and scientific development that turned the human body into a commodity, thus making those murders profitable. That development was the rise of anatomy, in the course of the Enlightenment, from the despised, messy, material business of barber-surgeons to a field literally at the cutting edge of medical knowledge. With status came increased demand: students wanted to attend lectures, lecturers wanted bodies, and the best courses provided students with sufficient bodies on which to practice, as well as those required in the lecture hall. The business of resurrecting the very recently deceased, wherever medical schools existed, could not keep up with demand. The prices anatomists paid the resurrection gangs for bodies rapidly inflated in the course of the late eighteenth century, until they fluctuated from eight pounds to as much as twenty guineas in the 1820s.²⁶

Certainly none of the other goods stolen by Edinburgh thieves would bring as much as the bodies that were "stolen" from their owners by Log, Hare, Burke, and M'Dougal in 1828. That makes the four murderers entrepreneurs of a very dangerous sort, people both extraordinarily vicious, and quick to understand supply and demand in a very basic way. But if they—none of whom had a record with the police—could grasp this so quickly, surely the habitual criminals of the Old Town, though shy of committing murder, were equally aware of prices and dealers. Of course, the other goods in the shadow economy, such as watches, clothes, food, and household goods, would not bring nearly as much. And their prices were no doubt somewhat controlled by the reseters (resellers of stolen goods), secondhand deal-

ers, and pawnshop keepers of the city, who would not have had many wealthy customers. Then again, Maggie Robertson's nocturnal search for tea suggests that those three thieves had a particular buyer in mind, and perhaps an attractive price. They did not find the tea, but in the West Port, Rymer's grocery supplied Hare, Log, Burke, and M'Dougal with empty tea chests, which they used to transport their victims' bodies to Dr. Knox's rooms.



The West Port, the city's old west gate, grew into a neighborhood known as Wester Portsburgh by 1828. The murderers Burke, M'Dougal, Log, and Hare lived near these buildings.