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**THE CRIMINALITY OF WOMEN IN THE 18TH CENTURY IN THE SOUTH  
WEST OF ENGLAND**

by

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in partial fulfilment for the degree of**

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## Author's Declaration

At no time during the registration for the degree of Doctor of Philosophy has the author been registered for any other University award.

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Signed A. A. Williams

Date 20/04/07

## Abstract

### The Criminality Of Women In The 18th Century In The South West Of England

Amy Williams

#### Chapter 1: Debates and Developments in the fields of Crime History and Women's History: Frameworks, Methodologies and Consolidation.

This chapter falls into three sections. The first outlines some key issues in Crime History. The second examines the development of women's history and discusses the introduction of gender into Crime History. It is argued that the new issues that have arisen from the joining of these two disciplines have enhanced the development of Crime History. The third section discusses women's history and the study of crime and gender in the early modern period, the source material used and methodology employed in this thesis.

#### Chapter 2: Economy and Society in the South West of England: The Female Experience

This chapter provides the social and economic background to the study of eighteenth-century female criminality in this region. It argues that the region constituted a pastoral rural economy; and it is within this context that the recorded criminal activities of women should be seen. The discussion develops, using the work of scholars who have examined this area of women's history, into an account of the roles and lifecycles of eighteenth-century women in these communities.

#### Chapter 3: Female Theft in the South West

This chapter falls into two distinct sections. The first is a broad examination of all recorded female property offences in the period. The study assesses trends over

time, using material from the Assizes Gaol Book and the Quarter Sessions Indictments. It discusses relationships between levels of prosecution and food prices and periods of war. It also seeks to identify possible reasons which types of goods were commonly recorded as stolen and discusses any trends for the prosecution of these thefts over time.

The second part of the chapter is a detailed examination of the detection and prosecution of theft during the period. An emphasis has been placed on the importance of the sorts of goods stolen, as well as how they were stolen and, consequently, the type of offender most vulnerable of detection and prosecution. The section moves to focus on clothing theft and its relationship to trading networks in the eighteenth century. It places the examination of this networking within the context of the eighteenth-century clothing trade.

#### Chapter 4: Offences Against the Person

The first section of Chapter 4 concentrates on the record of assault and disorder found in the quarter sessions rolls and the assizes gaol books. It is argued that the increased use of recognizances to prosecute demonstrates the flexibility of the eighteenth-century criminal justice system. Also discussed in the section, are how assaults may be linked to other offences such as theft and how some assaults constituted unofficial punishments by communities. Although avoiding making too broad a statement about assault and disorder, it seeks to demonstrate that some cases could be representative of women's interests in both the public and private sphere.

The second section of Chapter 4 discusses the record of homicide and infanticide for the western circuit assizes between 1735 and 1785. The section examines homicide, which seemed to predominantly occur within the familial setting. This includes the specific homicide offence of petty treason. The discussion moves on to examine infanticide, by far the most prominent female homicide offence

recorded. The circumstances surrounding each case and the consequences of its discovery are examined. It is argued that a stereotyped narrative of the infanticidal woman dictated the prosecution and conviction rates of the offence.

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## Introduction

The range of material relevant to the production of a thesis on crime depends, in the first instance, on the definition of 'criminality'. This is especially the case for a study on the eighteenth century, a period that did not, in statute, recognise the term 'crime'. As Elton warns, the historian is confronted, in eighteenth-century law, with distinctions between 'felonies' and 'misdemeanours' and, as a result, those researching crime in this period,

study something like an artificial construct, a compound comprising breaches of the law which at the time of being committed were regarded as diverse and separate.<sup>1</sup>

Although broad and, arguably, anachronistic terms, 'crime' and 'criminality' are still the only useful constructs with which to study the eighteenth-century court records. Without them, the historian is left with only the categories, felony or misdemeanour. An analysis using these terms results in a fragmented view, which breaks down illegal acts into categories that are not useful to the social historian. It would not be useful, for example, to examine misdemeanour, per se, which involves diverse offences such as bastardy and theft. A far more useful starting point for study would be to describe criminality in this period as all offences dealt with by the quarter sessions and assizes courts, and to further categorise it according to the nature of each group of offence. This method of definition follows the work of other historians.<sup>2</sup>

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<sup>1</sup> Elton, G. R. "Introduction: Crime And The Historian" in Cockburn, J. S. (ed) Crime In England 1550-1800 (Princeton 1977) p. 2.

<sup>2</sup> Phillips, in his study of nineteenth-century crime, describes the criminality of an act as, "not something absolute which is inherent in that act, but can only exist as something relative to the laws of that particular society" Phillips, D. Crime And Authority In Victorian England: The Black Country 1835-1860 (London: 1977) p. 45.

Although following many of the established methodologies of the historians working in the field of Crime History, this thesis also examines social and economic issues surrounding criminality. More especially, it seeks to provide a contribution to work on the female experience in the eighteenth century by using the court records as an avenue into the lives of labouring women. At the same time, the study does acknowledge the serious difficulties that recorded criminality creates for historians adopting various research methodologies, especially when focusing on female criminality. The first part of Chapter 1 provides an account of some of these issues surrounding methodology in the historiography of crime history and its implications for those researching female criminality in the eighteenth century. It also seeks to address the problem of female under-representation in historical records, and specifically crime records, and suggests a more qualitative research method in line with the recent work of some historians of gender and crime.<sup>3</sup>

The study constitutes an examination of female criminality using the court records available for the south west. It focuses on the counties of Devon, Somerset, Dorset and Cornwall for the period 1735-1785. The time-span of the study is considerable, although not as large as other works, notably that by J M Beattie. The source material used comes mainly from the quarter sessions and assizes records for the period. The largest sample of quarter sessions material has been taken for the county of Devon for the period 1735-82. Smaller samples have been compiled from the Somerset records for the years 1735-45 and 1775-85 and the Dorset records for the years 1735-45 and 1780-85. The samples from Cornwall are smaller, owing to the disappearance or destruction of the quarter sessions bundles for the county, but the surviving order books have been used to create samples for the years 1737-42, 1758-63 and 1778-83. The region's surviving assizes records

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<sup>3</sup> See Walker, G. "Women, Theft And The World Of Stolen Goods" in Kermode, J. and Walker, G. (eds) Women, Crime And The Courts In Early Modern England (London 1994) .

consist of only cursory material. Nevertheless, fifty year samples for all counties have been extrapolated from the Gaol Books, which are complete for the period. The latter part of Chapter 1 provides an assessment of this source material.

The study also confines itself exclusively to the eighteenth century, unlike many other examples of research on this period. Although never straying from the boundaries of the century, the period can indeed be seen as a construct to straddle the sometimes used mid-eighteenth century divide between the 'early modern' and 'modern' era. In order to avoid any teleological analysis, the eighteenth century in this study has not been analysed in the context of later, industrial periods. It is acknowledged however, that eighteenth-century society was a changing one, especially after 1750. Chapter 2 discusses to what extent these changes in society were relevant in the south west. This was a region that, in the eighteenth century, remained largely rural with a relatively stable and, in some cases, a declining population. Organisational structures in the workplace in the region followed similar modes right across the region, although some distinction between farming methods may be made. There has been no serious comparison made between recorded crime in the rural areas of the region and those in urban areas. In fact, two main county towns, Bristol and Exeter, had their own quarter sessions, neither of which have been used for the study. Other larger towns in the region such as Plymouth, Truro, Dorchester and Taunton are included in the study by virtue of being covered in the administration of the county quarter sessions, but have not been especially singled out.<sup>4</sup>

Specific forms of female criminality are discussed in two broad chapters. Chapter 3 deals with the property offences that are dealt with by both courts. This is by far the most prevalent female crime in the eighteenth century. The first section of the chapter provides a quantitative analysis of theft in the period. It argues that an

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<sup>4</sup> A study of the larger urban areas of the south west counties would be an interesting piece of future research, but would not contribute heavily to this thesis.

examination of the prosecution for property crime can provide insight into the attitudes of those prosecuting, as well as the offenders. These values can be seen within the context of other factors, such as food prices and war. The section also discusses reasons why certain types of goods are predominant in prosecutions for theft and thus points to the perceived value of certain materials in everyday life. Inherent in the discussion, are various considerations on the economic and social structures that can be seen to facilitate both the offence and its record.

The second section of Chapter 3 constitutes a detailed qualitative study of theft and further discusses the most prominent type of female property offence, clothing theft. It relies largely on the depositions as a source material, highlighting the worth of such records to the historian of female crime. The importance of clothing and fabric in the eighteenth century, as well as the methods which women used to pass these goods on are discussed in this section. The section provides a picture of the networks in which women could effectively steal and receive. These networks, it is argued, were integral to a society with a developing and flexible consumer culture. Such networks were not exclusively criminal. It was not necessary for an organised criminal 'underworld' of illegal trade to develop in a society where second-hand clothing and other non-luxury goods were sold and resold as a matter of course.

Offences against the person, their expression ranging from disruptive behaviour to serious assaults, show the nature of social relations in both the familial and community space. These issues are dealt with in the first section of Chapter 4. This section concentrates on assault cases found in the quarter sessions rolls, although some evidence from the assizes gaol books on arson is used. Also discussed in the section, are how assaults may be linked to other offences such as theft and how some assaults constituted unofficial punishments by communities for such crimes. The nature of the source material itself means that confining the study of assault and disorder to an examination of indictments does not reveal the most comprehensive picture of this form of offence. A more detailed examination

of other records of prosecution and conviction in conjunction with the indictment provides a fuller picture. The record of prosecution and conviction by recognizance and by summary means therefore features to a greater extent in this chapter. Such evidence demonstrates the flexibility of the criminal justice system in the period in dealing with a wide variety of offences. The existence of a great variety of different types of assault or breach of the peace is evident from an examination of these records, making it very difficult to make too general a statement about any one broad range of offences against the person. However, the section seeks to demonstrate that, in general, these cases could be representative of women's political activities in both the public and private sphere.

The second section of Chapter 4 discusses the record of homicide and infanticide for the western circuit assizes between 1735 and 1785. The gaol books for this court can be used to provide an initial quantitative discussion on both offences. Unfortunately there is a dearth of source material which would provide qualitative information for these types of cases, simply because the Assizes rolls for the Western circuit have been either lost or destroyed. Using other information available for the region and the period, however, it is possible to provide some interesting analyses. The section examines homicide, which seemed to predominantly occur within the familial setting. This includes the specific offence of petty treason. It can be demonstrated that the sphere within which women are shown to have killed appears to have been considerably smaller than that in which assault cases occur. The chapter is careful to argue, however, that this sphere - the household - did not confine itself to family members. The discussion moves on to examine infanticide, by far the most prominent offence by women to fall within the category of homicide. More specifically this offence was legally classified as bastard neonaticide by the 1624 statute. The statute confined the definition of the offence so that only those delivering bastard children in secret were vulnerable to prosecution. Not surprisingly, therefore, the offence, as evinced in the records, was shown to have been committed privately. The

prescriptive nature of the statute can be seen to have been both influenced by, and resulting in, a stereotypical narrative of the infanticidal woman. This narrative dictated the prosecution and conviction rates of the offence and can be seen to both exacerbate and ameliorate the plight of the offender.

Other forms of criminality have been referred to in the thesis, but this is generally when their record can be used to substantiate arguments about the lives of rural labouring women. While the study does not attempt to provide the definitive picture of female working life in rural areas, it does seek to demonstrate that court records can provide insights into more general aspects of life at the time. The thesis does not, therefore, limit itself to a discussion on female criminality, often drawing on more general social and economic contexts in the period and region. Where the evidence allows it, the study examines the extent to which women drew upon their family, kin and neighbours to help them either survive or profit from both legal and illegal activities. It seeks to demonstrate that the women appearing in the court records for the period probably acted both legally and illegally in their lives, moving from one to the other according to perceived or actual necessity.

This study applies the traditionally understood definition of criminality in the first instance to the eighteenth century, but also to female criminality. It cannot be claimed that the range of criminality studied in the thesis represents the complete range of eighteenth century crime, nor even representative of a comprehensive sample of illegitimate activity for women. There is no way of knowing the true numbers of crimes committed in any one time or place; and this has been discussed with regard to both offences against property and against the person. Furthermore, the thesis does not seek to contend that the experiences discussed in the following chapters proportionately represents all women's experiences, or indeed, the experiences of all women who committed crime in the eighteenth century. Its qualitative slant is an attempt to suggest the importance of female criminal activity. This is achieved by disallowing the traditional quantitative

methodologies, which place emphasis on the prevalence of male criminality, to limit the examination of female crime.



## Chapter 1

### Debates and Developments in the fields of Crime History and Women's History: Frameworks, Methodologies and Consolidation.

In order to place this project within the context of previous and current research in the field, an examination of the historiography of crime history and women's history is needed. Each field has experienced methodological developments, some of which are specific to their disciplines and others that also relate to more general issues in the study of social history. The first section will deal, therefore, with the two historiographies separately. The second section, however, will discuss the how the historiography of gender and crime has emerged and developed through various studies relating to the early modern and modern period. It will also suggest ways in which this project will deal with the established practices of both areas and build upon them.

In Britain, the study of crime and women's history stem from a new social history, which emerged in the 1960s and was spearheaded most notably by E. P. Thompson, particularly in his The Making of the English Working Class in 1963. Raphael Samuel, in an article written in 1985, encapsulated the spirit of this 'new social history' as:

pre-eminently a modernising one, both chronologically, in the choice of historical subject matter, and methodologically, in the adoption of multi-disciplinary perspectives

Furthermore, Samuel argues that the new social history allowed for the examination of the relationship between history and theory. Subjects such as sociology and social anthropology, which pioneered the investigation of 'sub cultures' and 'gender identities' also began to have a place within the study of

history because of new and more diverse methods of historical investigation.<sup>5</sup> New kinds of primary source material were introduced as valid evidence for historical research and new sociological tools of analysis entered the arena of professional history. These initial developments allowed social history to flourish and diversify. Both crime history and women's history are products of this diversification.

Studies of criminal law date back further than that of new social history. In particular are Leon Radzinowicz's comprehensive set of volumes on the history of English criminal law and its administration, published in 1948. However, the methodological debates concerning the representation of true levels of crime and prosecution and the theories on the existence of sub-cultures and criminal underworlds, stem from the initial research conducted by social historians in the early 1970s. Associates of the Centre for the Study of Social History at Warwick with an interest in the law, criminality and eighteenth-century England, worked together to produce work which can arguably be seen as the starting point for a series of developments in British crime history.<sup>6</sup> The initial objectives of those contributing to Albion's Fatal Tree were to examine the eighteenth century's definition of crime comparing the ideology and application of the law with the actual offences and offenders. The authors started their research with the theory that offences could be separated into two different categories - those that could be described as 'social crime' (for example, poaching and smuggling) and those that were 'crimes with qualification' (for example, theft and murder). This theory rested on the idea that the law was an embodiment of the ideology of those in power and that 'social crime' could be described as 'anti-authoritarian'. Their

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<sup>5</sup>Samuel, R. et al, "What Is Social History...?" in Gardiner, J. (ed) What Is History Today? (London 1988) p. 43. This article was first published in the magazine History Today as part of the 1984-5 "What is History...?" series.

<sup>6</sup> The project came out of the Labour History Society conference in 1972, where several of the issues covered by the book were first aired. See Emsley, C. "Albion's Felonious Attractions: Reflections Upon The History Of Crime In England" in Emsley, C. and Knafla, L. A. (eds) Crime History And Histories Of Crime: Studies In The Historiography Of Crime And Criminal Justice In Modern History (London 1996) p. 67.

findings resulted in a qualification of this initial and rather simplistic view of crime and the Law during the period, in that a 'tidy notion' of two different types of crime became 'less possible to sustain'.<sup>7</sup> Nevertheless, the investigation of the criminality, or anti-authoritarian behaviour of those in eighteenth-century society, was held by the Warwick scholars as the key to the writing of history from below.<sup>8</sup> This rationale was stated from the outset, with questions of law and criminality being held up as:

...central to unlocking the meanings of eighteenth-century social history.<sup>9</sup>

The debates springing from this early research into crime history seem to reflect wider issues in social history. Theoretical frameworks of class, authority and power dominated the debates in the work that came out of Warwick at the time.<sup>10</sup> The study of crime and the law gave those who were concerned with conflict and control in the past an excellent arena in which to examine notions of class control.<sup>11</sup> For Thompson and Hay, who were essentially Marxist historians, these notions were seen within the frameworks of class struggle and the 'economic

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<sup>7</sup> Hay, D. et al, Albion's Fatal Tree: Crime And Society In Eighteenth-Century England (Harmondsworth 1975) p. 14. The editors noted that, '...in many cases, we found little evidence of a morall endorse popular culture here and a deviant sub-culture there.'

<sup>8</sup> A similar argument was made by E P Thompson in his concurrent work on the Black Act. Thompson introduced this work as 'an experiment in historiography'; but went on to argue that his methodology was something more than merely 'muddling through':

Since I started with the experience of humble foresters and followed up, through sketchy contemporary evidence, the line that connected them to power, there is a sense in which the sources themselves have forced me to see English society in 1723 as they themselves saw it, from 'below'

Thompson, E. P. Whigs And Hunters: The Origin Of The Black Act (Harmondsworth 1975) p. 16.

<sup>9</sup> *ibid.* p. 13 The central concern of research into the social history of law and crime has mostly been the functional explanation of property, power, ideology and hierarchy. See Snyder, F. and Hay, D. "Comparisons In The Social History Of Law: Labour And Crime" in Snyder, F. and Hay, D. (eds) Labour, Law And Crime (London 1987) p. 7.

<sup>10</sup> For an account of the Marxist traditions within British History, see Curry, P. "Towards A Post-Marxist Social History: Thompson, Clark And Beyond" in Wilson, A. (ed) Rethinking Social History: English Society 1570-1920 And Its Interpretation (Manchester University Press 1993) pp. 158-200.

<sup>11</sup> Gatrell, V. A. C. (ed) Crime And The Law : The Social History Of Crime In Western Europe Since 1500 (London 1980) p. 2.

factor'<sup>12</sup> It was Hay's contribution to Albion's Fatal Tree that can be clearly seen to contend that the law in the eighteenth century represented the efforts of one class to control the other using tools of rhetoric and spectre in the seemingly conflicting way. His chapter on Property, Authority and The Criminal Law offered this particular structure as an explanation for crime and punishment in the eighteenth century. Hay argued that there was a close relationship between those in power and the criminal justice system, and attempted to look behind the contemporary ideas of equality before the law. His conclusions were that:

It was a society with a bloody penal code, an astute ruling class who manipulated it to their advantage, and a people schooled in the lessons of Justice, Terror and Mercy. The benevolence of rich men to the poor, and all the ramifications of patronage, were upheld by the sanction of the gallows and the rhetoric of the death sentence.<sup>13</sup>

Hay's thesis pointed out the strong resemblance of the ritualistic nature of the English criminal trial and punishment procedures to those of religion. One example of this ritualistic protocol, he argues, is that of the Special Commission. Called into counties in exceptional circumstances to try particular offences only, (and usually ones seen to threaten authority itself), the Special Commission:

...descended from London, the sermon was preached in the nearest Cathedral, and the breach in the social and moral order was healed with the rituals of justice: speeches, fear and the sacrifice of lives on the gallows.<sup>14</sup>

Religious aspects pointed out in Hay's argument are part of an overall thesis built around the idea of a paternalist state in the eighteenth century. The power of this State, he argued, was masked by an ideology of English Law. Men of property

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<sup>12</sup> We should take some care with this interpretation. As has recently been noted, Marxist frameworks cannot be reduced to two strands and 'economic determinism' is not confined to Marxist historians. See Rigby, S. H. "Marxist Historiography" in Bentley, M. (ed) Companion To Historiography (London 1997) p. 889.

<sup>13</sup> Hay, D. "Property, Authority And The Criminal Law" in Albion's Fatal Tree: Crime And Society In Eighteenth Century England (Harmondsworth 1975) p. 63.

<sup>14</sup> *ibid.* p. 31.

were not willing to acknowledge openly that the criminal law made distinctions between rich and poor. They actively perpetuated the belief that all were equal before the law and that the law was an independent 'body' with absolute demands of its own. The discretionary powers built into the criminal justice system, from the Justice of the Peace on a lower level to the power of the King to bestow mercy on the highest level, all served to reinforce the Englishman's idea of a fair and personalised system. The execution of propertied men therefore, was not common, but made a strong impression and occurred often enough to give colour to the popular imagination. Hay cited the case of Lord Ferrers, executed for the killing of a steward, and he provided the advice of an anti-jacobin as an example of a possible reaction to such an execution:

We have long enjoyed that Liberty and Equality which the French have been struggling for: in England, ALL MEN ARE EQUAL; all who commit the same offences are liable to the same punishment. If the *very poorest and meanest man* commits murder, he be hanged with a hempen halter, and his body dissected. If the *Richest Nobleman* commits a murder, *he* is hanged with a hempen halter, and his body dissected - *all are equal here*.<sup>15</sup>

Much was made of executions such as these, and the notion that all were equal before the law was as important as the ideology that all must be subservient to the form of 'The Law'. Hay argued that although mercy ran throughout the administration of the criminal justice system, its purpose was to enforce the powerful ideology of the law, not to attack it. Pardons in the eighteenth century were common; almost half of those condemned to death did not go to the gallows. Successful petitions to the King were made through the propertied men of the counties, usually on the grounds of the respectability and good character of the offender and the triviality of the offence. Petitions and pardons were part of the currency of patronage, further securing the social/political ties of the community and societal structure. However, even though judges used the pardon "to meet the request of local gentry", it would have been presented to as an act of grace,

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<sup>15</sup>*Job Nott's Advice* Staffs. RO, D1778 bdl.57. cited in Hay, D. et al, Albion's Fatal Tree... p 34.

rather than a ramification of interest and connection among those in power.<sup>16</sup> Hay's thesis therefore stated that the power of the authorities to control the lower levels of society by using the Law as a tool of state, actually rested on its potential to be presented to them as a complex and negotiable system entirely separate to the state.

Hay's theoretical framework was part of the school of socialist and Marxist history flourishing at this time.<sup>17</sup> Although his thesis represents one of the most comprehensive and thorough investigations into eighteenth century crime history, historians from very different schools of thought have since attacked his somewhat dogmatic framework. The work of J H Langbein in particular represents this criticism. Langbein's attacks, mainly directed against Hay's essay, "Property, Authority And The Criminal Law", especially in his thesis of a ruling class conspiracy, accused Hay of producing an argument that 'floats above the evidence'.<sup>18</sup> To counter the notion that it was mainly the poor receiving terrible justice at the hands of the rich, Langbein pointed out that the culprits tried at the Old Bailey were seldom destitute:

...in the main we see employed persons who have yielded to temptation rather than necessity<sup>19</sup>

This type of evidence was used to suggest that if the main offenders in the eighteenth century were not the poorest, then arguments concerning a rich/poor, propertied/unpropertied relationship between the prosecutors and offenders were weakened. Langbein argued that the eighteenth century criminal justice system and its enforcement should not be seen as a struggle between two categories of people. Although conceding that prosecutors were in most cases more propertied than the accused, he pointed out that evidence from the Old

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<sup>16</sup>Hay, D. op. cit. pp. 43-47.

<sup>17</sup> For a high powered discussion on the various complexities of Marxist historiography see Rigby, S. H. op.cit. passim.

<sup>18</sup> Langbein, J. H. "Albion's Fatal Flaws" in Past and Present 98 (1983) p. 114.

<sup>19</sup> *ibid.* p. 100.

Bailey Sessions papers would suggest that they seldom came from the propertied ranks. It could not be argued, therefore, that prosecution was the preserve of the ruling elite. Furthermore, the lower orders were encouraged to prosecute those who stole from them, arguably to propagate the culture of property protection on which the criminal justice system depended. This was more apparent in the second half of the century, when campaigns by such men as Henry Fielding resulted in legislation in 1752 and 1754, subsidising some of the expenses involved in prosecuting and providing evidence in court.<sup>20</sup>

This apparent strength of activity among the lower orders of society concerning the criminal law was also used to weaken Hay's theory. Langbein accused Hay of underestimating the importance of jury discretion by paying little attention to their power to acquit or give partial verdicts. He cited the work of Beattie in this area, who has computed that during the period 1736 to 1753 in the county of Surrey, ten per cent of the bills in urban cases of capital crime were dismissed by petty juries. There was also a high incidence of partial verdicts, which Langbein argued were principled and dependent on the type of punishment reserved for a particular offence. There were definite aversions, for example, to the capital sentence in property cases, except perhaps with livestock theft and highway robbery. Langbein consequently argued that juries showed consistent humanity by the standards of the day. Hay's account of the social make-up of juries was also criticised by Langbein. Rather than juries being from the same social class as Justices and Judges, Langbein argued, they were typically from the same ranks as the prosecutors, in other words, farmers and tradesmen. They were therefore not to be considered as part of any ruling class conspiracy.<sup>21</sup>

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<sup>20</sup> *ibid.* pp.101-103.

<sup>21</sup> Beattie, J. M. "Crime And The Courts In Surrey, 1736-1753" in Cockburn, J. S. (ed) Crime In England,1550-1800 (Princetown 1977) pp. 155, 163. cited in Langbein, J. H. *op. cit.* p. 106.

Langbein's opposition to Hay's work amounts to an attack on the Marxist frameworks that the contributors to Albion's Fatal Tree were using in the 1970s.<sup>22</sup> Langbein was also writing from the standpoint of a legal historian with an essentially internalist perspective - focusing on the machinery within the system to explain how it worked.<sup>23</sup> However, he was also writing at the start of a decade of reaction and reinterpretation in the field of social history in general. A less harsh response to the Warwick group came in 1980 from historians mainly based at the University of Cambridge, most notably the eighteenth-century historians, John Styles and John Brewer. Styles and Brewer sought to address three main areas; the nature of authority and the exercise of power during the period; the perception of the law and justice by the various social groups; and the ways in which people "organised themselves to be able to take advantage of the law or avoid its consequences".<sup>24</sup> These seemed to be very much in line with themes discussed by the contributors of Albion's Fatal Tree, and the editors were keen, in fact, to emphasise the importance of a case study approach in line with the Warwick scholars. However, the picture of the seventeenth and eighteenth centuries that was painted by the Cambridge group featured some important modifications. The editors fully acknowledged the importance of Hay's argument that the judicial process was part of a class tool, but sought to shift the emphasis of the argument:

...this does not mean that we should regard the seventeenth and eighteenth century legal process as simply an instrument of the

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<sup>22</sup> Patrick Curry argues that the reaction to the Marxist tradition of the 1970s was manifest of a change in political climate in Britain, signified by the Conservative electoral victories in 1979, 1983 and 1987, and their American equivalents. He also notes the rise of right wing dominated media organisations such as the Murdoch papers. Revisionist historians of the 1980s, in particular Alan Macfarlane and J. C. D. Clark, sought to talk about the period 1660-1832 as a period in which there was a growth of individualism, or in terms of a monarchy, aristocracy and church playing centre stage. Curry, P. op.cit. pp. 158-162.

<sup>23</sup> Langbein makes no pretence about his position as a legal historian, and Hay's role as a social historian. In his opening lines of "Albion's Fatal Flaws" he admits that Hay's article has "...attracted a huge following, especially outside specialist legal history circles." Langbein, J. H. op. cit. p. 96.

<sup>24</sup> Styles, J. and Brewer, J. (eds) An Ungovernable People: The English And Their Law In The Seventeenth And Eighteenth Centuries (London 1980) p. 12.



elite , or as serving only a class function. The ... legal system that aided patrician power also enabled others to exploit the law.<sup>25</sup>

The notion that the law could be exploited by certain classes of people is not denied, but modified to include the idea that, depending of the social makeup and economic circumstances of communities, any class of people could potentially utilise the law to their advantage. Thus, this collection of essays edited by Brewer and Styles outlined the diversity of power struggles concerning crime and the law.<sup>26</sup> A key application of this identified diversity is regional specificity. This was one of the main themes used in approaching the question of authority and crime in the collection. Law enforcement varied in both its intensity and nature, not just over periods of time, but also across regions. Thus in his investigation of the limits of authority in the Forest of Kingswood in Gloucestershire, Malcolmson argued that although in all areas some men would have the right to rule over others, this right was usually defined by economic strength, concluding that "the actual effectiveness of such authority in any particular place depended on a multiplicity of local circumstances".<sup>27</sup> The Kingswood colliers successfully defied their authorities over the setting up of turnpikes, and again, later in the century, on issues of trade wars and grain prices. Their unity and isolation as dwellers in a forest hinterland along with their role as chief suppliers of coal to Bristol , meant that justices and landowners efforts to control them were, at times, unsuccessful.<sup>28</sup>

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<sup>25</sup> *ibid.* p. 19.

<sup>26</sup> Not surprisingly therefore, the theoretical approach to crime used by the Warwick group, that of either 'social crime' or 'crime without qualification', is no longer the central question. This distinction has been identified as central to Marxist theories of crime and criminal law, and the controversies surrounding it rest on whether the dichotomy is too neat and hides the real difficulty in distinguishing the two. See Snyder, F. and Hay, D. "Comparisons In The Social History Of Law: Labour And Crime" in Snyder, F. and Hay, D. (eds) Labour, Law And Crime: An Historical Perspective (London 1987) pp. 25-27.

<sup>27</sup> Malcolmson, R. W. "'A Set Of Ungovernable People': The Kingswood Colliers In The Eighteenth Century" in Brewer J and Styles J (eds) *op. cit.* p. 85.

<sup>28</sup> The weakness of Local support of Whig rule is also a factor when examining the power of the Kingswood colliers. Central government was reluctant to place troops in the area because of this. The Tory landowners in the region were known to have played to the sentiments of the colliers, thereby adding high political flavour to disputes between colliers and turnpike trustees. Malcolmson, R. W. *op.cit.* pp. 123, 105.

A greater emphasis on regional specificity and varying concepts of order, also provides the premise on which Brewer and Styles question the usefulness of statistically charting trends of crime and prosecution. They suggest that such analysis without qualification (according to particular circumstances) leads to too general conclusions and, as the editors argue, "necessarily entails lumping together highly disparate crimes, and types of lawbreaking into general categories".<sup>29</sup>

The reactions to Marxist frameworks in crime history have resulted therefore in a revised, particularist, approach and a qualified criticism of statistical methodologies. However, such reactions, like those of Langbein, are continually challenged by scholars who continue to adhere to positivist statistical approaches. This is not to say that the original theoretical agendas of the 1970s labour and crime historians stopped developing. Significantly, Linebaugh uses qualitative and biographical source material to illustrate the culture surrounding Tyburn hangings, yet reflects on the arguments provoked by the 1975 publications and is critical of the approaches and methodology of the revisionists:

what the subsequent discussion gained in methodological sophistication and breadth of contributions, it lost in conceptual timidity and the narrow rejection of historical imagination<sup>30</sup>

Conversely, some historians have defended their use of statistics by arguing that the type of crime research, or the period to which it refers, can be partially exempt from revisionist criticism. These are the arguments used by V A C Gatrell and others in their collection of essays on Crime and the Law, published in 1980. Gatrell et al. identify two main flaws in the nature of criminal statistics. Firstly, as had long been recognised by criminologists, they recognised that the figures merely represent recorded crime. Consequently therefore, such figures may have

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<sup>29</sup> Brewer, J. and Styles, J. (eds) op. cit. p. 12.

<sup>30</sup> Linebaugh, P. The London Hanged: Crime and Civil Society In The Eighteenth Century (Harmondsworth 1991) pp. xviii-xx.

had no direct relation to the true or 'dark' figure of criminality. In the editorial Gatrell cites the Belgian statistician Adolphe Quetelet, who wrote that:

Since this total sum will probably always remain unknown, all conclusions based upon it will be more or less erroneous<sup>31</sup>

He went on to argue, however, that such scepticism may not have universal validity. He argued in his article on "Theft and Violence in Victorian and Edwardian England", that the records of some serious crimes during the period were, "comprehensive enough to allow the scholar meaningfully to assess real trends in serious crime".<sup>32</sup> He thus maintained a positivist standpoint with reference to certain types of criminality only.

Douglas Hay's re-evaluation of the debate in his article on "War, Dearth and Theft" in 1982 also argued for partial qualification of the criticisms of Langbein. The pessimism over crime records, he argued, resulted in conclusions that judicial statistics were so influenced by control that they misrepresented the extent and nature of crime. This might lead researchers to conclude that the records could reveal only the systems of criminal law within their historical context and nothing about crime itself.<sup>33</sup> While fully acknowledging that 'crime' could no longer be seen as an unproblematic social fact that could be measured by counting

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<sup>31</sup> Quotation taken from Sellin, T. and Wolfgang, M. E. The Measurement Of Delinquency (New York 1964) pp. 7-38 cited in Gatrell, et al, op cit. p. 4.

<sup>32</sup> Gatrell, V. A. C. "The Decline Of Theft And Violence In Victorian And Edwardian England" in Gatrell, et al, op cit. p. 5. The relations between recorded and actual crime cannot be identified as either proportional or inversely proportional, previous calculations seeking to quantify the figure of crime represented by its recorded number has resulted in a perceived gap between the two becoming wider and more abstract. To compound the problem, a consideration of the meaning of recorded crime has to be made. It was suddenly no longer enough to accept definitions of crime on face value. The editors provide examples from the collection of crimes which had been redefined, like Christina Lerner's examination of witchcraft and the processes of labelling such behaviour, and Jennifer Davis's study of the loose use of the term "garotting" to describe assaults not normally labelled so during the panic of 1862 in London. Lerner, C. "Crimen Exceptum? The Crime Of Witchcraft In Europe" and Davis, J. "The London Garotting Panic Of 1862: A Moral Panic And The Creation Of A Criminal Class In Mid-Victorian England" in Gatrell, et al, op cit. pp. 49-75, pp. 190-213. Both examples point to definitions based on an historical specificity that must be considered when looking at criminal records in any period.

<sup>33</sup> Ditton, J. Controlology: Beyond The New Criminology (London 1979), esp. Ch. 2. cited in Hay, D. "War, Dearth And Theft" in Past and Present 95 (1982)p. 119.

indictments, Hay strongly argues the case for further work into serial studies of prosecution. The "wholesale rejection of the eighteenth-century judicial statistics as guides to criminality", he argued, was "premature."<sup>34</sup> He even went as far as to argue that, because of the absence of a state policing system, eighteenth century court records were possibly a more accurate reflection of changes of behaviour of offenders.<sup>35</sup> He presented a "positivist reading" of the figures for indictments in Staffordshire over the period 1740 to 1805, comparing them with the Schumpeter-Gilboy price index, and the periods of war and peace throughout the eighteenth century. His findings led him to conclude that correlations between prosecution levels and other factors did exist, but were subject to certain qualification. For example, he concluded that prices were more closely related to the level of theft indictments in war than in peace:

In statistical terms, this is most significant, and by any standards it suggests that there is a strong connection between the two sets of events, either direct or mediated through more or less lengthy causal chains.<sup>36</sup>

The first wave of debate in crime history was largely centred around Marxist approaches and the reactions to them. There was an assumption made in the early seventies (probably based on the previous work of labour historians) that the law could be explained in terms of a functional tool of control over the labouring classes.<sup>37</sup> The work of those who came after, reacted against these Marxist frameworks by adopting a more pluralistic approach. Consequently, new methodologies were developed which took the emphasis away from simple categorisation of criminals, and placed it on varying levels of authority and use of law. This is not to say that Marxist and socialist historians automatically fall into the category of those who swear by simple statistical analysis of indictments and other quantifiable sources; nor that revisionists refuse to quantify themselves. In

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<sup>34</sup> *ibid.* p. 158.

<sup>35</sup> *ibid.* p. 120.

<sup>36</sup> *ibid.* p. 128.

<sup>37</sup> Linebaugh, P. *op. cit.* p. xix See also Snyder, F. and Hay, D. *op. cit.* *passim.*

fact, the quantification of crime records still remains the starting point for much research, including that which is in this thesis. The debate over quantification itself, has shifted and reshifted from one theoretical approach to another. What has tended to move the argument further, has been the development of new approaches which have their own historiography. One such approach has come from the discipline of women's history.

As with the study of crime history, women's history has gone through some major changes in theoretical framework and methodology since the 1970s. The emergence of the modern discipline of women's history owes a great deal to the development of the women's rights movement of the 1960s and the subsequent developments in modern feminism thereafter.<sup>38</sup> Initially, along with the need to discover women in the records of history, there was a strong focus on the oppression of women throughout the ages, and women's reaction to it.<sup>39</sup> The notion of patriarchy, centralised as functional tool in the 1960s, was used as a framework with which to examine this oppression and to theorise male authority in societies of all ages. Patriarchy, although simply defined as male authority, could be seen to manifest itself in many ways. The notion of different political and social spheres in society was central to the argument for the diversity of patriarchy; and this model can be seen clearly in work on women in the eighteenth and nineteenth centuries.

The separation of the public and private spheres, which conventional wisdom appears to attribute to the 'industrial revolution' also remains a dominant theme in women's history, although it is often challenged<sup>40</sup>. This notion is an extremely

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<sup>38</sup> We should not forget the extremely influential and magisterial texts by Lilian Knowles, Alice Clark and Ivy Pinchbeck in the late nineteenth and early twentieth century. For a concise historiography which includes the work of women's historians before 1972 see Joan Thirsk's Foreword in Prior, M. (ed) Women in English Society 1500-1800 (London 1985: Reprinted 1991,1996) pp. 1-21.

<sup>39</sup> Rowbotham, S. Hidden From History: 300 Years Of Women's Oppression And The Fight Against It (London 1973).

<sup>40</sup> See below pp 23-26.

important starting point for ongoing debates on the change and, arguably, the decline in female authority, as these issues have affected both the theory and the practice of women's history.<sup>41</sup> Never more so is this the case than for studies concerning the pre- and early industrial period, where the development of industry was seen to lead to a larger divide between the domestic and public spheres and increasing difficulties for women. Although it does not rely on the separation of spheres as a structural model, Ivy Pinchbeck's study of women's work and the Industrial Revolution identifies the period 1750-1850 as one of the most significant periods for economic and social change for women. Her reasons for arguing this, centre around work organisation. As the workplace was removed from the domestic sphere, so women's contribution to the household economy shifted. The domestic sphere thus became the private sphere, where less and less work was conducted. Notions about the role of the woman's wage in the household economy, however, continued, and this was reflected in their wages earned outside of the home. This resulted in the economic oppression of some women, as women's work in the public sphere was still paid at the supplementary level:

So long as they were contributors to, and participants in, a family wage, however, this system was not necessarily oppressive; but as soon as women became dependant on their own exertions the hardship of their position was at once apparent. By tradition their wages tended to remain at a supplementary level and they found themselves excluded by lack of training from skilled and better paid work<sup>42</sup>

Pinchbeck's work, as well as the work of Alice Clark for the seventeenth century, remain extremely influential, as the reprint of both Pinchbeck's work in 1969 and Clark's in 1982 suggest.<sup>43</sup> The work itself centres around change and revolution,

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<sup>41</sup> Rowbotham, for example, strongly associates the increasing disadvantage of women over the ages with the growth of capitalism - a process which saw women forced into inferior positions and thus strengthened patriarchal systems. Rowbotham, S. op. cit. p. 2.

<sup>42</sup> Pinchbeck, I. Women Workers And The Industrial Revolution 1750-1850 (London 1930: Reprinted 1969) p. 2 see pp. 1-5.

<sup>43</sup> See Clark, A. Working Life Of Women In The Seventeenth Century (London 1919, 1982).

but its influence on more modern work after 1970 manifests itself differently. The ideas of a continuous working of patriarchal power and of the domestic sphere as a place of oppression are not new, but they have been more explicitly used in the recent past by scholars such as Rowbotham. The emphasis on this approach was in some part due to the outside influences on others working on women's history in the 1970s. The modern interest in women of the past had its roots within sociological and political networks and, with only a few exceptions, those originally working on women in history were not part of the established professional institution of social and economic history.<sup>44</sup>

The concept of patriarchal systems and the approaches of the women's historians of the 1960s and 1970s have provided the basis of much debate in the field of gender and women's history. The most important criticisms to note are concerns over using social models that risk generalisations about the experiences of women and a failure to acknowledge changes in those experiences.<sup>45</sup> In the introduction to his 1995 publication, Anthony Fletcher briefly outlines the early preoccupations of the feminist historians with such criticism:

when socialist and radical feminists took up the notion of patriarchy in the 1960s they were looking for a concept which would help them to theorise as well as historicise male dominance. The trouble with some of this work was that it tended to assume that patriarchy was and is immovable and monumental<sup>46</sup>

Active debates over patriarchy as a useful model still continue in the 1990s. Viewing the experience of women in this way may highlight their struggle against, or collusion with, oppressive hierarchies, but this may not be the only

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<sup>44</sup> This has much to do with the relative difficulty in joining history departments in British universities, only 18 per cent of whom were women in 1987. As Rendall has argued, many influential writers on women's history have chosen to remain outside history departments. Rendall, J. "Uneven Developments: Women's History, Feminist History And Gender History In Great Britain" in Offen, K. Roach Pierson, R. and Rendall, J. (eds) Writing Women's History: International Perspectives (London: Macmillan 1991) p. 47

<sup>45</sup> This is, of course, excepting Marxist historians, or those using 'Marxist' approaches.

<sup>46</sup> Fletcher, A. Gender, Sex And Subordination In England 1500-1800 (London: Yale University Press 1995) p. xvi. For a concise discussion of these issues, see pp. xv-xxii.

method of value. The dialogue between historians Bridget Hill and Judith Bennett in 1993 highlights these problems. Hill criticised previous work on women's history that held patriarchy as central to its study. She questioned the tendency to relegate the importance of other factors such as class and race, and voiced her concerns over the potential for this to threaten the achievements of women's historians in general. The model of the patriarchal structure seemed necessarily joined to the study of the oppression of women, and Hill recognised problems with this. She argued that although it is relatively easy to find examples of the way women have been oppressed through the ages, such an approach might be:

...at the cost of missing the subtlety of the complex interaction of the many other factors that have shaped women's history.<sup>47</sup>

Like Anthony Fletcher, Hill was critical of the association made between patriarchal oppression of women and their unchanging role through the ages. It was the identification by Judith Bennett, of continuities in the role of women between 1200 and 1900 that triggered harsh criticism from Hill.<sup>48</sup> She warned that theses attaching such significance to continuities, as defined by Patriarchal structures, at the expense of other factors, might play into the hands of male historians:

who have long argued that women's experience has no part in history because everyone knows their role has been unchanging - a view that was hotly contested by the early women's movement.<sup>49</sup>

This criticism resulted in retaliation from Bennett. She responded strongly to Hill's accusations that her work threatened to de-legitimise women by portraying

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<sup>47</sup> Hill, B. "Women's History: A Study In Change, Continuity Or Standing Still?" in Women's History Review vol 2, No 1 (1993) pp. 5-25 esp. p. 18.

<sup>48</sup> For an example of Bennett's work, Hills cites Bennett, J. "History That Stands Still: Women's Work In The European Past, Review Essay." in Feminist Studies 14 (2) pp. 269-283 esp. pp. 269-270.

<sup>49</sup> Hill, B. op. cit. p. 13.



them as subjects in the past History, she argued, is not just about change; but also about continuity:

And if women's history has a larger measure of continuity than the histories of some other groups, that is intriguing but certainly not de-historicizing.<sup>50</sup>

Bennett further countered Hill's accusations that such work over-generalised, by actually justifying the need to do so. She argued that although Hill criticised her for generalising, she praised the early twentieth-century women's historian, Alice Clark, for producing work that opened the way for new studies in urban histories because of its generalisations. Hill described this work as having "scope and vision", but did not then accord Bennett with the same praise. Consequently Bennett did not accept Hill's criticisms as wholly valid and continued to assert the need for broad approaches:

...we seek to understand the particularities of past lives, but we also quite rightly seek to place those lives in broader context.

Finally, Bennett addressed Hill's criticism of work centralising patriarchy, and her work in particular. She accused Hill of making the argument amount to a simple dichotomy. Bennett argued that Hill held economic change as a determining factor in the transformation of women's lives, accusing Bennett of seeing patriarchal forces responsible for keeping women in subordination. Bennett maintained that she did not see the history of women in terms of this dichotomy. She attempted to exonerate herself from the focus of Hill's diatribe against feminist historians studying patriarchy by reflecting on her previous work:

...I consider at length how women have co-operated and colluded in our own oppression and how "[w]omen's agency *per se* is a part of the strength of patriarchy...I advocate looking at how patriarchal

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<sup>50</sup> Bennett, J. M. "Women's History: A Study In Continuity And Change" in Women History Review vol 2, No2 (1993) p. 176.

structures have interacted with economic systems...I explicitly reject the idea that patriarchy is a static force...

Bennett further moved to attack critics of the patriarchal model by identifying the concept 'patriarchy' as one that

attracts so much fear and loathing that it cannot, for some people, be treated in a rational and moderate fashion<sup>51</sup>

thus challenging the vehement reaction of historians to this concept and insisting on its validity as a worthy approach.

If patriarchy has been challenged and hotly debated over recent years, then it should not come as a surprise that the notion of separate spheres has also come under attack.<sup>52</sup> An accepted historical model, the idea of separate spheres in societies has been translated into examinations of gendered spheres. In other words, there has been much consideration on the extent to which public and private spheres in past societies were occupied exclusively by men or by women. Vickery acknowledged the value of such a model in allowing the study of women in history to progress:

With this conceptual framework women's history moved beyond a whiggish celebration of the rise of feminism, or a virtuous rediscovery of those previously hidden from history.<sup>53</sup>

Vickery went on, however, to question the model of the dichotomy between the home and the workplace which has shaped the bulk of work done on women

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<sup>51</sup> *ibid.* pp. 177-179.

<sup>52</sup> This model has been a powerful concept in the study of eighteenth and nineteenth century British women's history. The separation of spheres has been held up as "one of the fundamental organising characteristics of middle-class society in late eighteenth and nineteenth century England" according to Catherine Hall in "Gender divisions and class formation in the Birmingham middle class, 1750-1850", in Samuel, R. (ed) *People's History And Socialist History* (1981) cited in Vickery, A. "Golden Age To Separate Spheres? A Review Of The Categories And Chronology Of English Women's History" in *Historical Journal* 36 (2) (1993) p. 386.

<sup>53</sup> Vickery, A. *op. cit.* p. 413.

(especially middle class women) until the late 1980s. She cited Jane Lewis, who commented in 1986 that although such a model would fit the recent historical experience of women, "it has more descriptive than analytical power".<sup>54</sup>

Since it appears integral to such a model that the public sphere should then have more power than the private, systems of patriarchal power also remain associated to it. Again, it appears that a dichotomy springs from the model. Such a division, some argue, is unhelpful when dealing with the complexities of male and female relations in any society. Gisela Bock thus challenged the usefulness of the established model of separate spheres. In her 1993 article, she identified the traditional translation of this model as the sphere of power on the one hand, and the domestic sphere on the other, with men ruling in both. The model thus allowed for an assessment of the division of labour in societies in terms of power relationships. Bock points out that these studies using the model recognise that:

"...the dichotomy is not between two autonomous, symmetrical and equivalent spheres, but rather a complex relation between domination and subordination"<sup>55</sup>

The model of the separation of spheres in society is closely related therefore, to the idea of patriarchal structures.

Bock sought to demonstrate that the spheres model was part of a continuing trend in women's history to see societal structures in terms of dichotomies. This, she argued, pointed to a broader problematic in the field. She identified the challenges to this particular established model, but pointed to scholars' continued insistence on using the models that form dichotomies.<sup>56</sup> Even some newer

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<sup>54</sup> Lewis, J. "Reconstructing Women's Experience." in Lewis, J. (ed) Labour And Love: Women Experience Of Home And Family, 1850-1940 (Oxford 1986) p. 20 cited in Vickery, A. op. cit. p. 393.

<sup>55</sup> Bock, G. "Challenging Dichotomies..." in Offen, K. Roach Pierson, R. and Rendall, J. (eds) op. cit. p. 4.

<sup>56</sup> This tendency is also pointed out by Natalie Zemon Davies in her contribution to "What is Women's History?" in History Today vol 35 (1985) p. 42.

approaches, like those dealing with the questions of sex versus gender or equality versus difference, she argues, continue to create the same problems. They did not necessarily create a strict divide between men and women, but they did continue to present either/or questions, which are essentially limiting. Bock suggested in conclusion that the dismantling of these structures in favour of models that offer "as well as" solutions would allow for more helpful insights in the study of women and gender issues in history.

Along with the various challenges and debates that have been going on in British Women's History since the 1970s, there also developed a new problematic with the labelling of the subject itself. This issue has had a significant impact on the study of women's history, and requires some attention. Women's history seemed to hit a crisis point in the mid 1980s, when academics felt they needed to redefine the subject. It was becoming a worry that women's history was seen as a ghetto subject - a field still confined to 'women's interests'. Moreover, because of its dual roots in both the academic sphere and the women's liberation movement of the 1960s, it still had not found a place in mainstream professional history.<sup>57</sup> The article, 'What is Women's History?', appearing as part of the 1985 series examining different genres of historical study in the journal History Today, is a good reflection of these concerns, and it seems helpful to outline the main contentions within the issue of labelling that appear in it. Eight academics contributed to this article, and one of the common denominators in all of the contributions was the need to extend the idea of women's history to the idea of gender constructs. The contributors were by no means all in agreement as to what women's history was (except, of course, in its most basic form - the history of women), nor about which were the most relevant approaches and issues in the field. Olwen Hufton

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<sup>57</sup> Arguably, this is still the case today. As Jane Rendall pointed out in 1991, "...women's history in almost all institutions of higher education, remains, despite prolific publication, a marginal area, lacking academic respectability, outside the mainstream, an academic extra occasionally demanded by troublesome women students and subversive temporary staff." Rendall, J. "Uneven Developments: Women's History, Feminist History and Gender History in Great Britain" in Offen K, Roach Pierson R and Rendall J (eds) op. cit. pp. 45-57.

recognised that the study of women in history is often through the literature and ideas of literate men, thus, she argued:

In examining some of these, we are looking not merely at how men conceived 'the sex' but also themselves. At this point, the history of women becomes the history of mentalities.<sup>58</sup>

She also argued that a "History of poverty is invariably largely a history of women"<sup>59</sup>, identifying the vulnerability of women, especially unmarried women, to economic factors such as price variations or food shortages. Her arguments appear to take their roots from the established traditions of women's history in identifying the struggle of women in the past, but they also incorporate a recognition of the importance of mentalities (implying perhaps constructions of femininity and masculinity) within them.

Other contributors to this article, although recognising that women's history needed to be more than just the reclamation of the existence of women in the past, seemed to have different reasons for suggesting change. James F McMillan's short contribution, either consciously or unconsciously, seems to represent the concerns of the established mainstream historical tradition. His concerns were not to see the study of women in the past banished to obscurity, as he clearly argued:

...women's history requires to be much more than the enterprise of reclaiming and celebrating a lost past...to achieve its full and exciting intellectual potential, women's history has to be integrated completely into the discipline of history as a whole.<sup>60</sup>

In a sense, his arguments fall in line with the concerns about ghettoisation in this article. However, the implications of his comments are important to note. In the

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<sup>58</sup> Hufton, O. et al , "What is Women's History?" in History Today 35 (June 1985) pp. 38-48. This was an article composed by a group of contributors, including Anna Davin, James McMillan, Sally Humphries, Natalie Zemon Davies and Anna Davin.

<sup>59</sup> *ibid.* p. 39.

<sup>60</sup> *ibid.* p. 40.

first instance, it would seem that he implied that the current, non-integrated, study of women in history amounts to work that needs to be developed intellectually. Moreover, it can be inferred that the article voiced doubts over whether women's history could stand alone as a valid approach. What McMillan saw as feminist history, in relation to the "discipline of history as a whole" is made clear in his comments at the end of the article:

...stripped of any propagandist or antiquarian tendencies towards exhuming and celebrating long-lost sisters, the history of feminism ... offers new avenues for exploring the social and political power structures of the past - which, arguably, should be central to any serious historical endeavour.<sup>61</sup>

McMillan therefore measured the perceived inadequacies of the field of women's history against the methodologies and approaches of the established mainstream tradition.

This approach was arguably well founded, but contributors to the article such as Natalie Zemon Davies and Sally Humphries had different approaches and suggestions when regarding the same problem. Natalie Zemon Davies recognised and applauded the changes occurring in the field of women's history at this time. In particular, she noted the extension of the practice of merely including women in the historical record to an integration of the study of women, gender and sexuality in all areas of historical research:

What is happening to 'women's history' , of course, is that it is being extended to men. Sexual identity is an historical construction for both sexes...<sup>62</sup>

Zemon Davies clearly saw women's history as a way to "renew the history of both sexes". In other words, the new approaches and methodologies developed by

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<sup>61</sup> *ibid.* p. 40.

<sup>62</sup> *ibid.* p. 42.

those in the field of women's studies and women's history could have a direct and positive influence on established modes of practice. Humphries also saw this as the way forward for the field, and identified the enriching qualities of women's history. Her suggestions for the application of enriching traditional history amounted to a redefinition of the subject. Rather than the history of women, she argued, women's history should be:

...the history of conceptions of gender (ie, of 'men' and 'women' as social, not natural beings) and of the social relationships and experiences to which gender ideologies are tied.<sup>63</sup>

Thus, it seemed that, for the contributors to this 1985 article, the answers to the problem of marginalisation and unprofessionalism, included either changing the content of the study of women in history, or changing its concept. The article as a whole therefore, reflected increasing scepticism about women's history and a desire to update approaches in the field. The final comments of Anna Davin, in the conclusion to the article reflected these concerns:

...it will not be enough simply to add women's history on to the existing men's history. We have to work towards a more complete understanding of the past, encompassing the complementary and sometimes conflictual diversities of both.<sup>64</sup>

The editors of the History Workshop also voiced concerns about the development of women's history in the same year. They too, expressed their worries over the potential ghettoisation of the field and the ease with which professional historians working in other fields could ignore women in history. Their subsequent suggestions for future research included an expansion and reinterpretation of the discipline, as they called for 'a feminist commitment to reconstructing the history of men as a social group and gender category'.<sup>65</sup> Thus, during this watershed in

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<sup>63</sup> *ibid.* p. 42.

<sup>64</sup> *ibid.* p. 48.

<sup>65</sup> Editorial, "Women's History And Men's History" in *History Workshop* 19 (1985) pp. 1-2 cited in Rendall, J. *op cit.* p. 49.

the field of women's history, a new term for the subject was coined, that of Gender History. This is a term that in theory does not exclude the study of men in history, and thus cannot simply be seen as history by, about and for women. The term seems to have thereafter been developed and became synonymous with women's history. Its political implications however, were not lost on those working in the international field. Joan Scott's article in the American Historical Review, discusses the value of 'gender' as a useful category of historical analysis in 1986. She noted that the substitution of the word 'gender' for the word 'woman' sometimes denoted the seriousness of the work because of its more neutral and objective connotations. 'Gender', Scott argued,

includes but does not name women and so seems to pose no critical threat. This use of 'gender' is one facet of what might be called the quest of feminist scholarship in the 1980s<sup>66</sup>

However, it can be argued that the need to redefine the term arose from more than just a fear of ghettoisation; it would be cynical to assume that a substitute terminology merely represented a politically expedient move. As Jane Rendall argued in 1991, those who have come to use the term 'gender' have done so by many routes. Moreover, the term has its own origin separate to the study of history and can be understood and applied in many different ways, as Joan Scott clearly demonstrated in the same article. She outlined three theoretical positions in the analysis of gender; the feminist effort to explain the origins of patriarchy through relations between the sexes; the Marxist tradition which seeks accommodation with feminist critiques by placing gender analysis within the model of economic analysis; and the object-relations and post-structuralist theorists who draw on the school of psychoanalysis to explain gendered identity. Scott examined these different theories in relation to how usefully and meaningfully they might be applied by historians. She identified limitations for historical analysis in all three kinds of theories. Feminist efforts to explain the

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<sup>66</sup>Scott, J. W. "Gender: A Useful Category Of Historical Analysis" in American Historical Review 91 (1986) p. 1056.



origins of patriarchy, she argued, do not show how gender inequalities influence, or are impacted by, any other inequalities in society, making it difficult for the historian to contextualise such theories in any given period of study. This type of analysis also rests on physical differences, which are universal and unchanging, rendering the study of history a by-product which provides only variations on an unchanging theme. The Marxist feminist approaches renders the analysis of gender itself a by-product, being only defined by the changing economic structures. This means that 'gender' is denied an analytic status of its own. Psychoanalytical theorists, both object-relations and post-structuralist, focus on the formation of gender identity through the early stages of childhood in different ways. Object-relations theorists stress the importance of actual experience, especially within the family. Scott argued that adherence to this theory leaves the historian no way to connect such a theory to larger spheres such as the economy and politics. Post-structuralists place centrality on systems of meaning, including language, as a means by which gender identity is formed. Scott's contention was that this approach tended to universalise 'male' and 'female' and the relations between them, thus precluding historical specificity.<sup>67</sup> Scott finally suggested a definition of gender analysis that might be more rewarding and relevant for the historian. Her final definition of gender rested on a close connection between two positions. Firstly, that gender is a constitutive element of social relationships based on a perceived difference between the two sexes, and secondly, that it is a primary method of explaining relationships of power.<sup>68</sup> She insisted also, that gender should be seen as contextually defined so that it does not project a timeless quality and thus disallow notions of historical specificity.<sup>69</sup> Scott's analysis of the various schools of thought concerning gender was incredibly sophisticated and demonstrated how the term gender should not merely be seen as a means to legitimise the study of women and women and men in history.

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<sup>67</sup> Scott, J. W. *op.cit.* pp. 1055-1062.

<sup>68</sup> We see the latter position expressed in part by McMillan. See p. 22.

<sup>69</sup> Scott, J. W. *op.cit.* pp. 1065-68, 1073-5.

To what extent the theories outlined by Scott have been used by British social historians not directly dealing with gender history and women's history is questionable. It does appear that, in the study of gender and crime in the early modern and modern period in Britain, these sophisticated methodological and philosophical problems have not been approached in such a comprehensive way. Although women's history and crime history have developed in line with social history in general, certain particular issues, like the analysis of 'gender' in women's history, have remained exclusive to the field of women's history. Both fields have had crises in methodological practices, which came at a time of popular conservatism and academic revisionism in the 1980s, but the issues surrounding each were very different. It should come as no surprise, therefore, that when historians started to incorporate the two fields, they encountered both basic and complicated problems. Crime historians approaching the subject of gender did so differently from those who approached their subject matter from the standpoint of the gender historian. The consequences for the development of gender and crime in history are that it must now grapple with basic questions over women and men in history as well as the increased methodological problems caused by the technical limitations of the court records. There was (and perhaps still is) a gap to be bridged by historians of gender and crime. The points at which the study of women and the study of crime in history have met need now to be examined in order to assess the problems in integrating the established practices of both fields. What follows is an outline of some of the literature focusing on both crime and gender, putting it into context with debates in gender history and crime history. It will also attempt to use the work to suggest new approaches and in consequence, more developed methodologies. These methodologies are the basis on which the criminality of eighteenth-century women in the south west has been approached.

Early debates on the value of positivist quantitative research, and the extent to which the record of prosecution was a true reflection of criminality, do not seem to have been fully developed and applied to initial research into the criminality of

women. Women featured so rarely in the courts in all periods and the figures associated with them are so low that dangerous assumptions have been made about their criminality. Thus, when Beattie conducted a quantitative analysis of female criminality in rural and urban parishes of Surrey and Sussex between 1663 and 1802 he came to certain conclusions. His calculations of the proportion of female criminality are not surprising. His figures for rural parishes in Surrey during the period show that while 1 254 men were charged with crimes against the person, only 151 women faced the same charge. There was an equally significant discrepancy for property crime, with 1 842 men charged and only 305 women. Out of a total of 3 552 charges for both types of crime, only 13 per cent concerned women. Beattie appeared to accept that the recorded discrepancy was a reflection of the real incidence and nature of female crime:

There is obviously no simple explanation of the fact that women committed fewer crime of violence and fewer crimes against property than men<sup>70</sup>

This acceptance of that "fact", also appears to rest on the assumptions that:

Differences in sheer strength may have had some bearing on it ... as may temperamental differences. But more fundamentally it must have resulted from contrasts in training and expected behaviour and in general from the place of women in society.

It is not easy to disagree with these arguments. No doubt, female underrepresentation in the court records was partially caused by views about expected female behaviour, and physical strength might well have been a factor in any decision made by a woman to injure another person. However, the easy acceptance of low female crime rates as a reflection of real incidence, and caused by essential differences between male and female criminality, needs addressing. Beattie's approach to women's criminality was from the standard of male

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<sup>70</sup> Beattie, J. M. "The Criminality of Women in the Eighteenth Century" Journal of Social History (1975) p. 96.

criminality. This approach has theoretical problems that result in the obfuscation of female criminality. In this case the female experience is measured against the male experience, with the male experience held as the norm. Thus, when fewer women than men are inevitably seen in the crime records, reasons are found for why women should be 'less' criminal, 'less' active or 'less' likely to be in the public arena of the court than men. Garthine Walker and Jenny Kermode have made note of this in their editorial to a collection of essays published in 1994 on *Women, Crime And The Courts In Early Modern England*. They argue that:

As women do not appear in the records in comparable numbers to men, they simply cannot be compared in a like manner. Female activity is marginalized if it is measured only against male criminality; only by considering women's actions in context does their significant role in the legal process become evident. Thus, prevailing methodologies of historians of crime have restricted rather than facilitated our understanding of the nature of female criminality in the past.<sup>71</sup>

The traditional objective of the field of crime history, despite the various re-evaluations by crime historians during the 1980s, has been to rely on quantification; but Walker in particular argued that this method of research is unhelpful to the historian of women. A consideration of female criminality that measures it against other factors than male criminality, might be a more revealing approach. This, she argued, would have to involve far more than just the counting of formal charges for men and women over any period. Walker and Kermode argued that historians traditionally hold quantifiable evidence in higher regard than evidence, which cannot prove any typical trait or pattern because it does not lend itself to be quantified. In this respect then, the more typical evidence becomes the more valid. This methodology, they argued, needs to be fundamentally questioned when examining female criminality:

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<sup>71</sup> Kermode, J. and Walker, G. (eds) *Women, Crime And The Courts In Early Modern England* (London 1994) p. 4.

One way of negotiating this is to stop holding up typicality as a yardstick of historical worth. Women's crime is, after all, atypical if we compare the sheer number of prosecutions of men and women, but it is surely as valid an indicator of human experience as any other.<sup>72</sup>

What Walker and Kermode argued represented a significant and valid challenge to established methodologies of crime historians. Female criminality as represented by the records in the courts in the seventeenth century is atypical. This is also true for the eighteenth-century, as Beattie found for Surrey and Sussex. Female criminality is atypical, but the danger comes in seeing it as criminality 'other' than male criminality, thereby creating a dichotomy. Other feminist historians point to the dangers of researching along the lines of difference and dichotomy in this way. As Renate Duelli Klein argues:

proving in what ways the average man differs from from the average woman by emphasizing differences makes us overlook important similarities, and does not account for the constant interactions that go on in reality.<sup>73</sup>

Women's criminality made up for 13 per cent of the formal court records in Beattie's sample, but there is no reason to assume that this figure has any relationship to the real incidence of female crime. If that were the case, it could be concluded that women were less criminally minded than men, less violent and less willing to break the law. Beattie's argument highlights a traditionally accepted notion that women were indeed less criminally minded. Discrepancies in the figures have therefore been unquestioningly seen as representative of true incidence. This constitutes a confusion between attitudes toward criminality, and criminality itself. Thus any analysis based on this assumption about female criminality is extremely limited and ignores the developing consensus by crime

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<sup>72</sup> *ibid.* p. 5.

<sup>73</sup> Duelli Klein, R. "How To Do What We Want To Do': Thoughts About Feminist Methodology" in Bowles, G. and Duellu Klein, R. (eds) Theories of Women's Studies (London 1983) p. 92.

historians that there are problems with recorded crime statistics and their quantification.

Some historians have, nevertheless, continued to rely on series of figures based on indictments and measure these over different periods of time. Of note, is a study by Feeley and Little, the reading of which reveals various problems with continued reliance on purely quantitative methods.<sup>74</sup> Feeley and Little argued that one of the central puzzles for students of gender and crime should be the vanishing female participation in the criminal process from the late seventeenth to the early twentieth centuries. Their research on the numbers of women appearing before the Old Bailey during this period showed a significant decline in female indicted defendants. The figures they present show that during the first half of the eighteenth-century women made up three or four times the proportion of felony defendants than in the twentieth century.<sup>75</sup> Feeley and Little considered five possible explanations for these figures; changes in court jurisdiction; demographic changes in London; the vigorous enforcement of 'women's offences'; the possible shift in policies regarding female accomplices; and the overrepresentation of women during times of war.<sup>76</sup> They assessed the limitations of these explanations and then concluded by suggesting economic, social and cultural changes that might also have a bearing on the figures.

The Feeley and Little thesis in this case is based on two assumptions. Firstly that long term changes in the proportion of female crime as represented in the courts is significant and important, and secondly that the decline in recorded female crime represents behavioural changes over the period:

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<sup>74</sup> Feeley, M. M. and Little, D. L. "The Vanishing Female: The Decline of Women in the Criminal Process, 1687-1912" in Law and Society Review vol 25, No 4 (1991) pp. 719-757.

<sup>75</sup> *ibid.* p. 722.

<sup>76</sup> Feeley and Little's later argument concerning the relationship between war and the overrepresentation of women seems only to be relevant when talking about short term effects on figures. In their argument however, they use it as a control for the long decline. Not surprisingly they find no correlation, since arguably, long declines over hundreds of years could not be measured against a relatively short term phenomenon as war.

The discussion in the several sections of Part II suggests that this higher level of involvement and subsequent decline was real.<sup>77</sup>

The five explanations offered by the authors act as controls on their thesis. In the first instance, much attention was paid to the possible shifts in jurisdiction having an effect on the figures. In their assessment of these jurisdictional shifts, Feeley and Little distinguished between the eighteenth and the nineteenth centuries. During the nineteenth century, they argued, a series of acts of parliament downgraded felonies, especially those of simple larceny (where women were perhaps most commonly found) and these culminated in the Summary Jurisdiction Act of 1879. The effect was to shift lesser property offences away from the Crown courts, which offers suitable explanation for the decline of women during this time. The authors argued, however, that this did not adequately explain the declining female presence in the courts during the eighteenth century. While they acknowledged that, during this period, there were informal shifts between caseloads of the upper and lower courts and that Jurisdictional lines between the assizes and quarter sessions (in London and elsewhere in the country) were not fixed, they rejected this as a complete explanation. They consolidated their argument using evidence from Beattie, that still showed a real decline in the proportion of women in both criminal courts after 1710.<sup>78</sup>

This argument seems disappointing on two counts. In the first place, it does not seem that Feeley and Little have taken into consideration the decisions that could be made by justices and prosecutors not to prosecute women by indictment. Although they acknowledge that practicality sometimes determined in which court a defendant should be tried, they did not pursue this line of argument much further. If practical decisions had a bearing on where a defendant was tried, then

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<sup>77</sup> Feeley, M. M. and Little, D. L. *op cit.* p. 740 also see p. 720.

<sup>78</sup> *ibid.* pp. 727-8.

practical decisions might also have affected whether an offender was tried by indictment in the first place. Secondly, the presence of summary justice, in eighteenth century London does not seem to have been recognised in Feeley and Little's analysis. Evidence of summary justice in London was not, in all probability, available in great quantity, but this did not mean that summary justice was not operating in London at the time. Even if it wasn't, then there may have been other informal procedures in the criminal justice system, that although equally difficult for the crime historian to quantify, still deserve some consideration before concluding that recorded criminality represents anything like a true trend. Feeley and Little's observations are, nevertheless, an important recognition of the varying activities of those who decided on where different types of offenders were tried in the eighteenth century. To recognise that the activities of the quarter sessions and assizes courts in the eighteenth century cannot always be easily distinguished from each other is helpful for the student of gender and crime, because it opens an important debate over the extent to which jurisdictional scope was completely represented in the records.

Feeley and Little's dismissal of demography as grounds for declining figures also seems unsatisfactory. They examined a simple and direct relationship between ratios of men and women in London and trends in the recorded decline of women in the courts at this time. Such an examination does not appear particularly prudent. Scholars in the field of crime history have always been aware that those appearing in the courts were not necessarily a typical sample of the population as a whole. Those prosecuted by the courts in most periods were predominantly from the lowest ranks of the labouring classes, and most were men. This skew on the record of crime means that relationships between recorded proportions of female criminality in court records and the supposed proportion of women in any society might be incredibly distant. Comparatives aside from demography, which include, where it is possible to do so, the age or original settlement of defendants might demonstrate a more complex relationship between women and the recorded crime of women. These lines of investigation could prove an important



development in the consideration of female criminality, and both quantitative and qualitative analysis can demonstrate this.

Feeley and Little also set about dismissing the notion that the decline of women in the court records was perhaps due to their increased underrepresentation in cases where they offended as part of a group. They tested the hypothesis that female culpability was seen to be reduced if kinsmen were involved in the offence, that they were omitted from group indictments because it was assumed that they had merely acted on male requests or demands. If this attitude towards women increased in prevalence over the period of 1687-1912, then levels of indictments against women would indeed have decreased. Feeley and Little demonstrated, however, that women were continuously and predominantly indicted singly (as opposed to as accomplices to men), and therefore the decline in the records cannot be wholly due to women disappearing in this way. In the first place, such an argument ignores the notion that women could be primary agents in group criminality, regardless of how their actions were represented (or underrepresented) in the court records.<sup>79</sup> More pertinently, however, it does not take into account other reasons why the records probably show mostly singly indicted women. Group offences involving both sexes probably resulted in women being completely excluded from the records at the initial stages of prosecution (ie. before the indictment was drawn up). It should be no surprise therefore, that the decline in Feeley and Little's series for prosecutions against women was a decline in prosecutions against lone female offenders. The fact that women were predominantly indicted singly does not preclude the suggestion that justices and prosecutors omitted females from group indictments. Moreover, there seems no reason to assume that, because group indictments (with omitted female defendants) should not be taken into account, the decline in female prosecution levels was any more 'real'.<sup>80</sup> When dealing with the representation of

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<sup>79</sup> This has been tentatively suggested below in the case of sheep theft. See Chapter 3 pp.110-114.

<sup>80</sup> In any case, it is impossible for the historian to know for sure which group indictments are ones with female offenders omitted.

women within cases of group criminality, there seems little choice but to accept that common notions of male responsibility over women extended to their committing criminal offences. It seems fair to assume that the eighteenth century justices and prosecutors held these sorts of attitudes and, more importantly, did so throughout the period. It should be borne in mind that this probably has an effect on the patterns and proportions of represented male and female criminality.

It is as a result of the assumption that the decline of female participation in the criminal procedure represented a real decline in the proportion of female criminal behaviour, that Feeley and Little offered economic, social and cultural explanations for these possible changes. These explanations are again open to considerable debate, and can be put into the context of debates running in women's history. Moreover, although Feeley and Little hinted at the idea of informal controlling systems that cannot necessarily be monitored during this period, they still equated the decline in numbers in the court records with a change in *actual female behaviour* regarding crime:

women became less inclined and able than men to engage in activity defined as criminal, and women were less subject to the criminal sanction as other forms of more private control emerged.<sup>81</sup>

The separation of spheres and the consolidation of patriarchal power during this period, are used by Feeley and Little as explanation for the decline of recorded female criminality. A distinction has therefore been made between the relative economic independence of women in the eighteenth century and the restriction of women to domestic work and consequent 'subjugation of women to their husbands' in the nineteenth century.<sup>82</sup> Moreover the changing work patterns of women through the eighteenth and nineteenth centuries, led to increased private forms of control outside of the household. Private informal systems could have been in the hands of the husband as the legal head of the household, but they

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<sup>81</sup> Feeley, M. M. and Little, D. L. *op cit.* p. 741.

<sup>82</sup> *ibid.* p. 745 The arguments here are mostly drawn from Ivy Pinchbeck.

could also be in the control of employers in the new large factories where women were actively recruited. These changes, they argued, led to more restriction and therefore a lesser inclination to criminality. Also identified was the possible trend towards the socialisation of women and men during this period. The decline in inter-personal violence is seen to be a result of socialisation aimed to control anger and find non-violent resolutions.<sup>83</sup> Women were affected first because they were viewed as the moralising influence over society, and their deviance a matter of extreme importance. It is not within the remit of this thesis to examine the extent to which the social and economic roles of women changed in the nineteenth century and how this might affect their propensity to larceny and violence. However, such an examination rests on the assumption that women were less controlled by private means in the eighteenth century. A reading of the court records of the south west during the period does not suggest that the attitudes towards male and female criminality were by any means the same.<sup>84</sup> It could be suggested that their underrepresentation alone, is an indication of this.

It should be noted that these separate spheres models, although useful in the investigation of social structures, can oversimplify the experience of men and women in the eighteenth century. This is especially so when it is considered that, traditionally, historians have identified the eighteenth century with less distinct spheres of activity. Furthermore, Feeley and Little make only one passing reference to the idea that models, probably had vastly different applications on women from different classes, ethnic groups and regions. The result is an oversimplified view of the female experience in London during this time.

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<sup>83</sup> *ibid.* p. 748.

<sup>84</sup> Feeley and Little use discourses and approaches that need further examination. Firstly, they appear to accept the prevailing idea that female social and economic freedoms were severely restricted by the industrialisation and urbanisation of the nineteenth centuries. Although there can be no doubt that such developments have profound effects on everyone in society, the view seems to concur with the idea of a 'golden age' for women in the early modern period and eighteenth century. This approach cannot be used without a recognition of its limitations, as the debate between Hill and Bennett, and discussions by Vickery outlined in the first section of this chapter identify.

The Feeley and Little thesis appears very much to rest on the idea that the trends in prosecution levels over the early-modern and modern period are a reflection of real changes in female criminality. Moreover, their quantitative methodology is similar to that used by Beattie, in his early work on female criminality. As examinations of gender and crime, neither move significantly from the traditional approaches of crime historians. In contrast to this work, there have been more recent studies that move away from such methodologies. Peter King is one such scholar who employed new approaches and adapted methodologies to allow for a better picture of female criminality. He recognised the limitations of traditional methodologies and identified not only the methodologies employed but the sources available as frustrating:

Since these documents contain virtually no information about the relationship between victim and accused, about the context in which the crime occurred or about the occupation, age and material circumstances of the offender, they are extremely limiting.<sup>85</sup>

His attempts to overcome these problems are aided by the discovery of a richer source of information gained by combining two sources, The Old Bailey Sessions Papers and the Newgate Calendars. These two sources could only be combined, however, for the years 1791 to 1793, but nevertheless allowed King to analyse age, occupation and place of birth. These are factors which he considered to be important for providing a:

..much more deeply contextualised account of female offenders in this period<sup>86</sup>

King was also very careful to draw the distinction between actual criminal behaviour and vulnerability to prosecution in his research. He identified a peak in the age range of women brought before the courts and attempted to explain it

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<sup>85</sup> King, P. "Female Offenders, Work And Life-Style Change In Late-Eighteenth-Century London" in Continuity and Change 11 (1) 1996 p. 62.

<sup>86</sup> *ibid.* p. 62.

in terms of changing vulnerability. The prevalence of women defendants in their teens and early twenties, King argued, is a reflection of their employment experiences and economic vulnerability at this stage in their life-cycle. Many young women moved to London at a young age to enter into domestic service. As single women with no responsibilities, yet still extremely vulnerable to economic change, they formed a large proportion of female defendants during the period. Their work was largely casual, intermittent and insecure, and their situation was not likely to change until the age of twenty-five at least.

Work such as this reflects a shift in the emphasis of approaches in crime history to a more qualitative research methodology that is not preoccupied with the trends and fluctuations of crime statistics. It also represents a move from comparing male and female criminal figures and therefore avoids the creation of dichotomies in the analysis of male and female criminality. Increasingly, there have been attempts like this to provide insights into the female experience, although such an approach is not universal. Historians are finding it more rewarding to examine a greater range of sources in more detail. King's work has shown that although the quantification of recorded female criminality from the court records is important, the historian must also look at more than just records for prosecution. He noted that the historian's view of the female experience is enhanced by, but also hindered by, the way that female crimes were recorded in the eighteenth century and also the reasons why they appeared in the records.

King is not the only scholar to examine qualitative evidence of criminality, but he was unfortunate to have access to a uniquely qualitative source. The Old Bailey material is unique to London and not available for historians researching other parts of the country. What forms the main body of source material available for most county quarter sessions and assizes records are the depositions. These sources have been increasingly focused upon by both crime historians and women's historians. Cynthia Herrup's study of theft in seventeenth-century East Sussex, although not focusing on female criminality *per se*, suggested a focus on

depositional evidence could constitute a more fruitful methodology for the crime historian. She argued that, as the investigation of crime history has become more complex and sophisticated, so the limitation of using only indictments to chart criminality have been increasingly recognised.

The official record is a skeleton from which historians can infer only the shadowy outlines of crime and law enforcement.<sup>87</sup>

Her arguments can be seen within the context of the scepticism towards positivist research felt by some crime historians generally during this period, but her research showed an innovative approach to other sources such recognizances and depositions. She contended that these sources, especially depositions, were valuable not just for historians of crime, but also historians interested in other areas of social history:

By revealing the dynamics of crime and detection they translate general knowledge about social life into particular examples.<sup>88</sup>

Herrup reiterated the potential non-exclusivity of seventeenth-century depositions in her concluding paragraph. She stated that because they were written in English (as opposed to Latin), and without the technical legal language of other court documents, they can be useful for the creative social historian.<sup>89</sup> Historians of female criminality, who have begun to embrace this newer methodology over the past ten years, have provided much fresher insight into the female experience in the seventeenth and eighteenth centuries.

A particularly important piece of research in the field has come from Garthine Walker. Her qualitative methodologies have contributed to a wider theoretical

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<sup>87</sup> Herrup, C. "New Shoes and Mutton Pies: Investigative Responses to Theft in Seventeenth-Century East Sussex" in Historical Journal Vol 27 No 4 (Dec 1984) p. 811.

<sup>88</sup> *ibid.* p. 829.

<sup>89</sup> *ibid.* p. 830. Note that during the eighteenth century, approximately around the year 1733, legal documents such as indictments and recognizances ceased to be written in Latin, but still retained the formal legal style.

approach to women's criminality and showed a new perspective which does not find difficulty with the relationship between 'real' and recorded levels of crime. She argued that once it has been accepted that the criminality of women as represented in the court records is atypical, then the kinds of crime for which women are being examined, and how those crimes are reportedly carried out, can be focused on.<sup>90</sup> Thus, the dynamics of female crime may be viewed through the deposition - a source material which provides no clue as to the recorded levels of any one type of crime, but much in the way of detailed descriptions of both offences and the social situations surrounding them. The depositions can provide information, therefore, on not only the criminality of women, but also insight into their roles and activity in society. Walker's examination of property offences in the seventeenth century thus allowed for a different picture of female criminality to be painted. Her agenda, as a women's historian, was apparent in her interpretation of this picture, and her argument for a partial redefinition of the subject:

...historians of women's crime must practice a little lateral thinking...our definition of "criminality" must surely be redefined, as it is here, to include female participation in the various economic and social networks of exchange and interaction which provided the backdrop to prosecution for property crime.<sup>91</sup>

The new approaches of such historians as Walker and King are a step towards a more fruitful marriage of crime history and women's history. They concentrate on

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<sup>90</sup> For previous discussion on the representation of female crime and thus its typicality, please see above pp. 41-42.

<sup>91</sup> Walker, G. "Women, Theft And The World Of Stolen Goods" in Kermode, J. and Walker, G. (eds) *op cit.* p. 98. Walker's research into the extent and characteristics of female theft in early modern Cheshire, part of her recent PhD thesis, challenges traditional notions of female involvement in theft and its related offences. It seeks to demonstrate that it was not the case that women were less likely to act as solitary agents and more likely to be accomplices to men when engaged in theft. Notions such as this, Walker argued, tempt a binary model of the inherently passive female and the inherently assertive male. Walker also argued against the idea that the treatment of men and women in the early modern courts was necessarily gender-specific. This may well be the case, as the trials, sentencing and punishment of women in the eighteenth century do not appear to stand out from those of men. Care should be taken, however, to remember that gender specificity may have been more apparent in the earlier stages of prosecution, ie, whether or not women were prosecuted in the first place. Walker, G. "Crime, Gender and Social Order in Early Modern Europe" (Unpublished PhD Thesis University of Liverpool June 1994).

more qualitative analysis of the record of crime and are not drawn back into the more traditional quantitative arguments that demote women's presence in the court records. The consolidation of the fields of crime and women's or gender history has required not only new theoretical approaches, but also much more innovative examination of the other source materials available to the historian. Thus it is in the recognizances and depositions – records of the initial stages of the eighteenth-century legal procedure, that evidence might be found to build a more complete and contextualised picture of female criminality and the female experience.

There are, in the light of those who have conducted diverse research into female criminality and criminality in general, various ways with which eighteenth-century female criminality in the south west can be dealt. However, the source material for this study remains the same as that used by all crime historians and has, to some extent, been limited by availability of sources. The study covers an approximate period of 50 years from 1735 to 1785 in the counties of Devon, Dorset, Somerset and Cornwall. The source material for the region varies in nature and quantity, but the study focuses mainly on the quarter sessions indictments, recognizances and depositions which are found in the quarter sessions rolls for each county. The study has a Devon focus with indictments charted for the period 1735 to approximately 1782. Indictments are also charted for Somerset for the periods 1735-45 and 1775-85; and Dorset 1735-45 and 1780-85. Smaller samples from 1737-42, 1758-63 and 1778-83 have been taken from the Cornwall Order Books. The Order Books are all that remain of the Cornwall quarter sessions material. These samples, although varied in their detail and qualitative value, combine to form a fairly substantial amount of quantitative material and thus give a sound starting point for further analysis. Information from the Western Circuit Assizes has been used to chart the pattern of prosecution for serious felonies, murder, petty treason and infanticide over the period 1735 – 1785. The material used is from the Assize Gaol Books and is used both separately and in conjunction with the quarter sessions records. Although the gaol and



crown minutes books are all that remain of the western circuit courts records, they at least provide comprehensive coverage of the whole south west region. This includes the county of Cornwall, which has little surviving quarter sessions material.

The quarter sessions courts met four times a year in all counties. Dorset, Somerset and Cornwall held each session in a different town throughout the year, but Devon consistently held its quarter sessions in Exeter, to coincide with the Exeter City Sessions.<sup>92</sup> These sessions dealt with all manner of business in the county, from hearing reports on the state of the highways to the hearing of non-capital charges against defendants. In the main, these charges concerned the offences of assault and petty larceny. The typical range of punishments of such a court were from fines of varying amounts, through to incarceration in houses of correction and corporal punishments, most notably, public whipping. The counties of Devon, Dorset and Somerset, however, all have comprehensive material from their quarter sessions rolls in the form of indictment, recognizance, deposition and the supplementary order and minute books. It is mostly from the indictments, recognizances and the depositions, that the study takes its findings.

The quarter sessions indictment has been used in this study, both to provide quantitative analysis and also, in some cases, to demonstrate the nature of female criminality. Indictments were an essential part of the judicial process during the period. They were drawn up by the clerks of the court immediately prior to the sessions, and were based on the information provided by the county justices and their clerks. The draft bill of indictment was the sole document on which the verdict of the sessions grand jury was based.<sup>93</sup> If the grand jury found the bill to be true, the indictment was passed on to open court, where it was used as the starting point for the trial of the defendant. Draft bills of indictments, that the

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<sup>92</sup> These sessions are not examined in this thesis.

<sup>93</sup> Baker, J. "Criminal Courts And Procedure At Common Law 1550-1800" in Cockburn, J (ed) Crime in England 1500-1800 (London 1977) pp. 18-19.

grand jury rejected as answerable in open court, were marked 'ignoramus' and either filed or discarded by the clerk of the court.

As source material, the indictment is very useful. Apart from the deposition, it contains the most information on record about the details of any one case. A bill of indictment is definitely available for every case openly tried by the quarter sessions courts in this period, which potentially allows for a straightforward quantification of all tried cases of female crime in the south west. This process is helped by the fact that the indictment was written to a formula, which meant that the same kind of information was recorded and submitted for each case. Quantitative analysis using the indictment is also easier for the eighteenth century than in previous periods because bills were mostly written in legal English after 1733 and included a greater specificity when listing goods. Indictments show general information about the defendant, her marital status or occupation in her community, her place of residence and, sometimes, small clues as to the circumstances of the offence. In the case of property offences, they also show inventories of goods stolen, and from whom they were taken. With offences such as assault, indictments usually indicate the names of others involved in the offence. On the reverse side of the indictment, assuming that it has been judged as a true bill, are usually the names of those called to bear witness to the offence (where the bill has been judged answerable in open court). These names may be cross-referenced to the more detailed depositions sometimes found in the same roll.

There have, however, been questions over the reliability of indictments in the eighteenth century. Cockburn's work on indictments of an earlier period has shown that they could have contained 'fictitious information' and Beattie has argued that this could remain the case for the eighteenth century.<sup>94</sup> Clerks of the

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<sup>94</sup> Cockburn, J. "Early Modern Assize Records As Historical Evidence" in Journal Of The Society Of Archivists 5 (1975) pp. 215 - 31, cited in Beattie, J. M. Crime and the Courts p. 20.

court formulated the indictment so that it would conformed to being certain and precise. Omissions of the defendant's occupation could result in the charge being rejected by the court and clerks may therefore have insured their acceptance by using generic definitions of occupations where the defendant's was unknown.<sup>95</sup> It is the occupation, 'labourer' and, for women, 'singlewoman' and 'spinster' of which the historian should perhaps be the most wary. These definitions can cover so many different lives and, in the light of knowing the clerks' methods for constructing an effective indictment, could probably describe almost any defendant. This strategy on the part of the clerk of the peace can result in difficulties for social historians attempting to research the specific social and economic backgrounds of offenders. The study does not, therefore, make any grand theses regarding patterns of occupations of those appearing before the courts. It does, however, allude where it can, to specific defendants whose occupations can be seen more clearly through the indictment.

To a certain extent, this source must be trusted to provide material with which a good picture of rural life in the eighteenth century can be created. The indictment was not likely to be wholly inaccurate, but details like the names of the offenders and the parish in which any offence was supposedly committed were probably correct. Indictments describing assault cases often list the occupations of those involved in enough detail for some analysis. It can be inferred from the information, therefore, possible community or group politics from which the offences result. The eighteenth-century indictments for theft are also very satisfactory in revealing the material possessions of both individual and communities. They can also be used to speculate on those possessions perhaps most valuable to the owner and to the thief. The indictment can therefore be used to help provide insights into the material and political values of individuals and communities.

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<sup>95</sup> Beattie, J. M. *op cit* pp. 20-1.

The quarter sessions recognizances are, in many ways, complementary to the indictment. These documents acted mainly as bonds to satisfy certain conditions or pay the Crown an identified sum of money. Recognizances were drawn up by the clerk of the peace after the Justice had examined the defendant, prosecutor and any witnesses. The recognizance provides information to the historian about the identity of the prosecutor (usually the victim in cases of larceny) and the witnesses, the identity and status of the defendant, and information on the amount of money to which the bond related. However, some aspects of the information contained in the recognizance vary considerably across the south west region and over time. The nature of the offence was occasionally noted, but the amount of detail is variable and sometimes all a clerk would indicate on the bond was whether the offence was a felony or a misdemeanour. Generally speaking, and from the point of view of the social historian, the recognizance adds very little information to the indictment.

Recognizances to appear in court were usually issued to defendants, prosecutors and witnesses in cases of felony and misdemeanour and, in theory, can be references to an indictment for an offence. However, Shoemaker has found that this was not always the case for Middlesex in the early modern period, and the samples from the south west for the eighteenth century seem to support his findings. It appears that recognizances were issued to defendants who were never indicted for a crime. Shoemaker argues that, consequently, recognizances should also be considered as a 'distinct legal procedure'.<sup>96</sup> Recognizances could, it is argued, act as a form of injunction against the offender. The financial contract still existed, but it was not necessarily to appear in court. The fact that many recognizances in quarter sessions bundles represent the only instance in which particular offences are recorded, is either suggestive of their effectiveness as a procedure to convict, or of an unwillingness to charge and present certain

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<sup>96</sup> Shoemaker, R. B. Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex c. 1660 1725 (Cambridge 1991) pp. 24-5.

offenders for trial. Furthermore, it appears that victims of an offence had two choices if they wished to prosecute a defendant. Either they could consult a justice outside of the sessions, or they could directly prefer an indictment at the quarter sessions.<sup>97</sup> This meant that in some cases, an indictment appearing in the quarter sessions rolls was a result of the defendant being initially presented by the prosecutor at the court, neither of whom had been bound by a justice to appear.<sup>98</sup> Nevertheless, without a consideration of these documents, the presence of women in the criminal procedure is misrepresented. Feeley and Little's conclusions on the disappearance of women over time from their samples might have been very different had recognizances been examined in their study. Recognizances are shown in this study to be especially useful in showing cases for assault and discord between members of the same community where an indictment was never drawn up. Their ability to show the relationship between the offender and the victim might also complement evidence from an indictment.

The indictments and recognizances allow for an effective quantitative analysis of female criminality in this study. However, because the quantification of female crime statistics produces a misleading underrepresentation of female crime, more qualitative analysis is necessary.<sup>99</sup> This analysis is allowed by the, albeit limited, existence of the depositions included in the quarter session rolls. Depositions were documents resulting from the Justice of the Peace's initial examination of defendants, prosecutors and witnesses within three days of an arrest. These examinations were conducted privately, most likely in the Justice's own parlour.

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<sup>97</sup> Shoemaker, R. B. Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex c. 1660 1725 (Cambridge 1991) p. 23.

<sup>98</sup> Shoemaker points out that there is a distinct disadvantage of preferring an indictment in this way. Should the grand jury choose to ignore the bill of the indictment, the defendant has not been affected by any legal procedure. In contrast to this, a case taken before a justice outside of the quarter sessions had the scope to put certain pressure on the defendant that was more immediate and possibly more effective. In his own research, Shoemaker found that most prosecutors did in fact go before a justice of the peace outside of the sessions. *ibid.* p. 23.

<sup>99</sup> The aggregate numbers of people convicted in any one year in this region and during this period are very low generally. For women, however, who really only amount to at most perhaps about 20 per cent of recorded offenders, that number is incredibly small. With such insubstantial samples, any purely quantitative examination is ultimately rendered meaningless.

There is some debate over the process by which the record of the deposition is created. The narrative recorded might well have been primarily dictated by those being interviewed. In which case, the deposition becomes the closest record of the voices of a section of the population who might otherwise have never been heard. However, what was eventually recorded by the Justice or his clerk might just as easily have been the result of a careful interrogation of prosecutors, defendants and witnesses, perhaps in the form of a question-and-answer session. Since the purpose of the examination was to determine whether or not an offence had been committed, the deposition was as likely to reflect the justice's agenda.<sup>100</sup> Depositions consequently vary in their formula according to the style of the particular justice, and this should also be borne in mind before reading too much into the tone of the evidence.

It is nevertheless the case that depositions provide more colourful information than any other quarter sessions material available. The content regarding the order of events and nature of the offence, must, to some extent, be trusted as valuable in providing good information. Evidence of this sort can provide information about the relationship between the prosecutor, witnesses and defendants, and thus help to gain insight into the reasons for offences and the processes by which they came to be detected. Other aspects of the lives of women in these mainly rural south western communities can also be inferred from the surviving depositions. Although generally very scarce, depositions are the best form of qualitative evidence available, and they should therefore be used to their fullest extent.<sup>101</sup> They are most fruitful material through which to see

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<sup>100</sup> Richard Williams' work on the role of the justice of the peace in eighteenth-century Berkshire, shows that the justice often used his discretion when dealing with alleged offenders in the first instance. His objective was to assess whether or not there was a case to answer and, if so, to take detailed examinations from the witnesses. The examination put the justice in the role of interrogator, and thus the end product of such interview may have shown as much of the justice's interpretation as it did the witnesses' voices. Williams, R. "Securing Justice In Eighteenth-Century England: The Example Of Berkshire" in Southern History Vol 18 (1996) pp. 43-4.

<sup>101</sup> Depositions were part of the process that often resulted in a formal indictment being made against the accused. However, they were rarely used in open court, and found their way to the quarter sessions bundles only when they were produced before the grand jury to supplement the indictment in the absence of witnesses.

evidence of female crime and, using them, it is possible to get an impression of all the kinds of criminal activities that women were involved in at the time. They therefore contribute to a more profound investigation of the nature of female offences in the eighteenth century.

Also available in the quarter session rolls, are the records for summary conviction by magistrates alone. The power to convict summarily, without recourse to the quarter sessions and a trial by jury, was increasingly conferred on Justices in the seventeenth and eighteenth centuries.<sup>102</sup> These powers were never extended to felonies, and some of the offences listed by statute as triable summarily are not easily described as 'crimes'. Justices were allowed to deal with offences, which included those concerning the sale of liquor, weights and measures offences, trading and manufacturing standards, apprenticeship regulations, turnpike acts and the poor laws.<sup>103</sup> During the late seventeenth and eighteenth centuries, these summary powers were extended to include other offences, some of which could be defined as 'crimes' and some which, according to Beattie, were, "on the borderland of larceny".<sup>104</sup> These included violations of the game laws and certain kinds of petty theft, including gleaning, wood gathering and the theft of turnips. Justices could also convict for vagrancy and other disorders, most notably swearing and cursing.<sup>105</sup> The extension of summary powers of conviction were a legislative response to the slowness and solemnity of formal conviction by trial jury. However, the function of summary conviction could also have been seen as a cautionary measure for first-time offenders. Its existence should therefore be noted as important when considering the range of procedures for prosecution.

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<sup>102</sup> Baker, J. op. cit. p. 25.

<sup>103</sup> Hay, D. "Crime, Authority And The Criminal Law: Staffordshire 1750-1800" in 2 volumes. Vol. 2 (PhD Thesis, University of Warwick. August 1975) p. 602. Shoemaker argues that it is impossible to list all offences that were summarily punishable at this time. Shoemaker, R. B. op. cit. p. 35.

<sup>104</sup> Beattie, J. M. Crime And The Courts p. 17.

<sup>105</sup> Shoemaker, R. B. op. cit. p 36.

Unfortunately, there is a dearth of material concerning summary justice in the records for the south west. This is possibly because the justice of the peace was rarely required to make a record of the conviction and send it to the quarter sessions.<sup>106</sup> Evidence of summary convictions of women for theft and game law violations are virtually non-existent. In fact, where summary convictions are available, they predominantly relate to swearing and cursing. A similar lack of material has been noted by both Hay and Beattie in their respective samples of Staffordshire and Surrey. Because such records could include convictions for larceny-type offences, Hay has concluded that the summary convictions are, "the most serious loss from the eighteenth-century judicial records".<sup>107</sup> For those studying female criminality in particular, such disappointment is accentuated by the suspicion that more immediate forms of policing and prosecution might have been regularly applied to female offences. Owing to the lack of a great deal of summary material, it is difficult to determine to what extent female offenders were represented in these records. The importance of summary conviction for female offenders, therefore, remains a point of conjecture for historians. However, this study has considered the summary convictions as worthy of note, especially in determining their function in policing disorder. Since most documents refer to the swearing of oaths and curses to a greater or lesser degree, it has been suggested that justices might have used their own discretionary codes for certain types of disorderly behaviour and misdemeanour. On the face of it, convictions for the swearing of 10 oaths, or 50 curses seem meaningless. It is possible, however, that convictions like this have a function to measure the seriousness of miscellaneous disorders by 'quantifying' an established summary offence. This probably masked what the offender really did, but nevertheless allowed for a legitimate summary conviction where the justice felt that this was most appropriate for the offender.

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<sup>106</sup> Hay, D. *op. cit.* p. 602.

<sup>107</sup> *Ibid.*



Serious female crime in the eighteenth century is evidenced in the Assizes material. The Western Circuit Assizes covered the counties of Cornwall, Devon, Dorset, Hampshire, Somerset and Wiltshire.<sup>108</sup> Assize sessions were held twice a year and were presided over by commissioned judges from the superior courts. The sessions dealt with serious crime including felony and murder. Assize judges also had responsibility to clear the gaols and deal with outstanding business while on their circuit.<sup>109</sup> The business of an assize court, rather like that of the quarter sessions, was recorded in the form of indictments drawn up by the clerk of the court, recognizances and depositions sent by the justices of the peace. Specific to the Assizes, however, were the record of the goal books and the crown minutes. The assizes records for the Western circuit have mostly been lost or destroyed. There are no surviving indictments, recognizances or any depositions evidence from these courts. All that remain from the Western circuit for the eighteenth century are the gaol books and sporadic runs of the crown minute books.

Information on the trials and verdicts for the whole period 1735 to 1785 are available in the gaol books in assi 23. The gaol books constitute gaol calendars and record various recognizances to appear, to answer, and to prosecute and give evidence. During this period the western circuit gaol books list the names of the offenders, a brief description of the charge, the verdict and the prescribed punishment. These records have provided a clear picture of the pattern of prosecution of women across the entire region for the whole of the period covered. The Crown minute books for the western circuit (assi 21) are closely related to the circuits gaol books but, for the period with which this study is concerned, do not provide a great deal of useful information. The Assizes records have been advantageous in the charting of trends of criminality over time in conjunction with the quarter sessions indictments.<sup>110</sup> However, the comparisons

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<sup>108</sup> Only the city of Bristol had the right to hold its own session of gaol delivery and of oyer and terminer for the city, until the nineteenth century.

<sup>109</sup> Beattie, J. M. Crime And The Courts (Oxford 1986) p. 16.

<sup>110</sup> Although the Assizes records deal only with felonies, this body of evidence does, however, fit well with information from the quarter sessions records. Both courts tended to concern themselves

between the two courts are limited by the lack of information from the grand jury. Thus, only indictments judged to be true bills by the grand jury (i.e. charges which the grand jury judged to be answerable in open court) can be used in series with data from the gaol books, rendering what can be seen charted over this period of time to a comparison of cases brought to open trial.

Some note has to be made of the source material which has proved to be disappointing in the investigation of female criminality in this study. The evidence from the Cornwall quarter session material is of primary concern. The loss of the quarter session rolls for this county causes methodological problems when trying to compare and analyse certain forms of offences. Analysis of the extent and nature of cases in this county proved to be particularly difficult. Most notably, problems have been encountered while dealing with assault cases using the source material from Cornwall. An example taken from the order books from the period 1737 to 1742, for assault cases, illustrates the problem. Forty two entries for this period in the quarter sessions order books concerned action taken by the court on women offenders. Only eight cases can be identified as possible assault cases involving women. In some years in the sample, there were apparently no assault cases listed. This is on average less than 2 cases listed in a year for the county.<sup>111</sup> It cannot be assumed that this is because of the lack of assaults and breaches of the peace in Cornwall, nor can such a low figure be attributed to the laxity of the court. The information given in the order books is not specific and not comparable to the quality of material that would be available if the quarter sessions rolls had survived. Although more serious female crime in Cornwall is covered by the Western Circuit Assize Gaol books, researching the records for Cornwall requires relatively more speculative analysis than for other

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predominantly with property offences and assaults of varying seriousness and the nature (if not the degree) of these offences were often similar.

<sup>111</sup> Cornwall RO QS 1/1/31-154 Sessions Order Books. The figure for assault cases may not be accurate because of the nature of the source. The Order books do not always list specific offences. The 101 cases also include settlement orders. These apart, the percentage of assault cases within the listings for offences is about 19 per cent.

regions. Nevertheless, the order books at least provide a cursory picture of criminality in the county, which is enough to demonstrate how less serious female criminality tends to compare with that of the south west as a whole.

The petitions to be found in the State Papers are disappointingly rare. Petitions on behalf of convicted female prisoners sentenced to be hanged were sent to be secretary of state to consider in consultation with the trial judge.<sup>112</sup> Their evidence is potentially extremely valuable in providing more information than that which any court record could provide. This is especially true in the case of the convicted woman's age, a factor often deemed important in any plea for clemency. Consequently, when petitions have been discovered for the south west, the woman for which the petition has been made is often under the age of twenty. It may only be assumed that it was very rare for young rural women to be convicted of an offence and sentenced to death for an offence. This may be an important reflection on the attitudes of the courts towards female offenders, who, at every stage in the administration of justice, according to Beattie, "were more likely to take a harsher line with a man than a woman."<sup>113</sup> The study does refer to such material where it has been found, and this was mainly for serious offences such as infanticide and arson.

Other source material has proved to be far more disappointing. The evidence from newspapers, often used as a source of qualitative information for those studying the machinery of law, can contribute only a little to the study of female criminality itself. Although the *Sherborne Mercury*, the most local paper in the south west region, contains small advertisements describing property which have been lost or stolen, there is usually very little information about the offenders themselves. Occasionally the paper will provide listing of those tried and convicted at recent sessions, but this type of information can also be found in gaol

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<sup>112</sup> Beattie, J.M. Crime And The Courts p. 432.

<sup>113</sup> *ibid.* p. 438.

calendars for both the quarter sessions and assizes. The most interesting evidence that is provided by the press in the eighteenth century, are the occasional accounts of executions. However, these accounts have not been found in great number for the region and period, and so have not been relied upon in the study.

This study of female criminality has not drawn upon any different types of material than that used by other crime historians. To a large extent also, there has been work conducted along the same lines as that which is practised by established crime historians. Consequently seemingly insurmountable problems have been encountered during the course of the research. This is especially the case with the quantitative analysis conducted. There have been attempts to chart trends of prosecution, where they can be seen, in the context of economic and social factors like price fluctuations and war. The study has proved unsatisfactory for a variety of reasons, not least the extremely small aggregate numbers that have been charted. Fluctuations in charted criminality over time, therefore, may seem more significant than they should be. Even though some correlations have been noted, no firm conclusions can be reached about the relationship between external social and economic factors and fluctuations in such small samples.

However, the thesis also incorporates a different focus, that may be seen in relation to the work of recent historians of gender and crime. In the first place, there has been no attempt to chart female criminality alongside that of men. In some respects, this has caused problems. Such a methodology might well have impeded further study into the relationship between certain cases involving only men and cases involving men and women or only women. Circumstances where this type of analysis would have been useful have been acknowledged at certain points in the thesis. However, the exclusive focus on female criminality has been an attempt to avoid measuring it against male criminality, traditionally seen as the norm by historians. Walker has noted that the record of female women's criminality is indeed atypical and constitutes a small percentage of the record of crime, but this should not deter the historian from seeing the importance of

analysing this group in the records. This thesis has moved away from the creation of male-female dichotomies (ie. typical versus atypical crime) by choosing to place female criminality only within social, economic and cultural contexts. It is not an attempt to view women in isolation to men, but ultimately an attempt to avoid confusing the lesser record of female crime with a perception of a less important experience. This research hopes to build on the work of Walker and Hay, who have succeeded in these aims, and made the history of female crime a relevant and fruitful area of research. In order to do this, methodologies other than straightforward charting have been employed. In the first place, another form of quantitative analysis, the forming of sub-categories within the offences of theft and assault, and an assessment of their nature rather than their extent, has been used. This is work that does not initially involve comparing female criminality with any other factors but itself. Furthermore, where it has been done, for example in the study of theft, it forms an interesting and fruitful starting point for more qualitative analysis. Such analysis requires a detailed focus on the types of other material - namely the depositions - to be found in the quarter sessions records.

The information given on each deposition provides a varying level of insight into more than just the case and those involved in it. Often the deposition will reveal the lifestyle or occupation of those who either supposedly committed the offences, or those witnesses who provided information. This information can be used to demonstrate how some crimes committed by women can be seen in the context of eighteenth-century life. By using the quantitative analysis as an indicator of dominant recorded crime, certain types of offences can be focused upon in the sample of depositions. Where common relationships like those of the offender with the victim, are seen in the deposition, interesting hypotheses can be put forward. This is also possible when depositions are available that show typical methods of committing crime, or the same types of goods are stolen in property offences. In more broad terms, the deposition can provide insights into the social and economic relationship that the female offender or offenders have with their

community, a sphere which includes their families, masters and mistresses, husbands and kinsmen as well as their workplace and parish as a whole. Where it has been possible to make comment on these relationships, it is hoped that the assessment of female criminality can be seen within the context of female experience in eighteenth-century rural communities as a whole.

### Economy and Society in the South West of England: The Female Experience

In order to fully contextualise female criminality, some reference to the social and economic profile of rural life in the region should be made. Without these references, a less clear reasoning of female criminality is risked. Two types of source material have been used to produce an assessment of the female experience in this particular type of rural economy. Material useful in assessing the nature of the economy in the region during the eighteenth century comes from surveys to the Board of Agriculture. These were mostly presented and published in the early nineteenth century.<sup>114</sup> The purpose of such surveys was to suggest how agricultural technology would be improved in the different areas, and their authors did this with varying degrees of success.<sup>115</sup> The reports give a comprehensive view of each county's rural structure and provide the basis of the account of the rural economy which constitute the first part of this chapter. It may then be used in conjunction with the work of women's historians to provide an assessment of the experience of women in the eighteenth century. This chapter will focus on certain issues of society and economy, in particular to what extent there was population growth and urbanisation and whether changes in agriculture (if any) were likely to affect community and household structures. Thereafter it will outline the typical and most likely experiences of rural labouring

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<sup>114</sup> These include Claridge, J. A General View Of The Agriculture In The County Of Dorset, With Observations On The Means Of Its Improvement (London 1793); Stevenson, J. A General View Of The Agriculture Of Dorset (London 1812); Billingsley, J. A General View Of The Agriculture Of The County Of Somerset (London 1795); Worgan, G. B. A General View Of The County Of Cornwall (London 1811); Vancouver, C. A General View of the Agriculture Of The County Of Devon, With Observations On The Means Of Its Improvement (London 1808) and Marshall, W. The Rural Economy Of The West Of England: Including Devonshire And Parts Of Somerset, Dorset And Cornwall (London 1796).

<sup>115</sup> The nature of these sources do vary. Some surveys were more thorough than others; some give the impression that the surveyor had wandered through foreign lands, encountering alien creatures. These surveys often had polemic slants, the authors allowing their views of social reform, wages and work organisation to come through in their work.

women who, during the course of their lives, had varying roles to play in this society.

During the period from 1735 to 1785, the population of England grew from around five and half million to just over seven million, with much of the increase after 1750.<sup>116</sup> To what extent the nature of any increases in population in the south west bear relation to national population trends, needs to be addressed at this point. This is especially the case as population changes have been closely allied to migratory patterns and urban growth; factors which have combined to cause fundamental demographic changes. It has been noted that the sharp increases in the population, especially after 1750, on a national level, can be attributed to certain factors. A decline in mortality due to vaccinations against smallpox and other medical and hygiene issues played some part, but increases in fertility due to changing courtship and marriage patterns; and changes in the migration habits of young people are agreed to have been more important factors.<sup>117</sup> This has been evinced by research undertaken in the 1970s and early 1980s by the Cambridge Group for the History of Population and Social Structure.<sup>118</sup> The growth of towns appeared to be the main manifestation of this social phenomenon and Corfield's examination of urban growth is a useful starting point in demonstrating the particular character of urban population trends in the south west. Her research showed that only three cities in the four counties grew to a population of over 20 000 during the century. These were Bristol, Bath and Plymouth. Bath and Plymouth had populations of under 5 000 and 10 000 respectively in 1700. Bristol

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<sup>116</sup> Schofield, R. "British Population Change 1700-1871" in Floud, R. and McCloskey, D. (eds) *op cit* p. 64 These figures come from the process of Back Projection which is designed and implemented by the Cambridge Group for Population Studies. For a more in-depth study of population statistics through back projection see Wrigley, E. A. and Schofield, R. S. The Population History of England 1541-1871 (Cambridge 1981).

<sup>117</sup> See Rule, J. G. The Vital Century: England's Developing Economy 1714-1815 (New York 1992) pp. 10-16. For marriage and courtship see Stone, L. The Family, Sex and Marriage in England 1500-1800 (London 1977).

<sup>118</sup> Through a lengthy and complicated system of back projection, they concluded that fertility and nuptiality were the principal contributors to this accelerated population growth after 1740. In fact, the research demonstrated that they contributed two-and-a-half times as much to the rise in growth rates as the fall in mortality. See Wrigley, E. A. "The Growth of Population in Eighteenth-Century England: A Conundrum Resolved" in Past and Present 98 (1983) pp. 120-150.



did not experience much growth, having already a population of 20 000 at the beginning of the century.<sup>119</sup> The population of Exeter remained within the range of 10 000 and 20 000 throughout the century and can be seen as a city suffering a relative decline in population during the period. If urban growth occurred in this region, it does not appear to have been in the cities. Towns that sprang up and developed in the south west seemed to lie along a trading line between Bristol and Plymouth. There were very few towns with a population of over 5 000 lying outside this line. The region was mostly composed of small towns and villages with populations of less than 2 000 people and, in fact, usually only containing a few hundred people. Stevenson presented figures that showed that Dorset had not increased in population at the same pace as the national average during the eighteenth century. He estimated that the county's population had grown from 90 000 in 1700, to 96 000 in 1750 and by 1801, it stood at 119 000. This increase, although fairly significant, included the military presence in the region at the time. Claridge noted in 1793 that, in fact, Dorset was mostly made up of small rural communities. He estimated that, of an entire population of 89 000, 21 000 people lived in towns with a population of 3 000 or over and the remaining 68 000 lived in smaller towns and villages across the county.<sup>120</sup> The most heavily populated region by far, was the port town of Poole, with 7 000 people.<sup>121</sup> It would not be prudent, therefore, to conclude that population growth in Dorset was due to much major urbanisation.<sup>122</sup> Devon was described by contemporaries as having a similar demographic profile as Dorset. Marshall described the county as made

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<sup>119</sup> Population increases in these two towns were probably due to their specialist natures. Bath was a rapidly growing spa resort, attracting London society, and consequently those from the middling classes. Plymouth, on the other hand, expanded in population owing largely to War or the expectation of it. See Corfield, P. J. The Impact of English Towns 1700-1800 (Oxford 1982) pp. 52-63 and pp. 44-46.

<sup>120</sup> Claridge, J. op. cit. p. 47.

<sup>121</sup> In fact, Dorset was known for its population of sheep over people, Defoe stating in 1724 that there were 600 000 sheep fed on the downs near Dorchester. cited in Cullingford, C. N. A History of Dorset (London 1980).

<sup>122</sup> Stevenson, J. op. cit. p. 459. We must also bear in mind that population increases in Dorset, as of most of the region, were minute in comparison to the growing cities of the north west during this century. The towns of Birmingham and Sheffield each experienced over 820 per cent increases over one hundred years, Birmingham from 8 000 to 74 000 and Sheffield from 5 000 to 46 000. Berg, M. "Women's Consumption And The Industrial Classes Of Eighteenth Century England" in Journal Of Social History (Winter 1996) p. 416.

up of villages “few and small; farmhouses, and many cottages, being happily scattered over the areas of the townships.”<sup>123</sup> Somerset, by comparison, was assessed to be a much more populous county. Billingsley gave to the Board of Agriculture a population figure of 300 000 in 1795.<sup>124</sup> This was probably because of the existence of Bristol and Bath, and larger towns like Taunton, which had a population of over 5 000 people.<sup>125</sup> Cornwall had a demographically uneven population. Worgan estimated the county to have a population of between 189 and 190 000 at the end of the century, and most of these people would have lived in the west of the county and on its coast. Although most of its villages and towns were small, there was a greater concentration of people in the mining areas in the west of the county, and these areas experienced a greater population increase.<sup>126</sup> The main areas of trade were the fishing ports of Padstow, Boscastle, Penzance, Falmouth, Truro, Fowey and Looe.<sup>127</sup>

The growth of cities in the eighteenth century has generally been attributed to changes in the rural economy, which facilitated changes in the migratory pattern of young people. Rather than employing themselves in agricultural labour or entering into service in husbandry they were increasingly likely to pursue more lucrative service employment in urban settings. This could have especially been the case for women. However, urbanisation through migration in the south west does not appear to have been a major factor in the growth of the region’s population. To use Exeter as an example, Corfield’s findings showed that the city grew steadily over the century, with no sharp increases in line with other cities in other regions. The evidence suggests migration levels into Exeter by men and women, presumably into service, cannot have been particularly high, and certainly there seems no distinct upturn in population after 1740.<sup>128</sup> Furthermore,

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<sup>123</sup> Marshall, W. *op. cit.* p. 24.

<sup>124</sup> Billingsley, J. *op. cit.* p. 1.

<sup>125</sup> Corfield, P. J. *op. cit.* p. 129.

<sup>126</sup> Halliday, F. E. *A History of Cornwall* (London 1959) p. 258.

<sup>127</sup> Worgan, G. B. *op. cit.* p. 145.

<sup>128</sup> Corfield, P. J. *op. cit.* p. 99. The nature and extent of the phenomenon of urban migration may have had significant implication for some aspects of female criminality. See Chapter 5.

it was not likely to be the case that population in either urban or rural communities were affected by emigration from the region, as most migration tended to be over fairly short distances. One possible reason for a relatively small migratory population was the lack of pressure, either through urban trade growth, or the collapse of a family household, to seek employment in towns.<sup>129</sup>

Certain connections have been made between increased nuptiality and changes in the rural economy during this period. The nature of the rural economy determined marriage trends in the eighteenth century. Such connections seem largely to apply to areas where arable farming was dominant. In these areas, the increasing commercialisation of agriculture tended to result in common land becoming less accessible to the poor. Former grazing rights were lost to this section of society as customary land-use rights were eroded, which meant that some smaller rural households could no longer subsidise their income by using common food and fuel resources. Previously, it had been financially feasible for young husbandmen to establish such households with their wives, allowing for economic independence with relatively little capital. This became less possible in arable areas during the century. Changes in the economic power of the rural labouring community were compounded by the new employing patterns of the tenant farmers, who were under pressure to hire on a seasonal or weekly basis, rather than use the traditional living-in system to train apprentices. In some cases, therefore, it was impossible for young servants in husbandry to save over long periods of time. Both men and women from these classes consequently reached a maximum earning potential in their early to mid twenties. As there were no compelling reasons to wait until their savings were sufficiently amassed before marrying, increasing numbers did not, and so married earlier. With such increased nuptiality among a section of population now less inclined to have established households and more inclined to work on a seasonal basis, greater

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<sup>129</sup> Hill, B. Women, Work and Sexual Politics In Eighteenth Century England (Oxford 1989) p. 129.

migration was likely.<sup>130</sup> Even if a labouring couple managed to set up a small household, no amount of efficient housewifery could ensure its survival wholly as an independent unit. It is likely that an increasingly common picture was for households such as these to rely, at least partially, on wage labour for its material subsistence.<sup>131</sup>

The agricultural economy of the south west was, however, dominated by pastoral and not arable farming.<sup>132</sup> The exception to this were the several grain growing areas in the Vale of Taunton, some parts of Dorset, and larger areas of Cornwall. Areas of very good quality arable land existed in small areas, usually in the extreme parts of the region. The area around Lizard Point and Lands End in Cornwall, and also the more eastern regions in Dorset – around Weymouth and Dorchester – and stretching north-easterly from these towns were very good grain growing areas. As a rule, it was the more northern and eastern areas that were suited to grain growing. This should not, however, detract from the general agricultural profile of the south west. For the most part, the quality of land in the region did not lend itself very easily to arable farming. Whole areas of land such as Dartmoor, Exmoor, Bodmin Moor, and the Quantock Hills were unsuitable, and other areas such as the chalky downlands of west Dorset were poor lands for grain growing. While it is true that large areas of south Somerset were made up of good or medium quality arable lands, their use was restricted by drainage problems caused by flooding in the lowlands and in estuarine areas. Other areas

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<sup>130</sup> The implications of this conclusion are important. Earlier marriages contributed to increased fertility because women were starting sexual unions before, or as, they reached the age of peak fertility. Schofield argues that the age of marriage for women went from a mean of 26.4 years to 22.6 years between 1716 and 1816. If women were marrying earlier the effect on their economic roles and social status was bound to be changing. They were also entering marriage at the statistical peak age for offenders - a peak largely attributed to the circumstances of unmarried women between 14 and 25 years of age. We should take this into consideration when viewing their presence in the court records. King suggests that the early years of marriage, which resulted in women committing their time to childbearing and the maintenance of the household economy, would effect a decrease in female indictment levels. King, P. J. "Crime, Law And Society In Essex, 1740-1820" Unpublished PhD Thesis University of Cambridge 1985.

<sup>131</sup> Malcolmson, R. W. Life and Labour in England 1700-1780 (London 1981) pp. 136-157.

<sup>132</sup> See Kussmaul, A. "The Pattern of Work as the Eighteenth Century began" in Floud, R. and McCloskey, D. (eds) op cit pp. 1-11.

that comprised of good quality general-purpose land, like south Devon, were nevertheless committed to pastoral farming.

Pastoral farming areas seemed suited to the survival of a largely independent rural household, which did not have to rely as heavily on seasonal wage labour, as was increasingly the case for arable areas in the country. One of the reasons for this was the practice of manufacture within the home. It could be argued, in fact, that pastoral farming was itself incorporated into a dual economy based around household production of manufactures and agricultural wage labour. It is perhaps best, therefore, to view the economic structure of eighteenth-century rural society as one where interests in manufacture and agriculture were integral to the community. As Rule has argued, industry and agriculture often existed in very close proximity, and much industry was in fact by-employment for families.<sup>133</sup> Thirsk maintains that the allocation of handicraft industries (the main type of subsidiary occupation for farming families in the west country) should not be viewed as haphazard, but rather as one arising from 'certain types of farming community and certain kinds of social organisation.'<sup>134</sup> While this system prevailed, the household remained a complex unit of consumption and production. Its flexibility meant that it responded to the raising and lowering of demands on its resources. As family members left or joined the household the hours of work committed to production of piece-work (textiles, buttons etc) adjusted accordingly. The production of other goods from husbandry (such as eggs and cheese) also contributed to the output of the household.

The agriculture and industry of the four counties in the region reveals such a dual economy. The agriculture and industry of Dorset was diverse. Farming types were divided by the type of land available. The Chalky downlands of the county were largely devoted to pasture and meadow. The rearing of long-horned sheep

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<sup>133</sup> Rule, J. The Experience of Labour in Eighteenth-Century Industry (London 1981) pp. 12-

<sup>134</sup> Thirsk, J. The Rural Economy of England (London 1984) p. 232.

was especially prevalent in the area, Dorset being a well known provider of house-lamb to London at a very early season of the year.<sup>135</sup> Arable land in the county was certainly used to grow wheat, and in comparison to the other more western counties, Dorset had a significant amount of arable land. Often, wheat was carefully rotated with other crops used for industry, like hemp and flax.<sup>136</sup> Hemp was used for rope making and flax cultivated for sailcloth used in shipping. These industries were centred in the south east of the county in places like Bridport and Beaminster. The manufacture of shirt buttons took place in Whitchurch and other local areas like Blandford Forum and also to the north of the county in Shaftsbury. Lace making was also an occupation of women, especially in Blandford. To the south of the county, in Purbeck and Portland, stone quarrying proved a lucrative occupation for men, these areas being a major exporter to the metropolis. Dual employment was not the preserve of women in these areas. Often, the men employed in the quarries were also farmers. Furthermore, seasonal factors seemed built in to the pattern of dual employment. Contemporaries commented on the implications of this, saying that women were employed fully in reaping during the harvest season in these areas, and often brought all of the crops in, owing to the preference of the kinsmen to remain in the more lucrative quarries.<sup>137</sup> Such an observation strengthens Thirsk's argument that rural industry should not be seen as a subsidiary occupation. It is necessary, therefore, to be wary of calculations such as that made by Claridge, who estimated that of 89 000 in the county's population, 34 000 were engaged in husbandry, 30 000 as artificers and manufacturers and 5 000 in temporary residency as soldiers and sailors.<sup>138</sup> These reported divisions should be viewed with scepticism, as those involved in husbandry may have included manufacture in their work, and vice versa.

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<sup>135</sup> Stevenson, J. *op. cit.* pp. 374-393.

<sup>136</sup> *ibid.* p. 202.

<sup>137</sup> Bettey, J. H. *Rural Life In Wessex* (Bradford-on-Avon 1977) p. 47.

<sup>138</sup> Claridge, J. *A General View* p. 1.

Agriculture in Devon was also almost entirely pastoral, with arable land mainly used for the cultivation of subsistence crops. Pastoral farming itself varied across the county. East Devon (and Parts of West Dorset) were noted by Marshall as areas of dairy farming. The vale of Exeter produced enough dairy products to export to London, but these areas did not appear to breed cattle for meat.<sup>139</sup> Devon's main export (apart from meat and dairy produce) was serge cloth - a fine woollen fabric, the making of which seemed to universally occupy the people of Devon and eastern Cornwall. The spinning and weaving of the wool for this manufacture seems to have continued to remain in the household, according to Marshall. He briefly refers to a factory in Modbury (probably a spinning mill, although he doesn't say), but appears to have viewed it as an exceptional form of work organisation, as well as a short-lived one. This factory, he noted, was of "considerable extent...and carried with good spirit, and with success to the individuals who prosecuted it. But their end being answered, the manufacture ceased..."<sup>140</sup> It may be assumed therefore, that the infiltration of the factory system was slow in coming to the county of Devon. In fact, changes to the rural economy in Devon were slower simply because of the nature of the textile industry. Not only was it a peculiar mix of old and new systems of work organisation, but these systems remained, maintained their character and still expanded until about 1780.<sup>141</sup>

Like most regions in the south west, Somerset was a pastoral farming district, whose inhabitants combined their husbandry with other industrious pursuits. Billingsley's calculations on the use of land show that enclosed meadow and pasture far exceeded the areas of land designated for crop farming. He estimated that while just over 26 per cent of the acreage of the county was used for arable farming (including common fields still in existence), around 60 per cent was used

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<sup>139</sup> Marshall, W. The Rural Economy of the West of England: Including Devonshire; and parts of Somerset, Dorset, and Cornwall (London 1796) p. 112.

<sup>140</sup> Marshall, W. op. cit. p. 290.

<sup>141</sup> Berg, M. The Age of Manufactures: Industry, Innovation and Work in Britain 1700-1820 (London 1985) pp. 28-35.

for pastoral farming.<sup>142</sup> The drainage of the levels meant that during the eighteenth century, more land became fit for productive use, and this was generally used for grazing and rearing.<sup>143</sup> Although the land was said to be extremely fertile, the humidity of the air meant that corn growing was more difficult than in other areas, and the county imported much grain from Wiltshire and Dorset.<sup>144</sup> There were arable areas however. The vale of Taunton was described by Marshall as 'properly an arable district', and was also an area in which innovations in agriculture were evident in the eighteenth and nineteenth centuries.<sup>145</sup>

Somerset was also a county with much industry, the most important of which was cloth making. The large scale nature of the trade was commented on by Defoe in 1724. A Taunton manufacturer claimed to him that:

...there was at that time so good a trade in the town, that they had then eleven hundred looms going to the weaving of sagathies, du roys, and such kind of stuffs, which are made there...<sup>146</sup>

Billingsley makes some reference later in the eighteenth century, to the decline of the woollen industry in Taunton, but talks of the 'considerable manufactories...at Wellington, Wiveliscombe and other places..'. It would appear, therefore, that although industry fluctuated throughout the century, the making of woollen cloth was a sustained industry in Somerset as elsewhere in the region. In the south of the county (and in west Dorset) the manufacture of linen and sail cloth was facilitated by locally grown flax. The cultivation of flax required care and attention, and this meant a great deal of employment for those in the area.<sup>147</sup> Along with the manufacture of cloth in Somerset, other industries existed that

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<sup>142</sup> Billingsley, J. *op. cit.* p. 1.

<sup>143</sup> Bettey, J. H. *op. cit.* p. 36.

<sup>144</sup> Billingsley, J. *op. cit.* p. 14.

<sup>145</sup> Marshall, W. *op. cit.* p. 170; Bettey, J. H. *op. cit.* p. 36.

<sup>146</sup> Defoe, D. *A Tour Through the Whole Island of Great Britain* (1724, reprinted Harmondsworth 1971) Letter 4 p. 251.

<sup>147</sup> Bettey, J. H. *op. cit.* p. 44.



were of note. Coal and lead mining occupied those in the north of the county and in the Mendip areas. These industries required work organisation that resembled factory systems, although miners may also have been husbandmen, as in other mining and quarrying areas in the region. Glove making centred itself in the south of the county around Yeovil and Ham Hill and was conducted notably by women. Paper making occupied those in the Mendip hills, and in other places where clear water ran in the whole region, and this was also an important by-employment.<sup>148</sup>

Industries in Cornwall included to a large extent the fisheries. The seasonal pilchard fishing trade deserves particular mention. Because of the migratory patterns of pilchards, their trade was completely confined to Cornwall and their catch confined to only two or three days in a year. By the eighteenth century, the pilchard season was in December. Its main fishing centres were in Mevagissey and its neighbouring coves. Export centres were in Falmouth, Fowey, Penzance, Newlyn and Mousehole. The industry employed a large number of people. A 1785 committee enquiry reported that 5 500 seamen and a further 4-5 000 people were engaged in the curing and packing of fish once they were caught. Those employed to cure and pack fish included women.<sup>149</sup> Apart from the fishing trade, contemporaries noted mainly the presence of the tin mining industry in the county of Cornwall. These areas of industry were situated west of St Austell. Towns like Kenwin, Kea and Gwennap were noted for their large tin yield, and it would seem that population intensity was increased in these areas.<sup>150</sup> Wages for mining were low, making the supplementary income earned by women and

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<sup>148</sup> *ibid.* pp. 48-9.

<sup>149</sup> See Rowe, J. Cornwall In The Age Of The Industrial Revolution (Liverpool 1953) pp. 263-281. Rowe also noted that there were connections between the pilchard fishing industry and smuggling, especially owing to the increased duty on foreign salt in 1798. The pilchard fisheries favoured the use of foreign salt, believing it to be superior to English salt. Rowe argues that there was evidence of the illegal import of foreign salt in defiance of Pitt's ruling. The evidence collected for female crime in Cornwall during the eighteenth century does not suggest that women were tried for offences relating to duty-free salt, or the theft of it from the workplace. It should be noted, however, that the Cornwall Order Books do not carry sufficient detail for us to conclude this with surety.

<sup>150</sup> Fraser General View of the County of Cornwall (1794) p. 15.

children important.<sup>151</sup> It is not surprising, therefore, that Worgan thought to make note of the proportion of women engaged in agricultural work at the end of the eighteenth century. He noted that their work in this respect was largely weeding, hoeing turnips and potatoes and the unskilled labour needed during times of harvest. Seasonal employment seemed to be an integral part of the lives of women, but, as was the case in other areas of the south west, the pay was considerably lower than men's. While a man might receive between 9 and 12 shillings per week as a casual labourer, a woman would only be paid between 6 and 8 pence per day (amounting to about 4 shillings a week).

Pastoral farming did not feature so strongly in Cornwall as in other counties in the region. Worgan noted the Cornish farmers propensity to cultivate corn, and gave the lucrative nature of such a crop as a reason for their doing so.<sup>152</sup> The relationship between agricultural and industry was still fairly strong however. In the Cornish mining areas, men who were primarily employed in non-agricultural work such as mining still worked variable hours depending on agricultural demands. Work may have drastically fluctuated throughout the year, therefore, with intense labour needed at harvest time. However, dual occupations involving manufacture in the home and agricultural labour in the county did not appear to be as extensive as for the rest of the region. While it is true that the inhabitants of east Cornwall were contracted for piecework, Cornwall itself did not have many manufactures. Worgan listed only a coarse woollen, a paper and a carpet manufactory.<sup>153</sup>

Communities in the south west as a whole also produced a range of goods for their own use. They were able to do this because the demands on their agricultural labour differed from that in arable farming areas. Industrial activity was an important part of the whole family income and for most of the year

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<sup>151</sup> Halliday, F. E. *A History of Cornwall* (London 1959) p. 259.

<sup>152</sup> Worgan, G. B. *op. cit.* pp. 160, 63.

<sup>153</sup> *ibid.* p. 145.

production could be practised alongside husbandry. This lifestyle of dual occupation was sometimes facilitated by the putting-out system, which distributed manufacture of goods such as yarn and cloth into rural areas from provincial centres such as Exeter or Honiton.<sup>154</sup> Dual occupations included more diverse activity than the manufacture of textiles however, as is evident from the industries outlined above. The work organisation of rural pastoral economies had significant impact on the occupations of women in these communities. Marshall observed the cultivation of hemp and flax in West Dorset for rope and sailcloth making gave employment to the female villagers of the neighbourhood of Bridport. This, he added, was "of mutual benefit to Agriculture and Commerce".<sup>155</sup> Whole families would be more or less engaged in such manufacture depending in their commitments, often seasonal, to farming in the area. Employment in the cottage industries such as spinning or button making was of particular importance to people contributing to their household income. In some cases it may have proved more profitable than husbandry. Defoe revealed the importance of cottage industry when he claimed that "The Farmers' Wives can get no Dairy-Maids...truly the Wenches Answer, they won't go to Service at 12d. or 18d. a week, while they can get 7s. to 8s. a week at Spinning."<sup>156</sup> Manufacture could also prove far more profitable for women than harvest wages (which appear to have been higher than normal labouring wages). Stevenson noted that although women in the western region of Dorset could earn between 8d. and 1s. per day during this time, "the women find the manufacture of shirt buttons a more profitable employment in this neighbourhood".<sup>157</sup> The combination of husbandry and industry also extended to more organised forms of work, as Rule has shown for Cornwall. Parish registers in the county recorded the dual occupation of tinner and husbandman until the middle of the eighteenth century,

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<sup>154</sup> Labour organisation in the preindustrial period was not simple, different structures of manufacture co-existed, so that the putting-out system may have worked alongside small centralised factories and mills. See Berg, M. "Factories, Workshops and Industrial Organisation" in Floud, R. and McCloskey, D. (eds) *op cit* pp. 123-50.

<sup>155</sup> Marshall, W. *op. cit.* p. 145.

<sup>156</sup> Pinchbeck, I. Women Workers and the Industrial Revolution (Reprinted 1969) p. 140.

<sup>157</sup> Stevenson, J. *op. cit.* p. 197.

when presumably employers restricted their allocated lands to ensure longer hours tinning.<sup>158</sup> The putting-out system of cottage industry in textiles, which was most suited to pastoral areas (not least because wool was in ready supply), coupled with the dual employment system of agriculture and industry, was still prevalent in most areas of the four counties. This type of economy relied very heavily on the household as a base for production. The prevalence of the rural economy over that of the urban, therefore, most likely contributed to the survival of the household as an independent economic unit in the region. Not surprisingly, proto-industrial systems that took ownership of the means of production away from the household were slower to reach the south west. These systems included the introduction of factory systems.<sup>159</sup> The dominance and continued success of the rural economy may even have been a factor in the slower development of other forms of work organisation in the region.

Implications for the study of women in eighteenth-century society in this region are affected by their relatively unchanging relationship to the means of production. The household provided the focal point for this relationship. Where women and children benefited from the employment opportunities presented to them by rural industry in areas where it was feasible, this in turn dictated the economy of the household and the structure of the family.<sup>160</sup> As long as the household remained a solid economic and social unit, there were definite roles

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<sup>158</sup> Rule, J. G. *op. cit.* p. 13.

<sup>159</sup> A finely crafted examination of Alice Clark's work on capitalist systems and the rise of factory systems with reference to women can be found in Middleton, C. "Women's Work and the Transition to Pre-Industrial Capitalism" in Charles, L. and Duffin, L. (eds) Women And Work In Pre-Industrial England (London c.1985) pp. 181-206. Middleton is careful to communicate the argument that the "transition from feudalism to industrial capitalism was not one of unilinear progression" (p. 186).

<sup>160</sup> Middleton also focuses on how capitalist and factory systems affect the division of labour in economies. One particular factor was the increase of occupational specialisation both within and outside of the household. With increased commercialisation in agriculture, jobs became less wide-ranging, some becoming less skilled. Middleton argues that the inevitable result of this was a decrease in the flexibility of task allocation in the work place among the non-specialist and unskilled labourers. This was an area in which women were disproportionately over represented. Middleton *op cit* p. 190. For an alternative point of view, where women's work before the industrial revolution was seen as the 'bad old days' see Shorter, E. "Women's Work: What Difference Did Capitalism Make?" in Theory And Society 3 (1976) pp. 513-527.

for all members of the family, including wives, daughters, mothers and female servants.<sup>161</sup> These roles, however, can be seen to be flexible and not in any sense less important than, or subordinate to, male roles. Women may even have claimed a certain amount of autonomy, especially in dairying areas, where they can be seen to have had more independence.<sup>162</sup> Moreover, where households continued to constitute a central focus in the economy, any distinction between public and private spheres as defined by historians, becomes confusing and perhaps ultimately meaningless. An example of this is noted by Susan Dwyer Amussen, who noted that in some pastoral farming areas married women may have had relatively more contact with the market place, because of their traditional responsibilities for selling home and dairy produce.<sup>163</sup> Such contact with the market place was certainly reflective of many women's roles within the household unit as both consumers and producers.<sup>164</sup> In the eighteenth century, women could be found working in most sectors that made up the rural economy of the south west.<sup>165</sup> They worked in the household as domestic servants; both in and out of the household as servants in husbandry and dairy maids. At times, especially during the harvest, they laboured with their kinsmen in the fields. They could also find employment in manufacture, mostly through the putting out system, which saw women producing piecework for clothiers. Regardless of age and status within communities, women's employment and roles had a strong

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<sup>161</sup> Stone, L. The Family, Sex and Marriage in England 1500-1800 (London 1977) p. 140. For an interesting examination of how the household unit served as a basis for defining 'the family' see "The Concept Of The Household-Family In Eighteenth-Century England" in Past and Present No 151 (May 1996) pp. 111-140.

<sup>162</sup> Dwyer Amussen suggests that the Skimmington rituals of the south west of England imply female independence and subsequent insubordination. The ritual was originally directed against women who beat their husbands. and a reinactment of the assault involved the dairy maid's skimming ladle. Dwyer Amussen, S. An Ordered Society (New York 1988) p. 69.

<sup>163</sup> *ibid.* Dwyer contends that this may have given women a higher status in pastoral communities, owing to their significant role in the household economy. Women's social and cultural status in communities however, sometimes seems to have had less relation to their economic role. Ambivalence towards female dominance and power in early modern societies is explored in Fletcher, A. *op. cit.* *passim*. This suggested decline in the status of dairywomen from the middle of the eighteenth century onwards is explored in Valenze, D. "The Art Of Women And The Business Of Men: Women's Work And The Dairy Industry c. 1740-1840" in Past and Present no 130 (Feb 1991) pp. 142-169.

<sup>164</sup> Tilly, L. and Scott, J. *op. cit.* p. 44-46.

<sup>165</sup> They were, however, excluded from some skilled trades by statutes. This was done indirectly through restrictions on apprenticeship. See Rule, J. G. *op. cit.* pp. 14-15.

relationship with the household. Young single women worked in other people's households as domestic servants, apprentices, or servants in husbandry. Married women often worked within their own households, but might supplement their income by working in others'. Widowhood rendered increased dependence on the household and kin, but as long as a woman could still engage in piece-work or husbandry or both, a solid household economy could keep her from poverty.

Service provided the most common form of occupation for women in their youth. It also provided them with education and training relevant to the community economy.<sup>166</sup> While some young women may have migrated to larger towns to find work in urban households, most would have been employed by others in the community. Both landed and tenant farmers needed help with the running of their farms, and even smaller tenants would have at least one servant or apprentice to do both indoor and outdoor work.<sup>167</sup> This type of occupation covered a multiplicity of types of servant. Female apprentices, domestic servants and female servants in husbandry were technically different in their arrangement and their purpose. Distinguishing between them is nevertheless difficult in practice, although the first category - that of the female apprentice - stands out more than the rest. Female apprentices were often parish charges, who were sent to households outside the parish to learn husbandry or housewifery either because they had no parents, or their parents could not maintain them. They may often, therefore, have been very young, perhaps sometimes as young as nine or ten years old. Theirs was possibly the most unfortunate of situations in service. Although the parish paid the prospective master or mistress a premium, it was not usually enough to compensate for the cost of maintaining an extra family member. Consequently, from the late seventeenth century onwards, all occupiers

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<sup>166</sup> Roberts, M. "Words they are Women, Deeds they are Men" in Charles, L. and Duffin, L. (eds) *op. cit.* pp. 126-127.

<sup>167</sup> Hecht argued that the rural counterparts of the lower middle classes - tenant farmers and yeomen- employed on average a lower proportion of servants in the household. Moreover, in the countryside, the job descriptions of such servants were more varied than their opposite numbers in towns. Maid servants were frequently also farm workers and vice versa. Hecht, J. Jean. The Domestic Servant in Eighteenth-Century England (London 1956) see Chapter 1 pp. 8-9.

of property worth £10 a year or more were liable to house parish apprentices on pain of a fine.<sup>168</sup> Forced to accept young strangers, masters and mistress would have had varying attitudes towards the care and training of the apprentice. Vancouver commented that such apprentices received little training in what was most valuable to them, especially in the case of female apprenticeship:

Scraping the roads, lanes and yards, turning over mixings and filling dung-pots, is at best but a waste of time, and a feeble effort of infantile strength...being altogether incompatible with the household and more domestic duties they ought early to be made acquainted with.<sup>169</sup>

In relative terms, the female parish apprentice was extremely vulnerable to the whims of her employers and guardians. She had no family or kin network to support her if her position became unbearable. She was often a stranger in the parish of her master or mistress. Such situations potentially ended in disaster, including the bearing of illegitimate children, assaults and homicides within the household.<sup>170</sup>

Other forms of service included domestic service, service in husbandry and apprenticeship in husbandry. These are more problematic terms because, although technically different, they could in practice involve the same kinds of work. In theory, domestic servants were hired to perform tasks in the house such as washing and cleaning, while servants and apprentices in husbandry were hired to learn and perform duties including the care and feeding of livestock and perhaps even gardening. In practice, domestic servants working as part of small farmsteads may often have been required to perform tasks outside the household, for example care of domestic livestock. Conversely, servants or apprentices in husbandry may also have been allocated training in housewifery. The structure of

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<sup>168</sup> See Hill, B. *op. cit.* pp. 88-90.

<sup>169</sup> Vancouver, C. *op. cit.* p. 360.

<sup>170</sup> Tilly, L. and Scott, J. *op. cit.* p. 38-9. For examples of homicides and assault, see Chapter 4, Section II, where cases involving young female apprentices can be inferred.

the pre-industrial household was a contributory factor to this blurring of occupations. Because early modern households were sometimes units of production, all those working within it, although technically adopting separate roles, were working together to produce a range of products. When the dual occupation system meant some members of the household left to work in other places, those remaining would take on the consequently outstanding tasks. Flexibility was important to the successful management of the household economy and this applied to all members, including the servants. As Hill argues, servants were "hired not to maintain a style of life, but a style of work", in other words, to achieve a balance of production and consumption needs within the economic unit.<sup>171</sup> It therefore made sense to train servants in a multitude of skills.

Although the decline in female service in Husbandry (as distinct from domestic service and apprenticeships) has been documented, areas of the south and east of England with enclosed farms specialising in corn production tended to be the first to experience it. The practice of husbandry, associated with farming households which remained units of production, persisted in the pastoral farming areas of the south west.<sup>172</sup> In fact, William Marshall commended this practice, evidenced in Devon, as a good deterrent to rising poor rates (for which he blamed public manufactures). He argued that rather than by factories, which promoted "dissoluteness, debility and wretchedness", the manufacture of wool within private households,

by men, women and children, who by this employment, are kept at their own houses, are enured to the habits of industry, are enabled to support themselves, at all seasons, and are always at hand, to assist in the works of industry.<sup>173</sup>

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<sup>171</sup> Hill, B. *op cit* p. 70.

<sup>172</sup> See Hill, B. Women, Work and Sexual Politics In Eighteenth Century England (Oxford 1989) p. 84.

<sup>173</sup> *ibid.* p. 50.



According to Hill, however, the relationship between the eligibility for parish help and the recipient's place of settlement meant that increased concern over the poor rates contributed to the decline of the female servant in Husbandry. Servants were increasingly less likely to be hired for a full year, thus negating their claim on settlement within the parish that they were working. It is not easy to assess how quickly the south western counties abandoned yearly hiring, as the surveys make only passing mention of the system of service and apprenticeship. Vancouver makes some reference to the continued practice of hiring servants by the year, however. Servants, as a general rule, he stated, were engaged at around Christmas time, to be in service from the following Lady Day until the Lady Day the year after.<sup>174</sup> Marshall commented on the exceptional practice, by most regions of the south west, not to have set places for the hiring of servants. Often in the eighteenth century, large fairs were held in local markets or provincial towns, where large numbers of young people gathered to be hired either as farm servants or as domestic servants. It would appear from Marshall's observation, that this did not happen in the south west. Marshall reported that some servants went from door to door in search of employment, and after finishing a period of service, using word of mouth to find new work. Hill has argued that this might be representative of the need for servants in the south west to secure work in their local areas.<sup>175</sup> Such behaviour may well, in turn have had significant implications for the pattern of migration in the south west during the period. If local migration prevailed, then communities would not expect strangers from great distances to come into their villages. Female migration may well have been common among young women, as they moved from one neighbourhood to another looking for positions of service. However, it is also possible that they (or their families) may already have been known to their new communities. Continued contact with their original families might therefore have been frequent and important for young servant women. Where they retained ties, their positions as domestic

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<sup>174</sup> Vancouver, C. *op. cit.* p. 361.

<sup>175</sup> Hill, B. *op. cit.* p.72-3.

servants in neighbouring houses would have been less vulnerable. In fact, some women would have alternated between their parents' household and others' until they married, effectively contributing, and remaining loyal, to both households.<sup>176</sup>

Domestic service or service in Husbandry was the usual occupation of the unmarried woman until she left the household to marry. This was, of course, dependent on meeting an appropriate suitor, and also on whether between them, they had sufficient financial means to set up a new household. Poorer couples starting out together would typically occupy a small cottage with very little land. Such a couple would no doubt benefit from any grazing rights to be claimed on the local common land. The wives of those in social classes from artisans downward often found that their working lives involved a great deal of flexibility. Wives lost legal control over any property they might have amassed during their single working lives. Their practical roles, however, show that the principles of marriage were not adhered to in practice. Wives played a significant role in the family economy. Their responsibilities for regulating the family income, meant that they were active within and outside of the house.<sup>177</sup> In rural areas like the south west, husbandry and industry, in varying proportions, formed the make-up of a wife's occupation. In addition, any dependants in the family would need to be cared for. The farmer's wife would have managed the household and its extensions. This included tending livestock, perhaps keeping bees and preparing a variety of products for sale at the market. Those without land in this region had recourse to the textile industry. Piecework provided a great deal of employment for women, and could be expanded or contracted according to the needs of the family and circumstances in the local economy. The lower down the social scale, the more important the contribution of the wife to the household became. Often, her input would be the difference between survival and pauperism.<sup>178</sup>

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<sup>176</sup> Tilly, L. and Scott, J. Women, Work and Family New Edition (New York 1987) p. 36.

<sup>177</sup> Dwyer-Amussen, S. "Gender, Family And The Social Order 1560-1725" in Fletcher, A. and Stevenson, J. (eds) Order and Disorder in Early Modern England (Cambridge 1985) p. 203.

<sup>178</sup> Hufton provides an example of how the work of a wife in Ruthin, Wales, in the eighteenth century saved her family from destitution after a bad harvest. Her son remembers his mother

Even if wives were widowed their potential links with the household remained. Many were fortunate enough to retain their property, with sufficient means to continue to maintain it in the same way as previously.<sup>179</sup> Furthermore, remarriage was common during the period owing to the shorter life expectancy.<sup>180</sup> This probably resulted in many younger widows continuing in communities as wives to other men. Nevertheless, the older widow was often reliant on her children to support her in her old age if they were able. Many more widows were no doubt made poor by their situation. It would appear that the widow's relationship to the household (and her productivity within it) stood as an important factor in her material outlook and social integration. This is evinced by a description of the fortunes and happiness of one respectably situated early eighteenth-century widow. Although she seemed very much to depend on the support of her sons, "She continued to spin until four months of her death." Earlier troubles in her widowhood were not based on financial problems, but rather on her input in the running of the household, now taken on by one son and his wife:

But when the young wife came to housekeeping, my mother thought to have some direction in that, more than the young wife (who had been her father's housekeeper) would allow; which made their mother uneasy.<sup>181</sup>

Conversely, Hill has also cited cases of widows and their families going into decline after the death of the husband, with the further removal of other resources and their increasing isolation from the community. One article from the *London Chronicle* tells such a story. The widow of a timber-merchant, much reduced by

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saying to his father, "I'll make a bargain with thee...if thou, in addition to looking after the horse, the cattle and the pigs, wilt do the churning, wash up, make the beds and clean the house...I will knit...We have wool if thou will card it, I'll spin" Hufton, O. *A Prospect Before Her*: (London 1995) pp. 155-6.

<sup>179</sup> In this respect, widows were often a good prospect for remarriage, even if children were involved. See Macfarlane, A. *Marriage And Love In England 1300-1840* (Oxford 1986) p. 236.

<sup>180</sup> *ibid.* p. 98.

<sup>181</sup> Extracts from *The Autobiography Of William Stout Of Lancaster, 1665-1752* cited in Hill, B. *Eighteenth Century Women: An Anthology* (London 1984) p. 134-5.

the death of her husband, set up a small home with her daughter (a war widow) and her granddaughter. When the daughter died, the war pension that she received stopped. The old widow then became extremely poor and increasingly isolated until her death; the granddaughter was discovered in a state of misery.<sup>182</sup> Widows in general, however, survived by cottage industry and, to a greater or lesser extent, on parish allowances. If they could maintain a strong relationship with the household either through remarriage or the industry of their offspring, they would be taken care of. It appears that the biggest enemy of the widow was social and economic isolation from the household.<sup>183</sup>

The south west in the eighteenth century was characterised by a slow increase in population and, unlike other areas of the country, relatively slow urban growth through migration. This can be seen through the growth of towns like Bristol, Exeter and Poole, which showed no massive expansion on the scale of towns like Birmingham and Sheffield. One reason for this was arguably its rural economy, which was based on pastoral agriculture centred in small towns and villages and so less prone to change in this period. In fact, until the slump in the textile industry in the south west (in the wake of new technology) at the end of the eighteenth century, the rural economy of the area remained relatively unchanged. Consequently, the predominant pastoral system in the region continued to support the household as a centre for both production and consumption. Industries in the region were conducted in the home and often involved payment by the piece. This meant that production time could, to some extent, be controlled according to need. Such industry was flexible enough to suit traditional working patterns of women (and indeed children) and thus proved to be a relatively lucrative prospect.

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<sup>182</sup> Extract from the London Chronicle vol 1 (1757) p. 403 cited in *ibid.* p. 165.

<sup>183</sup> Various examples of household industry performed by widows and also their reception in the community, can be found in Hill, B. Eighteenth Century Women: An Anthology (London 1984) pp. 163-167, 143-136.

The household, although having constantly changing personnel, therefore remained a centre for all members of a community.<sup>184</sup> Women had, undoubtedly, a part to play in the maintenance of such a centre. As servants they occupied dependent positions within other households, becoming members of new families. They learned the skills of husbandry and housewifery within these communities. They used these skills as managers when they became wives, often taking a part in the running of small and large farms. Even labourer's wives could take some control over production in the home. Wives in the region may therefore have had less dependence on the cash wage than their eastern counterparts, who increasingly became wholly wage labourers along with their husbands. As widows, labouring women in the pastoral farming communities of the South West either took over the headship of their households, entered into another marriage or became reliant on their family to allow their continued contribution, perhaps through handicraft trades, to the household economy. It was isolation from the household at a vulnerable age that would render the widow a parish pauper.

The working life of women in the south west was very flexible. By-employment featured to a greater or lesser degree depending on the season and the fortunes of the households. This applied to women in most situations. As servants, their tasks were general and dependent on season and income of the household. If extra outdoor work for the family was necessary, then even the domestic servants would be required to do it. As wives, women's roles within the household were also constantly changing according to which was the best way to provide for those within. The wife might produce extra goods to exchange in the market place for other consumables that she could not make and for this she might need to be an adaptable woman with a multitude of skills in housewifery, husbandry and

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<sup>184</sup> Contemporary sources indicate that long term contracts for servants and apprentices were still in existence. This allowed for the establishment of longer-term household families. In Devon the practice of hiring servants for as long as one year was still reported in the late eighteenth century, although it was commented that there was no fixed time or place to hire them. Marshall, W. *op. cit.* pp. 107-8.

handicrafts. Women would also have to respond to economic situations, often according to season. When harvests were bad, more time was spent doing piece-work in the home. When industry slumped, work in agriculture was sought in order to supplement the household income. Unfortunately, because women found themselves in positions where they could be flexible, this also meant that they were vulnerable. Agricultural work deemed suitable for women was laborious and unskilled and therefore badly paid. Even spinning, which was relatively well paid, was an occupation vulnerable to the fluctuations of the market.<sup>185</sup> The economic security of a woman therefore depended on her relationship to the household and community. Without this, she was doubly vulnerable to poverty.

This chapter has briefly examined the economic profile of the rural south west in order to lay some foundations for the next two research chapters. Women's economic situation in rural areas undoubtedly rested on their social ties with the community, a community which was likely to have been made up of several household-families. Roles and responsibilities within these households and communities were extremely varied and flexible, and the sources on female crime sometimes provide further insight into these. Furthermore, the relationship between lifecycle and female occupation in a rural economy, which was flexible and sometimes precarious, but also operating within a community which was close-knit and, to a certain extent, non-transient, has implications for the study of female offences during the period. In the following chapters, more detailed studies of how far women's roles manifested themselves in criminality have been made. The work covers a great variety of offences, although there has been a focus on certain trends. In general, it can be seen that the visibility of female crime in the courts has a strong connection with economic and social situation.<sup>186</sup> This

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<sup>185</sup> Marshall, W. *ibid.* pp. 155-157.

<sup>186</sup> This is particularly the case for certain female age groups and occupational groups. Recent research has shown that vulnerability to prosecution can be linked to both age and occupation. See King, P. "Female Offenders, work and life-style change in late-eighteenth-century London" in

is most obviously the case with property offences, which make up the bulk of female crime and which, in turn, can reveal a great deal about women in rural communities in the eighteenth century.

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Continuity and Change 11 (1) 1996. Sources for the south west in the period however, do not give sufficient information in order to make a comparable study.

## Chapter 3

### Female Theft in the South West:

#### Part I: Identifying the trends.

The question of how far the source material reflects 'real fluctuations' in crimes over any period continues to trouble even the most positivist crime historians.<sup>187</sup> In particular, the extent to which property offences should be seen as social fact rather than just the record of changes and developments in the law remains an important research question. While it is not wise to deny the validity of quantitative work on theft and its punishment, which should be a starting point for any discussion on theft, the issue is compounded by questions over the value of quantitative research methods in the field of women's history.<sup>188</sup> This is mainly because of a tendency to "measure" women's experience against what is often seen as the statistical norm of the male experience. Consequently, this first section on female theft deals with the charting of female prosecutions for theft as a useful starting point for further investigation, but does not attempt to measure it against male property offences. Instead, the charting of indictments over the fifty-year period can be used to show possible correlations with the social and economic factors of war and consumer prices. There are undoubtedly problems with this form of analysis, but it can be combined with a more detailed study on the nature of those property offences to provide some insights into the causes of female theft and its prosecution over time.

The law regarding property offences in the eighteenth century was complex and continually developing over the eighteenth century. It was a mass of varying and specific statutes relating to each type of crime. The courts could interpret an offence in many different ways, according to whichever statute seemed most appropriate to the justice, the judges and the grand jury. This meant that an

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<sup>187</sup> See King, P. " The Rise Of Juvenile Delinquency In England 1780-1840: Changing Patterns Of Perception And Prosecution" Past and Present 160 (1998) pp. 116-160.

<sup>188</sup> See pp. 45-47.



offender was not only at the mercy of statute law, but also the discretion of those administering it. No doubt, such discretion affected the pattern of prosecution for theft throughout the eighteenth century. One of the most important aspects of the development of the Law on property offences was Benefit of Clergy, or rather, its removal by statute.<sup>189</sup> Although statutes removing the Benefit of Clergy from larceny offences were enacted from the sixteenth century onwards, during the first half of the eighteenth century there was an increase in these statutes; the most notorious of which was the Black Act of 1723.<sup>190</sup> This act, the focus of considerable study in crime history, was seen as the lynch-pin of the 'bloody code' of the eighteenth-century legal system.<sup>191</sup> Like other enactments before it, the Black Act was initially an emergency response to a perceived crisis. The huge number of offences regarding theft and disorder which it removed the Benefit of Clergy from, however, distinguished it from preceding acts.<sup>192</sup> In fact, according to Radzinowicz, there was "hardly a criminal act which did not come within the

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<sup>189</sup> Until the sixteenth century most felonies (including highway robbery and murder) were subject to benefit of clergy. Originally a privilege claimed by churchmen to be subject only to punishment by the ecclesiastical courts (where no capital punishment existed), benefit of clergy could be claimed by all men and women deemed literate by 1691 (3 and 4 Wm and M, c.9, s.6.) As those who could claim the benefit increased, statutes denying clergy from offences were introduced, including burglary in 1576. By the late seventeenth century, this was the case for increasing numbers of property offences. Beattie, J. M. Crime and the Courts (Oxford 1986) pp. 141, 148. For a detailed account of the development of non-clergyable property offences by statute, see Radzinowicz, L. A History of English Criminal Law and its Administration Volume 1: The Movement for Reform (London 1948) pp. 41-79.

<sup>190</sup> A comprehensive study of the legalities of the Black Act can be found in Radzinowicz, L. A History of English Criminal Law and its Administration Volume 1: The Movement for Reform (London 1948). The Origins of the Black Act are discussed in the context of the high politics and the development of the concept of the rule of Law in Thompson, E. P. Whigs and Hunters: The Origin of the Black Act (Penguin 1975).

<sup>191</sup> The nature of the Black Act was discussed as part of the debate between Langbein and Hay, and commented on later by Styles and Innes, its significance has been given varying importance by these scholars. Hay, D. "Property, Authority and the Criminal Law" in Hay, D. (ed). Albion's Fatal Tree ; Langbein, J. H. "Albion's Fatal Flaws" and Styles, J. and Innes, J. "The Crime Wave: Recent Writing On Crime And Criminal Justice In Eighteenth Century England" in Journal of British Studies (October 1986).

<sup>192</sup> Radzinowicz claimed that an accurate estimation of the number of offences for which the Black Act provided capital punishment without benefit of clergy was impossible. He also argued that its passing coincided with the rise of the doctrine of crude retribution. His arguments are a reflection of a teleological approach towards the changes in punishments over the period 1700-1900. In fact, the 'crude retribution' in its most severe form was exercised (for whatever reason) with great discretion, as the consensus of historians, diverse in their opinions as Douglas Hay and John Langbein, shows.

provisions of the Black Act".<sup>193</sup> It seems surprising, therefore, that in the evidence from the South West sources, more sentences of death are not evident. It should be remembered, however, that there was a great difference between the enactment of Law and its administration by Justices, Grand juries and Petty juries during the period. Radzinowicz also points out that at all levels of the criminal justice system, there was great scope for the evasion of the capital punishment prescribed by such Draconian acts.<sup>194</sup>

It is not surprising therefore, that the study of the interaction between the Law and the record of crime in the eighteenth century has proved so fruitful. The main point to be drawn out for the purposes of this study, however, is that of the discretionary powers of legal administrators. It is quite probable that, regardless of new Parliamentary Acts, justices and juries used their own knowledge of both Common and Statute Law and combined it with moderation and reason when dealing with offenders in their communities. It is this type of interaction that allows a reasonable study of the pattern of prosecution, charted against social and economic factors, to be made, without going too far into the chronicling of the Law itself.

When dealing with patterns of prosecution for female theft, there are other methodological problems to be considered. Compared with the figures for male theft, property offences committed by women form a very low percentage. The very small numbers of indictments make it difficult to comment on the changing extent to which women were prosecuted and convicted for theft during the period 1735 to 1785. Numbers this small have to be treated with care. The charting of small fluctuations (caused by factors of varying importance) result in exaggeration. An examination of the Assize circuit gaol book for Summer 1737 for example, shows that 27 men from the four counties studied were tried for grand

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<sup>193</sup> Radzinowicz, L. A History of English Criminal Law and its Administration Volume 1: The Movement for Reform (London 1948) p. 77.

<sup>194</sup> *ibid.* p. 97.

theft (theft of goods over the value of 12d), 7 for Burglary or house breaking and 3 for highway robbery. However, during the same period, only 3 women were tried for grand theft and 1 for burglary. In this particular sample therefore, only a little under 11 per cent of those tried for theft and related offences in this year were women. The percentage is perhaps generally reflective of the average percentage of women tried and/or convicted for property offences in the higher courts over the eighteenth century. Indeed, if charges and convictions for female theft are looked at over the whole period, it seems that the percentage figure was actually declining.<sup>195</sup> Graph 3.1 (see p.92) demonstrates that the numbers of indictments judged to be true bills in Devon show no significant trends of increase or decrease over the period as a whole. No increase is shown in line with, for example, the steady rise in population in the South West for the period. Without accurate population figures for the region it is difficult to be certain, but it appears that relatively fewer women were prosecuted and convicted by both courts as the century progressed.<sup>196</sup> Other historians have demonstrated their importance in qualifying their own charted decrease in prosecutions of certain groups of offenders.<sup>197</sup> Such an observation raises questions over how women were dealt with both in and outside of the courts in the eighteenth century. If women were not being punished in the courts, it might be assumed that other forms of control were in operation.

Feeley and Little's research into female prosecution levels (both for theft and violent crime) in London during the period also suggest this sort of decline. Their conclusions, however, are very different. They assert, after considering all the possible factors that might affect such a record of conviction, that during the period women "became less inclined and able...to engage in activity defined as

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<sup>195</sup> This decline was also discussed by Feeley and Little in 1991. Feeley, M. M. and Little, D. L. *op. cit. passim*.

<sup>196</sup> However, the role of summary justice during the period should not be ruled out, even though this material is rarely in evidence in the quarter sessions rolls for the south west.

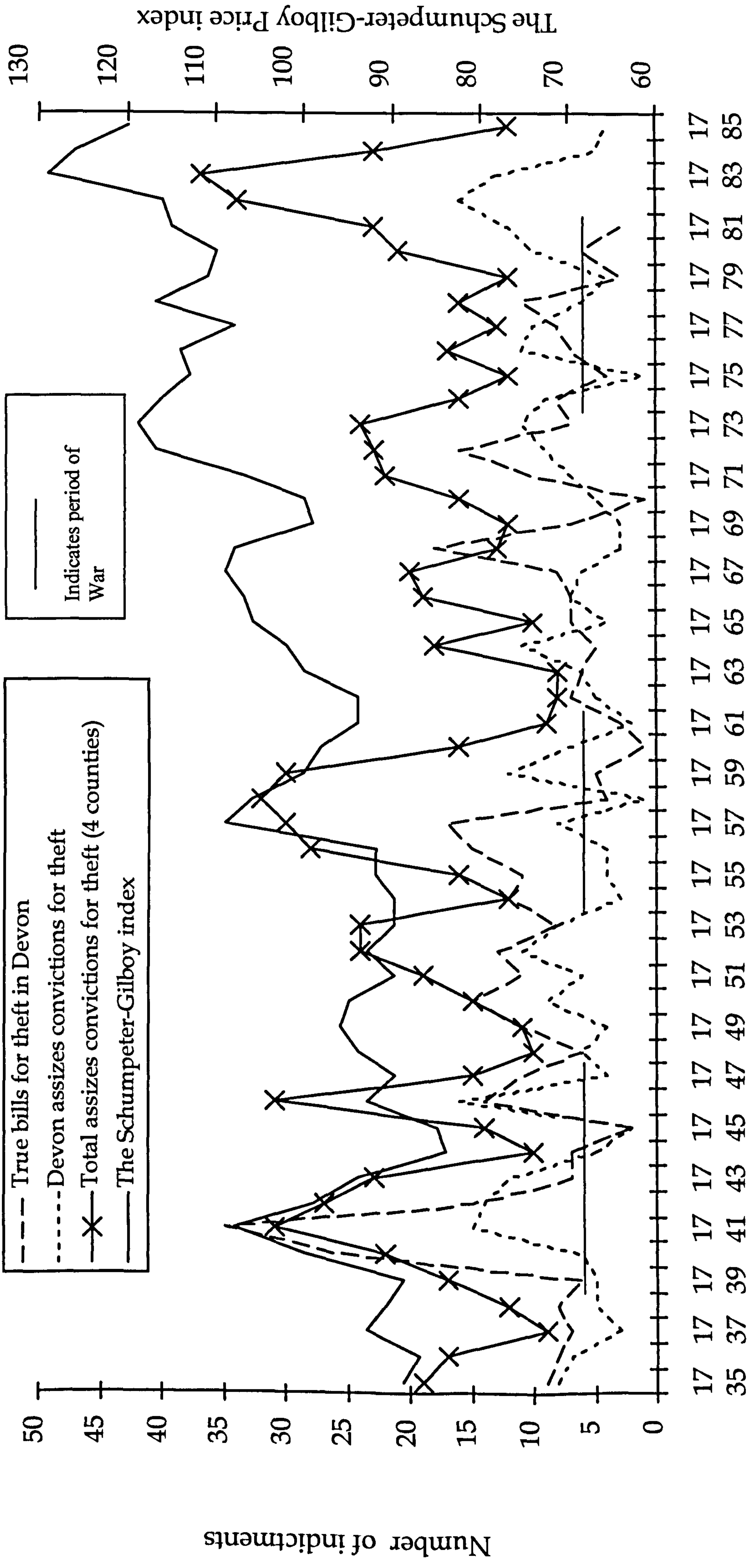
<sup>197</sup> King, P. "The Rise Of Juvenile Delinquency In England 1780-1840: Changing Patterns Of Perception And Prosecution" Past and Present 160 (1998) pp. 134-135.

criminal, and...were less subject to the criminal sanction as other forms of more private control emerged."<sup>198</sup> They talk about the conceptual shift in female

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<sup>198</sup> *ibid* p. 741 The premise on which the two scholars base their assertions is also discussed in the second section of Chapter 1.

Graph 3.1 Theft in Devon and its relationship to assizes convictions for theft in the South West.



roles in the various arenas of life and the "intensification of private patriarchal control of women within the household" during the eighteenth and nineteenth centuries. They also argue that "there was no organised system of police" in the eighteenth century.<sup>199</sup> The implication is that the eighteenth-century systems of policing and justice, because they relied solely on private prosecution, were arbitrary and casual. The work of other crime historians has demonstrated a more complex picture, especially in rural areas. Effective methods of social control in the early modern period in the form of apprenticeship contracts, forms of rough music and not least the restraints of family and kinship ties, remained in many rural areas, the south western region included. Although it should be acknowledged that some weakening of social constraints through migration and urbanisation occurred in the south west, the region may not have experienced as much change as the London and Home counties.<sup>200</sup> The replacement of community policing by private patriarchal control risks too simplistic an analysis of the eighteenth-century policing system. It is however, a very familiar type of analysis. The intensification of private patriarchal control in the home follows a classic history of the transformation from the "golden age to separate spheres" by women, which also charts the increased marginalisation of women in the public sphere. This model has been criticised, although still upheld by historians<sup>201</sup>. There remains the problem in this case, however, that the separate spheres model itself may be more relevant to those women from the respectable and middling

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<sup>199</sup> See also Williams, R. "Securing Justice In Eighteenth-Century England: The Example Of Berkshire" in Southern History Vol. 18 (1996).

<sup>200</sup> For an examination into the decline of kinship and community, see Stone, L. The Family, Sex and Marriage in England 1500-1800 (Harmondsworth 1977) vide pp. 105-9. Stone also concedes that changes in family structures during this 300 year period were most evident in the upper and middling groups of people. His sources are mainly literary, although the demographic evidence he provides to demonstrate the rise in premarital sexual intercourse shows a dramatic increase in the eighteenth century. This evidence, however, really only shows that the lower orders were changing their habits of courtship, sex and marriage, and marriage itself seemed very much still to be enforced as part of the natural conclusion to pregnancy.

<sup>201</sup> For a good analysis of the concept of separate spheres, and how this model can be challenged see Vickery, A. "Golden Age to Separate Spheres? A Review of the categories and chronology of English Women's History" Historical Journal 36(2) 1993 pp. 383-414. See also Middleton, C. "Women's Labour and the transition to Preindustrial Capitalism" in Duffin, L. and Charles, L. (eds) Women and Work in Pre-Industrial England (Beckenham 1985) pp. 181-206.

ranks upwards - clearly not the women facing juries for minor crimes in the eighteenth century.

Despite the figures, it cannot be assumed that the real occurrence of theft by women declined during the period. The decline in prosecutions is probably more representative of changes in attitude towards female criminality, or increased emphasis on traditional notions. This does not mean that women were increasingly 'decriminalised' by legal statute. It could be argued, in fact, that women were always marginalised in the criminal sphere (which in itself could be seen as a gendered sphere). Criminality, as historical and modern crime records seem to indicate, is male dominated and characterised by traditionally male attributes. It is impossible to know whether eighteenth-century authorities, in their decisions to prosecute, adhered to this construct, but it could be suggested that they had it within their power to do so. Moreover, such power lay in the hands of prosecuting victims (whether men or women) as can be seen in the examples from the depositions below. Such constructs could themselves, have acted as filters between real and recorded property offences.

The level of prosecution for property offences as measured against economic factors like food prices, constitutes further quantitative analysis of female theft fluctuations and may help make connections between theft and periods of dearth and hardship. Graph 3.1 shows that over the entire period, assizes convictions for female theft in the south west, and quarter sessions grand jury verdicts for Devon, appear to closely follow the fluctuations of the Schumpeter-Gilboy index, which charts the average fluctuations of consumables. Moreover, the relationship between assizes convictions and quarter sessions true bills concerning theft for the county of Devon seems close, although not always consistently so, throughout the period. The latter series, showing trials of female property offenders at the Devon quarter sessions, also show some relationship to the price index. These correlations should not be viewed too simply. One possible explanation for this close relationship could be that women were actually more inclined to steal

during times when food was less available, when wages were lower or during periods of underemployment. However, an alternative suggestion is that these fluctuations in conviction rates may also be indicators of the priorities of law enforcers and prosecutors, but this should not preclude the idea that such priorities themselves were linked to economic factors. Certainly, it would appear that during periods of high prices, people seemed more likely to prosecute women for property offences. It could be suggested, therefore, that material possessions increased in worth during times when communities struggled to feed themselves. The theft of items, of whatever value, from households, was probably more significant to those who suffered their loss in periods of hardship. This in turn might fuel a more concerted effort to prosecute, even though, for the first part of the period, financial help for prosecutors was non-existent.<sup>202</sup> Furthermore, the administrators of the law, the Justice of the Peace, the Grand Jury and the Petty juries were not immune to the changing values of their communities. They may not, as members of a generally higher social group, have shared the same reasons for wanting to prosecute offenders. They would, however, have been anxious to preserve harmony by making appropriate decisions that would be upheld by these communities.

Increases in the prosecutions for theft during periods of dearth are not simple indicators of need. The complexity of this relationship is further evinced when the types of property stolen are considered. The property offences for which women were prosecuted did not always include the theft of goods for immediate survival, like food, for these periods of relative hardship. The following evidence from the assizes convictions for all four counties appear to support this contention. Table 3.1 shows three sample periods (1740-3, 1755-9 and 1780-4), where assize convictions peaked. These periods coincided with high prices.

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<sup>202</sup> Statutes passed in 1751, 1754 and 1778, granting costs to prosecutors in felony cases may well have affected conviction rates during the period.



Table 3.1. Sample Female Convictions by Property: Western Assizes Circuit, 1740-3, 1755-9, 1780-4

PROPERTY	NUMBER OF CONVICTIONS	RANK IN SAMPLE	PERCENTAGE OF SAMPLE
1740-3			
General Household Goods	7	4	14
Clothing, yarn and Fabric	21	1	41
Foodstuffs	8	3	16
Valuables, Silver, Gold etc.	3	5	6
Livestock: Sheep, Horses, Geese	9	2	18
Money	3	5	6
1755-9			
General Household Goods	11	2	13
Clothing, yarn and Fabric	46	1	55
Foodstuffs	4	4	5
Valuables, Silver, Gold etc.	9	3	11
Livestock: Sheep, Horses, Geese	2	5	2
Money	11	2	13
1780-4			
General Household Goods	8	4	9
Clothing, yarn and Fabric	47	1	56
Foodstuffs	5	5	6
Valuables, Silver, Gold etc.	10	3	12
Livestock: Sheep, Horses, Geese	2	6	2
Money	12	2	14

It seems that textile goods were consistently dominant in records for theft over the entire period and, arguably, became more so as the century progressed. Whether this is suggestive of a relative decline in the immediate value placed on stolen food items, or an increase in the saleability of clothing and fabric, is difficult to establish without further evidence. 41% of female convictions between the years 1740-3 were for the theft of Clothing, Yarn and Fabric, and this percentage increased to 55% in the period 1755-9 and 56% between 1780-4.<sup>203</sup> Therefore, although it would be unwise to deny that high prices and dearth were generators of need in eighteenth-century society what was stolen during these periods may not have been for immediate consumption in order to survive. This is further supported by a ranking for theft of foodstuffs in the three periods. Food ranked third after clothing and livestock in the first period (1740-3), but fell to fourth and fifth for the other two periods (1755-9 and 1780-4).<sup>204</sup> It appears that women (and men) may have chosen not to steal food if other, more disposal goods were available. Care should be taken when looking at these figures, however. The crude categorisation of goods in these samples means that the theft of foodstuffs may be underrepresented. The statistics do not take into account foods stolen alongside clothing or household goods, where the latter category was the largest. Moreover, it is difficult to assess fully whether or not foodstuffs were stolen solely for eating or whether they were also stolen in order to resell.

It would not be wise to conclude that the predominance of prosecutions for clothing theft reflected an insensitivity to economic changes.<sup>205</sup> It could be

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<sup>203</sup> This rather crude categorisation does sometimes also include the theft of some household goods and sometimes even foodstuffs. The purpose of compiling the statistics in this way is to highlight the presence, even incidentally, of clothing and fabric as an important currency. See part 2 of this chapter for a more thorough examination of clothing theft.

<sup>204</sup> Such categories included all fabrics, household goods where they were listed with fabrics, all edible goods (including grain) and all livestock with no distinction between horses, cattle and others including fowl. The high proportion of conviction for the theft of livestock -17.6 per cent - was probably representative of the new capital offence for sheep theft from 1741. See below.

<sup>205</sup> Hay draws a distinction between thefts more sensitive to price changes and those that weren't. This effectively categorises those prosecuted into two different types. He puts non-capital theft into the category most sensitive to price changes, and asserts that those committing it during

suggested that the continued predominance of convictions for the theft of clothing and fabric during hard years was that such goods were immediately exchangeable for food, money, or both. In fact, it could be tentatively suggested that changes in the proportionate predominance of clothing theft shown in the assizes records for the three periods, actually reflected a sensitivity to consumer changes. With an increasing population, especially in the later half of the eighteenth century, clothing became more sought after. Mass manufacturing of cheap clothes was yet to develop, and so the value of second-hand clothing became increasingly significant.<sup>206</sup> In hard times, therefore, the theft and disposal of clothing for some would prove easy and lucrative - important factors for encouraging theft. If a developing consumer culture facilitated higher proportions of thefts of clothing, because it was easier to sell on, then the expectation is that other items with the same characteristics also increased in predominance. Indeed, the sample shows increases in the percentages of convictions for the theft of more valuable, saleable or transferrable items that could be sold on quickly, surreptitiously and for considerable profit. The percentage of listed valuables (gold, silver etc) and money in the three samples is worth noting. The two categories made up for 11.8% of the range in the period 1740-3. These figures rose to 24.2% for the period 1755-9, and again to 26.2% in 1780 - an increase of 122%. This changing profile of criminality is a reflection of what people were beginning to own, and the goods for which they were prepared to initiate prosecution. Either way, the development points to a possible changing material culture which resulted in changing attitudes to the value of certain goods. A cursory examination of these three periods, therefore, provides an insight into convictions for female theft during times when the samples were the largest. These periods coincided with years of high prices and hardship, but show that the "pressing concerns of

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periods of dearth had either not done so before, or at least not stolen so much. Hay's method of distinguishing certain crimes means that our samples from the assizes gaol books may only be representative of crime impervious to changes in economic climate. Graph 3.1 shows that this is not the case. Insensitivity to price fluctuations is, in any case, only one way of putting property offences into a social context. See Hay, D. *op. cit.* *passim*.

<sup>206</sup> See Lemire, B. "Consumerism in Preindustrial and Early Industrial England: The Trade in Secondhand Clothes" Journal of British Studies (Jan 1988).

necessitous poor" could have manifested themselves in the theft of more than what was immediately needed for survival.<sup>207</sup>

Figures from the two Dorset quarter sessions sample periods 1735-45 and 1780-85 also seem to compare well to samples for the entire region as evinced by Table 3.1. Both samples also represent periods of relative hardship. Table 3.2 shows the types of property offence tried between the years 1735 and 1745 and the same manner as the previous two tables. Table 3.3 shows similar information for the later sample of 1780 to 1785.

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<sup>207</sup> Hay, D. op cit p. 134.

Table 3.2 True Bills for Female Theft in Dorset 1735-45

TYPE OF GOODS	NUMBER OF OFFENCES TOTAL = 34	PERCENTAGE
Food/Drink/Fuel	12	35.29
Household goods	8	25.52
Clothes	5	14.7
Clothing and Misc.	2	5.88
Grain	2	5.88
Yarn and Wool	2	5.88
Money	1	2.94
Silver/Gold	1	2.94
Sheep	1	2.94

Table 3.3 True Bills for Female Theft in Dorset 1780-85

TYPE OF GOODS	NUMBER OF OFFENCES TOTAL = 33	PERCENTAGE
Clothes	12	39.4
Food/Drink/Fuel	10	30.3
Household goods	4	12.1
Grain	3	9.1
Silver/Gold	2	6.1
Yarn and Wool	1	3.0
Money	1	3.0

The proportion of basic non-luxury items feature as highest in both Table 3.2 and 3.3. Other categories such as money and valuable goods amount to very small percentages in both samples. However, the differences in proportion of goods shown in the tables further support the contention that over the century, a greater proportion of recorded theft of non-foodstuffs influenced the profile of female property offences. The difficulty with these figures, however, is that they are small and so can only be used, in this case, to back up evidence from the larger sample taken from the Assizes records.

The Cornwall Order Books for the period are problematic because their level of detail is varied. Goods were not always listed in the books, and therefore no table corresponding to the other county's samples could be made. Fortunately, the order book sample for 1778-83 does go into more detail, which allows for similar data to be presented. Table 3.4 shows the proportions of different types of goods for which women were tried between 1778-83.<sup>208</sup>

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<sup>208</sup> Forty cases of theft and related offences can be identified in Cornwall during this period. Some entries in the Order Books are unclear and have not been included in the figures. Cornwall RO QS 1/4.

Table 3.4 Female Theft in Cornwall 1778-83: The Record of the Order Books

TYPES OF GOODS	NUMBERS OF OFFENCES	PERCENTAGE
	TOTAL = 40	
Clothes	17	42.5
Household goods	11	27.5
Silver/Gold	4	10.0
Food/Fuel	4	10.0
Grain	2	5.0
Fowl	2	5.0

Again, an extremely high proportion of clothing in the inventories of stolen goods for the county can be seen. Silver, gold, food and fuel are recorded in equal proportion. It is unfortunate that figures from earlier samples cannot be taken for Cornwall because these do not list the types of goods stolen, but at the very least, the figures for Cornwall appear to support those from the Western Circuit Assizes (Table 3.1).

The effect of War on the recorded criminality of men and women has been examined by Hay in detail for the eighteenth century, but the specific issue of female experience during war and peace should at least be addressed. Hay argues that the relationship between the price index and the conviction/indictment rate is closer during wartime than peacetime. The complex nature of the female experience of war is reflected in Graph 3.1. It shows the three periods of war for Britain during the period. The War of Jenkin's Ear and of Austrian Succession, (1739-40 and 1744-1748), The Seven Years War (1755-1763) and The Anglo-French and Anglo-Dutch Wars of 1775-1783.<sup>209</sup> The graph shows some closer relationships, but questions of how far warfare, mobilisation and demobilisation

<sup>209</sup> Holsti, K. J. Peace And War: Armed Conflicts And International Order 1648-1989 Cambridge Studies in International Relations:4 (Cambridge 1991) p. 87. For a concise history of British warfare over the past 300 years, see French, D. The British Way In Warfare 1688-2000 (London 1990).

appear to influence the short-term fluctuations in recorded female theft are difficult to address, and do not result in firm conclusions. Mobilisation removed a significant number of adult labouring men from their communities, leaving their female kinswomen behind to either assign the absentees' duties to other kinsmen, or take on those duties themselves. If a causal relationship between mobilisation and behaviour is assumed, then two outcomes can be considered: either decreased criminality (more work to do and one less mouth to feed) or increased criminality (significant loss of income added to increased activity). These options, however, are most likely to apply to a certain section of women; those who depended on kinsmen greatly for income and labour. Others, possibly younger women, and possibly unmarried, may not have been affected in the same way by mobilisation, although the consequences of a delayed marriage because of enlistment could have meant potential destitution (or at least continued existence as a domestic servant, and therefore dependence on another family).

In fact, it would be very difficult to say anything conclusive about these relationships over the period. This is not to say that women were not affected by war, or that they did not steal as a result of destitution because of absent kinsmen. It would also be unwise to say that demobilisation, with all the catastrophe it brought to the un- and underemployment rates among men, did not in turn affect women. The graph is inconclusive because it charts the trial and convictions of women who were affected by war in a range of ways. Moreover, the fluctuations in the price index itself was affected by war, possibly making its extreme fluctuations a factor to be considered when discussing female theft conviction levels. It may be clear that the surge in indictment levels of men after demobilisation reflected an influx of dispossessed men back into communities that had worked without them for as long as eight years. The experience of their kinswomen is not so clear and difficulties in reaching simple conclusions through this quantitative analysis are not helped by the small numbers of convictions and trials charted.



The study of long-term trends and short-term fluctuations of female property offences allows for an initial examination of some of the issues surrounding women and theft, but it does not constitute the most detailed picture. From the assizes evidence, it can be seen that the numbers of indictments for female theft for the South West as a whole rose and fell roughly in line with the Schumpeter-Gilboy index. How far this trend represents a real fluctuation in property offences should also be considered within the context of the courts themselves. Although approaching property crime merely in terms of prosecution levels and the Law is restrictive, it should perhaps be remembered that the administration of the Law lay in the hands of the Justice and juries. They were not completely isolated from the communities in which they served, but at the same time the reasons behind their decision-making could not always have been the same as the prosecutors' themselves. The general levels of prosecution in relation to both the assizes and quarter sessions courts, therefore, represent what could be seen as the interaction between the agendas of the legal administration, the prosecutors and the offenders in this region for the period. The agendas of the latter groups become more apparent when the nature of the goods stolen over the period is looked at. This is especially the case concerning periods of dearth and high prices. The evidence suggests that certain types of offences were more likely to be prosecuted in hard times and that these were not necessarily property offences relating to foodstuffs. The predominant record of theft by women of fabric and clothing, not to mention the increasing relative presence of property offences concerning money, silver and gold, during noted hard times is significant. The recorded trials and convictions of female property offenders may be an indication of a changing consumer society, with an increasing regard for easily traded consumables. It is not possible to come to firm conclusions about this theory until a more detailed and qualitative study is made of the nature of certain types of property offence is made.

The range and nature of the records for theft over the whole period can be studied on a more qualitative level by combining the records from both the assizes and

quarter sessions records. The basic range of property offences found in both courts in the eighteenth century resemble each other more closely than might be expected. This may have been because decisions concerning which court was to try an offender were based on practical as well as theoretical considerations. In theory, cases of grand larceny (involving goods valued over the amount of one shilling or twelve pence) were dealt with by the higher court, and petty larceny by the quarter sessions. However, the victim or prosecutor often set the value of stolen goods, and the justice of the peace sent cases to court depending on this value. In practice, the value determined by the convicting trial jury might have been less still, in order to avoid inappropriate punishment. Often, the assizes courts were so busy that trials were adjourned and cases, which were in theory serious, therefore tried before the quarter sessions.<sup>210</sup> Of equal importance were the individual circumstances that influenced decision-making. In the Summer of 1757, for example, Ann Lawson was sentenced by the Devon Assizes to transportation for the theft of a pocket of the value of 1d. In the same year, Joan Isaacs was tried for the theft of shoes charged at the value of 2s/8d, but eventually sentenced by the Devon Quarter Sessions to be whipped.<sup>211</sup> The reason for this apparent anomaly may lie in the nature of the theft (and the character of the offender) rather than the value of the items. Pickpocketing was certainly a more serious crime because it involved stealing privately from the person; it duly carried a capital sentence. Conversely, the items stolen by Joan Isaacs were judged by the trial jury at 6d - possibly a reflection of her own circumstances and character, or perhaps an indication of the practical value of a pair of shoes. Even the decision to try her before the lower court may have been a practical one on the part of the justice of the peace. These differing consequences are a reflection of the concerns of those prosecuting for theft; they do not necessarily reflect the seriousness of the offence as defined by the law. Thus, the general range of

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<sup>210</sup> Feeley, M. M. and Little, D. L. *op. cit.* pp. 719-757.

<sup>211</sup> Ann Lawson is listed in the Assize gaol book for the Summer of 1757. PRO ASSI 23/7. Joan Isaac was indicted in the Devon Quarter Sessions for Michaelmas 1757. Devon RO QSB Mich 1757.

property offences is often similar, even though the proportion of certain types of criminal behaviour in general, was bound to differ between the two courts.

An assessment of the sorts of goods listed as stolen in the eighteenth century can initially be made using simple quantitative information from the Assize gaol books. This information, shown in Table 3.5 below, shows the type of goods recorded as stolen for each property offence, and the percentage of the different types of stolen goods in all four counties studied for the entire period. There were a total of 932 recorded property offences by women for the four counties between 1735 and 1785 where the goods stolen were listed.<sup>212</sup>

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<sup>212</sup> The figures also include entries concerning the receiving of stolen goods, but only when the original theft was not recorded as a female property offence.

Table 3.5. Property Included In Female Theft Trials By The Assize Court 1735-1785

TYPE OF GOODS	NUMBER OF OFFENCES TOTAL = 932	PERCENTAGE OF SAMPLE
Clothing (including fabric)	293	31.44
Household (inc.' tools)	139	14.91
Money	135	14.48
Silver/Gold	104	11.16
Clothing and Misc. <sup>213</sup>	102	10.94
Food/Drink/Fuel	67	7.18
Sheep	39	4.18
Grain	27	2.89
Yarn and Wool	11	1.18
Fowl	7	.75
Horses	6	.64
Pickpocketing	2	.22

The most obvious conclusion that can be reached from this table is that over half of all recorded female property offences concerned the theft of non-luxury goods (with the exception only of the small amount of luxury clothing in the clothing category). These goods were in abundance, which would explain the trend in the first instance. However, there are other considerations to be made about these types of goods that open the way to further discussion. Clothing, money, tools and household utensils could easily be resold or assimilated within the community. They were also very portable and easily hidden. The theft of cloth

<sup>213</sup> The category of miscellaneous goods is included to show that clothing was not always exclusively sought by the thief, but might be included any one of the listed categories. However, the predominant nature of miscellaneous goods was either food, fuel and drink, or general household goods. Household goods in turn might mean anything from carpets to iron bolts, but does not include any goods made from silver or gold which have a separate category.

and linens may be included in the category of clothing because such goods could easily be converted (as were most articles of clothing) into other goods. This is significant for reasons that will be outlined in the second part of the chapter, which discusses the nature of second-hand trading networks and their possible impact on the patterns of property offences during this period.<sup>214</sup>

The theft of money and valuables form a generally higher percentage than thefts of many other types of goods listed in the assizes records. The theft of money and valuable items may well have been based on similar motives and thus committed by the same types of offender as any other type of property crime, but thefts like these were probably seen as more underhand. Often, money and valuable items were carefully stored in houses; owners who deemed them too vulnerable to display may even have hid them in chests and boxes. The offender would in many cases, therefore, have used premeditative methods in order to secure privacy and conduct a search for valuable items. Consideration must also be given to the types of victims most likely to own such items and the various reasons why they might prosecute. Wealthier victims of property offences were more likely to pursue prosecutions against offenders because they had the money and time to see such measures through. Those less wealthy, but nevertheless in possession of valuable items, may have pursued prosecutions more vigorously because they valued their stolen property more highly than a petticoat or a pound of cheese.<sup>215</sup> Some offences concerned with the theft of money were strongly associated with pickpocketing, which was private theft from the person, and classed as a capital offence. The heavy penalty for pickpocketing may have, in itself, affected the pattern of prosecution in this period and could account for a possible obscuring in the records. Female offenders tried for pickpocketing *per se* account for a very small percentage of theft trials at the assizes. It is possible that,

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<sup>214</sup> See pp. 124-144.

<sup>215</sup> In the cases of theft of foodstuffs and fuel, victims may even have been inclined to initially devalue the stolen goods and prosecute at the quarter sessions. Those who stole items for immediate consumption may have been viewed more sympathetically than those who stole gold and silver.

in order to avoid a trial leading to a capital conviction, thefts of money which may in fact have been from the pockets of the victims, were not always recorded as so.

The theft of food and fuel, as recorded in both the assizes and the quarter sessions records, is difficult to classify because it takes so many forms. On first glance many such offences might be interpreted as opportunist and motivated by immediate need. This may indeed have been the case for the majority of thefts of food and fuel, but care must be taken not to assume that the nature of these stolen goods, determined a particular motive. Not as easy to transport as other foodstuffs, it could be assumed that the theft of milk was for the consumption of the thieves and their families, but some milk thieves did make money from their activities. Evidence from the quarter sessions depositions can demonstrate this. The theft of milk directly from the cow, for example, appears to be an offence tried at regular intervals across the south west, although not particularly predominant.<sup>216</sup> Betty Chapel confessed to a Somerset justice in 1780, that she and her mistress often went into the fields of farmers in Bedminster to milk their cows, she went on to inform that:

her mistress would often make the informant go by herself, that sometimes they would get eight ten or fourteen bottles of milk and what was brought home in the morning her mistress would take to Bristol and sell at night.<sup>217</sup>

The theft of milk was not always, therefore, a theft through immediate need. Chapel's mistress, despite the protestations of her husband, continued to steal and sell the stolen milk for at least the five months that Chapel remained a servant in the household. This trading in stolen milk was not necessarily a manifestation of

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<sup>216</sup> In Devon between 1735 and 1782, 24 cases of milk theft appear in the quarter sessions records, a percentage of only 4. In Somerset between 1735 and 1745 by contrast the percentage is 10, but between 1775-1785 in the same county the percentage is 1.3. Those that got caught in the act were probably most likely to be convicted, and it is likely that prosecutors concentrated on persistent offenders.

<sup>217</sup> Information given to Bere Cann Wilkins, 1st May 1780. Somerset RO Q/SR 348/2 Easter 1780.

the desire to supplement a small income, or a response to destitution; in fact, it could well have been an entrepreneurial exercise. Eventually the mistress herself, Betty Chamberlain, was indicted and tried for the offences, although the jury found her not guilty, probably through lack of evidence. Other evidence spanning both the quarter sessions material and the assizes gaol books, shows that cases of food theft might not always refer to opportunism based on immediate need. Food may also have been used as currency in some cases, as the embezzling of 40 shillings worth of food by Grace Force demonstrates. Force confessed in 1782 to having embezzled vast quantities of food over a period of three years. She had used the products, mainly dairy, to pay off her neighbours and kinswomen for work they had done for her over this period. Part of the inventory of embezzled goods, which is listed in her confession, is as follows:

to Elizabeth the wife of Robert March of Lydling...two cheeses for helping her to wash some of her said master's cloathes...to Martha the wife of Thomas Cornock...three cheeses at different times in exchange for tea, and for making two shirts for her master one cheese...to Sarah Devenish spinster of the same place 1lb of dock - some cream and a little butter...last year for cyder, which she used to drink going to milking...<sup>218</sup>

Force used goods belonging to her master in order to 'pay' fellow women, and also to acquire goods for her own personal consumption. The deposition points to her position in a dairying farm, but it may be inferred that she was not simply a dairymaid. Her responsibilities included the laundry, and she also used the master's goods in exchange for new garments for him. Such action might be taken to mean that, rather than embezzling these goods through either desperate need or as a casual supplement to her living costs, Force considered the exchange of goods as part of her role as a servant. Of course, Force's agenda can never be clear, but the example is suggestive that the theft of food was not always an act with straightforward motives. The indictment concerning this theft states briefly that Force stole goods over the value of 40 shillings from her master.

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<sup>218</sup> Dorset RO 15<sup>th</sup> January 1782 (Blandford) Confession to Justice Medlycott.

Consequently, although the case was first brought before the quarter sessions, it was certified and transferred to the Assizes, where Force was tried, convicted and sentenced to one year's hard labour in a penitentiary.<sup>219</sup> It should be noted here also, that the cases of both Chamberlain and Force are suggestive of activity over extended periods of time, albeit illegal. According to the Chapel's testimony, Chamberlain successfully engineered the theft and retail of milk over a period of months. Although her story cannot be confirmed, it seems that Chamberlain employed her servant maid to help her to do this. Even if the information that Chapel gave were untrue, another likely story would have been that Chapel herself was privately stealing the milk for resale. In any case, the magistrate hearing the story considered it a case to be answered. Force, on the other hand successfully ran the maintenance of her master's laundry and dairying by offering consumables to fellow women over a number of years. It may only be speculated as to why after this length of time, her master chose to prosecute her. It seems he had either left her to her devices completely and therefore taken some time in noticing his goods were disappearing, or he had been tolerant of the activity, but had a change of heart for some reason. Either way, the position of responsibility and trust that household servants held during the eighteenth century is certainly apparent in the case of Grace Force.<sup>220</sup> If trust of servants was in widespread existence, it would provide a sound basis for the argument that such people facilitated and contributed to the unregulated networks of trading and exchange in the eighteenth century.<sup>221</sup>

The theft of livestock, and most especially horses and sheep, does not appear to be a typically recorded female property offence. Theft of sheep and horses could be seen as traditionally a male preserve, and so it is significant perhaps that such thefts form any part of the records of female theft at all. It is best to discuss these

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<sup>219</sup> PRO ASSI 23/8 (Assizes gaol book) Force was initially removed to the house of correction in Sherborne until she could be transferred.

<sup>220</sup> The positions of servants, their close proximity to material culture and their vulnerability to suspicion and consequent visibility in the courts is discussed below.

<sup>221</sup> See below, pp. 121-141.



two offences separately, as grouping the theft of horses and sheep together would amount to too simplistic an analysis. The theft of horses was a far more serious property offence in the eyes of contemporaries than that of sheep.<sup>222</sup> Horses were an extremely valuable commodity, they represented capital, status and above all, an effective means of transport. Thus the possible characteristics of the theft or rustling of horses varied considerably. Horses could be sold on for profit or just for disposable cash; this could be done within groups or alone, and could be organised or casual. Men and women may also have stolen horses as a method of transport as they were relatively easy to steal and one could presumably make a fast getaway. Horse theft forms less than one per cent of the total assizes convictions for women in the four counties. It may be assumed from this low figure that it was rare for women to be involved in such crimes, but a reliance on a purely quantitative interpretation of the records is limiting. Of particular concern to the authorities was organised horse theft, involving a network of receivers and criminal gangs. If women were involved in such groups, there is no evidence to demonstrate this in the records for the south west. It is highly likely that groups of horse thieves were perceived as male oriented and male dominated. Any woman unlucky enough to be caught involved in such groups may not have appeared in the records simply because it was assumed she was merely an accessory to the fact, and furthermore, that she in a position of lesser responsibility. Of course, it could also have been the case that women played active roles in the organised stealing and handling of horses, although there is no evidence for such activity in the south west. No conclusions can therefore be drawn from the records available for the south west. Women appear very rarely in the records for this form of theft.<sup>223</sup>

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<sup>222</sup> In fact, Horse theft was one of the first forms of larceny to be removed from the benefit of clergy by Henry VIII in 1545 (Hen VIII, c. 8, s. 2). It continued to be prosecuted throughout the eighteenth century, despite the general reluctance to prosecute for larceny (theft without threat to a person) that would result in the death sentence. See Beattie, J. M. Crime and the Courts pp. 167-8.

<sup>223</sup> The lack of depositions evidence for the Western Circuit Assizes means that there is no way of assessing the dynamics of female involvement in horse thefts. There is no doubt, however, that such a crime was a concern to the people of the south west, as frequent advertisements in the Sherborne Mercury reveal. In the last half of 1737, for example, it was common for an issue to

Far more evidence exists for the involvement of women in sheep theft, and the examination of this form of property offence provides some very interesting insights into the possible attitudes to women's involvement in group-theft activities. The theft of sheep was considered in a far less derogatory light than horse theft by the authorities as manifested in the statutes. It was not until 1741 that the theft of sheep was removed from benefit of clergy and, even after this date, the attitude towards those who stole sheep was relatively sympathetic. It should be noted, for example, that the Act was passed after a period of extreme rural distress coincided with complaints from farmers which then facilitated the creation of a parliamentary committee, empowered to suggest remedies for the apparent increase in this offence.<sup>224</sup> It was felt that the motive for stealing sheep was invariably for immediate consumption, although there is evidence to suggest that networks existed to ensure the discreet trade of mutton on the black market.<sup>225</sup>

The stereotypical sheep thief was the labouring man between the age of 20 and 40, usually the head of a family. Such a figure was no doubt given respite from the death sentence if he could demonstrate that his crime was motivated by severe want. However, the existence of women in the records, although rare, does give cause for discussion. Of the 39 cases of sheep theft or offences for receiving stolen sheep shown in Table 3.5, 20 cases refer to women involved in cases of group-theft

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include at least one advertisement for horses stolen or strayed. These advertisements included full identification of the horse.

<sup>224</sup> See Beattie, J. M. Crime and the Courts pp. 170-1 Beattie suggests a direct causal link between the rise in sheep theft and the passing of the act. Undoubtedly, the period of distress experienced by those in rural communities did result in increased reports of such cases. We must remember that farmers may have been more likely to report and complain about sheep theft at times when their own livelihood could be more seriously affected. It is certainly the case that most of the depositions from the south quarter sessions in this sample come from the 1740s, but this could well be a result of increased prosecution due to an enhanced sense of loss by farmers and landowners.

<sup>225</sup> Hay's work on crime in Staffordshire has identified the existence of networks of butchers prepared to receive stolen meat. Cited in Rule, J. "The Manifold Causes of Rural Crime: Sheep Stealing in England c 1740-1840" in Rule, J. and Wells, R. Crime, Protest and Popular Politics in Southern England (London 1997) p. 242.

with men. More often than not, these cases involved women and their kinsmen. Sheep thefts committed by groups therefore involved mostly family members, and it seems that women were as capable of active involvement as men. The records for female theft of sheep should be viewed with reference to two stereotypes. Both shape the recorded criminality of women involved in the theft of sheep, and the narratives on it in the form of the deposition. The first stereotype determined that the convicted sheep thief was a local man, it was not assumed that women were capable of such roguery. This probably meant that if women were unfortunate enough to be caught in the act, they were not so readily prosecuted. The second and probably more significant stereotype concerns the power structures within the groups themselves, especially that of marriage and kinship in the early-modern period. The standard and expected marriage contract in the early modern period was one of mutual responsibility to the marriage, but whereas the husband was given authority, the wife remained subordinate. The relationships between fathers and daughters, brothers and sisters and other male and female kin therefore, was also probably informed by a central patriarchal concept, as was the relationship between all servants and all masters and mistresses. In the prosecution of women in group-cases for sheep theft, it may often have been assumed that, as a subordinate member of the group, their culpability was less. Only 7 women in the 20 group cases were convicted of sheep theft in the period 1735-1785, and this may be indicative of the perception that sheep theft was a male crime and, in groups of offenders involving both sexes, a male-led one. A quarter sessions deposition (submitted to the courts possibly because of the ambiguity of the offence) concerning Eleanor Langbeere of Newton St Cyres (Devon), provides further insight into how women managed (or, indeed, were allowed) to avoid prosecution in group cases. Langbeere was implicated in the theft of two weather sheep along with George Merson and Nicholas Halsell in 1740. Langbeere told the Justices, James Force and John Martyr, that she "being in company of...George Merson and Nicholas Halsell did condescend with the said...to feloniously take and convey...two weather sheep". It might be inferred from the tone of the deposition that Langbeere had merely agreed to take part in

the theft, rather than having anything to do with instigating it. More importantly, she went to add that, "...Halsell was making proposall of marriage to her to which she signs her hand" This proclamation could be seen as an attempt by Langbeere to firmly label herself in a more subordinate position to at least one of the men. This was possibly to ensure protection from culpability that, as a widow, she may not formally have had.<sup>226</sup> Although the victim of the theft acknowledged himself bound to prosecute all three people for this offence, Langbeere does not appear in either the quarter sessions indictments or the assizes gaol books. It might be assumed therefore, that her supposed role in the theft did not amount to her being culpable enough to try at the sessions. Merson and Halsell, however, were tried, convicted and sentenced to seven years transportation. The evidence from the depositions appear to suggest that, while it is clear that women may have been actively involved in the theft of sheep (as indeed the assizes goal books and quarter sessions indictments show), it was accepted in some cases that their culpability might be assessed on their relationship with their co-defendants. This is certainly not to say that in their daily lives men and women lived by an inflexible patriarchal maxim that required women to be subordinate and obedient at all times. Among other sources, the depositions show that such a structure still allowed for an active role to be played by women, and certainly did not preclude female authority.<sup>227</sup> The challenge, when interpreting the records, is to maintain the belief that the female criminal profile was informed by the contemporary belief that criminal responsibility was essentially a male domain, and that this was a concept adhered to and manipulated by both law enforcers, communities and offenders alike.<sup>228</sup> Thus it could be seen that the theft of horses and sheep is

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<sup>226</sup> Information given to James Force esq Mayor and John Martyr (JP) for the borough and liberty of Bradninch on 6th May 1740 Devon RO QSB Midsummer 1740.

<sup>227</sup> Fletcher talks of the early modern marital contract being contradictory over the issue of subordination and responsibility. It could be argued that efforts to circumvent this problem probably resulted in the placing of women firmly as authorities in the private sphere. Such concepts, although prescriptive, lasted into the eighteenth century, although Fletcher argues that by this time they were changing. Fletcher, A. J. Gender, Sex and Subordination pp. 204 -222.

<sup>228</sup> In seeking reasons for the decline of convictions throughout the eighteenth and nineteenth century, Feeley and Little examine the possibility that changing attitudes towards accomplices in group crime affected the conviction rates for women. This examination was based on the suggestion that women might follow men into criminal acts. They concluded on the evidence from

reflected very poorly in the record of female criminality. Although the offender profile of both the horse and the sheep thief was very different, women were, to varying extents, outside of the stereotype of both. Where their involvement was charted, it was as accessories or less responsible parties. This does not mean that they were merely carrying out the wishes of their kinsmen, but it would have been a very believable narrative in the eyes of contemporaries. If this is a demonstrated characteristic of group criminality in sheep theft, then it might perhaps be applied to group criminality in general.<sup>229</sup>

An examination of the profile of property offences in the south west as a whole masks the characteristics that a study of each separate county could reveal. Comparing the varying proportions of different goods stolen in each county and discussing the possible reasons for these , allow for a more qualified view of the data. Table 3.6 indicates the same data used in Table 3.5 to show the breakdown within each county.

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the Old Bailey Sessions Papers that the higher proportion of women coming before the courts in the early eighteenth century was not the result of their following men as accomplices. In fact, their evidence suggests that two thirds of women were convicted singly in the period 1687 to 1912. See Feeley, M. M. and Little, D. L. *op. cit.* pp. 735-6.

<sup>229</sup> It should be noted, however, that a careful consideration of stereotypical offender profiles would have to be made.

Table 3.6. Property Included In Female Theft Convictions By The Assizes Court 1735-1785: A Breakdown Of The South West Counties

TYPES OF GOODS	DEVON T = 376	SOMERSET T = 375	DORSET T = 120	CORNWALL T = 80
Clothing	85 22.61%	93 24.80%	29 24.17%	26 32.50%
Silver/Gold	58 15.43%	30 8.00%	17 14.17%	5 6.25%
Clothing & Misc.	53 14.10%	90 24.00%	16 13.33%	14 17.50%
Household Goods	43 11.44%	51 13.60%	19 15.83%	9 11.25%
Money	42 11.17%	57 15.20%	14 11.67%	12 15.00%
Food/Fuel	30 7.98%	28 7.47%	10 8.33%	3 3.75%
Sheep	26 6.91%	7 1.87%	4 3.33%	4 5.00%
Grain	12 3.19%	9 2.40%	1 .27%	4 5.00%
Yarn/Wool	7 1.86%	5 1.33%	4 3.33%	- -
Fowl	5 1.33%	1 2.67%	1 .27%	- -
Misc.	10 2.66%	4 1.07%	4 3.33%	2 2.50%
Pickpocket	3 .79%	- -	- -	- -
Horses	2 .53%	- -	1 .27%	3 3.75%

There are some important observations to be made from an initial assessment of the comparative ranges and proportions of property listed in each county. In all probability, the recorded ranges of property stolen for Devon and Somerset are greater because these counties were more highly populated during the period. Not surprisingly, the categories of clothing and household goods are prevalent in all four samples across the region. It would appear that these goods were easily stolen and transferable regardless of any county's particular social or economic profile. Conversely, as the general picture showed, the theft of food and fuel

consistently features less in the range of property offences dealt with by the assizes courts. Care should be taken when analysing this kind of material, however, to note that any kind of categorisation, whether it be on the part of the justice and clerk of the peace, or the researcher, has its flaws. Although the samples here have been analysed as carefully as the information will allow, certain decisions have had to be made which, ultimately, change the way the figures are presented. Possible anomalies in the classification of stolen goods may well account, therefore, for some variations in the samples. This might well be the case, for example, with the lower percentage of silver and gold thefts tried in Somerset and Cornwall. In both of these counties, the lower percentage of trials for gold and silver theft might be combined with the higher percentages of trials for the theft of money. Thus, adding the two percentages for trials for money and gold and silver for each county shows a slightly smaller variation across the four counties. Similarly, the combined percentages of the theft of gold and silver and money may be comparable to the percentages for the category of theft of clothing, cannot match the combined percentage of the two categories, 'clothing' and 'clothing and miscellaneous goods'.

It would be unwise to draw too many hard conclusions from the percentage differences in, say, grain theft in the four counties. There are, however, some interesting points that can be made about this small presence in the samples. The largest number of convictions for the theft of grain was 12 for the county of Devon. This figure should be viewed with some scepticism, especially as it shows the convictions of an underrepresented group in society. It would be imprudent, therefore, to place too much weight on arguments resting on the variations in convictions for grain theft across the four counties. Although it could be suggested that the very small recorded incidence of grain theft in Dorset (only 1 conviction) was due to the population distribution and the proximity of large population centres to grain growing areas in the county, this is an inexact science,

as grain was grown, to a greater or lesser extent, all over the county.<sup>230</sup> Conversely, the relatively high percentage of grain theft (5 per cent) in Cornwall could be explained by the fact that, unlike the other three counties, Cornwall grew larger amounts of grain. At least, this was according to an early nineteenth-century survey by Worgan, who claimed that the farmers of the region, "having an idea, that there is nothing like corn in sacks for making money, they are very fond of the plough...".<sup>231</sup>

The low recorded incidence of grain theft by women could be partially explained by these geographical and economic factors.<sup>232</sup> It should also be noted at this point, however, that there were social complexities of grain theft in the period, especially concerning the practice of gleaning. These complexities may further obscure the record of grain theft, although there are reasons to believe that, for the south west at least, such a factor was minimal. Grain was an important constant in the lives of all country people during the period and it was extremely valuable currency in the relationship between employers and employed. In some areas, grain formed a significant non-monetary income - sometimes 10 per cent of the annual household income - in the form of gleaning. Gleaning therefore constituted an important part of the non-wage income of the average labouring family during the period.<sup>233</sup> King has examined the developing criminalisation of the traditional practise of gleaning - taking wheat grain unharvested from the field for consumption at home. This practise was mainly performed by women and children, and was not seen as a crime by many members of rural communities. King has found that in the counties of Dorset and Cornwall,

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<sup>230</sup> Admittedly, the vast expanse of high ground in Dorset, which had to be farmed carefully using a rotation system if farmers were to get good grain crop yields, probably meant that in certain areas at certain times, no grain would be grown at all.

<sup>231</sup> Worgan, G. B. A General View of the Agriculture of the County of Cornwall (London 1811) p. 53.

<sup>232</sup> According to Claridge, in the eighteenth century the agricultural profile of Dorset was such that of the total area of 755 000 acres, 250 000 were in tillage. The remaining 519 000 consisted of water meadow, pasture woodland and downs. Claridge, J. A General View of the Agriculture in the County of Dorset, with Observations on the means of its Improvement (London 1793) pp. 1-2.

<sup>233</sup> This was especially the case in predominantly arable farming areas like central south and eastern England.



gleaning was not considered greatly as part of family earnings in 1834, as no incidental references to it were made by those responding to the Poor Law Commissioners at the time. There were between 1 and 13 references to gleaning in Devon and between 14 and 26 in Somerset however.<sup>234</sup> It may be assumed that the authorities in the two more populated counties had a greater recognition of the practice of gleaning, but it would be unwise to use this to explain the differences in numbers of convictions in Devon and Somerset as compared with the other two counties. The continuance of by-employment in the form of spinning, weaving and, to some extent manufacture in the south west meant that women especially could contribute to the household income in the form of money rather than grain, like their counterparts in the eastern counties. The recorded theft of grain in the court records do not in themselves reveal disputes over whether the grain was stolen or gleaned. Gleaning was never legally defined as a crime, although there had for centuries been many changing ideas over whom exactly should maintain their rights to it. What the figures for the south west do show perhaps, is the smaller amount of grain grown in the area, indicating possibly its lesser relative importance as currency.

The theft of goods that continued to be saleable consumables throughout the period dominated the range of stolen goods listed in the Western Circuit Assize Gaol Books for the period. The categories of Clothing, Clothing and Miscellaneous and Household goods listed in the assizes gaol books (Table 3.6) amounts to an average percentage of 56.3%.<sup>235</sup> These figures are reflected in the quarter sessions evidence for Devon for the period 1735-1782.

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<sup>234</sup> On the other end of the scale, however, the authorities of the East Anglian counties of Essex and Suffolk received more than 40 references to gleaning as income in that year. It could be concluded, therefore, that the south west was an area of relatively low gleaning activity by women in labouring families. King, P. "Gleaners, Farmers and the Failure of Legal Sanctions in England 1750-1850" Past and Present no 125 (Nov 1989).

<sup>235</sup> The highest percentage is 62.4 in Somerset; the lowest is 48.15 for Devon. Percentages for Dorset and Cornwall are 53.3 and 61.25 respectively. These figures are calculations from Table 3.6.

Table 3.7. Devon 1735-82: Property Included in Quarter Sessions Female Theft Trials.

TYPE OF GOODS	NUMBER OF OFFENCES TOTAL = 446	PERCENTAGE TOTAL % = 102.02
Clothes	135	30.27
Food/Drink/Fuel	99	22.20
Household Goods	75	16.82
Clothing and Misc.	33	7.40
Grain	30	6.73
Fowl	23	5.16
Money	20	4.48
Silver/Gold	20	4.48
Yarn and Wool	14	3.14
Sheep	3	.67
Horses	2	.45
Pigs	1	.22

Table 3.7 shows a similar listing for the true bills for the theft of clothing tried at the quarter sessions court in the county, to the assizes convictions for the whole region. The categories of 'clothing' and 'clothing and miscellaneous' form a total of 37.67%. The overall prevalence of clothing theft is therefore significant, and provides an avenue for further discussion.

There are, however, some stark differences in the proportion of some types of property stolen in as evidenced for the Devon Quarter Sessions (Table 3.7) and those for the region's Assizes (Table 3.5). Partly, this is because the types of property offences dealt with at the lower courts were largely petty larceny (legally defined by the value of the goods stolen) or misdemeanour. Thus, money and gold and silver, two categories of valuables that amount to nearly 26 per cent of

offences recorded in the Assize gaol books, only account for 8.96 per cent of those in the quarter sessions. In contrast, while the theft of food, drink and fuel makes up for 22.2 per cent of all female property theft tried by the quarter sessions, at the assizes this category reduces in percentage to 7.18. The proportions of money and food in both tables seem self-explanatory. However, the reasons behind the difference in proportions of certain goods listed in the two tables may be based on more complex considerations than that of value. This becomes even more apparent when it is seen that the theft of sheep and horses, both considered serious types of theft in the eighteenth century, are also listed in the quarter sessions. It may only be assumed that, when assessing the seriousness of any particular case, the Justice of the Peace may have also noted the nature of the property offence, as well as the value of the goods concerned. For example, if an offence included the theft of money, a Justice might have considered how far such a theft involved the targeting of a victim more likely to have gold and silver coinage. If the nature of such a theft seemed to be based on more calculated motives than opportunism or simple need, the consequences for the offender were likely to be more serious. It is therefore feasible that decisions made by justices over what kind of trial any offender would face were not just based on the value of goods stolen.

The evidence presented in Tables 3.5, 3.6 and 3.7 appears to reflect the economic concerns of both offenders and prosecutors across the region and in individual counties. Table 3.7 demonstrates, in the main, that the quarter sessions true bills for Devon in the same period dealt with the theft of the same sorts of property, even though the relative proportions of some goods within each range differ. Moreover, the fluctuations of female theft (as evidenced in Graph 3.1) throughout the period show that the pattern of prosecution and conviction for female property offences can be usefully compared with economic and social factors. There are limits to this, so far very simple, economic, interpretation. It has already been noted that direct consumption was not always the motive or the consequence of female theft. If that were the case, then the historian would be faced with the

impossible question as to why other people in communities, although in extreme want, never committed, or were never prosecuted for property offences. Furthermore, the similarities and differences in the ranges of goods stolen in both courts seem to indicate that individual circumstances were as important in the trial procedure, as any other factor. That there exists other information which throws light on the occasion, detection and prosecution of female property offences, may go some way to explain why there were so few recorded female thefts in the period and why, perhaps, some seemingly serious offences were tried by the lower court. The relationship between those who stole, what they stole, and from whom they stole, is an important consideration when seeking to answer these questions. Information from the depositions does suggest that there were common relationships between the thief and the stolen goods, and that these were well known by communities.<sup>236</sup> It could be argued that the complex distinctions between the ranges of property offences tried in both courts and the complex links between trends over time is a manifestation of a similarly complex and integral understanding of female criminality held by all those using the administering the court systems. The depositions provide a more information about the complexity of female property offences. Evidence from them is presented below, with a particular focus on common offenders and the most prevalent recorded offence committed by women during the period, clothing theft.<sup>237</sup>

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<sup>236</sup> Most depositions concerned theft rather than other forms of offence, possibly because arbitration was more difficult to employ and justices were encouraged to find a case to answer. In fact, between 1735 and 1750 over half of all depositions found in the Devon quarter session bundles concerned cases of theft.

<sup>237</sup> Clothing theft featured highly in the samples of depositions collected, thus supporting the quantitative evidence compiled for the period. Approximately two thirds of the Devon theft depositions for the period 1735-50 concerned clothing.

## Female Theft In The South West:

### Part II: Servants, Clothing Theft And 'The Hidden Economy' In The Eighteenth Century: Evidence From The Depositions.<sup>238</sup>

The evidence in the gaol books of the western circuit assizes confirms the prevalence of indicted clothing theft between 1735 and 1785.<sup>239</sup> Over half of all female convictions listed were for the theft or receiving of clothing and fabric.<sup>240</sup> It also appears that women were either acting alone, or with other women while committing these offences. 307 men and women were convicted in the 294 cases of clothing theft involving women, and only 6% of those convicted were men. Clothing theft cannot be seen to be a wholly gender-specific offence, however. The gaol books also provide evidence that men were also commonly charged with this type of offence.<sup>241</sup> Figures from the quarter sessions records tell a similar story. 446 women were tried for theft in Devon between 1735 and 1782. Of these, 168 were tried for stealing clothing and fabric. In some of these cases a variety of other goods were included on the indictment. Samples taken from the Somerset quarter sessions concur with these figures. 48 out of the 99 cases of female theft tried by this court between 1735 and 1745 concerned clothing, fabric or household basics. Between 1775 and 1780, 17 cases out of 30 concerned these types of goods. From these samples, it can be seen that the percentage of trials of clothing theft tried at quarter sessions was between 37.9 and 56.6 per cent. This evidence compares well with material from the western circuit assize records.

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<sup>238</sup>The original version of this section was presented as "Illegitimate Male and Female Trading in the Eighteenth Century" to the Second Exeter International Gender History Conference in July 1996.

<sup>239</sup> [P]ublic [R]ecord [O]ffice ASSI 23 (Gaol Books) 1735-1785.

<sup>240</sup> Women were convicted for property offence in 585 cases in these four counties. Of these cases, 294 were for the theft or receiving of clothing and fabric.

<sup>241</sup> Of the 39 men charged with property offences in a sample year of 1737, 10 were charged with stealing various articles of clothing. These men were either acting alone or with other men. It might well be the case that fewer recorded male property offences concerned clothing, but its existence as a form of male theft is significant. Moreover, the number of incidences could be higher than the gaol books confirm, because details on the nature of goods stolen in each case were not always given. PRO ASSI 23/6 (Gaol Books) 1737 Devon, Dorset, Somerset and Cornwall.

The evidence on female prosecutions and convictions in the eighteenth century provide a good starting-point for discussion, but a far more enhanced analysis of the nature of female theft in this period can be gained through the examination of the depositions. Using these sources, it becomes clearer that the dynamics of theft (how goods were stolen, by whom, and who received them) can provide insights into female experience and criminality. They often show under what circumstances women who were prosecuted for theft committed the offences. Moreover, they may provide a good context for other aspects of the female experience, outside of an account of female criminality. Central to this examination of the depositions are the relationships shown between offender and victim, as well as the prevalence of certain goods stolen and the reasons behind the propensity to steal such goods. There are strong connections between all these aspects, which combine to form an overall view of the main type of recorded female criminality.

The thefts described by many depositions seem to indicate a clearly identifiable relationship between the defendant and the victim. However, such observations should be treated with some care. In many cases, offenders were either apprentices or servants, their victims their masters or mistresses. Thefts by servants were more easily detected. Connections between a theft in a household and the likely culprit were made according to who had come into direct contact with the stolen goods. Often this meant that servants and apprentices were first in line to be questioned and, therefore, more vulnerable to detection. Thus when Mary Tredermick, on returning to her previously locked house, "found wanting one apron, one capp and one silk handkerchief taken out of a box which was upstairs" she quickly asked her apprentice, Sarah Battern, where the goods had gone.<sup>242</sup> Other information and depositions from the period further illustrate this

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<sup>242</sup> Evidence taken before Walter Radcliff, a justice of the peace for Devon on the 24th May 1745 Devon RO QSB Midsummer 1745.

sequence of events. The information of Cornelius Gill and Joan Butler tells of their "having in a suspicion a servant maid of [Joan Butler] called Joanna Bolt who have[sic] absented herself out of [her] service". As a result they,

made application to some neighbours who made after her. The above said Cornelius Gill with some other of the said neighbours overtook her in the parish of Sourton and there...found on her [the goods]<sup>243</sup>

Similarly, when Mary Froom discovered an apron missing from a room belonging to the Greyhound Inn in Honiton, she charged her servant Elizabeth Davies with its theft, "she leaving the said Elizabeth in the room, where the said Settle stood, and the apron hanging thereon".<sup>244</sup> The association between thefts from the household and the people living within it was understandably and commonly made. In some cases the depositions do show that prosecutors were often correct in conforming to this standard process of detection. Thomas Bird informed the Justice, John Chapman, that his wife had found striped muslin aprons missing from his dwelling house, he explained that his actions were based on the belief that:

that it must have been taken away from thence by some person then in the house and one Ann Gordon wife of Joseph Gordon late of the said city butcher then being employed by this informant in the said house in his said business this informant having some suspicion that the same was taken away by her<sup>245</sup>

Pursuit of those previously in close contact with the victim's property quite often correctly led to the discovery of the thief by the victim. Judith Peters found

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<sup>243</sup> Information taken before his Grace Wriblesley Duke of Bedford [no apparent date] Devon R O QSB Midsummer 1731. There appears to be no information from the depositions as to where the theft took place and exactly how far Gill and his neighbours travelled to apprehend Joanna Bolt; and this would have been an useful indicator of the determination of communities in administering justice.

<sup>244</sup> Information taken before Reymondo Putt at the Turks Head in Honiton on 19th May 1748. Devon RO QSB Midsummer 1748.

<sup>245</sup> Information taken before John Chapman at Bath on 28 October 1779 Somerset RO QSR 348/1 Epiph 1780.

various linnen goods missing and correctly suspected her late servant Edith Buckland. Peters consequently found the goods in the house of her new master in Molcombe (Dorset).<sup>246</sup> Because the suspected perpetrator of a theft was likely to be someone with a close relationship to the victim or his or her family, any such person was the first to be approached when goods were stolen. It may also have been understood that servants and apprentices may not have had money to buy the types of goods they saw around them in the household, but they knew how to dispose of such things. Moreover, it would seem that a theft was often accompanied by the absconding of the servant, and it could be suggested that goods were taken, as far as the servant was concerned, in lieu of unpaid allowances. Consequently, the victims of theft would look sometimes to their late servants for their goods.

These sequences of detection for clothing theft were not confined to the female servants in communities. Male servants were pursued and charged with clothing theft, as the cases of John Stock shows. Richard Pope, a yeoman from Abbotsleigh informed Isaac Elton that goods belonging to George Edwards had been stolen from his house, and that he suspected the man he had brought before the justice, "who gives his name to be John Stock labourer, for that the said John Stock lived a servant with him this informant and lately absconded..."<sup>247</sup> Reading between the lines, it may be assumed that on discovering the theft of the items, which were clothing and silver of some value, Pope pursued Stock and, as the deposition says, found some of the goods on him. In this case, the process of suspicion and capture took a space of three days, which meant probably that Pope knew where to find Stock, or that he had help in finding the suspected thief.

Even if a servant had not stolen from anyone in the community in which they lived, questions would be asked if they were seen with goods not fitting with their

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<sup>246</sup> Information taken on 18th May 1736 in Dorset RO QSR 20th July 1736 (Shaston).

<sup>247</sup> Information given to Isaac Elton on 6th November 1775 Somerset RO QSR 344/2.



income. Women, usually young single women, had economic motives for stealing such goods from households, and were consequently vulnerable to accusation from anyone in a community. Whole communities seemed aware of this phenomenon, and this was often a help to victims of opportunist theft, who might otherwise not know who stole from them. A year after Sarah Trencher of the parish of Heavitree had a gown stolen off a hedge in a garden where it was drying, she,

heard by accident that such a gown had been cried publicly by one Moses Wave of the parish of Woodbury, yeoman, as a thing brought into his house by Mary Fox his apprentice, and which he suspected she had stolen<sup>248</sup>

Moses Wave advertised against his apprentice whom he believed could not have afforded the goods in her possession. His position as master meant that he had powers of policing over his servant. This is important to remember because it meant that servants were vulnerable to exposure in more ways than just if they stole from their own households. It is apparent that people in positions of household authority did take part in the general policing in communities, sometimes apprehending offenders before they got far.

Servants and apprentices were particularly vulnerable to detection if they stole from their masters and mistresses, but they were not the only ones. Family members were also vulnerable to fast detection, especially in communities where constables and other officials were familiar with the business of their neighbours. This seems to be the case with the constable, George Maunder, in his arrest of Sarah Baker. His information against her for the theft of several items of clothing belonging to Judith Baker, in December 1729, showed that his knowledge of the relationship between Sarah and Judith Baker helped him detect possible offences:

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<sup>248</sup> Information taken before James Gayor on August 30th 1736 Devon R O QSB Michaelmas 1736.

this informant being one of the [constables] of this parish of Stoodley, and being in Tiverton on the second day of December was informed that the above said Sarah Baker had brought severall goods into the town to sell, and supposing that she had robbed her Aunt Judith Baker, the sd[sic] George Maunder went to see the said goods<sup>249</sup>

His supposition may have rested on knowledge about Sarah Baker's business, and whether it included trading goods in Tiverton. It must also have rested, however, on the connection between Sarah and Judith Baker.

The detection and arrest of offenders by the victims of theft and their neighbours and kinspeople, was based on a familiarity with the idea that servants stole goods. A high proportion of female thieves prosecuted and convicted in the courts were therefore servants and apprentices. It would be prudent to remember, however, that this process of detection (based on immediate assumptions about the criminality of servants) formulated the profile seen in the records. More female servants were caught with stolen goods on them because they were the first suspects to be approached. This means that their appearance in the records, although reflective of a certain behavioural cycle, is exaggerated through an apparent prejudicial attitude towards domestic servants and apprentices and their propensity for theft.<sup>250</sup>

Preconceptions about what type of offender stole which type of property are an important consideration for the historian studying the quarter sessions depositions for this period. It seems to have been accepted by communities that servants were in a position to steal goods from their employers, and there also

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<sup>249</sup> Information taken before John Worth JP on the 22nd December 1729 Devon R O QSB Michaelmas 1730. Note that George Maunder, in his capacity as constable was probably informed of the theft by Judith Baker, and knew who the likely suspect was.

<sup>250</sup> King's work into theft and the female life cycle in London demonstrated that female convictions were more likely to involve younger women in domestic service, but he too is careful to stress the vulnerability of these women to conviction. King, P. "The Rise Of Juvenile Delinquency In England 1780-1840: Changing Patterns Of Perception" Past and Present no 125 (Nov 1989) pp. 116-160.

seemed to be an awareness that clothing and fabrics were particularly desirable to the female thief. Such a preconception may well explain the prevalence of clothing thefts prosecuted in the period. The depositions relating to such offences are very effective in revealing the processes of the theft and receiving of clothing, but they also point to the wider issue of the consumer culture in the eighteenth century. Such a culture has to be examined when dealing with the motives behind the majority of property offences. Eighteenth-century society had a well-developed culture of consumerism. Significant markets were developing in the previous century, with the rise of peripatetic traders ensuring that cheap goods reached even the remotest areas.<sup>251</sup> This system was based around the collection and redistribution of goods through the larger chapmen and others they employed. Specialist produce was organised through the larger chapmen and, in turn, they compiled a mix of goods which the travelling petty chapman would sell to customers on their doorsteps.<sup>252</sup>

The continued growth of consumerism in the eighteenth century was facilitated and maintained to a large extent by the development of the media in the form of the provincial newspaper. Feather has identified the first provincial newspaper as The Norwich Post, which first went into print in 1701, with about twenty newspapers in existence by 1730 covering virtually the whole of England.<sup>253</sup> The trade in newspapers existed within the context of the book trade in general, which expanded significantly during the period 1730 to 1775. Provincial newspapers were used for the advertisement of goods and news of fashions.<sup>254</sup> Lemire argues that at least eleven of the provincial newspapers in existence at this time,

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<sup>251</sup> Spufford, M. The Great Reclothing of England: Petty Chapmen and their Wares in the Seventeenth Century (London 1984) p. 5 See Also McKendrick, N. "Part I: Commercialisation And The Economy" in McKendrick, N., Brewer, J., and Plumb, J.H The Birth Of A Consumer Society: The Commercialisation Of Eighteenth-Century England (London 1982) pp. 7-194.

<sup>252</sup> *ibid.* p. 85.

<sup>253</sup> Feather, J. The Provincial Book Trade In Eighteenth-Century England Cambridge Studies In Publishing And Printing History (Cambridge 1985) p. 19.

<sup>254</sup> McKendrick lists newspapers, Boston Newsletter, Cambridge Journal and Flying Post, Chelmsford Chronicle, Ipswich Journal, Leeds Mercury, Northampton post. Salisbury Journal, York Chronicle and weekly advertiser, York Courant) McKendrick, N. *op. cit.* p. 91.

including the Sherbourne Mercury, the south west's paper, carried intermittent news of fashions. While it is true perhaps that the effect of the media was less significant in the semi-rural and rural areas of the county, the existence of the eighteenth-century distribution systems allowed for the exposure to this consumerism in remote areas.<sup>255</sup> Because provincial papers took much of the London news to the provinces, those in rural areas were aware of the styles of the Capital.<sup>256</sup> The London fashions, therefore, reached provincial and rural areas through these media, most likely affecting the tastes of all in society and not just their direct readership. As Lemire notes, those fashionable members of rural and semi-rural societies were very visible in their communities, and perhaps provided stimulation to those with less direct access to fashion news.

It is against this background of increased media and visual communication, that a flexible second-hand trading market in clothing developed. It could be argued that, alongside this market, there also developed opportunities to deal in stolen clothes. This is not to suggest the existence of a dark underworld of criminal activity in this region during the period. Rather, it is wiser to argue for the existence of an eighteenth-century "hidden economy". Modern studies of crime have defined a "hidden economy" as that which "goes on among ordinary people in honest jobs" but still involves the buying and selling of "cheap", "usually stolen" goods.<sup>257</sup> Property offences involving the theft of clothing and fabric (and most probably other household goods) in the 18th century are perhaps, therefore, a reflection of increased consumer interests within communities of the south west of England. These interests could be associated with either non-criminal or

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<sup>255</sup> Spufford, M. The Great Reclathing of England p. 62. Spufford also points out that it was mainly specialist chapmen and booktraders who were engaged in the transport of newspapers, as paper was easily damaged.

<sup>256</sup> As McKendrick argues in The Birth of a Consumer Society, "The role of London...swelled to a quite new significance as the radiant centre of the fashion world and conspicuous consumption more widely than ever before" p. 41. He also argues that their transmission became increasingly easy, through canals and more efficient coaching systems for example).

<sup>257</sup> Henry, S. The Hidden Economy: The Context and Control of Borderline Crime (London 1978) p. 20.

criminal trading interests and both were facilitated by a thriving and diverse second-hand clothing trade.<sup>258</sup>

Historians studying the material culture of the eighteenth century have shown interest in the value of crime records for this period. The work of Beverly Lemire is a key starting point in this respect. She contends that the second-hand clothing trade was a part of everyday life for most people of the eighteenth and nineteenth centuries. The trade, she argues, "was a commonplace". It required no explanation and was accepted as a familiar component of society.<sup>259</sup> There are few records in existence for this trade, however. No manufacturing processes were involved in the trading of second-hand clothes, and therefore only feature in traders' accounts as stock or items sold. The separateness of the production and sale of ready-made clothing and the sale of second-hand clothing also meant its absence from the political documents of the time. Lemire's sources, therefore, come mainly from the records and accounts of tradesmen. Her work has also focused on evidence from the trials of the Old Bailey and newspaper reports of misdemeanours by disreputable pawnbrokers to demonstrate malpractice.<sup>260</sup> More recent work notes the value of criminal records. Lemire argues that legal documents are "an excellent source" which admitted the reader "into the lives of an enormously varied cross-section of society. Sources like the Old Bailey Sessions Papers show how lodging and shops were routinely burgled for clothing, and how easy it was to convert such goods through private sale or by pawning.<sup>261</sup>

John Styles has extended the use of criminal records to examine the nature of clothes trading. He has looked at the records in the north of England in an attempt to produce a "more balanced assessment of the relationship between the

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<sup>258</sup> Both legitimate and illegitimate demand for goods were stimulated by what McKendrick calls the 'consumer revolution'. McKendrick *op. cit.* p. 19.

<sup>259</sup> Lemire, B. "Consumerism in Preindustrial and Early Industrial England: The Trade in Secondhand Clothes" *Journal of British Studies* 27 (Jan 1988) p. 3.

<sup>260</sup> *ibid.* pp. 8-11.

<sup>261</sup> Lemire, B. Fashion's Favourite: The Cotton Trade And The Consumer In Britain, 1660-1800 (Oxford: 1991) p. 89.

consumer and the market in the eighteenth century".<sup>262</sup> His studies have focused on how the non-elite clothed themselves, and suggest sources that may demonstrate a widespread and integral trade of ready-made clothing. The criminal deposition is offered as feasible source material for studies of the consumer networks and behaviour of the non-elite in eighteenth-century society. These sources, he argues, allow a move from the traditional practice of only concentrating on the exceptional cases of clothing trade. The deposition may be used to illustrate that the supply of non-elite clothing in the north can be seen in terms of consumption as well as production.<sup>263</sup>

The qualitative evidence from the depositions suggests knowledge of the clothing trade by those not formally occupied as traders. Moreover, it is clear from the sources, that chapmen or itinerant hawkers did not exclusively practise the trade. People officially occupied in other crafts also bought and sold goods for profit, goods which might include clothing. In her information to the Justice Thomas Trike in 1741, Mary John of Kinton Magna in Dorset described how she sold 19lbs of iron to John Mead of the same county, and described him as a "cordwainer who was then travelling about to sell mens' shoes and buy old iron".<sup>264</sup> It may be assumed from this deposition that, from time to time, people found themselves either underemployed or out of work and choosing to trade in these easily marketable goods. The origin of the 19lbs of iron was questionable in this case,

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<sup>262</sup> Styles, J. "Clothing the North: The Supply of Non-Elite Clothing in the Eighteenth Century North of England" *Textile History* 25 (2) p. 140.

<sup>263</sup> Sir Frederick Morton Eden had argued in 1797 that people in the North clothed themselves predominantly by production in the household, whereas there was a more consumer orientated practice in the southern counties. Styles argues against this. He attempts to provide "a useful pointer to plebeian practice" by combining evidence from criminal depositions with those of poor law and household accounts. *ibid.* p. 146.

<sup>264</sup> Dorset RO QSR 12th January 1741/2 Shaston, 29 October 1741. Focusing on the other dominant category of goods - non-luxury items - stolen during this period is enlightening when considering possible reasons for the predominance of clothing theft. Food, money or household goods could represent a bigger category in some samples of the region and variables such as war or food shortage contribute to changes in the dominant categories of theft. However, separately categorising these four should not mask the fact that they represent goods that were all easily sold, hidden or consumed. It remains unsurprising, therefore, that highly marketable clothing and fabric items should form the biggest single listed category of goods stolen during the period.

which is why we see the transaction in the depositions. It is likely, however, that this case is representative of a common practice in the eighteenth century.

A further example of trading activity on more informal basis is seen in the case of Mary Davies of Devon. Davies was charged with the theft of several goods from the house of Robert Shevell in Ermington, including:

two womens clokes four dowds three white handkerchiefs and one coloured handkerchief two cheque aprons a pair of woman's stockings two childs aprons a girls shift, [and] a mans dowlas shirt<sup>265</sup>

The confession reveals that she had been travelling from Plymouth to Totnes, and stayed in the house of Robert Shevell, as an employee, for the space of one week. Mary Davies was then prevented from travelling to Totnes by bad weather, and went instead to stay at the house of Samuel Rowe in the next parish of Ugborough. It was here that she became acquainted with Mary Farley, a woman living in Rowe's house, and most likely his employee. It was through this association that a fortnight later she returned to Rowe's house for a few days, during which time she was asked by Farley:

if she had noe things to sell and told her if she could gett any she should bring it to her and she would give her the worth of it and would convey it out of the house and not a feather should spring of it<sup>266</sup>

Davies consequently returned to the house of Robert Shevell and stole the goods listed. Evidence such as this indicates that women were involved in second-hand goods trade on an unofficial level, had the finances to buy such goods (Farley paid Davies four shillings for the goods) and knew how to pass them on discreetly. Mary Davies's confession clearly states that Farley was asking her to steal goods on her behalf, as Davies was "charged...to come by night that no body might see

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<sup>265</sup> Devon RO QSB Epiph 1749-50.

<sup>266</sup> *ibid.*

her." It would also seem that facilities existed for the alteration of such clothes by others not directly involved with their theft. Farley paid Davies for the stolen clothes, and said that she would "send them out of the house and have them altered that they might not be known"<sup>267</sup>

Both Farley and Davies were tried before the courts, as the records show. Davies was tried for theft and Farley for receiving. The indictments also give the status of the two women. Davies was the wife of a mariner from Plymouth and Farley a widow. There is no evidence of the occupation of Farley within the household of Samuel Rowe, and no evidence to suggest that she was involved in an official capacity in any trade. The deposition does suggest, however, that Farley had the means to ensure the quick alteration of these stolen goods. It could be suggested that these goods eventually found their way into the network of the second-hand clothing trade.

Other evidence from the Devon depositions show that some women who were involved in the legitimate retail trade actively encouraged others to supply them with stolen goods. Such a woman was Jane Rogers, a shopkeeper in Plymouth. Elizabeth Woone confessed to Justice John Cleveland in 1738 that Rogers, the wife of a worsted comber, called Woone into her husband's house three weeks before and told her that she wanted things to sell in her shop. When Woone said that she had none, Rogers told her that, "she must gett into peoples windows and gett some things and to bring them to her and she would buy them".<sup>268</sup> Woone consequently stole a Holland shirt from Molineux Delacombe in Eaststonehouse and took it to Plymouth, receiving from Rogers one penny for it. Rogers then told Woone to go and get more goods, in particular another holland shirt, or a smock and some shoes. Woone then stole various other clothing items from her mother and her grandfather and received more money from Rogers.

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<sup>267</sup> *ibid.*

<sup>268</sup> Devon RO Quarter Sessions Bundle Epiphany 1738-9.



From the deposition, it would appear that Rogers was short of stock to sell and so her shop was likely to have been a small one. There are, however, good reasons to suspect that Rogers' defined her shop as such, in the broadest terms. According to H-C and L C Mui, care must be taken when defining the word 'shop' in any case. The Excise would have defined the term very narrowly as one which opened out onto the street, but this obscures many other retail outlets. Many were no more than back room or "shops above stairs". These rooms may only have been used occasionally for the sale of goods, and include rooms in the houses of farmers and labourers.<sup>269</sup> The sale of goods in the eighteenth century was not therefore restricted to those officially registered as tradespeople, and the Muis' observation is supported by Lemire's suggestion that the second-hand clothing trade was commonplace. When Elizabeth Woone referred to Rogers' shop, she may have been talking about one of a number of different types of outlet so defined by contemporaries. Such shops were well utilised by an increasing number of consumers, as the Muis argue.<sup>270</sup> A significant proportion of the rural poor may have bought their non-essential goods first- or second-hand from provincial shopkeepers of many kinds, regardless of how these retailers operated. Furthermore, these consumer habits may well have been varied, depending on how much disposable income was left after payment for essentials.<sup>271</sup> Rogers' desire to sell clothing in her shop, and her demands upon Woone, are perhaps evidence of how such an outlet met the needs of the poorer consumer.

Clothing was easily converted in the eighteenth century, as can be seen in the case of Woone and Rogers. This goes some way to explaining why it may not always be easy to make the distinction between clothing and fabric in case of theft. Styles argues that inventories of goods stolen may describe handkerchiefs which were,

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<sup>269</sup> Mui, H-C. and Mui, L. H. Shops and Shopkeeping in Eighteenth Century England (London 1989) p. 35.

<sup>270</sup> *ibid.* p. 150.

<sup>271</sup> *ibid.* p. 153.

in fact, pieces of cloth that needed to be cut and hemmed.<sup>272</sup> This lack of distinction needs to be considered when looking at the theft of clothing because the reworking of clothes blurs the distinction between ready-made and home-produced clothing. Such reworking can be seen in depositions and provides a picture of the sort of life cycles some clothing might have had. It also makes more apparent the complexity of the second-hand clothing trade, and its relationship to illegitimate dealing. An example of the conversion of fabric can be seen in the case of Elizabeth Salmon. She was charged in 1738 with the theft of various items including a woman's holland cap, a pair of gown sleeves and pair of mans stockings from the house of John Chinn and half a guinea from the trousers of James Windsor. She confessed to the Somerset Justice Thomas Strangeways Horner, that she took a gown sleeve, the stockings and also a piece of dowlas with which she fashioned a cap. Examples such as this show that some women who stole clothing and fabric, may have had the ability to change them immediately without recourse to others with skills of alteration.

The case of Elizabeth Salmon can also be used to suggest a certain value placed upon fabrics and clothing. Later in her confession, Salmon admits to Horner that although she only found the half guinea belonging to Windsor on the floor in Chinn's house, she did give it to Hannah the wife of Thomas Biggs, "for which the said Hannah Biggs gave this examinant a piece of dowlas"<sup>273</sup>. Salmon's desire to possess the dowlas, probably so that she could convert it into more valuable items such a caps and aprons is an indication of the perceived value of fabric during this period. Another example of this type of exchange is that of Ann Pain of Saint Giles in Devon. She was charged with stealing barley and bacon in 1757, and confessed to delivering the barley to Frances Folland of the same parish. Folland had promised Pain that she would "give her for the same two linnen capps;.."<sup>274</sup> It is likely that Pain stole the foodstuffs with the intent to barter with Folland.

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<sup>272</sup> Styles, J. "Clothing the North.." p. 144.

<sup>273</sup> Somerset RO Q/SR 306/3 (6) document 8.

<sup>274</sup> Devon RO QSB Mich 1757, 5th Aug 1757.

Exchanges like this often worked in other ways. Mary Waters informed the Bath magistrate John Chapman that Ann Gordon had met her in Kingsmead square, had given her a muslin apron, and "desired that this informant would get some victual and drink upon it". The apron had been stolen from her employer.<sup>275</sup> Such goods were therefore a valuable currency, Folland would have known this when she made her promise to Pain, and Waters indeed responded positively to Gordon. Spufford has shown in her research that the value of linen among the poorest in society had indeed dramatically increased over the previous century. Whereas the wealth as a whole of the poor of the county of Surrey as a whole rose eighty five per cent between 1580 and 1680, the value of their linen rose 271 per cent.<sup>276</sup> She therefore refers to a transformation of the domestic living conditions of the poor. These conditions were likely to place more emphasis on the value of the wardrobe and hence increase the marketability of clothing and fabrics generally.

Although it would seem that the theft of clothing was highly lucrative in the eighteenth century, its value also depended on the ease by which goods could be altered, sold or passed on into wider retail market. The depositions demonstrate the relative ease of sale to tradespeople and dealers of such goods. Ann Murphy was brought before the Justice Edward Collibee and the Mayor of Bath, for the theft of a blanket and some pewter dishes from the house of Sydenham Snow in 1775. Witness statements from James Chisem and James Atwood, provide information on the resale of these goods. Chisem, a salesman in the city, informed the justices that he had bought the blanket from the woman for the price of seven shillings. James Atwood similarly bought the pewter for about sixpence. Neither men seemed to have thoroughly questioned Murphy, a stranger to them at the time of the sale, as to the origin of the goods. It is quite possible that Chisem and Atwood did not feel the need to question Murphy in this way. Goods were

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<sup>275</sup> Somerset RO QSR 348/1 epiph 1780.

<sup>276</sup> Spufford, M. op.cit. p. 117.

commonly hawked and peddled casually and, unless the goods could be identified as stolen by means other than questioning, it would be difficult for traders to establish whether or not such peddled goods were stolen.<sup>277</sup>

There are cases, therefore, where clothes were stolen and disposed of with significantly more care, as was the case for clothes stolen by Jane Mogg, who had previously lodged at the house of Robert Lantry in Bedminster. She confessed to stealing:

two pair of nankeen breeches one pair of leather breeches one worsted waistcoat one cloth coat and one pair of plated buckles...she pawned them at a Mr Parson and Mr Master in the parish of St Philip and Jacob in the county of Gloucester.<sup>278</sup>

These particular items were probably quite easily recognised, and may have been regularly pawned by their owner as they were of some considerable value. It should not surprise us, therefore, that Mogg went across the county border in order to pawn them. Other, more common types of clothing however, were less easily recognised by pawnbrokers, less easily detected and more easily altered by the thief and her associates. Paradoxically, it was this easy assimilation of clothing and non-luxury goods into the main market that encouraged their theft and facilitated their receipt.

Mechanisms for detecting stolen items (almost entirely dependent on community policing) seemed to operate within the context of an established awareness of the nature of clothing theft and receiving. In particular, they recognised how easy such goods could be assimilated into the market. Although it was all too easy to unwittingly trade with thieves, some particular shopkeepers can be seen to question the origin of goods. Their suspicion was a lot easier to confirm, however, if there was prior knowledge of an offence having taken place. This may well

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<sup>277</sup> Somerset RO Q/SR 343/2 Easter 1775.

<sup>278</sup> Somerset RO Q/SR 352 Easter 1784.

have been true in the case of Thomas Boyle. Boyle's information in 1778 stated that he was offered stays for sale by Mary Cary, but was suspicious that they might be stolen and so informed Mary Hiscox, the wife of another shopkeeper who was the victim of the offence.<sup>279</sup> The chances of stolen goods being offered to shopkeepers were probably high, as was their general vulnerability to charges of receiving. It was most likely for this reason that Hiscox either personally informed Boyle of the theft, or advertised it to a local group of shopkeepers dealing in similar goods. The wife of Robert Lake showed considerable care when dealing with the trade of goods from uncertain origins. Lake was a blacksmith who also owned a shop in the parish of Broad Clyst in Devon, and dealt in old iron. When Mary Channon, a labourer's wife, brought an iron implement into the shop in 1756, asking if it could be bought or exchanged for goods, Hannah Lake questioned her. Channon told her that she had found the goods in a hedge while picking wood. Lake consequently took the goods and exhibited them in the window of the shop for others to view and if possible own.<sup>280</sup> Putting the goods in the window may have been a ploy to attract a sale while at the same time appearing law abiding. The case illustrates that in any case, stolen goods were illegally offered for sale to shops.

Shopkeepers could also be more active in the recovery of goods and the detection of those that had stolen them, as the case of Joseph Lamb and his wife shows. Lamb confessed to Justice Meech in 1742 that he had stolen a parcel of Camblett cloth from Richard Warre's saddlebag and had taken it home. After some time he gave it to his wife so that she could make a dress with it. The wife confessed to have kept the cloth for about eight weeks before offering it to Martha Maunder, a spinster of the same parish. Maunder had initially refused to take the cloth, but,

...on [Mary Lamb] bringing such camblett to her last Thursday morning she took the same and carryed it to Mr John Wickham of Sherborne (being desired by him to do so) who then told this

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<sup>279</sup> Somerset RO Q/SR 346/2 Easter 1778.

<sup>280</sup> Devon RO Easter 1756, 18th Feb 1756.

informant it was the camblett which he had sold sometime before to one Richard Warre and which was stolen from the said Warre...<sup>281</sup>

It can be inferred from this that Martha Maunder had shared her suspicions about the Camblett with John Wickham. It can also be inferred that the owner of the Camblett, Richard Warre, had informed Wickham of the theft. Wickham's position as a retailer meant that he might well have been illegally offered the same goods at a later date. It is likely that both Warre and Wickham were aware of this likely pattern of events. Wickham may also have shared this information with a circle of different customers. Although it can never be established exactly what the order of events was, it is clear that Wickham was instrumental in the detection of the offenders. Wickham's actions in this case illustrate perhaps the shopkeeper's loyalty towards his customer or a particular sense of responsibility on his part. He, like Hannah Lake, was also aware of the risk and consequences of receiving stolen goods.

Opportunities for the placing of stolen goods into the main market increased as the trading of second-hand goods developed to meet the needs of the eighteenth century non-elites. It would appear from a reading of the depositions, that systems of retail, especially clothing, could be diverse. Such systems allowed illegitimate trading to be practised by a broad section of people. The depositions show that professional criminals, legitimate traders and ordinary citizens were all involved in the theft and receiving of clothing. This evidence can be used to support Lemire's arguments that the trade in secondhand clothing and fabrics, "developed precisely because of the value and utility of these items and...the uniformity and homogeneity of the English Market".<sup>282</sup>

The criminal depositions of the eighteenth century have a significant effect on conclusions about the relationship between legitimate and illegitimate trading. In

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<sup>281</sup> Dorset RO QSR 13th July 1742, information given to Meech on 8th May 1742.

<sup>282</sup> Lemire, B. "Consumerism in Preindustrial and Early Industrial England..." p. 5.

the first place, it is possible to see the integral nature of the trade in clothing and non-luxury goods. It is also possible to see where two ostensibly separate spheres can overlap. Using the depositions to demonstrate the existence and nature of illegitimate trading is therefore a useful process in the understanding of property offences in the eighteenth century. Such trading occasionally existed in networks, but this is no reason to take the evidence as indication of a criminal underworld in rural and semi-rural communities.<sup>283</sup> It is true that articles were easily assimilated into the retail market because of the existence of discreet and unscrupulous clothing dealers, and those who were prepared to alter clothes. However, evidence from the depositions suggest that goods could be received and consumed even without the existence of such people. Such activity was facilitated by the nature of the trade, which allowed for the sale of clothing and fabrics in a variety of ways in provincial areas. Small shops, rooms upstairs from shops, the back rooms of inns, as well as itinerant traders who would take clothes to larger towns to redistribute all acted as agents for the retail of second-hand clothing. Moreover, it was highly likely that every member of a community was familiar with a dealer (of one type or another) in second-hand clothing and/or goods. In this network of non-elite trading, it only took the negligence or underhand dealing of one trader to bridge the gap between the trade of bone fide second-hand and stolen goods. The existence of facilities to deal with the resale of stolen goods therefore did not necessarily mean the existence of liminal illegitimate networks. The recognition of the connections in legitimate and illegitimate trade, therefore, provides an insight (albeit from a rather obscure angle) the world of trade in the south west of England in the eighteenth century. In this way, criminality is not seen solely within the context of dearth and plenty, which tends to confine its examination to bread and butter issues. It can be seen that clothing theft operated within a system of developing consumerism, and that this system allowed for the kinds of dynamics that the depositions show.

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<sup>283</sup> footnote, see Henry's arguments against Ditton's idea of the 'hidden economy' being a "wry reflection of the visible economic structure, upon which it parasitically feeds" (Jason Ditton, quoted in Henry, *S. op. cit.* p. 5 ) pp. 5-12.

When considering the types of theft that women were charged with in the eighteenth century, a complex picture emerges. Although property offence continue to be seen primarily with the context of the economy, direct correlations between poverty and theft do not provide an adequate explanation. The first section of this chapter underlined the importance of not picturing simple causal relationships between food prices and theft, even though the relationship exists and is relevant. The second section illustrates how complex female criminality and its detection and prosecution could be. It also suggests that the nature of trade and markets themselves also had an important bearing on the behaviour of people in the eighteenth century. It obliged traders to travel along certain routes to certain market towns, and made provision for consumers in the street, the public house and the shop. The flexible nature of eighteenth century trade systems meant that goods were often exchanged in informal surroundings. This characteristic of the market is central to the contention that illegitimate and legitimate trading could exist side-by side during this period. Such a contention allows for insights into the nature of, and the motivation behind, clothing theft (and the theft of other easily sold goods) in the eighteenth century.



## Chapter 4

### Offences Against the Person:

#### Part I - Female Disorder and Assault in the South West.

In the early modern period and through to the eighteenth century, offences against the person were distinguished legally between offences that resulted in death and those which did not. Murder, manslaughter and infanticide were, to varying degrees, treated more seriously by the courts than assaults or malicious wounding. Murder and Infanticide were offences removed from Benefit of Clergy by Acts in 1547 and 1623 respectively.<sup>284</sup> Manslaughter, distinguishable from murder because it was seen to have been committed without 'malice forethought' remained within Benefit of Clergy, as long as it didn't involve the eventual death of the victim through stabbing.<sup>285</sup> Other offences which did not involve the death of a victim, such as assault, riotous assault, defamation, scolding and cursing were, in the main, treated by the courts as breaches of the peace and processed as misdemeanours. The first section of this chapter deals with the records in the south west for female assault cases and cases of disorderly or malicious behaviour, that did not involve the death of a person. This information is to be found primarily in the quarter session records.

Effective quantitative analysis of the nature of assault cases is very difficult for the historian looking at the quarter sessions records. This is because assault and disorder were not comprehensively defined by statute law. Assault was specifically defined as a felony in only a few legally defined cases. Various acts passed during the late seventeenth and early eighteenth century meant that certain forms of aggravated assault became felonies punishable by death without Benefit of Clergy. In 1719, it was made a felony to assault persons in the street

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<sup>284</sup> These were 1 Edw. 6, c. 12, ss10 and 13; and 21 Jac. 1, c. 27. See Radzinowicz, L. A History Of English Criminal Law And Its Administration From 1750 (London 1948) Vol 1: The Movement For Reform. pp. 628-629.

<sup>285</sup> 1 Jac. 1, c.8 (1604) and 16 Car. 1, c.4 (1662). *ibid.* p. 630.

and tear or spoil their clothes; the Waltham Black Act of 1723 removed Benefit of Clergy from those convicted of wilfully shooting at a person in a dwelling house or any other place. From 1734 onwards, transportation for seven years was the statutory punishment for those convicted of assault with intent to rob. The assault of someone in the execution of purchase or carriage of corn received a penalty under the Corn Exportation Act of 1738 and the Stealing Shipwrecked Goods Act of 1753 made it a felony to assault or obstruct the escape of a shipwrecked person.<sup>286</sup> Statutes concerning wrongs against the person, therefore, were laid down only within the context of other concerns, especially those of damage to property. Acts specifically concerning assault were not passed until the nineteenth century.<sup>287</sup> This means that a whole range of assaults on the person, of varying degrees of seriousness, were recorded under simple categories such as 'assault' or 'misdemeanour' by the courts. Sometimes an indictment for assault might make reference to weapons, especially knives or sharp instruments, but this is not consistent across the whole sample for the south west. Thus, the record of more commonly committed minor assault is limiting. Moreover, Depositions for this sort of offence are very rare. Where they do provide information, it is not always very helpful.<sup>288</sup> In order to produce an analysis of patterns of prosecution by indictment for assault therefore, it has been necessary to place all offences against the person in one category. As a result, presented fluctuations in levels of prosecution for this offence constitute a whole variety of different offences against the person and the peace.

There are other, more specific crimes relating to disorderly behaviour that are easier for the historian to recognise. The second part of this section discusses those offences in the records that have been distinguishable and provide some

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<sup>286</sup> For a comprehensive account of statutes relating to offences against the person and the peace, see Holdsworth, W. S. A History of English Law (in 12 Volumes) Vol XI pp. 535-538 and Radzinowicz, L. op.cit. pp. 618 - 622.

<sup>287</sup> Holdsworth, W. S. op.cit. p.. 537.

<sup>288</sup> Although the quality of depositional information regarding the circumstances surrounding crime is usually good, this is not the case for assault.

insight into female assault and disorder. Some of these offences can be legally identified, although their definition caused difficulty for eighteenth-century law enforcers. The malicious destruction of property by arson was dealt with as a legally distinct offence, punishable by death without benefit of clergy under various acts in the sixteenth century.<sup>289</sup> Its status as a capital offence was also clarified by the Waltham Black Act.<sup>290</sup> The acts stated a broad range of offences within the category of arson however, which meant that less 'serious' cases were still indictable as capital offences. Arson is also a unique because it can be seen as both a property offence and an offence against the person, depending very much on the motive of the offender.<sup>291</sup> This creates problems in analysing patterns of prosecution by indictment for arson committed by women. More qualitative evidence is available from the sample, however, that provide some insight into female arson (or threat of arson) during the eighteenth century. Also distinguishable in the court records are some cases of riot and riotous assault, but there are also important distinctions to be made between the two forms of offence. Some assault cases would have been subject to the Riot Act of 1714, but only if the act was read to the offenders during the alleged riot. Evidence from these samples suggest that the Riot Act was rarely read and this might have been because the definition of 'riot' seems to have been contested by the courts.<sup>292</sup> The cases discussed in detail in this section do not fall under the category of 'riot' as defined under statute, but should be seen within the category of riotous assault. Finally, evidence of more general disorderly behaviour is discussed and where this can be recognised, it seems to have taken the form of defamation, scolding, cursing and specified unpleasant behaviour.

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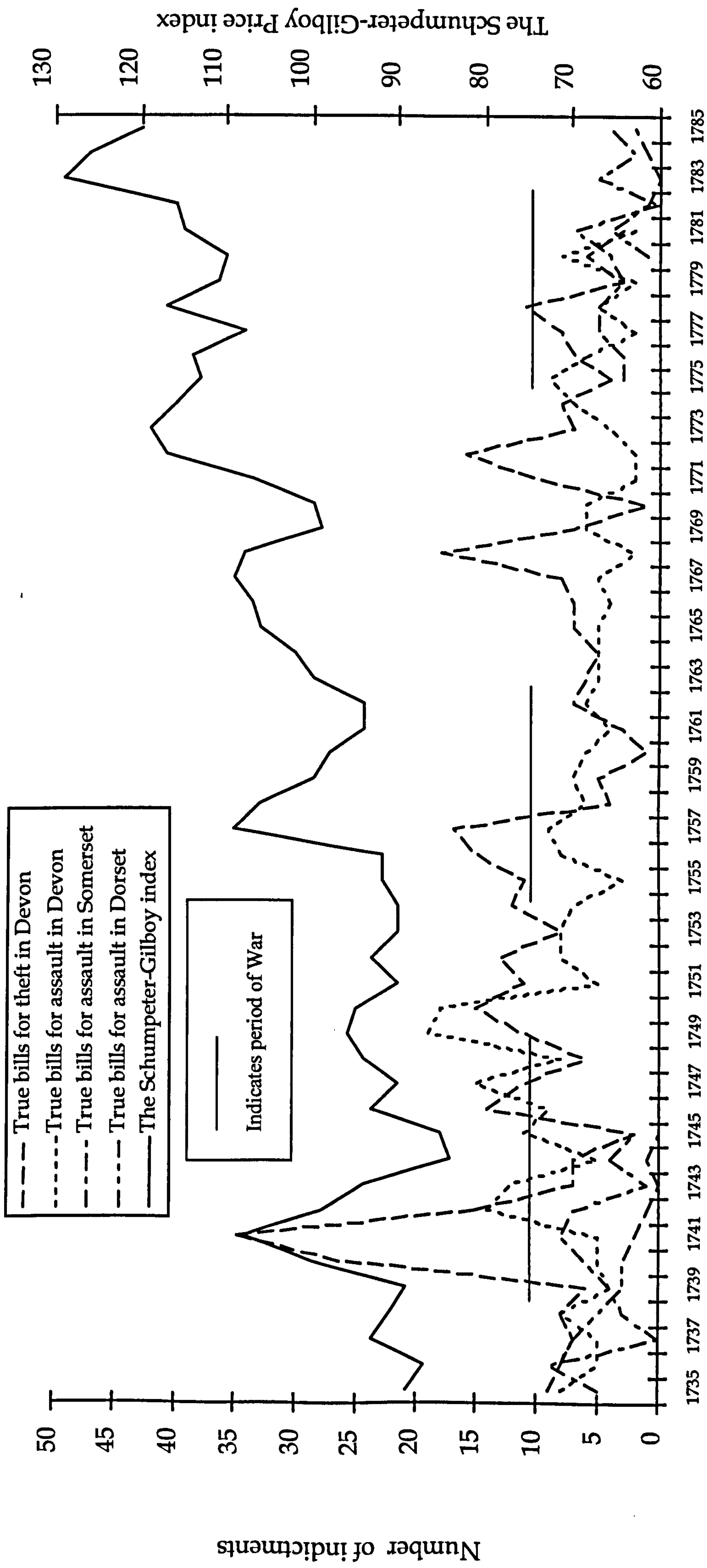
<sup>289</sup> Specifically 23 Hen. 8, c.1, s.3 (1531), 25 Hen. 8, c.3, s.2 (1533) and 4 & 5 Ph. & M., c. 4 (1557). Radzinowicz, L. *op. cit.* p.. 654.

<sup>290</sup> *ibid.*

<sup>291</sup> See *ibid.* pp. 9-10.

<sup>292</sup> *ibid.* pp. 619-620.

Graph 4.1 To show Relationships between Assault indictments and Other Trends and Fluctuations in the Eighteenth Century



Changes in long-term levels of prosecution for assault are apparent from a reading of Graph 4.1. (see p.147)<sup>293</sup> The trends in prosecutions for female assault in Devon show a decline throughout the whole period studied. The levels of indictments for the same offence in the sample periods for Dorset and Somerset appear to correspond with the figures for Devon. Although it may be argued, especially in the light of a steady increase in population, that this decline was significant, there are important qualifications to note. It would be extremely unwise, for example, to conclude that the true number of assaults by women actually went down during the period.<sup>294</sup> Moreover, the figures for the sample periods 1735-45 in Somerset and Dorset, 1775-1785 in Somerset and 1780-5 in Dorset are so low that it is impossible to reach firm conclusions about the pattern of prosecution in these counties. It is difficult to point, for example, to definite reasons for the steadily decrease of trials for assault in Dorset between 1735 and 1745. However, there are some possible suggestions as to why a general decline in prosecutions across the region might have taken place. The trend may be representative of an increasing use of other methods of prosecution. It could be that, especially in cases of female assault and disorder, victims and complainants, rather than initiating a potentially drawn out trial, favoured conviction by recognizance or even summary means.<sup>295</sup> If this were the case, however, it would be impossible to know whether a change in favour towards prosecution by recognizance was due to increasing confidence in these methods, or a decreasing

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<sup>293</sup> Graph 4.1: To Show The Relationship Between Indictment For Female Assault And Other Trends In the Eighteenth Century. The graph charts the true bills for assault for the counties of Devon, Somerset and Cornwall and measures them against the true bills for theft in Devon and the Schumpeter-Gilboy index. Indictments for Cornwall are unfortunately no longer in existence.

<sup>294</sup> Stevenson, J. "Bread or Blood" in Mingay, G. E. The Unquiet Countryside (London 1989) pp. 24 -35.

<sup>295</sup> Women were perhaps more vulnerable to informal means of prosecution such as summary conviction, but this might also have been the case for men and without levels of indictment for male assault, it would be unwise to make a gender distinction. It is worth noting however, that the disorderly woman was closely related in the minds of contemporaries with the scold, the sower of discord and even the whore. High profile trials were not helpful to women seeking to cultivate good reputations in the community, in fact, they could go some way to destroying women's chances of good reputation and economic stability.

confidence in the use of the open trial system.<sup>296</sup> The decline in prosecution levels for assault are nevertheless an indication that indictment levels alone cannot be used to build an accurate picture of either the full range of prosecutions for assaults and misdemeanour executed over the period, or indeed attitudes towards prosecutions for these offences.

The option to prosecute by recognizance seems to have constituted a significant alternative to the indictment.<sup>297</sup> This was because, as well as a procedure to bind offenders and witnesses to appear at sessions, it could also be used to ensure the peace. It could, therefore, be offered as an alternative to prosecute by indictment. An examination of sample recognizance material for Devon, Dorset and Somerset shows that attempts to enforce the law were indeed made by the use of the recognizance. Table 4.1 shows the sorts of offences that were specified on the recognizances during the three sample periods in the three counties. Those listed as having no indictment, are those recognizances that could not be cross-referenced to any indictment in the quarter sessions rolls during the period. They are likely, therefore, to have not resulted in formal prosecution.

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<sup>296</sup> Beattie notes that the decision to prosecute was likely to be based on the personal relationship of the victim and the accused, possible effects on the harmony of the community and also on the victims' view of the courts. Beattie, J.M. *op. cit.* p. 8.

<sup>297</sup> In fact, recognizances may even have been used to prolong or exacerbate disputes between parties, as Garthine Walker argues for seventeenth-century Cheshire. Walker, G. "Crime, Gender and Social Order in Early Modern Cheshire" Unpublished PhD thesis (University of Liverpool 1994) p. 61.

Table 4.1 - The relationship between recognisances and indictments for each type of Offence: Devon 1736-41, Dorset 1736-45 and Somerset 1775-85

Offence	DEVON 1736-41		DORSET 1736-45		SOMERSET 1775-85	
	Recognisance with indictment	Recognisance but no indictment	Recognisance with indictment	Recognisance but no indictment	Recognisance with indictment	Recognisance but no indictment
Assault	35	35	9	9	25	31
Breach of Peace	-	8	-	1	-	10
Riotous Assault	11	1	-	-	6	-
Good Behaviour	-	-	-	-	-	-
Rescue	-	-	-	-	-	2
Felony (theft)	39	14	10	6	58	26
Cheating	-	-	-	1	-	-
Forcible Entry and Assault	-	-	-	1	2	1
Nuisance	1	1	-	1	-	-
Miscellaneous	9	14	-	1	-	3
Unknown	4	55	2	21	-	4
Total Recognisances	99	128	21	41	91	77

The table demonstrates that, in each sample, assaults and cases of misdemeanour were just as likely not to be prosecuted by indictment. It is worth noting that, without detailed information, there is no way of knowing what criteria prosecutors used for making decisions on whether to prosecute by indictment, or

what specific types of assaults and misdemeanours were more likely to be indictable offences. However, this evidence suggests that recognizances were used by prosecutors and justices for more than just bindings over to appear in court.<sup>298</sup> Before an offence could be formally prosecuted, several stages in the justice system would have to have been negotiated. Victims and even defendants, as well as Justices, had several options open to them in dealing with violent interludes and disorderly behaviour. It would appear from the records for the south west, that the recognizance was one option in the case of female assault and misdemeanour.

The relationship between prosecutions by indictment for female assault and those for theft is worth noting. Graph 4.1 shows the relationship between female assault and theft cases in Devon throughout the period. The correlations are not straightforward, nor is it the case that the trend of each matches the other closely. However, there is a general relationship between assault and theft prosecutions. Both show a general decrease in indictments during the period, and there are periods during which the two trends follow each other fairly closely. This is evidenced by the drop in both series in 1739 (see Graph 4.1), the similar fluctuations between the years 1748 and 1752, and also between 1755 to 1767 and 1777 to 1781.

Complex connections between theft and assault cases create difficulties in the analysis of links between the pattern of prosecution for both. Also, in this case, the aggregate numbers are too small to come to firm conclusions. However, there

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<sup>298</sup> Shoemaker's findings for late seventeenth and early eighteenth-century Middlesex seem to fit in well with the information for the south west between 1735 and 1785. A table showing the offence and disposition of recognizances for the period reveal that of the 290 recognizances relating to breaches of the peace between 1660 and 1725, 78 per cent were apparently discharged, and only 12 per cent resulted in an indictment. Assault cases showed similar percentages, 61 per cent between discharged, and only 24 per cent formally charged. The result for recognizances concerning theft are different. The respective percentages are much closer, 44 per cent being discharged and 34 per cent indicted. Although Shoemakers' evidence is for both men and women in Middlesex, the figures for the recognizances in the south west that concern women show similar patterns.



are other sources which may help support any possible correlation in trends. When goods or monies were stolen, it was as well for eighteenth-century villagers to confront the suspected offender as quickly as possible, especially if the victim was to have any chance of recovering the goods or money stolen. This could result in an arrest (possibly violent) of a suspected thief in the street. Such events, if not supported by a warrant from the justice, in turn might easily have been translated into assault cases in the court records. Sometimes, members of the community assaulted others out of perceived necessity and, for one such occasion, there exists clear evidence from the Devon records. In 1737, two men and two women were indicted for assaulting and stripping a woman in Littlehampton. The charge states that Ann Halls, Charity Ley, Richard Squire and John Ley had assaulted Sarah Summers and taken three pounds and eight shillings from her purse. The charge is not particularly informative on its own. However, the case becomes clearer when it is found that the victim of the offence, Sarah Summers, was also indicted at the same sessions with the theft of a considerable amount of money. The deposition of Ann Halls (the servant of the Littlehampton shopkeeper, William Chapple, and one of the alleged assailants) gives more information. She informed the Justices that she was minding his shop the previous day, but had left the said shop for about a quarter of an hour and on returning:

she saw one Sarah Somers[sic] of the parish aforesaid spinster inside the counter in the sd shop and putting...mony into her mouth whereupon this informant being very much affrighted went to the shop door and called for help

Halls later followed Sarah Summers to a neighbour's house, where "she untied some part of her cloaths and ... saw several sixpences drop from her". This is most likely to have been the moment in time to which the assault cases refers, despite the discrepancies in dates recorded on the deposition and both indictments.<sup>299</sup>

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<sup>299</sup> Devon RO QSB Easter 1737. The dates of the deposition and the two indictments are not the same. Ann Hall is recorded to have informed on Sarah Summers on the 11th April 1737, and yet

None of the aggressors were found guilty of the assault charge, and yet Summers was found guilty of the charge of theft and subsequently transported. Authorities, because of the felony committed by the victim, may well have overlooked violence in particular cases like these. It is significant that by stealing a considerable sum of money Summers became vulnerable to punishment, not only through the courts, but also from other members of her community. The final verdict of the authorities might even reflect a consideration by the jury of a violent assault committed under mediating circumstances by community members.<sup>300</sup>

Further evidence of connections between rates of prosecution for female assault and those for other offences (probably including theft) are the identity of victims of assault. Notable in this respect are the cases involving the assault of those identified as holding office in their communities. A significant number of assaults on officials in communities took place in the eighteenth century, as the evidence from Devon indictments suggests. The links are not simple. It is not always clear from the evidence collected that an assault on a constable, bailiff or tythingman always took place as a result of a previous felony. However, cases of assaults like these can be found throughout the period and cannot be correlated to other social factors like high prices or war.<sup>301</sup> The fact that a number of assaults by women on bailiffs and constables during the period were, in fact, attempts to rescue kinsmen from their custody, seems to indicate that such assaults could be about more than personal grievance. Grace Brown, her husband and others were indicted in 1771 for an assault on the guardsman Richard Reed, and the rescue of John Brown

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the Indictments state both the theft and the assault as the 13th April, It may be assumed that the indictment date for the theft is an approximation, but an assault may easily have taken place three days after the theft.

<sup>300</sup> It is quite clear therefore, from looking at all the evidence together, that this assault case cannot be seen properly in isolation.

<sup>301</sup> Cases of assault on those definitely identified as officials occurred in the years 1735, 1739, 1740, 1741, 1742, 1745, 1749, 1767, 1769, 1770, 1774, 1775, 1776 and 1778. There appears to be no indictment for such assaults in Devon between the years 1750 and 1766, but we cannot be sure about this because some officials may not have been identified specifically on the indictment.

(probably a family member).<sup>302</sup> Mary King and her husband John of the county of Somerset were up before the Summer Circuit assizes in August 1766 on a charge of assaulting two of the constables in the parish of Bedminster, in the execution of their offices, and the rescue of James Sparkes out of their custody.<sup>303</sup> In other cases, the motive for assault seems to centre on fiscal affairs. Betty Stone was charged by the assizes court in 1779 for "violently assaulting Henry Stalland (one of the Tythingmen of the parish of Wrington in the execution of his office) with knives with intent to murder".<sup>304</sup> It is not always certain whether assaults on officials such as these are the result of grievances separate to the office itself. However, it might be assumed that they probably were, since they took place in many cases during the execution of those offices. Moreover, the fact that such information is given on the formal charges is some indication of its relevance.<sup>305</sup> The vulnerability of the constable to assault in the execution of his office provides a key to linking at least some assault and theft cases.

In general, the charting of indictments for female assault indictments in Devon against the Schumpeter-Gilboy index, does not appear to reveal very strong connections. However, the possible relationship between theft and assault means that it would be unwise to assume no connection whatsoever. Patterns of indictment for theft in Devon to show that in periods where consumer prices sharply increase, most notably the years 1740-1, 1757 and 1772, levels of prosecution for female theft also rise. During these periods of probable high distress and social tension, the levels of indictments for female assault could have

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<sup>302</sup> Devon RO QSB Easter 1771.

<sup>303</sup> [P]ublic [R]ecord [O]ffice ASSI 23/7 Western Circuit Assize Gaol Books. Summer 25th August 1766.

<sup>304</sup> PRO ASSI 23/8 Western Circuit Assize Gaol Books. Winter 27th March 1779.

<sup>305</sup> Offices such as constable and overseer of the poor were held by respectable members of the community, usually those who had a small amount of property or business. The offices were held by an individual for one year and then passed on to another suitable member of the village or town community. It was quite possible therefore, that some members of smaller parishes would hold the office of overseer of the poor one year and then become a constable the next. Such characters within communities would have found that good reputation and consistency and fairness were an advantage in situations where potentially they could be judged on their performance in their previous office. Ensuring the co-operation of the parishioners may have been a hard task, and disputes like those outlined above may have been more common than the records suggest.

been influenced by a number of factors. In the first instance, the authorities and the community as a whole were more likely to concentrate resources on the capture and formal prosecution of thieves, perhaps incidentally resulting in higher levels of recorded female assault. The case of Sarah Summers demonstrates that violence involving women could easily ensue from the capture and arrest of suspected thieves in the community. This type of violent discourse could itself be exacerbated by increased tension caused by dearth and high prices. A further question that emerges from this discussion is that of the presence of women in the court records for assault, in relation to those of men. Although it is apparent, at least from the case of Ann Summers, that men and women were involved in violent interludes together, it is also possible that assaults committed by men only could be referenced to cases of female theft. Without the indictment levels for male assault in relation to female theft, only a partial picture can be created from graph 4.1.

Recorded levels of female assault seem to have a closer relationship to female theft indictment levels and consumer prices during times of war. This could be suggestive of the importance of recorded male assault cases in relation to female theft and therefore possibly female assault. Previous research for Staffordshire in the eighteenth century has suggested that higher proportions of women were indicted for theft during times of war than in peace and that this was due to the mobilisation of men.<sup>306</sup> Owing to the absence of economic and social support normally provided by men, mobilisation might possibly have been an aggravating factor in cases of both female assault and theft during coinciding periods of economic distress. During this period of study, Great Britain was engaged in three main wars, the War of Jenkin's Ear, which then turned into the larger War of Austrian Succession, (1739-40), 1744-1748; The Seven Years War (1755-1763) and

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<sup>306</sup> Hay, D. "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts" Past and Present 95 (1982) pp. 117-160.

The Anglo-French and Anglo-Dutch Wars of 1775-1783.<sup>307</sup> It is probable that at least one per cent of the population was enlisted during the first two periods of war and that percentage may have been greater in regions close to naval ports like Plymouth. Communities in the south west of England were likely to have lost their kinsmen to these wars, perhaps forcing women to deal with issues for which they would not normally be responsible. This may feasibly have extended itself to dealing with political issues and problems in the community. Women might therefore have been involved more often in violent power struggles, or perhaps made more concerted efforts to apprehend offenders and prosecute them. Moreover, in times of economic hardship caused by bad harvests during mobilisation, namely those occurring in 1740 and 1756, issues surrounding the reinstatement of order within a community may have resulted in increased violence at the hands of women. The prosecution levels on graph 4.1 for these two years in Devon show reasonable links to demonstrate this. The differences between the male and female experience of war are perhaps borne out by the differences from Hay's findings for prosecution levels after demobilisation. Unlike his findings for male and female assault in Staffordshire, which show sharp increases in prosecution for crime immediately after war, there do not appear to be any significant increases in either female theft or assault indictments during these periods in Devon, except for the years 1747-8.<sup>308</sup> It is possible that women became less vulnerable to prosecution during these periods as the onus of policing turned to controlling demobilised men.<sup>309</sup> Without the figures for male assault indictments, however, the impact of mobilisation and demobilisation on Devon, or any other county in the south west is impossible to assess. Other

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<sup>307</sup> Holsti, K. J. Peace And War: Armed Conflicts And International Order 1648-1989 Cambridge Studies in International Relations:4 (Cambridge 1991) p. 87. For a concise history of British warfare over the past 300 years, see French, D. The British Way In Warfare 1688-2000 (London 1990).

<sup>308</sup> Care must be taken to note here that the Devon Series for female assault indictments ends in 1782. This is because the quarter sessions records become less coherent after this date and therefore less reliable than for previous years.

<sup>309</sup> Hay notes that the proportion of Staffordshire women indicted for capital crimes fell from 16 to 10 per cent and from 23 to 12 per cent for lesser thefts after demobilisation. Hay, D. "War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts" Past and Present 95 (1982) p. 144.

information, for example, the proportion of men in the south west who fought in each of the wars, would help in assessing the specific characteristics of each period of mobilisation for the region. All that can be stated with any surety is that formal prosecution levels for female assault in Devon range from below 5 indictments a year in some years and to a maximum of still less than 20 in 1748. Prosecution levels for assault in the other two counties are even lower. Consequently, none of this information is ultimately conclusive in assessing any trend or pattern.

Further analysis of female cases of assault and disorder can be made through a breakdown of the varying nature of cases. Such a breakdown is not possible for all cases, but there are some specific aspects worth noting. To what extent women confined their violence to a gendered sphere is one starting point. For the south west in this period, there is little evidence to suggest that female violence predominantly occurred within confined gendered spheres. It should not be assumed therefore, that assault cases concerning women were always isolated squabbles between women over domestic disputes or defamations. In fact, mixed groups of men and women assaulting either lone men or women, or groups of men or women, constitute a significant number of cases out of the total. Approximately fifty per cent of all cases concerned assault of this nature.<sup>310</sup> Disputes between two people do form the second largest category in the Devon sample (assaults by lone women constitute 47 per cent of cases-the vast majority of which were on one other person) it should be noted, however, that charges for assaults on lone men by women were only slightly less numerous than those for assaults on lone women.<sup>311</sup>

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<sup>310</sup> A minimum of 1327 persons, (both men and women) were included in indictments for the total assault case count of 529. This figure does not represent all persons coming before the courts for this offences during the period, sometimes whole parishes were indicted for assault and justices often alluded to other aggressors unknown to them.

<sup>311</sup> Of a total of 249 indictments charging lone women of assault, 238 were assaults on only one other person.

Many of cases in the Devon sample involved the assault of lone persons by two or three men or women. Often, these groups consisted of family members, or people involved in the same trades. The high number of both men and women involved in interpersonal disputes where women were included as aggressors (a mean average of between two and three people indicted for each case) points to family and community concerns. This further demonstrates the need to view female assault cases within the wider sphere of the community as well as exploring reasons why women in particular might have turned to violent or disorderly behaviour during the period. Furthermore, group assaults involving both men and women did not confine themselves to the same family or occupation groupings. An example of this is a case that seems to have involved a group of assailants from the wider community. Twelve members of the parish of Hatherleigh were indicted in 1742 for an assault on three of the county sheriff's bailiffs - who were probably sent to perform an unpleasant task, like the arrest of a debtor in the community. The reasons for such an assault look to be community-oriented, especially since members of varied status were involved in the case. Mary and Robert Bryett were of a higher status (Bryett was classed as a 'gentleman') than other members, who ranged from a miller to husbandmen and weavers. Unfortunately, the status of the two other women involved is difficult to determine, as both are described as spinsters.<sup>312</sup> Although a visible connection within groups of aggressors may not always be found in indictments for assault, this did not mean that they weren't present. According to Bohstedt, eighteenth-century people were accustomed to acting collectively, and these collections of aggrieved people would not have initially been formed in a random way.<sup>313</sup> Although in many cases the reasons for group assaults occurring were not based on what Thompson would call the 'moral economy', nor any other community

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<sup>312</sup> Devon RO Q S B Epiphany 1742-3.

<sup>313</sup> Bohstedt paints a persuasive picture of a community that dealt with threats to communal welfare by mobilizing the political relationships, both "horizontal" and "vertical". He argues that these relationships already existed in the community, and that they were often networks of kinship and camaraderie. (p. 23) Such a picture can be used to allow a logical explanation for group assaults as well as riots, and in fact could quite feasibly blur some distinctions. Bohstedt, J. Riots and Community Politics in England and Wales 1790-1810 (London 1983) p. 5,23.

interest per se, such disturbances could have important bases in the family and occupational politics within the community.<sup>314</sup> It is important to note that women's role in these actions would have been no less integrated.

Group assaults could also be classed under statute law as riots, but this seems rarely to have been the case in the south west because such an offence resulted in more serious consequences. The statute of 1714 stated that a riot was:

"when three or more persons shall assemble together with an intent mutually to assist one another against any who shall oppose them in the execution of some enterprise of a private nature with force or violence against the peace..."

In practice, it was acknowledged that the definition of riot depended on whether the intent was successfully executed, if not, then the charge could only be for unlawful assembly.<sup>315</sup> The records for the south west are problematic for the historian searching for detail on riot. Rare charges for the offence have been found in the Western Circuit Assize Gaol Books, but, of course, no detailed information exists to reveal their nature, or the motives behind them. The only detailed accounts available are those indictments in the quarter session rolls that deal with riotous assault and other group assaults. Furthermore, these indictments do not explicitly note any particular motive behind the assaults. There are, however, clues in the indictment that allows links between the aggressors and victims of group assault cases to be inferred. In most cases from the south west material concerning female assault cases, women were involved as

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<sup>314</sup> Thompson's notion of the moral economy centres around the pricing and distribution of bread in the seventeenth and eighteenth century. He argues that communities viewed fair trading of bread in terms of not only an affordable price but also of a distribution system that allowed the local community (including the poor) to buy in small amounts before larger amounts were sold to the richer dealers. Thompson's bread rioters insisted on enforcing this system and thus his writing is a reaction against historians like Beloff who thought riots "degenerated into mere excuse for crime". Thompson, E. P. "The Moral Economy of the English Crowd in the Eighteenth Century" *Past and Present* 50 (1971) pp. 76-136. We could not translate this type of organisation into spontaneous group assaults within the community, but in terms of a predisposition to rise up as cogent groups against characters within communities could translate itself into disturbances of all kinds.

<sup>315</sup> Bohstedt, J. *op. cit.* p. 7.



aggressors with men in group assault cases, and their relationship to each other was no doubt based on particular bonds. Occupation, family, property and consequent kinship bonds, meant that political structures in communities (especially small and medium sized communities) were based on shared experiences and political interests. There are several examples throughout the fifty-year period in Devon where groups of people indicted for assault are connected in kinship to each other. Mary Mutton, a spinster from Isington was charged along with Joseph Mutton and John Mutton, both presumably members of her family, with an assault on Thomas Balle, gent. Ann Bate was indicted with her husband Richard, Thomas Hockaday, his wife, and Gideon Hockaday for an assault on Mary Heard. All the men included in the charge were carpenters. Similarly Philippa Tozer was indicted for an assault with fifteen others, both men and women. Eight of the men were weavers, and two of the women were related to either Philippa, or one of the weavers.<sup>316</sup>

Charges against whole groups of people for ritualised assault can show how members of the community used either community justice or the legal system to voice themselves.<sup>317</sup> This was especially evident in cases of threats to the community from moral indiscretions. These can be seen in two cases of riotous assault found in the indictments for Devon. The first was in Aveton Gifford in 1738, the second case in Braunton in 1769. The Braunton case is identified only because of the description of the use of certain symbols. Ann Bale was one of over fifty people indicted for assembling together with "sticks, bells, frying pans and stones" and assaulting Jeffrey Hartnoll by breaking open his window and throwing stones into his house. The Aveton Gifford case is a little more

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<sup>316</sup> Devon RO QSB Epiph 1743-4 (Mary Mutton); Michaelmas 1750 (Ann Bate); Michaelmas 1763 (Philippa Tozer).

<sup>317</sup> In fact, the relationship between community justice and formal legal sanctions were arguably very close. As Ingram states, "...a legal system which relied heavily on local cooperation and which delegated considerable policing powers to non-professional parish officers, such arrogation of authority could be regarded with tolerance" Ingram, M. "Ridings, Rough Music and the "Reform of Popular Culture"" Past and Present No 105 (1984) p. 111. If such a system operated so cogently, we might even be inclined to suspect that those who were brought before justices for riotous assaults like these, were in fact punishing an offender.

informative. The case is presented as an indictment for the assault of Mary Jones the wife of Charles, concerning at least ten men and eleven women, and having distinguishing features that identify it as a case of community justice. Not only did the aggressors "riotously and unlawfully assemble...to disturb his Majesties peace", before the door of the gentleman's wife, but they "[ran] up and down with blacked and disguised faces...carrying a large pann of rams horns and a mock child made of raggs.." The use of the rams horns and the mock child might possibly symbolise adultery on the part of Mary Jones, as horns were often used to imply that a man had been cuckolded. Both these cases seem to be examples of Rough Justice, a form of community justice based around ritualistic and stylised processions and enactments. They involved large numbers of the community, including those of high status, and were accompanied by a cacophany of sound or 'rough music'. This was often performed using pots and pans, as is signified in the Braunton Indictment. Rough justice was usually dealt to those in the community who had committed moral offences, or offences, which threatened the stability of that community by changing relationships within families and groups.<sup>318</sup> Such crimes might include adultery or sexual relations between masters and their servants. Sometimes, though, rough music and 'skimmingtons' would occur for less serious reasons, it might form part of a wedding celebration. It could also have served as a manifestation of community disapproval for a marital relationship where the woman was overly dominant. Community justice, in its various forms could occur for a variety of reasons, but those that took part often amounted to considerable proportions of the community and included women.<sup>319</sup> It is difficult to know to what extent the community authorities tolerated community justice and rough music during the period. There are,

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<sup>318</sup> Communities may also have responded in this way the threats on the identity and stability of the community from outside. For a comparative study charivari and misrule in early modern France see Zemon Davis, N. "The Reasons of Misrule: Youth Groups and Charivaris in Sixteenth Century France" *Past and Present* 50 (1971) pp. 41-75.

<sup>319</sup> From the Aveton Giffard case, we could assume that women, although acting perhaps in smaller numbers, did not opt out of the punishment of other women if they had committed threatening offences. Adultery was one such offence. It threatened marriages, birthrights and the economics of the household, and was the concern of both men and women. For a concise examination of the nature and reasons for rough music see Ingram, M. *op. cit.* (1984) pp. 79-113.

however, two possible reasons for the presence of the Aveton Gifford indictment. It may well have constituted a significant breach of the peace, which involved the intervention of the Justice of the Peace. A more interesting line of enquiry though, might be that Mary Jones pressed a formal charge against her community in order to protect her reputation. This is one of only two cases of rough justice clearly visible through the Devon court records, and the reason for their presence might have a lot more to do with the agenda of the victim rather than the disorders themselves.

The Aveton Gifford case is a relatively easy one to examine as the clues are written into the indictment. There are other cases that might be considered similar, in that they involve an organised and premeditated assault on a specific person. An indictment from the Midsummer 1777 sessions in Devon charged that Patience Kelland did "gather together with several other persons...and advise, persuade and encourage [them]...to assault Catherine Bear a widow..." at North Tawton. There is no indication of the motive or nature of the ensuing assault. It could even have been the case that Patience Kelland and her co-aggressors were disorderly people bullying a vulnerable member of the community. An alternative explanation might be that the victim of the assault was in some way at odds with the rest of the village. It certainly remains that because several people were persuaded to participate in the assault, the incident probably amounted to more than a simple dispute.<sup>320</sup>

The nature of some assaults and disorder are more apparent when associated with distinctive forms of threatening behaviour. Most notable are cases that refer to arson or the threat of arson. The threat to set fire to anyone's house was taken seriously by those receiving the threat and the authorities. Five such charges against six women appeared before the grand jury for the quarter sessions in

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<sup>320</sup> Devon RO QSB Mids 1777. Although we could make suggestions as to the reason for such an assault, no conclusion can be reached in this case. The indictment was judged to be ignored by the grand jury, possible through lack of witnesses - perhaps suggestive of community justice.

Devon during this period, and four of them were judged to be tried in open court. Of those four cases, two were also charges for assault against the person or for criminal damage.<sup>321</sup> The other two were charges for threats of arson. The evidence is not confined to the Devon records. Of a total of ninety six indictments for assault in Somerset between 1735 and 1745, one was for actual arson and three others were charges for threatening to burn dwelling houses. Of the sixty seven indictments for assault in a later sample of 1775 to 1785, one was for the threat of arson.<sup>322</sup> It could be that threats such as these were not considered idle, although knowledge of the context of each situation would need to be assessed to see whether other factors were at play. It would be fair to say that the threat of arson was a serious one in the first instance because fire could so easily destroy whole towns. The serious nature of this offence was associated with the fact that it was also a property offence, as well as one which created disorder and threatened lives. Mary Pine's threat to set fire to the town of Hambury in Devon was thus taken seriously enough to warrant a quarter sessions trial in 1766, although she was eventually found not guilty in 1767.<sup>323</sup> Margaret Petit's threat in 1748 had unfortunate consequences also. She had threatened to set fire to the Mansion house of Thomas Williams in Stoke Damerel and pleaded not guilty to the jury at the Midsummer sessions. Consequently, she was held for at least six months in the gaol for want of sureties to prosecute her traverse. It could be argued that a decision to try Petit's case was based on the extra serious nature of a threat to burn a mansion house.<sup>324</sup>

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<sup>321</sup> The cases of Elizabeth Biley and Charity Barret outlined below, and the case of Sarah Rossitor for the breaking of window glass. Devon RO Q S B Midsummer 1748.

<sup>322</sup> These were Alice Gunter of Bath [S]omerset [R]ecord [O]ffice QSI 1735 (File no 354); Mary Littlejohn of Shepton Mallet Somerset RO QSI 1736-7 (no 355); Ann Carswell of Wellington Somerset RO QSI 1740 (no 360); Hannah Tibbets, her husbands and others of Cheddar Somerset RO QSI 1744 (no 364); Ann Purkis of Wellington Somerset RO QSI 1780 (no 400).

<sup>323</sup> Devon RO QSB Michaelmas 1766.

<sup>324</sup> Devon RO QSB Michaelmas 1748. Evidence of her incarceration in ASSI 23/6 Winter Assize Circuit 21 March 21 Geo II. It is worth noting that Petit's financial position may also have had a bearing on whether or not she would be incarcerated for the time before the trial. The social function of the Bridewell or house of corrections a prison for the poor sections of society is discussed in Innes, J. "Prisons for the Poor: English Bridewell, 1555-1800" in Snyder, J. and Hay, D. (eds) Labour, Law and Crime (Tavistock 1987) pp. 42-122.

The consequences of actually committing arson could be very severe indeed, but it appears that very few women ended up being capitally punished for it. Arson was tried as a capital offence by the Western Assize circuit, but such cases were very rare. The assizes records for all four counties show a total of only thirty six trials for arson throughout the period, the most in any year being 3 cases for the whole region in 1773.<sup>325</sup> Of the twelve women found guilty of the offence over the whole period, eight were either reprieved or had their executions respited, one was sentenced to be transported and one was incarcerated for six months. It was perhaps the case that communities did not wish to see these offenders capitally punished, and therefore petitioned for the life of the offender. This was the case for Mary Daley, found guilty of arson in 1746, whose petition requested that she be reprieved in favour of transportation. The grounds for the petition seem very much to rest on the effects that it would have on her family, the reputation of her family and on the support for the petition from the prosecutor (also her master).

...Mary Daley is of very tender years, being now under 17 years of age; and that...her Father hath a wife, and four other yong Children, and Has been always a diligent Laborious man, and lived with an honest character, and that he and his family must pass the Remainder of their days in Ignominy and Misery if the sentence ... should be put into Execution...and her Master, the Prosecutor, being an earnest Intercessor for her, and the Judge before whom she was tryed, having been pleased to respite the execution of her sentence for one month from the first day of this Inst April..<sup>326</sup>

The effect on Daley's family seem to be stated as a primary concern in this petition. However, it would be imprudent to assume that her family was more troubled over their loss of reputation than the loss of their young daughter. A more likely explanation would be that it was an expected convention that the petition should point to the effects on those close relatives, as well as on the offender. Avoiding the destruction of the reputation of a good family in a community might have been seen by the authorities as just cause for a pardon in

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<sup>325</sup> PRO ASSI 23/6-8. The three trials were of Ann Gale (Dorset), Elizabeth Merrifield (Devon) and Sarah Archer (Devon).

<sup>326</sup> PRO SP 44/260 (State Papers Domestic).

favour of transportation. It may well also have been the case, however, that communities and authorities did not like to convict female offenders for this type of offence.

Assault and disorderly behaviour did not necessary have to involve physical violence or the assault of any one particular person or group of people. Charges could be made for threatening or malicious behaviour of any sort. This is perhaps suggestive of the gravity with which communities viewed certain types of violence and disorder. It might also be suggestive of the way that communities dealt with certain types of anti-social and disruptive behaviour through the use of the court system. A variety of different types of offences by women can be found in the records. Some of these related to forms of highly unpleasant behaviour. Katherine Atkey was indicted for violently throwing a pot full of urine and human excrements at the head of Jane Bond in the Kings highway in 1747. Similarly, having already threatened to set fire to John Banfield's house and shoot his wife Miriam, Elizabeth Biley, together with Charity Barret of Topsham, cast "great quantities of human excrements and other filth and nastiness..upon the breast and other parts of the body of the said Miriam"<sup>327</sup> The physical defiling of a victim with human dirt may have served to remind the victim of his or her humanity. It might also have been an attempt to render someone physically dirty in order to reflect some moral misdemeanour; it was certainly highly unpleasant, and threatening to health. Human waste was, no doubt, very close to hand in households in the eighteenth century, and may have served as a potent weapon in violent disputes.

The presence of cases, which could be loosely described as defamation, in the quarter sessions records for female offences, suggests that the power of abuse and accusation formed a part of the language of violence in the eighteenth century.

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<sup>327</sup> Devon RO Q S B Epiphany 1747 but located in Easter 1747; and Q S B Midsummer 1748 but located in Michaelmas 1749. But these cases are likely to have been traversed, which is why they appear in later bundles.

Defamation cases were traditionally dealt with by the church courts, as they often involved sexual slander, but it appears that people were using the secular courts in the eighteenth century to prosecute these, and other types of offences associated with matters of reputation. Such is the case made by Silvester Parker against Mary Dirham in 1740, which places emphasis on his "credit and good reputation" in order to construct a case for an offence against his person. The case also shows that although people were at liberty to significantly affect the reputation of other in the community defaming them, such actions could have their consequences. The indictment states that Dirham:

contriving and intending unjustly to deprive Silvester Parker not only of his good credit and good reputation but also to obtain and get to herself of and from the said Silvester diverse sums of money...at Pilton...did...falsely charge and accuse the sd Silvester that he...lately robbed her...of one shilling and six pence.<sup>328</sup>

A similar case was made against Margaret Hamilton and Susanna Hargrave of Exeter in 1740 when they were accused of "wickedly fraudulently maliciously and unlawfully conspire[ing] and confederate[ing] together ...without any cause to charge William Sanford Clerk with being the father of a bastard child and to extort money from the said...whereas in truth..[he]..was not the father".<sup>329</sup> Cases such as these were often cited as wicked or malicious, and seen to cause enough harm to warrant formal charges. The power of language in the creation and destruction of reputations, sexual or otherwise, was immense. It is not surprising, therefore, that Sanford prosecuted Hamilton and Hargrave who, although pleading not guilty, were convicted of the misdemeanour and sentenced to be publicly whipped at Topsham and gaoled for at least one year.<sup>330</sup> Sanford had, of course, the advantage of his gender. This case might, therefore, demonstrate that

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<sup>328</sup> Devon RO Q S B Midsummer 1740.

<sup>329</sup> Devon RO Q S B Michaelmas 1740.

<sup>330</sup> Devon RO QS 1/18 Sessions Order Book 1734-45 (Michaelmas 1740 Sessions) The sentence also carried a fine payable to the clerk of the peace of 14s.

although women played a vital role in negotiations of honour and reputation, accusations against men could have serious consequences.<sup>331</sup>

Reputation seems also to have been important in the prosecution of women for much lesser offences. This might particularly be the case for scolding. Charges against women for scolding, lewd behaviour and sowing discord were primarily seen as breaches of the peace, but they could also be included as a charge of discordant behaviour in addition to an alleged assault. It is also possible that women who were seen as scolds, were seen as threats to the order in communities by virtue of their violent and disruptive language.<sup>332</sup> The broad definition of the scold reached across a range of female behaviour regarded by contemporaries as unacceptable, even the assertive woman could be labelled as a scold.<sup>333</sup> There are also some key gender issues to be noted at this point. Barratry was a term used to describe a brawler or "a common wrangler". It was not particularly gender specific, but was in most cases applied to men. Scolding, on the other hand, was nearly always the term applied to female barrators. This does not mean that the motives for scolding were exclusive to those of barratry. Men and women could be indicted together for scolding and related offences, and obviously these charges referred to the same circumstances and behaviour. Such was the case for Ann, Henry and Ann Venner of Newton St Cyres (Devon). They were all indicted for being "comon scolds...drunkards and fighters, excitors and stirrers up of quarrels" at the Midsummer sessions in 1746.<sup>334</sup>

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<sup>331</sup> For an account of the role of women in defamations in the early modern period see Gowing, L. "Langauge, Power and the Law: Women's Slander Litigation in Early Modern London" in Kermode, J. and Walker, G. (eds) Women, Crime and the Courts (London 1994).

<sup>332</sup> Walker, G. op. cit. p. 70 Walker contends that both scolding and barratry constituted part of the language of violence, and it has already been demonstrated in the case of threats of arson, that threatening words were seen as just cause for concern. She also warns, however, that it would be rash to assume that because scolding was seen as gender specific verbal abuse, such behaviour was therefore essentially feminine.

<sup>333</sup> For a clear explanation of the historical definitions of scolding and barratry, see Ingram, M. "Scolding Women Cucked or Washed" in Kermode, J. and Walker, G. (eds) Women, Crime and the Courts in Early Modern England (London 1994) pp. 48-80.

<sup>334</sup> It should be noted, however, that the term scold may have been a reference to the two women, and the fighter and exciter of quarrels to the man.



In some cases, the women were identified as such while being charged with specific assaults on other members of their community, and this may have been in order to strengthen the case against certain disorderly women.<sup>335</sup> Sarah Butcher was charged at the Michaelmas sessions in 1736 with being:

a comon disturber of..the peace..a sour[sic] of discord and strife amoungst her neighbours... and upon Mary the wife of Thomas Warren... [did] make an assault and affray...the said...was and yet is a person of ill name fame and conversation and other great damage and comon disturbance.....<sup>336</sup>

Scolding was considered a common offence, but was vague and intangible, it might be used however, to cast doubt over the credibility of the defendant, or to increase the case against them. Mary Joy of Stoke Damerall was one such character, who found herself in the bridewell for being:

a person of ill name fame and conversation, a disturber of his said Majesty's peace and a sour of discord amongst the neighbours at Stoke Damerall aforesaid, A common drunkard and one who keeps company and associates herself with other women's husbands in a lewd and wicked manner to the great damage and grievance of her said neighbours and other subjects of his said majesty to the evill example of others<sup>337</sup>

Thus the charge of immorality, bad reputation and drunkenness was bound up with a charge of disturbing the King's peace. This case shows that the legal system had mechanisms to deal with women and men who created non-specific disorder in their communities, and that those wishing to prosecute offenders for suspected adultery, perhaps had the legal knowledge to construct a case that would hold up in court as a breach of the peace. It was perfectly possible therefore, to be charged with and tried for antisocial or immoral behaviour during

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<sup>335</sup> Ingram argues that cases of scolding could be pursued as tactical legal moves in long-standing quarrels between community members. Complainants could use the powerful image of the scold to discredit. Ingram, M. op. cit. p. 66.

<sup>336</sup> Devon RO Q S B Michaelmas 1736.

<sup>337</sup> Devon RO QSB Michaelmas 1736.

this period. It is quite possible also, that considering the rarity of cases such as these in the larger sample of the Devon quarter sessions, that the procedure of formally charging anyone with this kind of offence was a last resort.<sup>338</sup> It may already be seen that rough music and community justice still occurred in the eighteenth century, and also that members of the community may have felt the need to confront offending characters without recourse to the authorities. With this in mind, it could be suggested that offenders like Mary Joy more typically found themselves faced with the anger of the community rather than the formality of the law.

Nevertheless, the charge of being a scold was not the only one that could be combined with an assault charge, presumably to strengthen the case for punishment. One very rare example from the Devon indictments, shows an assault charge combined with accusations of whoring. Susannah Tanner was indicted in 1735 for an assault on Samuel Ash, one of the parish constables of Honiton and insulting two Churchwardens (both gentlemen). Her indictment stated in the first instance that she was, '...and yet is a person of ill fame and name...and a haunter and frequenter of Bawdy Houses and other disorderly houses...'<sup>339</sup> It is difficult to know whether the charge had been put together as the most efficient way to deal with an idle and disorderly woman, or whether the background information was given to provide extra weight to the indictment for assault. In any case, the grand jury judged the indictment answerable in court. A case like this provides another example of the kind of disorderly behaviour a woman could be prosecuted for. However, it appears, from the Devon sample at least, that a more common charge relating to whoring, was that of keeping an ill

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<sup>338</sup> There are no references to scolds in the indictments for Somerset 1735-1745 or 1775-85, nor in those for Dorset 1735-45 and 1780-5, this is possibly suggestive of correction for such behaviour remaining outside the courts in many areas.

<sup>339</sup> Devon RO QSB Easter 1735.

governed and disorderly house. Fourteen Devon women faced these charges by indictment for the period 1735-1782.<sup>340</sup>

Other specific forms of female disorder could be dealt with summarily. Most notable in this respect, as evidenced from the summary convictions available for Devon during the period, are cases of oath swearing or cursing. The records pertaining to this method of punishment are rather scattered, and their presence in the quarter sessions bundles depended on the justice choosing to submit them. For the years 1746 to 1774, approximately 142 records for summary convictions against women can be found in the Devon quarter sessions bundles. Approximately 75 per cent of the convictions involving women are for swearing oaths or curses. The records themselves concerning convictions for swearing oaths do not give much detail on the true nature of this minor offence. This means that an analysis of the varying types of disorderly behaviour that could result in a conviction under the category "swearing" is impossible. What is interesting to note, however, are the degrees of oath swearing listed. In 26 per cent of these cases the offender was convicted of swearing one oath, approximately 46 percent for oaths numbering between two and nine, and the remaining 28 per cent concern offenders convicted of swearing ten oaths or more. It could be suggested that a literal translation of these convictions would be limiting in the analysis of these records. Many women were convicted for the swearing of five oaths, ten oaths, and some for 20 to 40 oaths. Joice Gribbham was convicted in 1762 for swearing 130 oaths.<sup>341</sup> It seems likely that the number of oaths recorded to have been sworn is a representation, either of the degree to which each woman was judged to be disorderly, or the seriousness of a particular offence. The connection between the swearing of oaths and uttering of curses seems to be recognised in these records, and in theory there was only a small step between these types of offences and those of being a scold, a sower of discord or a

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<sup>340</sup> The samples for Dorset 1735-45 show 2 similar cases; Dorset 1780-5 - 1 case; and Somerset 1735-45 -3 cases.

<sup>341</sup> Devon RO Q S B Epiphany 1762-3.

disturber of the Peace. A summary conviction for oath swearing or cursing might also have resulted from an assault or fight between two parties, although there is no way to confirm this. It is quite possible that the convictions relating to oath swearing could be translated generally into various types of aggression, or levels of anti-social behaviour. A Justice of the Peace may have chosen to record one woman's misdemeanour as very minor as a token warning, but recorded another woman's disorder in terms of a measure of, say 130 oaths, to make a clear distinction between these two offences, or these two women.<sup>342</sup> It would appear, though, that such convictions were potentially at the discretion of the justice, who probably made a decision on the character of the offender based on information given by whoever had brought the offender before him. This method of policing represents an important interface between policing on a community level and justice at its most informal. Both women and men were dealt with on this level.

### Conclusion

The evidence from the south west records for female assault and misdemeanour, in particular that from the quarter sessions rolls, shows that the category of 'assault' and 'misdemeanour' could refer to a vast range of disorderly and violent behaviour. This makes it extremely difficult to come to any firm conclusion or present particularly meaningful analysis on the prosecution levels for offences categorised as assault. On the one hand the falling levels of prosecution by indictment for the offence over the century might be a reflection on the different methods of prosecution used for assault. However they may also be representative of changes in ideas of what constituted disorderly behaviour and violence serious enough to be dealt with by indictment. Without knowing the exact nature of each assault case, information not available for the south west, it is

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<sup>342</sup> It would be interesting to measure the yearly activity of any one Justice of the Peace to see if any individual policy existed regarding re-offenders for example. However, the task would be difficult as summary convictions do not appear consistently for any period within these records.

impossible to investigate this line of enquiry. Similarly, the attempt to correlate constant trends like food prices and war against such drastically varying offences remains problematic. Some interesting questions are raised, nevertheless, about the female experience of such a phenomenon as mobilisation. This is especially the case during times of high prices, when patterns of prosecution for assault appear to follow those for theft more closely than during peacetime in the eighteenth century. What also becomes very clear from an investigation into the recognizances concerning assault prosecutions, is that any pattern of prosecution by indictment across this period needs to be examined alongside that of prosecution by recognizance. It is apparent from an initial examination of samples of recognizances from Devon, Dorset and Somerset, that these were sometimes exclusively used to prosecute a significant number of assaults and misdemeanours.

In general the category of assault in the records is very difficult to break down into sub categories, which would show the varying nature of violent altercations at the hands of women. However, it has been possible to identify particular types of offences that provide insight into attitudes towards female assault and disorderly behaviour in general. The records suggest that prosecutors in communities took some forms of threatening behaviour more seriously than others. Most notable, seems to have been the threat to burn a person's house down. Such a concern is hardly surprising, since fire could so easily spread to neighbouring houses, making the offence of arson clearly something much more than criminal damage and potentially likely to result in death and large-scale destruction. Some gender specific attitudes to disorderly behaviour have been identified, especially those concerning the language of defamation and the labelling of the scold. Those cases where labels were used as a preamble to an assault charge appear to suggest that the reputation of a female defendant could sometimes play an important part in the decision by a victim to prosecute. Other attitudes toward community values have been revealed through ritualised actions of those indicted for group assaults which were in fact forms of rough justice.

Their presence, albeit rare, in the south west records is evidence that women and men in communities still used ritualised and violent means through which to communicate their values.

An examination of the bulk of female assault cases in the eighteenth century show that women did not commit offences against the person within an exclusively female sphere. This is evidenced by the nature of group assaults, in all their forms, in the sample. It was common for women to be indicted alongside men for assaults against others, and it is highly likely that the reasons more group assaults like these lie in kinship networks and consequent feuds. Some allegiances between co-agressors and between groups of victims can be detected from the records. These were likely to be family or occupational connections (or both). These findings have important implications for historians researching women's role in their communities. The record of female assault appears to suggest that women were active in pursuing group and individual interests. Women were not confined to popular protests concerning the price of bread, nor were they necessarily taking advantage of possible leniency towards them by the authorities.<sup>343</sup> Judging from the relationship of women involved in group assaults to their kinsmen, political and social ties that already existed were the lynchpin on which women involved themselves in scuffles with other members of the community. This is not to say that women merely towed the line of their kinsmen's grievances (although this may have been the case in many incidences) but that they shared the same grievances through their obvious and intractable links with the economics and politics of that community.<sup>344</sup> Their physical

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<sup>343</sup> Thompson's rationale for the participation of women in bread riots was their involvement in face-to-face marketing, their consequent increased sensitivity to prices and their experience in detecting short-weight. While the female experience is valid here, the picture painted is somewhat two-dimensional. Women did not merely confine themselves to the business of bread buying. Thompson, E. P. *ibid* p. 116.

<sup>344</sup> Bodstedt's examination of two riots in Devon in the late eighteenth century outlines changes in riot participation and leadership. A riot occurring in 1801 and led by artisans ended in the "sophisticated control of "contract", in contrast to an earlier riot of 1795 which was led by women and labourers. Bohstedt, J. *op cit* p. 33. It is not clear whether Bohstedt is merely drawing a class distinction and naturally including women in the labouring classes, or whether he is suggesting that the female objective in riots is less sophisticated. His distinction does not however, leave room

conflicts put them firmly within the community arena rather than confining them to a separate and domestic sphere.

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for the possibility that women themselves might riot through complicated economic concerns, regardless of whether these concerns were shared by their male kinsmen.

## Chapter 4

### Offences Against the Person:

#### Part II - Female Homicide And Infanticide in the South West.

Homicide, the most extreme of offences against the person, stands apart from other offences, being deemed, in most circumstances, abhorrent. For both men and women, there were legal distinctions between one form of homicide and another determining the sort of charge those committing such a crime in the eighteenth century would face. The offence of murder, the planned and deliberate killing of a person, was rewarded by far the most harshly by the judge and jury in eighteenth-century courts. Within this category, however, existed two further sub-categories that are particularly pertinent to the study of female homicide. These are petty treason and infanticide. Although infanticide is dealt with separately in the second part of the section, petty treason can be seen to fall within a wider category of domestic or familial homicide. Both charges were determined by the relationship a suspect had with her alleged victim. Moreover, their study is useful in highlighting the particular attitudes that both communities and the formal eighteenth-century legal system had towards women in society. If a more contextualised account is to be presented, however, the focus of the study needs to be widened to include less legally specific homicide cases.

This section will deal with homicide in two parts. The first deals with more general cases of homicide, including manslaughter, murder and petty treason. Although the source material available for homicide in the south west is scarce, there exists some interesting qualitative material to examine. This evidence throws light on the power structures and relations of both women and men, especially regarding traditionally accepted ideas about the split between domestic and public arenas. What should be noted at this point, however, is the inclusivity of the domestic arena in eighteenth century rural society. Rather than being a private and restricted forum, the eighteenth-century household was an



important social convention, within which people worked and related to each other. It is for this reason that we may view homicide in all its manifestations, within the scope of the everyday experiences of women and men, and not as the congenital behaviour of deviants on the margins of society.<sup>345</sup> The study deals with infanticide separately from other homicides and has been confined to the second part of the section. The offence was identified by both contemporaries and by historians as one defined by the status and situation of the woman. It was also seen within the inevitable dilemmas she would have faced with an unwanted pregnancy.

Evidence for cases of female homicide in the south west is very rare. There are only fifty-nine entries in the gaol books for the western circuit (covering all four counties) for the years 1735-1785. This amounts to a mean average of approximately one case every four years for each county. Female homicide cases were therefore very rare.<sup>346</sup> Although in theory such offences were more easily visible to the authorities - more easily detected and more readily reported, there is some debate as to what extent it is underrepresented.<sup>347</sup> The quality of information that could be gained from a comprehensive run of indictments and depositions for the period would, no doubt, have provided invaluable insights into this account. As such information is unavailable, this section will therefore use other sources to compare established views on female homicide with the

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<sup>345</sup> Such offenders - men and women- surely existed but the nature of the south west source material does not allow us to identify them for certain.

<sup>346</sup> Walker's evidence for the early modern period shows that low involvement by women for these offences was not unusual. Just over one fifth of all homicide cases in the period that she studied involved women. She also argues that the phenomenon was universal. It must be reiterated that such low involvement should not lead us to conclude that women were one fifth as likely to commit manslaughter, murder or infanticide (Walker includes infanticide in the category of homicide here) but that more probably, perceptions of female violence affected the representation of such acts in the court records. Walker, G. "Crime, Gender and Social Order in Early Modern Cheshire" (Unpublished PhD Thesis University of Liverpool 1994) pp. 109-110.

<sup>347</sup> A concise discussion of the problematics of reported murder statistics can be found in Radzinowicz, L. and King, J. The Growth of Crime: The International Experience (London 1977) pp. 31-34. They argue that although it has been assumed that this is one crime where the official statistics come very close to the reality, the existence of murderers who go on committing strings of offences over long periods of time shows otherwise. Moreover, in the modern age, over half of all known murders are committed within family and close friendship circles. Within this sphere, it is not only easier to commit murder, but to conceal it.

profile that the assize records (and some miscellaneous accounts) do give us. The section will also discuss what can be gleaned from the more qualitative records, where they can be found. It can be argued that homicide was most commonly an extreme manifestation of social conflict. Conflict itself was enmeshed in the fabric of human relationships, and in this case it can be seen as an avenue to investigate the types of relationships that can be found between women and their peers, servants, husbands and masters in rural society.

Homicide can be further categorised into three legally defined offences: murder; petty treason and manslaughter. A conviction for murder or petty treason invariably led to a sentence of death. These offences were removed from the privilege of benefit of clergy in the sixteenth century.<sup>348</sup> In the case of murder under the common law, this was hanging, unless an act of petty treason had been committed. Charges of manslaughter were comparatively rare, although if the accused could prove that she had no prior intention of killing the victim, then the charge of murder might be reduced to manslaughter (punishable by burning in the hand).<sup>349</sup> Petty treason was a charge specifically related to the murder of husbands by wives; and masters by servants. It carried a more symbolic sentence and, in the case of women who murdered their husbands, it was burning at the stake. The nature of such a punishment can be seen to show connections between petty treason and sin against the church. The traditional relationship between the church and the state meant that allegiance to the king was tantamount to allegiance to God. By committing any act of treason, one was therefore committing an act of heresy, the only other crime for which burning was a punishment in the early modern period.<sup>350</sup> Punishments that involved fire and

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<sup>348</sup> 12 Hen VII, c 7 (1596) removal of petty treason: I ((ed)) VI, c 12, s 10 (1547) removal of murder; 4 and 5 P and M c 4 (1557) denied accessories to murder. Cited in Beattie, J. M. Crime and the Courts in England 1660-1800 (Oxford 1986) p. 77.

<sup>349</sup> Beattie argues that by the end of the eighteenth century more offenders were being charged initially for manslaughter. It could be argued that this was perhaps a recognition of the overwhelming nature of homicide, which was familial and domestically orientated. Beattie, J. M. Crime and the Courts p. 91.

<sup>350</sup> See Walker, G. Crime, Gender and Social Order in Early Modern Cheshire (Unpublished Phd thesis, Liverpool University 1994) p. 143.

water might be conceived as symbolic of a purging of the soul. The fact that women were strangled until unconscious by the executor, before being burned at the stake, suggests that the object of the punishment was not to inflict bodily pain on the murderess, but to cleanse her soul of sin and strike the fear of God into the crowd of spectators.

With such punishments for homicide being the result of a guilty verdicts, it is not surprising perhaps, that the number of such verdicts for female homicide in the eighteenth century were so small. Although 92 per cent of homicide cases listed went to trial, only 8 women were found guilty of murder in the period 1735-1785. In addition to this, a further 6 women had their sentences reduced to manslaughter. There may well have been serious problems in the eighteenth century, in establishing the extent to which a killing was premeditated. This may go some way to explaining the relatively low conviction rates. Any doubt on the part of the jury might lead to a reduction of the sentence, or the return of the not guilty verdict. It does not seem to be the case that women were ascribed less culpability if their offences were seen to have been committed as part of a group. The assizes list 20 cases of homicides where a woman and one other person was supposed to have been involved in a suspected murder. 19 of these cases were tried. A female co-defendant was identified in only one case<sup>351</sup> Where women were charged with homicide with another person, therefore, it seems that these were predominantly men. Four cases of these 19 resulted in a guilty verdict and these verdicts were delivered to all the parties charged. In only 2 of the 14 cases resulting in a not-guilty verdict, however, were distinctions in verdicts made between the female offender and her male co-defendant.<sup>352</sup> It would appear that juries tended to find group defendants either all guilty or all not guilty. However,

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<sup>351</sup> This was the case of Elizabeth Branch and her daughter, which is detailed below.

<sup>352</sup> These were the cases of Mary Wilkins, who was found not guilty and her husband Francis, who was hanged for the murder of Jane Wilkins, PRO ASSI 23/6; and Mary Lobb, who was found not guilty and her probable son, John Lobb the younger, who received a reduced sentence of manslaughter for killing John Lobb the elder, PRO ASSI 23/8.

this should be qualified by noting that such trials for group homicide probably only reached open trial if there was sufficient evidence to try all in the first place.

Interestingly, a higher proportion of guilty verdicts results when statistical evidence relating to trials and verdicts for petty treason are separated from those relating to homicide in general. The most likely explanation for this is that for trials of this sort to occur, grand juries may have insisted on substantial evidence. Without the assize rolls, containing the necessary indictments and depositions, definite conclusions about the decisions made by grand juries cannot be reached. However, there were only 10 trials for petty treason by women during the period, an average of 2 in any one decade. Of these 10 trials, the outcome of 6 were guilty verdicts. Of these, 4 found women guilty, one found a male co-conspirator guilty, but acquitted his mother and one reduced the sentence to manslaughter. It is difficult to reach a conclusion on whether the method of killing determined the verdicts for petty treason as not all cases listed that much detail. Certain forms of homicide were easier to investigate and this might well have had an affect on circuit juries. At an earlier stage, when indictments were judged by grand juries, the circumstances of any treacherous murder would have had an enormous impact on whether the case reached open court. Because a guilty verdict for petty treason carried such an enormous and symbolic penalty, it is probably not surprising that so few cases reached trial. The relatively high number of guilty verdicts resulting from them is not so much a reflection of a harsh view of such a crime, but more probably an indication of thorough review at an earlier stage in the judicial process.

Petty treason was the most legally distinct form of domestic homicide. It is unfortunate that very little qualitative information from the western circuit assizes exists to shed light on the circumstances of these offences, but what the Assizes material provides is of some use. Prosecution and conviction for this offence no doubt evidences dreadful conclusions to prolonged periods of disempowerment, and also, paradoxically, an indication of female power-struggle in the household

for the women concerned. This is especially the case for wives charged and convicted for killing their husbands. Contrary to their legal position, wives did exercise authority over their domestic surroundings, and this would often have included their husbands. Although the legal position of women throughout Europe during the early modern and pre-industrial period was one of contractual obedience, historians have found evidence that points to a more practical reality.<sup>353</sup> Power struggles between men and women, and women and women, were often commented on by contemporary humourists; and of some concern to those men who found themselves ruled by their wives.<sup>354</sup> If such struggles took on a malicious nature, a relationship based on antagonism and cruelty could develop. Such a relationship could lead to spousal murder. At the same time, the consequences for men and women were, as has been discussed, very different and reflected the conceptual patriarchal order. This double-standard may well have been recognised by both those enforcing the law and those subject to it. Thus, if the accused woman was able to demonstrate that the death of her husband was due to excessive marital violence between the two, or a moment of anger on the part of the accused, the verdict could be reduced to manslaughter. This might well have been the case for two of the listed homicide cases in the western circuit gaol books.

The deciding factor for murder and petty treason was, of course, the presence of intent.<sup>355</sup> This goes some way to explain the more harsh response to certain other forms of homicide. Of the three who were sentenced to death by burning for petty treason, two were cited as having poisoned their victims. Such a method was absolutely evident of premeditative murder, seen as extremely devious and a

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<sup>353</sup> For a comprehensive picture of the legal and social construction of women during this period see Hufton, O. The Prospect Before Her: A History of Women in Western Europe Volume One 1500-1800 (London 1995) pp. 25-58.

<sup>354</sup> Special stang ridings were performed in communities as informal punishment for the hen-pecked husband. Such power structures were probably seen as a perversion of the natural order. Fletcher, A. Gender, Sex And Subordination In England 1500-1800 (London 1995).

<sup>355</sup> Hufton argues that women were anxious to show that such killings were a result of drunken brawls or self-defence. Hufton, O. op. cit. p. 291.

violation of trust. Poisoning was not only seen as a particularly heinous method of killing, but also as a woman's weapon. One seventeenth-century writer outlined the subversion of power struggles that it evinced:

Truly...this poisoning art called *veneficium* of all other is most abominable, as whereby [crime] may be committed where no suspicion may be gathered nor any resistance made; the strong cannot avoid the weak; the wise cannot prevent the foolish, the godly cannot be preserved from the hands of the wicked; children may thereby kill their parents, the servant the master, the wife here husband so privily, so incurably, that of all other it hath been thought the most odious kind of murder<sup>356</sup>

As the text implies, not all cases of petty treason involved the killing of husbands. The murder of a master by a servant was given the same classification. Although this offence is extremely rare, it should not be made distinct from spousal murder, as it took place within the same arena. Rebecca Downing was burnt at Heavitree in Devon on July 29th 1782 for the murder by poisoning of her master, Richard Jarvis. A broadsheet outlining her life, character and dying behaviour states that she was led to poison her master through "ignorance and gloom". Her life was described as being from birth "in a state of bondage, servility, and ignorance", the author of the broadsheet therefore arguing that,

it cannot surprize, that she should contract an indolence and sullenness of temper, and commit frequent faults in judgement and conduct, sufficient to provoke chastisement from a master advanced to the tedious old age of 70.<sup>357</sup>

The author of this account attributes Downing's crime to her illegitimacy (her parents being described as "transiently connected by appetite, rather than affection"), lack of proper affection as child and lack of education. This was seen

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<sup>356</sup> Walker, G. Crime, Gender and Social Order in Early Modern Cheshire (Unpublished Phd thesis, Liverpool University 1994) p. 147 originally cited in Thompson, C. J. S. Poisons and Poisoners (London 1993) p. 109.

<sup>357</sup> Anon The Life, Character, Confession, and dying Behaviour of Rebecca Downing, burnt at Heavitree, Monday, July 29 1782, for Poisoning her Master, Richard Jarvis (Broadsheet) Devon RO 997Z/Z30-42 Miscellaneous files.

lead to a very negative outlook on her life as a servant. The author's agenda is revealed in a general statement about the place and treatment of illegitimate infants, "...thus circumstances are mostly considered as born but to labour, and little attention is paid to education." Thus in the eyes of the middle-class commentator, the monster society created was manifested in Rebecca Downing, a Godless creature who "was with much difficulty taught to repeat the Lord's prayer...but, being catechised, was incapable of fixing a meaning to the words."

It seems apparent however, that Downing's life as a charge of the parish, followed by an apprenticeship, was lonely and unhappy. From the age of eight she was restrained in a household containing only three people; an old master, his granddaughter and herself. Her apprenticeship meant employment picking weeds in fields, attending cattle and other menial tasks. This situation must have been fairly common in eighteenth-century rural communities (the broadsheet makes general statement to that effect), especially for illegitimate children formerly in the care of the parish. Furthermore, although householders taking parish apprentices in were given some financial incentive, it is not likely that all those obliged to take responsibility, did so happily. Rebecca Downing was in the service of Jarvis for eight years before she poisoned him with arsenic. It is possible that during this period of service, she received very little care, or became the victim of abuse. Whatever the circumstances of the case, it seems little wonder that in her confession she, "assigned a desire of being free from servitude as the motive." Downing's domestic service, therefore, was an unhappy one, and although her crime was of a type very rarely found in the courts, her situation could not have been untypical. Her act of petty treason was a result of a build-up of resentment for her lonely and disempowered position; it was the most extreme manifestation of discontent. Ironically, her infliction of the ultimate power of the poisoner was the very premise on which she found herself sentenced to be burnt.

In general, there are so few cases of homicides in the western circuit assizes for the period, that it would be unwise to chart any patterns of prosecution. Instead, a

more fruitful line of investigation would be to examine the circumstances in which women were seen to commit these homicides. It is particularly interesting, to look beyond petty treason – the worst possible conclusion to any period of domestic violence - and extend the examination to other homicides occurring with a familial context. The gaol books do, at least, give enough information for a speculative analysis, especially on the extent to which domestic homicide featured in the records. Of the 61 cases of homicide that the gaol books list, it can be calculated that 21 charges related to a suspected killing within a household or family.<sup>358</sup> This figure has been calculated from the very concise information provided on the lists, it includes charges of petty treason and also assumes that those victims with the same surname as the accused represented familial homicides. It should not be assumed, however, that they necessarily occurred within a geographically defined private space. This constructed record of female domestic homicide is therefore probably a modest one, especially as the killing of servants within the household is not always apparent without other sources. In fact, only two cases from the sample can be definitely identified as murder of servants by mistresses, one of which is identified because of newspaper accounts and witness statements.<sup>359</sup> This suggests an unrepresentative sample of prosecutions for female domestic homicide if Sharpe's findings for the seventeenth century are considered. These show that, during the period 1560-1709, domestic homicide averaged at about 24 percent of homicide as a whole. Moreover, out of the 108 men and women accused of killing family members or servants, 49 were women.<sup>360</sup>

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<sup>358</sup> The gaol book lists show 9 charges for homicide in Cornwall, 7 charges in Dorset , 21 charges in Devon and 24 in Cornwall. PRO ASSI 23.

<sup>359</sup> This was the murder of Jane Butterworth by Elizabeth Branch. Details of the cases are outlined below.

<sup>360</sup> This can be contrasted with only 31 women accused of killing outside the family, out of a total of 444 people. It would appear that domestic homicide is more characteristic of the prosecutions of women than men. Sharpe, J. A. Crime In Early Modern England 1550-1750 (London 1984 )p. 34-37.



Some homicides within the domestic sphere were obviously culminations of periods of abuse. One well documented example of such a murder was the case of Elizabeth Branch and her daughter Betty, who were tried, convicted and hanged for the murder of their female apprentice Jane Butterworth in 1740. Their case received national attention. The Derby Mercury gave two detailed and sensationalist reports of the murder, the coroners report and the execution. The report very closely follows the deposition given by the dairy maid servant to the Branches, Ann Somers. This deposition gives us an insight into why such a killing took place, and places all the characters in an understandable context. Jane Butterworth died as a result of being beaten to death by both women, who, it is presumed, thought they were disciplining her at the time. Ann Somers deposition stated that although Butterworth "behaved herself in an orderly and cevile[sic] manner...she apprehended the said Mrs Branch and her daughter to be very passionate people and have seen them beat the said Butterworth severall times on very slight occasions..."<sup>361</sup> Somers was the unfortunate witness to the beating of Jane Butterworth that led to her eventual death. As the Dairy maid, she was powerless to stop the beatings, although protested at them and refused to actively participate:

the said Elizabeth Branch the mother bid this informant to lay the said Jane Butterworth down on the ground which she refused to do telling her it was better to send the girl from whence she came than to beat her so often

Somers stated in her deposition that she had protested further but was told that it was not her business. Such information shows us that in the first place, the power of the master or mistress over servants was autocratic and that this was understood by all in the household. Moreover, the account reveals that Somers herself suffered abuse at the hands of the two mistresses. When she informed her mistress that Butterworth was dead, "she [Mrs Branch] called her [Somers] a

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<sup>361</sup> Somerset RO DD/X/WI 37 Information given by Ann Somers, Hemmington 1740 before Douttor, Sheriff of the county of Somerset.

Welch bitch..." Indeed, it would seem that the Branches abused all three servants under their roof. The Derby Mercury also reported that Henry Butler, a male servant, deposed, saying that "they often beat him very barbarously: and once till he be-t himself; and they took his excrement in their hands and thrust it into his mouth, and made him eat it."<sup>362</sup>

The argument over the culpability of the Branch women seemed to be based on evidence that they took the disciplining of Jane Butterworth too far and were, by these accounts, very cruel to all three of their servants. Although it cannot be concluded from this evidence that all relationships between masters, mistresses and servants were based on tyranny and fear, the case does at least show that power relations between the four members of this farming household were very clear-cut. In this case, fear on the part of the apprentice Butterworth and the belief on the part of her two mistresses that she was consistently disobedient had caused her death. Butterworth had been sent the previous evening to fetch bran from a house in the neighbouring village, but had returned with none. Rather than admitting (as was the case) that she had not known the way to the house, she lied, saying that there was no bran to be had from there. Her lie was uncovered when the son of the neighbouring household (who, it would appear was in the casual employment of the Branch women) claimed that no-one had called for bran on the night in question. The evidence from the depositions and reports suggest that this murder was not necessarily an enactment of personal hatred for Butterworth, but an overly severe manifestation of the mistresses' ideas of power and discipline. A certain amount of violence in the household was probably sanctioned as a way to discipline servants during the period, just as in the case for the discipline of wives. This sanctioning extended itself to both men and women in positions of authority.

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<sup>362</sup> Extract from The Derby Mercury May 1st 1740. Somerset RO T/PH/hea 1.

The case also illustrates the vulnerability of both male and female servants in households during this period. This is not to suggest that all servants were mistreated, but that there was always the potential for abuse. Moreover, that abuse could be administered from anyone else in the house in a position of power. This vulnerability was exacerbated, no doubt, by the fact that both male and female servants could be sent, at a very young age, to households and to employers who were reluctant to take responsibility for them. Although there is no evidence to support the assertion that Butterworth was very young, it may be inferred from her lie about the bran that she acted as little more than a fearful child. Female apprentices were often put into households at a young age, as the case of Rebecca Downing illustrates. Although the system of apprenticeship was the classic route by which women trained in the skills of housewifery, it seems that in some cases the system let individuals down badly.

The institution of marriage was no less fallible than the system of apprenticeship in this period. Although no depositional evidence has been found to illustrate the circumstances leading to domestic homicide by a woman on her husband, other sources show the kind of disharmony that could develop between married partners. For the purpose of building an effective argument around such scant evidence therefore, it is necessary to view petty treason, and other domestic homicides, within the general context of domestic violence. It is clear that, in marriage, certain behavioural standards were expected from both the husband and wife and that they were based on respect and consideration.<sup>363</sup> It should also be noted that women were subject to far more restriction in the marriage contract and their discipline by husbands was seen as more acceptable. One might be led to assume that this mismatch in power relations led women in unbearable marital situations to kill husbands, this being the only means to alleviate their problems.

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<sup>363</sup> French wives expected to be treated *maritalement* (as wives) which meant to be treated with respect and not like a servant, among other things. Husbands expected their wives not to be idle, to manage household affairs and children well, and not to generate bad reputation. Both parties would feel abused if the other were adulterous. By all accounts an ordered household and one free from antagonism was the aim. Hufton, O. The Prospect Before Her p. 293.

This appears too simplistic an assumption. There is evidence to suggest that women could vent their discontent through legal means if they so needed, although the effectiveness of these means can only be speculated upon. The case of Mary Badman of Somerset shows how one woman attempted to deal with violence in her marriage. Her article of the peace against her husband shows the kind of behaviour that could lead to a partner fearing for their physical wellbeing. The purpose of the article was to ask for the assistance of the quarter sessions court in securing sufficient sureties for the good behaviour of her husband, their marriage having almost completely broken down. She claimed that:

...her said husband kept company and lay about with other women and in consequence thereof has had several Bastards which has been the occasion of much uneasiness and has made this deponent very unhappy....That her said husband frequently abused and beat her and he keeping another woman in house with him and his dislike and cruel treatment of this deponent increased to such a height that...she and her said husband parted and continued to live apart about one year during which time he kept the other woman in house with him and then this deponent applied to a justice of the peace for support upon which she was ordered to go and reside with her said husband who was ordered to maintain her...that she thereupon went to live with her said husband... but his behaviour towards this deponent has been little else but...cruelty and severity he having very often beaten abused and ill treated this deponent and threatened and attempted to Murder her frequently, declaring that it was no more sin to kill her than it was to kill a toad.<sup>364</sup>

The concluding sentences of this article against the peace states that the request was being made out of fear for physical wellbeing, and not out of maliciousness or jealousy. It is evident that Mary was not necessarily seeking reconciliation from her husband, as she appears only to be with him by order of the magistrate. It is also clear, however, that Mary was extremely unhappy with the marriage, in particular because of her husband's fathering of bastard children. It is also apparent that her own finances seemed to be compromised in favour of his mistresses. Samuel Badman's reported behaviour also seems to be manifest of his

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<sup>364</sup> Article of the peace against Samuel Badman 1782. Somerset RO Q S I file 402 (July sessions).

unhappiness with the partnership. Having mistresses and threatening his wife was perhaps a way in which he dealt with his discontent. The fact that he was also supposed to have attempted to murder his wife was likely to have been the reason why she sought help from the courts. Mary Badman's case was not an isolated either. Charity Edwards appears to have even stronger reason to seek help. She reported to the Justices Edward Phillips and William Rodbard that:

the sixth day of this instant april her said husband had frequently and violently assaulted and abused her and threatened to murder her. That ... on her return from a neighbour whom she had visited, her said husband abused her very much pulled off her cap and handkerchief struck her down and kicked her many times and afterwards ... to go upstairs where he again assaulted her and with a double rope beat her for the space of half an hour by which she was much bruised and injured and in great fear and terror of her life. That from the repeated threats and behaviours of her said husband towards her she believes and fears he will either murder her or do her some bodily harm<sup>365</sup>

This occurrence seems to have more place in a deposition or indictment for assault, but it does not appear from the records that husbands and wives were inclined to formerly charge their partners. Wives may have found it difficult to properly identify where the line had been crossed between discipline and physical abuse. When they were able to do so, as in the above cases, they seemed concerned only with securing help to control the behaviour. Husbands, on the other hand, may have been disinclined to seek help from justices over female violence and abuse out of pride and embarrassment. These factors might well have contributed to the seemingly few numbers of trials for petty treason (the murder of a husband). This is because there was less likely to have been a formal recorded history of violence by a wife against her husband - evidence which, if presented to a grand jury with an indictment for petty treason, might well have resulted in a true bill being called.<sup>366</sup>

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<sup>365</sup> Article of the peace against Robert Edwards 29th April 1783 Somerset RO Q S I file 403 (April sessions).

<sup>366</sup> Evidence of the husband's voice in cases of marital breakdown do exist, however. Thomas Lang sent notice to the Sherborne Mercury in 1761 that his wife, Mary, had lately eloped from her

It might be reasonable to assume that Familial homicide (specifically spousal murder) was the most extreme consequence of a prolonged deterioration of domestic and marital relations. However, the source material, where found for the south west, can also reveal a picture of power relations that should be considered within a broader context than that of homicide alone. The two articles cited above show that spousal murder could be a real concern to those in unharmonious marriages, although it is unfortunate that there is no depositions material available to illustrate the argument for male fear of women. These sources, and the others cited in the chapter also provide insight into the way that violence in the familial context could constitute political dynamics. It is worth noting, therefore that homicide and petty treason is more usefully viewed within the wider context of assault, violence and disorder in households and communities in the eighteenth century. In order to present a more comprehensive picture of homicide, therefore, evidence demonstrating domestic relations from the previous chapter on assault and violence in rural society might be taken into consideration .

The value of viewing homicide within an extended domestic context is further evinced by the fact that wives and husbands were not the only people at risk from household murders. Masters, mistresses, servants and apprentices were all at risk of abuse, both short-term and long-standing. The connection between such strife and murder and manslaughter is strong. A third of all female homicides tried before the assizes in the four counties over this period might feasibly be identified as familial or domestic homicide, and this figure could be an underrepresentation.<sup>367</sup> From the very limited qualitative evidence presented, it

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said husband: "These are to give notice to all person not to trust her; for if they do, her husband will not pay it after this notice given." Sherborne and Yeovil Mercury February 9th 1761. Such advertisement became increasingly common from 1761 onwards. They were possibly a vent for the frustrations of the deserted husband, or even disguised threats to the wives themselves ;although in some cases they served as warnings against unscrupulous women.

<sup>367</sup> This assertion has to be tempered by the fact that the aggregate figures are very small.

can be seen that murders of this kind might typically follow a long period and unhappiness and/or abuse. Underlying these narratives of abuse and discontent are the established power relationships between the victims and killers. The source material, while ostensibly outlining the criminality of the accused and the circumstances of the crime, also reveal much about those structures.

Evidence from the south west records suggests that female homicide occurred primarily within the familial or domestic context. It would be tempting to assume, therefore, that familial and domestic homicides have particular domestic and private characteristics, but this might not always be a helpful distinction when attempting to reach conclusions about female homicide. It would be unwise to conclude that women committed homicide in a limited sphere because they were commonly confined to clearly defined private spheres in the eighteenth century.<sup>368</sup> This argument would, in turn, rest on a problematic distinction between public and private spheres in the eighteenth century.<sup>369</sup>

The family in the eighteenth century included everyone living in the same household and this might include people in the employment of householders. More people than just members of immediate families, or even servants entered rural households in the eighteenth century. Households were also the places in

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<sup>368</sup> An example of the sort of assumptions made about female homicide can be seen in Beattie's work on familial homicide in rural and urban areas. Beattie suggests that women might have become more involved in public, non-domestic affairs that led to homicide charges in urban and not rural areas. The western circuit assizes, no doubt, dealt with a disproportionate number of offences set within a rural or semi-rural context. This might well explain the predominance of familial homicide cases, but strictly defined ideas about gendered space should not be relied upon to explain its prevalence. Beattie, J. M. Crime and the Courts p. 107.

<sup>369</sup> Amanda Vickery warns of the dangers of adhering too closely to key words like domesticity and gendered spheres, which are in danger of becoming unquestioned keywords in the discourse of women's and gender history:

The economic chronologies upon which the accounts of women's exclusion from work and their incarceration in domesticity depend are deeply flawed. At a very general level, eighteenth and early nineteenth-century women were associated with home and children, while men controlled public institutions, but then this rough division could be applied to almost any culture - a fact which robs the distinction of analytical purchase.

Vickery, A. "Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History" in Historical Journal (36) 2 (1993) p. 413 (383-414).

which both men and women were introduced to the workplace, and this makes the traditionally understood concept of the private sphere difficult to attach to them. Furthermore, the family extended itself to include ties of kin, relatives by marriage and trade, some of whom would, no doubt, be neighbours. It could be argued that the domestic sphere, in as far as the concept can be applied to eighteenth-century rural society, included the community arena. Thus, homicides occurring outside the household, say, perhaps between neighbours, may have had similar characteristics as those taking place within it. The predominance of identified cases of familial homicide in the sample of female homicide is, no doubt, significant. It probably reflects the nature of rural and semi-rural societies in the south west during the period. However, strictly defined ideas about gendered space should not be relied upon to explain female familial homicide.

Historians have, quite prudently, seen infanticide within the context of early modern and modern attitudes to unwanted pregnancies and illegitimacy. This has much to do with the nature of the legislation regarding infanticide itself.<sup>370</sup> The offence did not enter the legal discourse properly until the seventeenth century, but brought about significant changes when it did. Infanticide was previously seen as a lesser offence, and dealt with in the church courts. Church courts reacted to cases of infanticide by shaming those who came before them, possibly by making them wear white sheets before their congregation, or sometimes by public whipping.<sup>371</sup> The attitude of the state towards infanticide changed in the sixteenth and seventeenth centuries when secular courts began to try cases and treat them as murder, which carried the penalty of a death sentence. Increasing sensitivity towards the connections between infanticide and bastardy became very important at this time. The statute of 1624 was explicit about this connection and is narrow in its interpretation of the circumstances that commonly

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<sup>370</sup> For example see Malcolmson, R. W. "Infanticide in the Eighteenth Century" in Cockburn, J. S. (ed) Crime in England 1500-1800 (London 1977) pp. 187-209.

<sup>371</sup> Stone, L. The Family, Sex and Marriage in England 1500-1800 (London 1977) pp. 473-4.



led to infanticide, thus criminalising a certain section of the female population – the single woman. It cannot be assumed, therefore, that the records for infanticide are quantitatively representative of the occurrence in the eighteenth century, of infant murder.<sup>372</sup> It reflected a recognition of a particular motive for infanticide, but also worries over the morality of certain sections of the population, namely the 'lewd and unnatural women' or the 'looser sort'.<sup>373</sup> Such legislation emphasised the criminality of a particular class of offender. It also explains the changes in the laws and jury response to offenders in the seventeenth and eighteenth centuries. The act related to a specific form of infanticide, that of bastard neonaticide. It stated that:

if any woman after one month next ensuing the end of this session of parliament being delivered of any issue of her body, male or female. which being born alive, should by the laws of this realm be a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself or the procuring of others, so to conceal the death thereof, as that it may not come to light, whether it were born alive or not, but be concealed, in every such case the said mother shall suffer death as in case of murther, except such mother can make proof by one witness at the least, that the child (whose death was by her so intended to be concealed) was born dead.<sup>374</sup>

This act emphasised the concealment of pregnancy as *prima facie* proof that the death of the child was premeditated, which effectively meant that the guilt of certain sections of the population, ie. those more likely to conceal their pregnancies, was probably presumed.<sup>375</sup> However, the statute was ambiguous in

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<sup>372</sup> The murder of a child of any age committed by married women or men, was not subject to the 1624 statute and was not classed as infanticide. Married women who could not afford to feed and clothe any more children could seek help from their husbands, kinsmen and women, and even the midwives. In many cases it could be argued that infanticide was the ultimate form of population control. Assuming that this is the case, the record of infanticide cannot faithfully represent the figures for infant mortality caused through deliberate neglect, manslaughter or murder. See Stone, L. The Family, Sex and Marriage in England 1500-1800 (London 1977) pp. 473-4.

<sup>373</sup> Quoted from William Gouge Domestical Duties and Percival Willoughby Observations on Midwifery cited in Fletcher A Gender, Sex and Subordination p. 278.

<sup>374</sup> 21 James I c 27 in Hoffer, P. C. and Hull, N. E. H. Murdering Mothers: Infanticide in England and New England 1558-1803 (New York 1981) p. 20.

<sup>375</sup> The concealment of birth over a nine month period was seen as a duration of premeditation perhaps. Such a concept would contribute to the horror of the crime.

other respects and seemed to contradict itself over the issue of whether the child was born alive or not. This ambiguity probably allowed for a certain amount of discretion by juries and judges. When considering the pattern of convictions over time, or the reasons why some women were convicted whilst others were not, it should be noted that charges of infanticide could have been interpreted very differently under the statute.

Infanticide was a crime seen by contemporary commentators as having direct links with immorality and inhumanity and it was seen to be a growing problem. The act of 1624 has been associated with a period of moral panic on the part of the gentry and the Church, which formed the context for both the bastardy and infanticide legislation of the late sixteenth and early seventeenth centuries. The group which was most seriously affected by these acts had been "defined as a threat to society's values...and thus made the target for public regulation".<sup>376</sup> Because whoring was strongly associated with the murder of children sinfully begotten, the women found guilty of such crime were often described as monsters.<sup>377</sup> Commentators also imagined the extent of this crime to be very great. The Northampton Mercury reported in 1737 that infanticide was:

a crime to the scandal of our country, little known but in great Britain, where more murders of this nature are committed in one year than in all Europe besides in seven<sup>378</sup>

The infanticide statute arguably created a specific profile, not only of the offence, but the offender. This can be supported by an allusion to wider moral issues surrounding infanticide. It is notable that the attitudes of moralists towards prostitutes in the period seem to follow similar narratives to that created by the 1624 statute. A correlation exists between the change in attitude towards the

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<sup>376</sup> Fletcher, A. Gender, Sex and Subordination in England 1500-1800 (New Haven and London 19985) pp. 278-9.

<sup>377</sup> Hoffer, P. C. and Hull, N. E. H. op. cit. p. 66.

<sup>378</sup> Malcolmson, R. W. "Infanticide in the Eighteenth Century in Cockburn, J. (ed) Crime in England 1500-1800 (London 1977) p. 189-90.

plight of the bastard bearer, manifested in the establishment of the London Foundling Hospital in 1746, and that of the prostitute. Links between narratives relating to both types of women were very strong, both being seen as 'fallen' women.<sup>379</sup>

Infanticide legislation was also strongly linked to the bastardy laws, which find their roots in the Elizabethan age, when a law passed in 1576 outlined the concern over the defrauding of parishes by parents of bastard children. Legally, bastard children were chargeable to the parish, but the law of 1576 was an attempt to avoid this burden by insisting that the mother of an illegitimate child named the father. Once the father was named, the justice's main concern was to coerce him to give a bond or weekly payment to the parish for the maintenance of the child. In some cases a marriage between the two could be secured. However, there were no powers to enforce either party to marry. The practice of answering for bastardy continued into the eighteenth century as Mary Holland's information of 1730 shows:

This examinant upon her oath saith that she is now with child which child when it shall be born will be a bastard and may then be chargeable to the said parish of Hallwell or to such other parish where she shall belong. And that one Thomas Parge sone of Trisham Parge of the said parish of Hallwell yeoman is the true father of such child or children she now goeth with as having had at

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<sup>379</sup> Madan's account of the life and death of a converted prostitute conforms to the narrative of the fall into prostitution. A young woman of the lower middling sort, being seduced by a libertine, was left pregnant and unmarried by him. Madan, M. An Account of the Triumphant Death of F S, a Converted Prostitute, who dies April 1763 Aged Twenty Six Years (1763) The fate of resulting children was usually abandonment or nursing by other mothers. Concerns about the links between immorality, prostitution and infanticide probably resulted in the establishment of the Foundling Hospital. The new emphasis on women being forced into low situations is shown in Defoe's account of the causes of the increase in Street-walking in London, "Multitudes of men...decline marriage, or at least defer it...while the proportion of women, who arrive at Puberty in this time, and are not provided for by their kindred, prompted by nature, and urged by wants, are forced to become the instrument of satisfying those desires in men..." Anon [attributed to Defoe, D.] Some Considerations Upon Street Walkers. With a Proposal for lessening the Present Number of them. In two Letters to a Member of Parliament: To Which is added a Letter from One of Those Unhappy Person, when in Newgate and Who was Afterwards Executed for Picking a Gentleman's Pocket , to Mrs --- in Great P--ney Street (c. 1735) For a comprehensive study to changes in law and attitude toward prostitution see Henderson, P. Female Prostitution in London 1730-1830 (Unpublished PhD Thesis 1992 ).

severall times carnall knowledge of her Body. The first time was about three weeks before lammasday last in a garden in the said parish of Hallwell belonging to the said Tristham Parge (with whom the said Thomas Parge his son then and now liveth) when and where he had Carnall Knowledge of her body. The second and last time was three days after the first time in the house of the Rev'd Mr William Law Rector of the said parish of Hallwell (with whom the Examinant was then a servant) on a bed in the parlour chamber when he had again Carnall Knowledge of her body, and that noe other person goeth with but the said Thomas Parge and further saith not.<sup>380</sup>

The justice appeared in these cases to insist on a detailed account of the relationship between the mother and the suspected father and also that there was an emphasis on the exclusivity of that relationship. If the mother refused to name the father, or the father refused to keep the bond, the punishment could be corporal, probably a public whipping, or a term in the bridewell. The preoccupations of the authorities seemed not so much moral but fiscal, although, as it can be seen above, this does not seem to have been reflected in the social commentary at the time. The poor laws in general throughout this period reflected a desire to ameliorate the burdens on parishioners caused by social and economic problems like bastardy and vagrancy. There were also, during this period, increasing changes in courtship and marriage patterns, that included marriage at a lower age and higher levels of illegitimacy.<sup>381</sup> It was against this background that a great amount of pressure was put on the single woman to name the father of an illegitimate child. Such was the preoccupation with accurate identification, that it was common for midwives to question a single woman during her labour, and refuse her help unless she complied and revealed the name of her seducer. From 1726 onwards midwives had this duty imposed on them by oath.<sup>382</sup> Although no evidence has been found in the south west depositions in

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<sup>380</sup> Information given to William Binkford January 1730 in Devon RO QSB Epip 1730.

<sup>381</sup> For an interesting examination of sexual practices before marriage see Hitchcock, T. "Redefining Sex In Eighteenth-Century England" in History Workshop Journal 41 (1996) pp. 73-89.

<sup>382</sup> Laura Gowing has found evidence of the practice of extracting information from women in labour in the seventeenth century. See Gowing, L. "Secret Births And Infanticide In Seventeenth Century England" Past And Present No 156 (August 1997).

the period for the refusal of help to aid a woman in labour by kinswomen, there is evidence to suggest that women may have chosen this time to 'reveal' the identity of the father. William Long's information to William Preke, a Dorset Justice, in 1736, describes such an event:

...his sister Mary Long was brought to his house by Catherine Bush of Orchard in the Isle of Purbeck in the county And was brought to bed or delivered there of a female bastard And being told by the women who were about his sister when she was delivered that she declared that Joseph Croone of Noell Lane in the Isle of Purbeck aforesaid was the father of the said child.<sup>383</sup>

Unfortunately, single women who were persuaded to name the father of the child took further risks. The man concerned may have denied the charge and cast doubt on the character of the woman by claiming that he would not be convinced that he was the real father, as she had spent time with more than one man. An unmarried mother could therefore risk total destruction of her sexual reputation. This, in theory, might secure her future in a downward spiral of poverty.<sup>384</sup> The Justice's decisions in these cases presumably rested on the good character and reputation of both the woman and the man. Should the suspected father be of a higher status than the examinant, his testimony may well have been held more credible than hers. Even if a man agreed that he was the father, he could still

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<sup>383</sup> Information given to William Preke, on the 20th July 1736. Dorset RO QSR Summer 1736 (Shaston).

<sup>384</sup> It seems almost too obvious to state that economic circumstances have a bearing on this type of criminality. The predicament of the unmarried mother, although not directly based on her financial situation, eventually means that she was condemned to a life of dependence at the very best. However, economic changes, like the price changes of grain or household provisions probably featured more strongly in the decision of the married woman to terminate the life of a new-born baby. Families already overburdened with children, and with insufficient means to support more, were probably the kind that committed such acts. The young single mother on the other hand, did not make her decision on the basis of the economic climate, as poverty would no doubt be imposed on her in any case. It might be true that in times of prosperity and good harvests, men and women married earlier, which in turn would lower the rates of illegitimate births. It is debatable as to what effect poor relief systems like the Speenhamland system, and others like it, had on the sizes of families and the ability to maintain them. Such relief systems made bigger payments to larger families, and thus may have encouraged population growth. Malthus commented on this phenomenon. See Wrigley, E. A. "The Growth of Population in Eighteenth-Century England: A Conundrum Resolved" in Past and Present 98 pp. 121-150 passim.

protect himself from the consequences, as a further extract from William Long's information illustrates:

And this informant [William Long] further saith that since his sisters death he went again to Purbeck to talk with the said Joseph Croone, who told him that she [Mary Long] should swear to him first, then that he would take care of the child and send her [Mary Long] to Bridewell, this informant had not told him of her death at that time, After which this informant gave him an account of his sister's death and told him that if he would give any thing towards the maintainence of the child to him, that he would then take care that the child afterwards should never be a burden to him or the parish, Joseph Croome answered that he would do no more than should be forced on him.

The account reveals the prevalent attitudes of both the informant and the named father towards both the mother of the illegitimate child and the consequential burden that the child presented to the uncle of the child and, potentially, the parish. It also implicitly shows what the consequences might be for a (surviving) unmarried mother in the eighteenth century. Not only might she have to go through a confrontation with the named father, but possibly also a drawn out bureaucratic procedure in front of magistrate, which might also result in her imprisonment for a misdemeanour.<sup>385</sup>

There are valid reasons why social commentators, legalisation and social historians have made connections between infanticide and the female life cycle. Malcolmson argues that employment in domestic service was a typical occupation of women during the significant portion of their potentially child-bearing years. He contends that roughly half of all women in the eighteenth century who were of the age group 16-25 years, were living-in servants. If a significant proportion of women in the child-bearing section of the population were domestic servants, it

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<sup>385</sup> The evidence of the quarter session bundles indicates that men also suffered bridewell sentences for bastardy, even though it was perhaps a result of ignoring their financial responsibilities for the upkeep of the child, or refusing to marry the mother. We should not, therefore, assume that men were legally defined as having less responsibility for the creation of illegitimate children.

follows, therefore, that a significant proportion of women charged with infanticide were domestic servants. The problems inherent in this form of employment, however, go further in explaining possible reasons for the significant proportion of domestic servants charged with infanticide in the early modern and pre industrial period. These factors were rarely noted in English trials, but Olwen Hufton notes that some French servants pleaded a justification for their crime because they were so low paid.<sup>386</sup> The circumstances of young female domestic servants in English rural society should be addressed, however. In households where more than one servant was employed, it was highly likely that female and male servants were employed for their various and separate duties, but that they would be in close contact with each other. Such contact would not always be supervised. A female servant would also be vulnerable to the master of the household, or any mature sons. This was because the relationship was one of subordination and, as Malcolmson argues, ambiguity.<sup>387</sup> These types of relationship, coupled with the probable dispossession of an isolated young single woman and the possible frustrations of the confinement of this type of employment, might therefore result in illicit sexual encounters.<sup>388</sup>

The option to facilitate an abortion was available to the eighteenth-century woman, but it carried its risks. Although the inducement of a miscarriage was generally considered immoral, it was not made a statutory crime until 1803. The practice was often extremely dangerous and highly arbitrary, as abortificants ranging from mustard, to the more notorious and potentially fatal savin were used by women during this period.<sup>389</sup> Literate midwives of the time may have been aware of the dangers of such practices, as the Midwife's Companion warned,

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<sup>386</sup> Hufton notes that some women felt that they would inevitably be convicted, and were hence very explicit when making their cases: 'comment voulez vous que je gagne ma vie et celle de cette enfant' (how do you expect me to earn my living and keep a child?) See Hufton, O. The Prospect Before Her: A History of Women in Western Europe Vol 1 1500-1800 (London 1995) p. 275.

<sup>387</sup> See also Beattie, J. M. Crime and the Courts 1660-1800 pp. 116-7.

<sup>388</sup> See Hitchcock, T. "Redefining Sex In The Eighteenth Century" in History Workshop Journal 41 (1996) pp. 73-89.

<sup>389</sup> For a sound examination of the practice of inducement and abortion see McClaren, A. Reproductive Rituals (London 1985) pp. 89-112.

"...by their dangerous Experiments, they frequently lose their Lives."<sup>390</sup> Abortifacients would have been known and used by many women, but knowledge of them would probably have been passed on with some discretion and it is not clear who was more likely to have access to this. It could be suggested that young single women were not expected to know the ways in which to control the number of children they had; such methods were passed between married women. However, as many herbal abortifacients were prescribed as remedies for irregular periods, licence to pass such knowledge was easily made.<sup>391</sup> There is no reason to suppose that women may have successfully aborted unborn children by these methods, as it was no exact science. In many cases, concealment of the pregnancy and birth was the safer option and not an untypical practice, as the records for infanticide in the south west show.

Having discounted herbal remedies, or perhaps failing to procure a miscarriage, a woman's second option was to conceal the pregnancy. She would then have to deliver her child in secret and either abandon the new-born baby on the doorstep of another parishioner, or perhaps a workhouse (known as dropping); otherwise she might have to engineer the death of the child and dispose of its body secretly. It can never be clear, however, what percentage of women clearly intended to kill their children from the moment they realised their condition. It may not have been a simple case of choosing between declaration of pregnancy or infanticide. Some expectant mothers would quite understandably have been terrified and confused and may well have hoped that the problem would solve itself through a miscarriage. Others may have simply refused to acknowledge their condition until the moment of delivery. Moreover, the shame and confusion of an

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<sup>390</sup> Bracken, H. The Midwife's Companion (London 1737) p. 84 cited in McClaren, A. op. cit. p. 112.

<sup>391</sup> Seventeenth century studies suggest that certain perceptions of pregnancy allowed for abortifacients to be used with impunity. The belief that the unborn child did not 'quicken' in the womb until the fourth month meant that the early stages of pregnancy could be interpreted as missing menstrual periods. Many abortifacients were therefore prescribed as treatments for the restoration of menstruation. See Gowing, L. " Secret Births And Infanticide In Seventeenth-Century England" Past And Present No 156 (August 1997) pp. 97-98.



inexperienced or perhaps totally ignorant young unmarried expectant mother could quite possibly have driven her to deliver in secret. The same state of mind could also drive a woman to endeavour to deliver as quickly as possible, an action that could have led to the damage of the child, and also of herself. A panicking new mother might also attempt to stifle the screams of a newborn baby to avoid being discovered, and this might also lead to the death of a child. At every stage, a pregnant woman concealing the fact could have been preparing to abandon the child, and not necessarily to kill it. It is this context, along with the complex economic and social situations from which offenders were drawn, that the figures for infanticide prosecutions in the south west should be viewed.

Figures drawn from the gaol books for the whole of the south west of England between the years 1735 and 1785, reveal that about 267 women went before the courts for murder in general. Two hundred were tried under the two statutes of murder (of children) and infanticide in the four counties. More specifically, 183 of these women would have been tried under the 1624 infanticide statute because of their status. Such a figure makes this type of offence a key gender-specific form of homicide.<sup>392</sup> It might also be further evidence that this particular kind of deviant behaviour was perceived as a great problem in the eighteenth century.<sup>393</sup> The trials for these offences therefore made up for about seventy-five per cent of the total female homicide trials in these courts. However, the aggregate numbers of infanticide trials were, in fact, quite small.<sup>394</sup> It is more probable therefore, that

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<sup>392</sup> We must be careful to retain the fact that the legal definition of 1624 was gender-specifically worded, and not conclude that the murder of children was in any way a feminine offence.

<sup>393</sup> In fact, single women make up for a high percentage of those charged with the murder of newborn children in the eighteenth century. According to Malcolmson, of the 61 cases brought before the Old Bailey sessions between the years 1730 and 1774, at least 35 involved single women, and more specifically, domestic servants.

<sup>394</sup> Evidence from the period predating this expression of concern does not apparently show cause to believe that such offences were rife. Walker calculated that only 33 women were hanged for infanticide between 1580 and 1709 in the county of Cheshire. The record for the south west of England in the eighteenth century shows comparable figures. In fact, the figures from Dorset show that no woman was convicted for infanticide in the fifty-year period. It is debatable whether Walker is correct to conclude that such evidence, along with evidence provided by Sharpe and Wrightson, shows that infanticide could not be that common. Such evidence of course depended on detection rates and the willingness (or unwillingness) of a community to send a woman in this predicament to the assizes. Moreover, the legal definition of infanticide does not take into account

the predominance of infanticide in the record of female homicide is a reflection of the unwillingness to send women to the courts for other serious offences rather than a hard-line attitude to the perceived wickedness of the offence.

It is unfortunate that the gaol books do not give information about the parish or borough that the suspected infanticidal mother came from. This kind of information might have provided insight into whether urban and rural communities cared differently about such crime. It might also have given a more detailed profile for infanticide cases in the south west. The social and economic problem of infanticide was linked to the shame and deprivation of the unmarried mother. This may have been more acute for the rural woman, as there may have been little option but to conceal the pregnancy and perhaps hope for a stillbirth. The experience of the urban young single woman, also vulnerable to the infanticide law, but nevertheless able to maintain a greater anonymity for longer, was probably a little different. In areas of higher population density, the chances of successfully abandoning a new-born child at a nearby residence were probably higher. At the same time, the act of infanticide itself may have been made less detectable because of the increased anonymity and weaker networks of detection. Whichever might be the case, the steady urbanisation of England and Wales during the eighteenth century probably facilitated some changes in the nature of the offence itself. Whether each county's rural/urban profile had any impact on the extent of infanticide is extremely difficult to establish with only the evidence from the gaol books. Only general statements about the levels of infanticide in the four counties, using what information there is available about the patterns and movement of population, can be made therefore. However, other information can be used to suggest that, in fact, convictions for urban infanticide were no more

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other unnecessary infant deaths caused by negligence. All such factors contributing to higher infant mortality than was accepted as natural would have played its part in exacerbating concern over child murder. Dorset figure from PRO ASSI 21-23 (Western Circuit Assize Minute and Gaol Books 1735-1785).

common than those of rural infanticide. This can be demonstrated in the case of Devon.

It has been shown that in the whole of England during the eighteenth century, the pattern of migration from the rural parishes into urban centres had some significant social implications. The extent of migration into the larger urban areas, however, varied according to region and also gender. Although young single people were the most likely section of the population to move into urban areas to look for work, young men tended to travel further afield than women. Female immigrants in towns and cities were more likely to have come from rural areas in a fairly close radius, whereas men may have come from further away.<sup>395</sup> Moreover, the traditional system of apprenticeship, although still evident in the period, was apparently in decline, and this meant that people moved from service to service more frequently, resulting in a higher turnover of servants.<sup>396</sup> It might be expected, therefore, that female migrants into Exeter, for example, would come primarily from south and east Devon, and rarely from outside the county.

A reflection of the extent to which Exeter might have received immigrants is shown in its population figures over the century. Exeter increased its population from about 14 000 in 1700 to 17 412 as recorded by the 1801 census - a steady increase over the century of 24 per cent. The national percentage increase in population was 80, so it cannot be said that Exeter had a population explosion, or that it significantly changed in character over the period.<sup>397</sup> It cannot be determined therefore, that there is a close relationship between what little urbanisation took place in Devon during the period, and the levels of prosecution for infanticide. One conclusion that might be drawn from this is that there was no

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<sup>395</sup> Corfield argues that women formed the majority of the urban population, which reflected the greater employment opportunities and women's tendency to greater longevity. Corfield, P. J. The Impact of English Towns 1700-1800 (Oxford 1982) p. 99.

<sup>396</sup> *ibid.* p. 108.

<sup>397</sup> These figures are cited in Corfield, P. J. The Impact of English Towns 1700-1800 (Oxford 1982) pp. 2, 114. Corfield cites population statistics relating to Exeter from Pickard, R. The Population and Epidemics of Exeter in Pre-Census Times (Exeter 1947).

sudden great move towards this provincial centre during the eighteenth century. The city grew steadily, and probably in proportion to the rest of the county. Migratory patterns may have taken on the form of movement from parish to parish, and perhaps growth was sustained more noticeably in larger villages and market towns, creating more urban lifestyles. Certainly, out of the four counties in this study, Devon has the highest aggregate number of prosecutions throughout the century, and this is probably because it was a more heavily populated county than the other three. There is no increase in trials for infanticide during the period however, and so it cannot be suggested that urbanisation was the sole factor for larger Devon's conviction rates for infanticide. An average of between one and two cases of infanticide a year was sustained in Devon throughout the period. There was no steady increase during the period as a whole.

Extremely low conviction rates for infanticide in the south west as a whole are evidenced in the gaol books. These records show that only 29 of the 200 women tried at the western circuit assizes for infanticide or child murder were convicted in the four counties of Devon, Somerset, Cornwall and Dorset during the period 1735 to 1785. This is an extremely low percentage of the 267 women tried for murder. Only 6 women were sentenced (either as lone offenders or with accomplices) for murder and 5 of them appeared to have had their sentences executed. It is perhaps surprising that with such apparent outrage over such a heinous crime, so few women - 3 per cent- actually found themselves being sentenced to death. Although, once they were found guilty, there was a very slim chance of reprieve, juries would face a long and difficult task in determining a woman's guilt in the first instance. There were many problems that could occur during the various stages of pregnancy and labour that make the culpability for infanticide very difficult to establish. Juries were most likely aware of the experiences and options of these women, and their unwillingness to convict might best be explained by outlining the sorts of defences that women would have used.

Although the information is unavailable for the western circuit, historians have noted the types of defences used by female defendants in eighteenth-century infanticide cases and their plausibility based on the likely experience of the mother. Malcolmson argues that the defence of lack of assistance during childbirth was a very plausible one because of the known experience of new mothers giving birth in private on their own. Although in the late seventeenth century, this aspect of the female experience was seen as an unambiguous manifestation of the lewd woman with evil intent, it is possible that changing sensibilities of the eighteenth-century jury allowed for more compassionate interpretation. Some women claimed that they made efforts to get help at the onset of their labour, but were unable to do so. Perhaps through collapse, or finding themselves stuck in an isolated spot. If a woman could prove that she had made a previous appointment with a midwife, this would add strength to her case. A further significant defence - benefit of linen - has been coined by some historians. Some women successfully defended themselves against a guilty verdict by claiming that they had made preparations for the birth of the child by acquiring linen and other clothes for the baby when it arrived. Hoffer and Hull cite the case of Ann Jewring in 1673, who claimed benefit of linen even though she had concealed her pregnancy and delivery of the child, and then hidden the corpse in a box. The jury did not find her guilty.<sup>398</sup>

There were also some very technical problems with establishing guilt and this seems to have been recognised by judges and juries in the period, especially in the case of the coroner's evidence. It is clear that although the coroner's report played an important role in deciding on the guilt of a suspected offender, it was by no means the deciding factor. Medical tests, such as the lung test - submerging the child's lungs in water to establish whether the child had breathed before death, were never held as strong evidence in favour of conviction.<sup>399</sup> Eighteenth-century

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<sup>398</sup> Hoffer, P. C. and Hull, N. E. H. Murdering Mothers p. 69.

<sup>399</sup> Beattie, J. M. op. cit. p. 119.

juries paid particular attention to the defences made by women. The claim that the child was stillborn was, apparently, frequently used in court, even though such claims had an ambivalent reference in the 1624 statute. Not surprisingly, many women may have used the defence that they were unaware of their pregnancy and the onset of labour had taken them by surprise. It was accepted at the time that labour pains could sometimes resemble bowel movement. An inexperienced mother could lose her child in the privy vault, and feasibly be too weak and confused to save it. Pleading ignorance of the pregnancy itself and then only becoming aware of labour after it was too late, could safeguard the woman from the charge of guilt through concealment.

The responsibility for deciding whether or not there had been a murder before a trial took place was held by the coroners jury. Their verdict might very well have been conclusive, but this in itself didn't seem to be the main factor in convicting or acquitting. Two very similar coroner's verdicts for the suspected infanticide in 1748 and 1746 by Mary Higgens and Eleanor Haydon, both from Bridgwater in Somerset, had different outcomes. The verdict given for the cause of the death of Mary Higgens' female child was given by the coroner as:

Mary Higgen late of Bridgewater aforesaid singlewoman was privately and by herself alone delivered of a living female bastard child within the said borough and that the said Mary Higgens on or about the said fourteenth day of january last not having the fear of God before her eyes but being moved and seduced by the instigation of the Devil with force and armes and so forth at Bridgwater aforesaid the said female bastard child in the peace of God and our said Lord the king then and there being then and there feloniously and of her malice aforethought did kill and murder and the said female bastard child some time thereafter did privately put and lay in a ditch of water about three foot deep

Mary Higgens was tried by the assizes court in the Winter of 1748-9 and found not guilty, even though the Coroner's evidence pointed very strongly to a conviction. The report also seems to have been written in accordance with the 1624 statute. The report on Eleanor Haydon was similar:

at about ten of the clock in the forenoon not having the fear of god before her eyes but being moved and seduced by the instigation of the devil ... upon the said male infant child ... did make an assault and ... with one or both of her hands or by some other ways or means did then and there stops its breath stifle or strangle whereof the said male infant child then and there instantly died

Eleanor Haydon was in fact found guilty and sentenced to be hanged. However, her execution was respited in order that a petition for a pardon be made. The verdict of the trial jury, therefore, depended on factors other than the coroners verdict. The way the court dealt with pleas probably took into account the nature of the case and the general character of the accused.<sup>400</sup> Fortunately the petition of Eleanor Haydon exists, which states that important witnesses who should have secured the acquittal of Haydon, did not appear in court, perhaps believing it unnecessary. The petition stated that these witnesses:

Did not imagine she would have been brought in guilty expecting some person or other would have appeared in her favour, but none did<sup>401</sup>

The complacency of the potential witnesses seems to show that trials for infanticide were not expected to result in a conviction if an amiable character witness stood. This evidence might even intimate a good reason why so few convictions were secured during the period. Eleanour Haydon had allies in her community, who were prepared (albeit rather late) to vouch for her character and thus safeguard her from the death sentence. It may well be the case that those women who did not escape the death penalty for infanticide in the eighteenth century were strangers to, or those estranged from, communities. It is also interesting to note that the inexperience of Haydon, which had resulted in her conviction, was used to petition in her favour:

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<sup>400</sup> It is also possible that the greater specificity in the coroner's verdict on Haydon's offence was a little more likely to lead to a guilty verdict in court.

<sup>401</sup> [P]ublic [R]ecord [O]ffice SP 44 289 (State Papers Domestic) .

she being ignorant of what might be necessary for her defence did not request them to attend and some circumstances discovered since seem to confirm her innocence

It could be suggested from this piece of evidence, that the description of Haydon being innocent of the law and workings of the criminal justice system surrounding infanticide would contribute to an overall picture of her innocence, In any case, Haydon's sentence was finally mitigated to one of fourteen years transportation as a result of this petition. This decision did not confirm her innocence by any means, but does show a reluctance to execute capital punishment if there was the slightest doubt of her guilt.

Defences such as these seem to have been taken seriously by juries who were likely to be accepting about the presumed innocence of the woman as regards murderous intent. This did not mean that juries necessarily believed in the complete innocence of the woman, but as murder carried the death penalty, there was a reluctance to send such women to the gallows. Such reluctance comes plausibly within the context of decreasing conviction rates for murder in general in the eighteenth century. The 1624 statute effectively criminalised single women -a section of society which was also one of the most economically and socially vulnerable, and the evidence points to the juries' realisation of this. The statute was clearly defined to deal with an experience almost entirely exclusive to the unmarried mother (also conforming to a stereotypical narrative) and the true legal definition this offence was thus confined to a certain type. Other types of child murder are therefore obscured because of the protection of reputation through marriage. Even though we should have no doubt that infanticide took place on a large scale within marriage, the institution itself insured that wives were not vulnerable to criminalisation. Although they did come before the courts and were



convicted for murder, it was on a much lesser scale.<sup>402</sup> The clearest understanding of infanticide is within the social context of women during this period. Bastard neonaticide cases received a higher profile because that crime was seen the result of immorality and ensured the destruction of a woman's character (the main criterion for employment and marriage). Their low conviction rate was probably a reflection of the difficulty in securing a conviction of murder and an understanding of the predicament of the unmarried mother in the eighteenth century. It should also be noted that a trial for infanticide under the 1624 statute would, in most cases, amount to punishment enough for any young single woman with a reputation to protect. Child murder within marriage was less visible in the court records, but the higher proportion of convictions within this small figure was likely to be a reflection of a lesser amount of compassion for the married infanticide mother by the juries. It may have been a common understanding that infanticide within marriage was a more calculated affair resulting from economic motive, and possibly more abhorrent per se, than bastard neonaticide.

Exploring the nature and extent of infanticide in the south west of England for the period has been a very difficult task. Without the kind of source material available from the Assizes Circuit records there is no way of seeing the offence other than from a quantitative level. From what little qualitative material that exists, however, a cursory picture can be built. This mainly rests on work by other historians who have had greater access to depositions. The material presented in this section supports much of this work. The records for infanticide and bastardy can demonstrate the attitudes of the community toward the unmarried mother and they support the contention that single women who became pregnant faced great economic and social difficulties. The trial and conviction rates for infanticide seem to be noticeably and consistently low for the fifty year period covered. This, taking into account the extent to which the region

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<sup>402</sup> The gaol books show 17 cases over the period of child murder not tried under the 1624 statute. 6 carried a guilty verdict, the sentence being to be hanged and in some cases dissected. Only 3 of these sentences were respited, 2 of which for only a short length of time. PRO Assi 23/6.

changed during the eighteenth century, suggests that the patterns of formal prosecution over time had less to do with change and more to do with continued discretionary power and prudence on the part of juries. Such powers could prove more influential than medical evidence and sometimes seemed to directly contradict the 1624 statute.

It seems clear that, when drawing together both infanticide and other records for homicide, two kinds of offence dominate the sample for the south west of England. Women seem to have been most commonly prosecuted for the homicide offences of bastard neonaticide and familial/domestic homicide. Arguably, the offence of bastard neonaticide itself could fit within the wider category of familial homicide. It can be suggested that the predominance of both offences in the records points to a particular vulnerability of women to prosecution for murder and manslaughter committed in familial circumstances. It would be more problematic, however, to conclude from this that women only killed within an insulated domestic sphere. In the first instance, the records do not explicitly reveal homicide cases where, although not the main protagonists, women were instrumental in homicide. More importantly, however, the notion of an insulated domestic sphere is an unhelpful one when dealing with eighteenth century rural society. This is especially important to remember when examining cases of homicide where the victims were related by kinship or were employed either fully or partially within the same household. Links between households in the same community might well have had similar characteristics in terms of the sorts of relationships developed within them. It might even be the case that entire communities worked, lived, played and fought together; and in which case, a public-private distinction would be a very difficult model to impose on such a society.

## Conclusion

This thesis has placed some emphasis on the qualitative material available in the court records and its value as an indicator of the social and economic position of rural labouring women during this period. In order to conduct this study, certain traditional methodologies have been challenged and others retained. There has been an attempt to move away from quantitative analysis using only the indictment. Previous studies have used these methods, especially those comparing the numbers of male to female prosecutions, but they have risked placing too much weight on the under-representation of women in the court records without examining the reasons why this might be the case. Only prosecution relating to Female Criminality has been discussed in this thesis, and comparisons have been made with factors other than Male Criminality. This is not to disregard the importance of studying the crime that men committed during the period, but serves only as an effort to avoid a dichotomy in the analysis, resulting in male criminality being held up as the norm. Further study into Male Criminality is certainly advisable and could easily complement this work.

In many cases, the work constitutes a positivist approach to the study of crime in History. Those who, in the 1970s, held studies in criminality as 'the key to unlocking social history', still have their critics. Such critics consider the records of crime as representing the changing agenda of the courts, the prosecutors and the legal system. The criminal justice system during this period, allowed for various levels of discretion to play a part in the detection, capture and prosecution of both male and female criminals, and it has been argued that the agenda of the criminal has been obscured because of this. In an analysis over time, these agendas should be considered, but to ignore the value of the records in providing an insight into society and culture would be unwise. This study has argued, therefore, that the court records may be used to examine some aspects of criminality. The indictments, recognizances, depositions and gaol book convictions listings have been consulted, using both quantitative and qualitative

methods, to provide hypotheses on what kind of crime women were prosecuted for, and why they may have been involved in certain types of criminal activity.

The most valuable source material in this respect is certainly the deposition. Although the documents are rare in the quarter sessions records for the south west, those that do exist allow for a colourful contextualisation of female crime. These sources have their limitations. It has been acknowledged that depositions might not reflect an unadulterated version of the exact events leading up to and during any offence, as seen by the defendants, witnesses and prosecutors. They were likely to have been the end result of a careful question and answer session between the interested parties and the justice of the peace. However, depositions remain the most detailed accounts of recorded crime in the eighteenth century, and provide a unique insight into the nature of female criminality.

Putting the criminality of women in the context of their accepted roles and activities within rural society in the eighteenth century results in a better understanding of both crime and its prosecution. At the same time, any analysis of criminality over time must take into account changes that any given society underwent during the period of study. An examination of eighteenth century rural society in the south west at this time shows a rural economy that was relatively unchanging and dependent on pastoral farming. This economy was also flexible, with dual occupations undertaken primarily by women, but also men, in accordance with the seasonality of farming work. Rural industry often acted as the second occupation for women and children, and was conducted within the household and may have contributed to its stability and durability as an economic unit. Such an economy also determined the working and living structures of that household. Communities in the south west appeared to be made up of household-families that extended beyond immediate blood relations and included servants and apprentices. Women's economic and social roles as in any given position within households such as these were well defined and connected.

The structure of the south west rural household in the eighteenth century provided opportunities for criminal activity, and evidence of these opportunities is presented in the study of female property offences. It has been argued that the pattern of prosecution for theft during this period can be loosely correlated with social and economic factors. The concerns of both the offenders and the prosecutors in these cases most probably determined the fluctuations of both the occurrence of theft and its prosecution. It has been shown that, during times of high prices, greater numbers of women were prosecuted for theft. It has also been demonstrated that, in line with Hay's arguments on War and Dearth, the pattern of prosecution was more closely allied to food prices during periods of mobilisation in the eighteenth century. It is not clear to what extent the fluctuations in prosecution are a reflection of the real numbers of property offences during the period, or of the changing concerns of the prosecutors themselves, the comparison is nevertheless a useful one.

To confine the argument to these parameters, however, is limiting. It has been argued that to view the pattern of prosecution for theft in simple economic terms results in the idea that direct consumption, theft for immediate need or prosecution out of economic necessity, are the only factors to be considered. An examination of the kinds of goods stolen is an indicator that the consumer culture in eighteenth century society is also a useful variable in the examination of female property offences. These goods were predominantly non-luxury items that were immediately available in the household and also in the direct reach of those who stole them. It would appear from the depositions that there was a direct and close relationship between the stolen goods and the thief. Often, the prosecuted offender was a current or former servant or apprentice in the household from whence the stolen goods came. This does not necessarily mean that servants and apprentices were the only property offenders in the eighteenth century, but it does indicate that they were the most vulnerable to detection and prosecution.

The presence of particular types of trading network in the period, means that property offences cannot be seen solely in the context of dearth and plenty. The consumer culture in the eighteenth century manifested itself in a flexible trading system. This system of trading, especially in second-hand goods and, most specifically, second-hand clothes, allowed for the quick and easy disposal of stolen clothing and fabrics. The evidence from the depositions demonstrates that women were involved in the stealing and receiving of such goods. In some cases, it can be seen that there were informal trading networks, through which women could operate. It cannot be concluded from this evidence, which is demonstrated in the second section of the chapter on property offences, that the theft of clothing always indicated a criminal network or 'underworld' in rural communities however. The nature of trade during the period meant that goods could be easily assimilated into the legitimate trading arena, which meant that any woman, if she could find someone who would buy and resell stolen goods, had access to an illegitimate or semi-legitimate trading network.

The record of property offences in the eighteenth century reveal a complex picture of female activity. This is also the case for the record of offences against the person and those of disorderly behaviour. These records cover a diverse set of offences, and it has been difficult to draw firm conclusions about the pattern of prosecution for them. The levels of prosecution by indictment for assault and disorder can be seen to fall during the period, and it has been argued that an increasing tendency to prosecute using means other than indictment may have played a part in this. Unfortunately, the nature of the records for assault, which contain little or no detail about the exact circumstances of each offence, mean that it has been difficult to assess in what circumstances an indictment might be preferred instead of more informal means, such as mediation or prosecution by recognisance.

Although the indictments for assault by women during this period are difficult to distinguish, and thus difficult to break down into categories for study, it has been

possible to identify certain forms of female disorderly behaviour. Where certain behaviour is identifiable, the historian may arrive at various conclusions. Notwithstanding the fact that distinguishable forms of disorder are so because prosecutors saw them as particular and notable threats, the identification of forms of defamation and ritualised rough justice provide an insight into the way women communicated their own values in society. The violence and power of language concerning reputation (manifested in defamations) and of symbolism (in the form of rough music and skimmingtons) is seen in the indictments examined in this study. There are also conclusions to be reached on the gender specificity of certain forms of disorder as evinced by these records. In general, the record of assault provides evidence that suggest it is not always helpful to confine the study of women's criminality and disorderly behaviour to the domestic or private sphere. If such a sphere amounted to a reality (and there are arguments to suggest that it does not) then the record of assault points to female activity operating outside of this. It was common for women to be indicted for assault alongside men and in cases which seem to involve disputes within a kinship, occupational or community sphere. This places the study of female assault firmly within the context of women's roles in the community as a whole.

This is not to say that the study of female violence and homicide within the familial sphere has no relevance. The second section of this chapter demonstrates that the record of homicide is characterised by the prevalence of familial homicide. It can be seen that such cases were the conclusion to prolonged tension, abuse or unhappiness in the given setting. Paradoxically, they may also provide an insight into the activity and power of women within the eighteenth-century household. The occurrence of homicide (in its various forms) within the family may well have been the conclusion to a playing out of family politics over a certain length of time. The records can also be seen, therefore, to provide evidence of domestic relations during the period.

In many ways, the examination of familial homicide provides evidence that female homicide can be seen within wider contexts than gender alone. The examination of infanticide, however, must be seen within particular gender specific constructs. This is not to say that the killing of children was essentially a feminine offence, but that the offence was legally defined by the 1624 statute as one committed by women. Furthermore, the statute relates specifically to bastard neonaticide, an offence for which single women were predominantly charged. It should be noted that this, in itself, means that the true figures for child homicide of children will never be known. The killing of children by men and married women was most likely to have been covered up, and its detection difficult, owing to protective family and kin networks. What is seen in the records, therefore, are infanticides committed by offenders most vulnerable to prosecution. In this respect, the record of infanticide can be seen to demonstrate the attitudes towards a certain group in the population, the unmarried mothers. In many cases these were probably young women, although the records do not reveal ages.

The record of infanticide also provides an insight into the economic and social difficulties faced by the pregnant and unmarried woman. In turn, they also reveal the potential pitfalls faced by all unmarried women during the period. It is interesting to note that these dilemmas were probably recognised and understood by trial juries faced with decisions over the conviction of such offenders. The evidence suggests that juries exercised a certain amount of prudence over such convictions, which accounts for the consistently low conviction rate evinced by the assizes trial records. In some cases, the decision not to convict seemed to contradict the 1624 statute and also the very crude medical evidence that could be presented during the period.

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