

Chapter 2 - the character and nature of crime in the early eighteenth century

Traditional forms of crime

This section will discuss the key forms of crime which existed during the first half of the eighteenth century. Many of these were not new and constituted long-standing criminal practices which are described as ‘traditional forms of crime’ in this chapter. These crimes did not die out by 1750 (in some cases developments associated with urbanisation facilitated their further development) although the late seventeenth and first half of the eighteenth century witnessed the heyday of some of the activities that are discussed below.

Robbery and highwaymen

Robbery in the early eighteenth century was carried out by two distinct criminal groups. The term ‘footpads’ is the name given to robbers operating on foot who attacked people who were travelling on foot. Footpads typically operated in gangs whereas highwaymen typically worked alone or in small groups.

Highwaymen were robbers on horseback whose main target consisted of travellers on horseback or in carriages whose occupants were held up at gunpoint and who were made to hand over their money and other possessions. A number of factors aided this crime, including the increase of trade in a period of few banks (which meant there was a lot of cash in transit) and improvements in travel. The construction of turnpikes (main roads whose use required the payment of a toll), ‘took off’ in the eighteenth century, climaxing with ‘turnpike mania’ between 1751 and 1752 when turnpike trusts covered 11,500 miles of road in Britain (UK Parliament, 2023: [Online]). This meant that targets (especially in the form of stagecoaches) increased in this period and also made it possible for footpads to go further afield to conduct their criminal activities (McLynn, 1989: 5).

Attacks of this nature often occurred on isolated roads between towns. The streets and roads approaching London were favourite haunts of highwaymen in this period. The use of guns was an important aspect of their effectiveness, since they were frequently robbing persons whose main means of defence was that of a sword. The activities of highwaymen threatened the safety of individuals and also the freedom of travel and commerce (Beattie, 1986: 148).

Highwaymen first appeared in the seventeenth century and initially consisted of supporters of the Royalist cause which had been defeated in the English Civil War. Areas such as Hounslow Heath (on which now stands London Airport) and the Great North Road (which linked London to York) were especially prone to this form of crime. They were immortalised in the career of Dick Turpin (1706-1739) whose career in crime commenced with theft and burglary but who then altered his *modus operandi* to that of a highwayman.

The 1692 Highwayman’s Act (reaffirmed by Royal Proclamation in the ensuing years) reflected concerns regarding the fear of highway robbery. The 1692 measure (otherwise known as the ‘Blood Money Act’) provided around £40,000 in reward money to secure the capture of criminals and offered a reward of £40 for the conviction of a highway robber, which was designed to encourage those who had experienced such a crime to prosecute it (Brain, undated: [Online]).

Subsequently, in 1772, the death penalty was imposed on persons armed and in disguise on the King's highways. The severity of this action indicated that highwaymen - and the fear of crimes committed by them experienced by travellers - was very much viewed as a national problem, the commission of which this penalty sought to deter. However, as is discussed in Chapter 1 in connection with the overall use of the death penalty in the eighteenth century, there was a disinclination to consistently use the death penalty in connection with this offence. Soon after becoming King in 1760, George III agreed that the death sentence for highway robbery should more or less routinely be changed to that of transportation, although this form of discretion was often applied at the last minute, when the condemned person was on their way to the scaffold (Hay, 2011: 52).

The activities of the Bow Street Runners (which are discussed in chapter 4), whose mounted patrols policed roads approaching London, was an important factor which led to the decline of this form of crime by providing, in the views later expressed by Cohen and Felson's routine activities theory, (1979) a capable guardian that would create an environment that was less conducive to the commission of crime. The continued growth of towns also meant that there were fewer isolated stretches of roads where crime of this nature could take place. Other factors that included the enhanced use of banking (so that individuals were less likely to carry large sums of money around with them) and a legal crackdown that saw licenses being withdrawn by Justices of the Peace (JPs) to inns and taverns which were frequented by highwaymen also contributed to the reduction in scale of this form of criminal activity.

.The last conviction for highway robbery occurred in 1831.

Piracy

Piracy entails the theft of goods being transported on the water. It was certainly not unique to the eighteenth century and was used against Greek and Roman shipping and still exists today in some parts of the world. However, what is described as 'the golden age' of piracy (Fiske, 1897: 338) embraced the period c 1670-1730 (Simon, 2023: 30) when several thousand pirates were active. The period of pirate activity was not constant, however, and several waves of piracy occurred, the last of which was around 1700-1730, with a peak of activity in the early 1720s.

The period 1713-1715 is an important year in the history of piracy since a series of peace treaties under the overall heading of the Peace of Utrecht ended the hostilities associated with the War of the Spanish Succession (which broke out in 1701) in which the UK had used privateers (who were effectively state-sponsored pirates with a certificate – known as a 'Letter of Marque' - giving them license to attack vessels belonging to other countries) in the naval war conducted against the Spanish and French. This resulted in privateers becoming no longer part of British foreign policy. Those involved in privateering thus had to become 'self-employed' and became pirates who operated on a freelance basis, technically the enemies of all established governments.

Box 2.1

Buccaneers

The terms 'buccaneers' and 'privateers' are more or less used in an identical fashion.

The term ‘buccaneer’ is applied to privateers who were active in the Caribbean and Pacific (West) Coast of America who mainly targeted Spanish ships and Spanish colonies in the second half of the seventeenth century. Buccaneers were willing to hire themselves out to foreign governments and the French, English and Dutch were all willing at various periods to grant licenses to those engaged in such activity, thus transforming them into privateers.

Henry Morgan (1635-1688) is an example of an English buccaneer. This form of activity died out around 1680.

Some of the pirates who were active in the final wave of the golden age are well-known historical figures. They include William ‘Captain’ Kidd (1645-1701), John Rackham (usually known as ‘Calico Jack’) (1682-1820) and Edward Teach (usually known as Blackbeard) (1680-1718). The pirate regarded as the most successful was Bartholomew Roberts (known to history as ‘Black Bart’) (1682-1722) who looted more than 400 vessels in his career as a pirate. Piracy was not confined to men and women pirates included Anne Bonney (1698-1782) and Mary Read (1690 -1721).

Pirates were active throughout the world, but especially in the Caribbean (in particular Jamaica where the ‘turbulent relationship between Spain and England helped fuel piracy’) (Simon, 2023: 30), the Atlantic (East) Coast (where the UK Colonies in America were located), the West Coast of Africa, the Indian Ocean (targeting the trade routes from India to the USA via Africa) and the South China Seas. One factor that aided piracy on the Atlantic (East) coast of America was the close relationships between settlers and pirates, the latter obtaining goods that the UK authorities would not allow the settlers to have (Dolin, 2018).

The targets of the pirates were ships conveying goods that included gold, silver, sugar and cocoa back to Europe.

The ‘golden age’ ended around 1730, mainly because of the scale of crackdowns resulting from international treaties whereby governments used warships and executions to eliminate pirates, many of whom were killed in battle or who were captured and executed. It was estimated that between 1700 and 1726, 4,000 pirates were arrested, many of whom were executed (Simon, 2023: 34). One of those who died in battle was ‘Black Bart’ Williams who was killed on board his ship, the *Royal Fortune* in 1722, following an engagement with *HMS Swallow*, commanded by Captain Ogle, off Cape Lopez, Gabon, Central Africa.

Box 2.2

The Rise and Fall of Piracy

Laverick (2016: 38) argued that piracy has existed since ancient times. Felson and Kalaitzidis (2005: 9), for example, drawing upon the work of De Souza (1999), noted that piracy was the subject of Homeric poems dating around the seventh or eighth centuries BC and has also been implicated in the creation of the Delian League in 478 BC which comprised an alliance of coastal and Aegean city-states directed against Persia.

Academic commentators have viewed piracy as intimately associated with the formation, preservation, undermining and strengthening of state power and empire building. Historical contextualisation has therefore been conceptualised as both an internal and external security issue, entailing both a challenge to states (and the safety of their citizens), and also, historically being used as a tool of statecraft directed against their enemies.

As a tool of statecraft, piracy was utilised to accumulate wealth, and also, as a means of undermining the strength of competitors. The common practice of privateering involved the employment of private sea vessels to assist in attacks against opponents, with states receiving a share of the proceeds from such activities. This officially sanctioned version of piracy was applied towards state enemies and anyone engaging in trading with its enemies (Andreas and Nadelmann, 2006: 22).

Piracy has therefore been linked to state competition for the amassing of wealth, territorial expansion and access and control over trade routes. Piracy followed the trading patterns set by Spain, Britain, and the other colonial powers, and was concentrated around the Caribbean, the Atlantic seaboard of America, the English Channel, and later the coast of West Africa (Vagg, 1995).

According to Andreas and Nadelmann (2006: 22), the expansion of European maritime commerce in the sixteenth century increased the rewards and the incidence of piracy dramatically, with much of it officially or unofficially sponsored by European governments, with colonial governors directed not to interfere with pirates by the French, British and United States governments, offering safe harbour in return for a share of their goods (Andreas and Nadelmann, 2006: 22).

Trends in piracy were also associated with conflict resolution. Thus, Gosse (1946) and Rule (1977), cited in Vagg (1995), suggested that the numbers of pirates in the western world tended to increase following the discharge of superfluous sailors from navies after the resolution of disputes. Able to supply goods at reduced prices, piracy flourished, these authors suggested, receiving widespread support from local magistrates, other officials and local inhabitants who were frequently involved in piracy and wrecking between the sixteenth and eighteenth centuries.

However, while colonial governors and local officials actively supported or turned a blind eye to piratical activities, often lacking the capacity to affect the practice in any significant way, by the end of the seventeenth century the perceived benefits of piracy were called into question as trade and diplomacy increased, and as governments sought to establish stable commercial relations (Felson and Kalaitzidis, 2005: 10).

If prior to the seventeenth century, 'international norms proscribing banditry on the high seas remained limited' (Andreas and Nadelmann, 2006: 23–24), the seventeenth century witnessed increased internal and external state control, strengthened navies and targeted British, American and Dutch action directed towards the eradication of piracy, resulting in a reconceptualisation of such activities as an 'international threat', subject to widespread criminalisation (Felson and Kalaitzidis, 2005: 10). The British Royal Navy was considered pivotal in driving efforts towards the eradication of piracy, seeking to protect their growing empire and introducing norms in both the domestic and international spheres (Williams, 1961, cited in Felson and Kalaitzidis, 2005: 10), resulting in a virtual ban by the mid-eighteenth century.

Furthermore, in accounting for the marked reduction in piracy by the middle of the nineteenth century, in addition to the significance of state control of sea-lanes and officials, Vagg (1995: 67) directed attention to the importance of state infrastructure, particularly highlighting improvements made to roads, which, were recognised as ‘decisively’ changing ‘the transport patterns on which piracy depended’, with consequences for the introduction of effective policing.

By the end of the nineteenth century, as noted by Andreas and Nadelmann (2006: 25), ‘a once customary form of waging war had been all but eliminated from the face of the earth’. Piracy in European and North Atlantic waters was virtually extinguished coinciding with the advent of the modern nation-state, and attempts to end practices which came to be regarded as official corruption (Vagg, 1995: 65).

Slavery and the slave trade

As documented by Laverick (2016: 292-38), slavery and the slave trade predate the arrival of Europeans on the west coast of Africa (Agozino, 2005: 121) and have existed since antiquity (Felson and Kalaitzidis, 2005: 7). According to these authors, having virtually disappeared from the European continent, slavery re-emerged after 1500 initiated by the conquest of the Americas in the sixteenth century.

The expansion and acceleration of the slave trade has been explained in relation to the development of the plantation economy in the so-called ‘New World’, which has been viewed as creating a huge market for slaves (Agozino, 2005: 121). Hardt and Negri (2001: 121) suggested that large-scale plantation production with slave labour was initiated in the Caribbean in the mid-seventeenth century by English and French planters who imported African slaves to replace native peoples killed by European weapons and disease. During the seventeenth and eighteenth centuries, the potential areas of supply increased as Europeans established more trading enclaves along the coast (Agozino, 2005: 121) and as European governments acquired a strong interest in developing the transatlantic slave trade, viewing black Africa as a limitless source of labour for the plantations and mines of the Americas (Andreas and Nadelmann, 2006: 27).

Andreas and Nadelmann, drawing upon the work of Craton (1974) and Curtin (1969), noted that, following the signing of the Peace of Utrecht in 1713, British slavers assumed a dominant role in the highly profitable trade, transporting a substantial portion of the estimated 10 million black Africans ultimately imported into the Americas (Andreas and Nadelmann, 2006: 27). By the end of the eighteenth century, the products of slave labour in the Americas have been estimated to constitute one-third of the value of European commerce (Hardt and Negri, 2001: 121).

Most historical accounts of African slavery in the criminological literature chart the criminalisation of the slave trade in 1807 following the signing of an ‘Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States’ by President Jefferson (Nadelmann 1993: 31–46; Deflem, 2011: 79). Despite the incremental development of a legislative framework, scholars observe the difficulties and challenges of enforcement recognising that ‘enforcement was generally lacking’ and ‘repeatedly violated by entrepreneurs all along the eastern and southern seaboard’ (Nadelmann, 1993: 31–33).

While the British Parliament made the slave trade illegal at home in 1807, the suppression of slavery within its colonies occurred much later – in the British West Indies in 1838 and British India in 1843 (Bassiouni, 1991, cited in Felson and Kalaitzidis, 2005: 8).

Conventional perspectives stress the significance of moral norms presenting the eventual abolition of slavery as evidence of moral progress and modernisation (Pogge, 2008: 2). Associated with this observation is the view that slavery comprised a form of pre-capitalist production, hence the final banning of the Atlantic slave trade during the first two decades of the nineteenth century was regarded as signalling a new ‘progressive’ approach to tropical Africa (Agozino, 2005: 121), with the capitalist ideology of freedom viewed as a progressive force of enlightenment leading to the replacement of slavery.

However, this perspective has been challenged, with critical scholars calling into question the assumption that slavery comprised a pre-existing form of production and that capitalism was antithetical to slavery. Hardt and Negri (2011: 73) for example, contend that ‘Capital’s relationship to colonial slavery’ is in fact ‘much more intimate and complex’. Thus, for Hardt and Negri, the large-scale colonial slave production system, which arose in the Americas between the late seventeenth and mid-nineteenth centuries, should not be viewed as pre-capitalist, but instead, should be understood as part of the complex and contradictory developments of capital. Slave production in the Americas and the African slave trade are therefore reconceptualised as ‘a pedestal of super exploitation on which European capitalism stood’ (Hardt and Negri, 2001: 122).

Smuggling

Smuggling entails the illegal trading in goods in order to avoid paying customs duties and taxes. It embraced two distinct activities, illegally importing goods without paying the duties on them and illegally exporting goods without paying the duties – the latter crime being known as ‘owling’ (McLynn, 1989: 173). This originated when, in 1614, the export of wool was made illegal.

Thus although, as with piracy, this form of crime was not unique to the eighteenth century, the period known as the ‘golden age’ of smuggling reached its climax in the early decades of the nineteenth century during the Napoleonic wars. It frequently involved smuggling goods out of the country, the profits from which were then used to purchase other goods which were smuggled back into Britain: wool in return for tea was an example of this trade in the 1740s (Norton, 2003: [Online]).

The main impetus for smuggling was the introduction of customs duties on a wide range of goods imported and exported goods in the seventeenth century which further increased during the eighteenth century, in part to finance the wars in which Britain was engaged in this period. It has been observed that ‘the existence of a customs duty several times the price of a commodity makes smuggling a temptation difficult to resist, particularly when there is little chance of the fraud’s detection and a steady demand for the commodity in question’ (Barker, 1954: 387).

A further duty, the excise tax – a tax on domestic consumption – augmented customs duties from the late seventeenth century and was levied on an ever-increasing array of goods that included goods such as salt, leather and soap. This was a further spur to the smuggling of imported goods.

High taxes created a market for persons wanting these goods more cheaply and who viewed the smugglers favourably. As with contemporary white-collar crimes, there was a tendency to view smuggling as not constituting a crime, provided no violence was involved (Norton, 2003: [Online]). Additionally, communities in which smugglers operated benefitted from their activities by being able to acquire goods they could not otherwise afford to buy, although quiescence could also be achieved by intimidation (Norton, 2003: [Online]). Pirates were frequently involved in these activities since goods they had looted at sea became the merchandise that was smuggled into the UK. 'River Pirates' operating on the River Thames also stole goods from ships moored there which formed part of the contraband that was distributed through networks used by smugglers.

The main items smuggled into the country in the eighteenth century were wine, spirits (especially gin and brandy), tea, tobacco and lace, although other goods, such as salt in were also smuggled. The favoured method of smuggling goods into the country was to run them into a remote bay or creek in secluded coastal areas often at night, especially along the south coast of England (Sussex and Kent) and West Wales. Kent's close proximity to France (where many of the smuggled goods could be obtained) and its nearness to London (which provided a market for smuggled goods) made it very much the centre of the smuggling trade.

Smugglers made use of large rowing boats (referred to as 'galleys') which could get across the English Channel in about 5 hours and outrun vessels used by the Customs and Excise officers. These were used in what was termed the 'guinea run' that entailed smuggling gold guinea coins from Britain to France. In Kent, Folkestone cutters were used by smugglers which were met by smaller boats 3-4 miles off the coast which transported the smuggled goods to land (Norton, 2003: [Online]). There was, however, another way of conducting smuggling which involved, with the connivance of the lower ranks of the Customs Service, under-weighting goods brought into the country so that a proportion of the cargo entered the country duty free (Barker, 1954: 388).

As a crime, smuggling became highly organised after the 1740s, and it has been argued that 'by the later eighteenth century, smuggling became an example of organized crime unseen since the days of Jonathan Wild' (Norton, 2003: [Online]). It was at this time that the organisation of smuggling altered so that operations became directed by London merchants and dealers rather than placing a reliance on local people such as innkeepers to distribute the smuggled goods (Norton, 2003: [Online]).

Unlike most forms of crime in this period, smuggling was conducted by large gangs (which might number up to 100 and whose members carried out specialised tasks (BBC Bitezize, 2020: [Online]) who were often funded by investors. The Hawkhurst gang that operated in Kent is an example of this during the 1740s. The highly organised form that smuggling adopted around the 1740s, provided work - and riches - to those involved in it. The numbers involved in the larger smuggling gangs also made it possible for them to fight pitched battles with the Customs officers and the military. Local militias might also be involved in attempts to combat the activities of the smugglers (Norton, 2003: [Online]).

Smuggling was successful in this period in part because of the market that London offered and also because of the deficiency of law enforcement. The Board of Excise was set up in 1643 to collect duties on a number of specified goods. In 1671, Charles II set up the Board of Customs to collect customs duties. The Board was responsible for collecting customs duties

and discharged their responsibilities through a number of customs houses that were dotted around ports in coastal areas. customs officers were provided with cutters to patrol the coast to try and apprehend smugglers. Subsequently (in 1690), a number of customs officers were deployed on horseback, termed 'riding officers (Platt, 2007: 112-25). Customs officers were at the forefront of the fight against smugglers. Additionally, the military was often brought in to back up the Customs men.

Legislation was introduced in an attempt to prevent smuggling. The 1718 Hovering Act made it illegal for vessels smaller than 50 tons to wait within six miles of the shore, and brandy imported in smaller ships (under 15 tons) was also liable to seizure. Vessels involved in these offences were impounded and destroyed (Platt, 2011).

The 1736 Act of Indemnity imposed the death penalty on smugglers who injured an Excise Officer, imposed heavy fines for bribery provided that unarmed smugglers could be transported and provided an indemnity for any smuggler who named his accomplices. The 1745 Offences Against Customs or Excise Act provided for the publication of the names of armed smugglers in the *London Gazette*. A smuggler named in this manner 'Gazetted' had 40 days to turn himself in, and at the end of that period he was declared a convicted felon, subject to the death penalty (Norton, 2003: [Online]) and also had a bounty of £500 placed on his head for any person who 'turned him in' after the 40 day period had lapsed. This was paid one month after the execution had taken place. The death penalty was extended beyond smuggling to include assembling in preparation for a run, and even the harbouring of smugglers. The bodies of smugglers who killed officers were to be hung on gibbets around the coast (Platt, 2011). Legislation of this nature indicates how serious the government took the problem of smuggling in this period. Although as relatively few smugglers were caught, the impact of these sentences were reduced.

There were several reasons to explain the decline of smuggling. The reduction of duties on key goods that were smuggled, making the trade less profitable. The duty on tea was reduced in 1745 and later, the 1784 Commutation Act reduced the duty on tea by over three-quarters. Subsequent reforms affecting duties in the early nineteenth centuries served to make smuggling less profitable. Additionally, there was an increased willingness by the government to deploy force against them.

In 1809 the Preventive Waterguard was established which provided for enhanced central control and greater co-ordination of the customs services. In 1816 the Coast Blockade Force (a force consisting of land patrols) was created in Kent together with the Coastguard which operated in areas in which the Coast Blockade Force did not operate. In 1831 the Blockade Force and the Coastguard effectively merged to become the Coastguard Service with responsibility for the entire coastline. Britain's free-trade policy that was introduced during the 1840s led to a major reduction in import duties which made smuggling no longer a viable occupation.

Wrecking

Wrecking is a further aspect of crime associated with coastal locations. It entails taking cargo from a shipwreck which has occurred close to shore. It is viewed as a form of smuggling in that technically all goods washed up on shore should have been declared to the local customs house (Smugglers' Britain, undated: [Online]).

However, wrecking was viewed as a customary right by those living in coastal locations. It was based on a popular understanding of the 1285 Statute of Westminster whereby if a ship wrecked and there was nothing alive on board, it became known as a 'dead wreck'. The practice regarding 'dead wrecks' was that any goods washed ashore could be claimed by the manorial lord exercising control over the land where the ship had foundered. But in practice these goods were shared between him and those who salvaged them (Pearce: 2014:14).

However, acquiring goods which were taken from wrecked ships had been a criminal offence since the era of Edward I and became subject to additional regulation during the eighteenth century, an important example of which being the 1753 Wreck Act. In line with the sentiments of the Bloody Code which upheld the 'sacredness' of property ownership and passed at the behest of merchants, traders and insurers of the city of London (Pearce, 2014: 6-7), the 1753 measure provided a raft of capital offences in connection with wrecking activities which included plundering, stealing, taking away or destroying goods belonging to a stranded or wrecked ship. Devon and Cornwall and the South East Coast of England were important locations where wrecking occurred.

Poaching

Hunting in the eighteenth century was the preserve of those who owned land worth more than £100 per year. Others who carried out such acts did so illegally and were termed poachers.

One impetus for poaching was the development of capitalist agricultural practices during the eighteenth century that resulted in common land (where previously commoners had grazed a few sheep or killed a few rabbits) being fenced off – a practice known as enclosure. It was henceforth treated as private property by large landowners where more scientific forms of agriculture would be practiced. This resulted in commoners and peasants resorting to illegal ways to uphold what they had historically enjoyed freely. Although the underlying causes of poaching were viewed as that of economic necessity it also became a trade, providing a useful form of income to those who engaged in it (Savage, 2018: [Online]).

Poaching was a common crime in the eighteenth century but a novel feature in the early part of the century was that it was frequently conducted not by local poachers looking for food but by gangs who operated on a wide scale. Game - pheasants, partridges, hares, woodcock and deer - was especially a target of these gangs. Attempts by landowners to protect their property by employing numbers of gamekeepers often led to considerable outbreaks of disorder as both sides clashed and people were killed. These clashes also had a destabilising effect on class relationships in the countryside since local people often viewed poachers as allies who were standing up to local landowners and the injustices with which they were associated locally (Savage, 2018: [Online]). This has led to the conclusion that the motives of poachers might correspond to contemporary discussions of illegal hunting which views the activity as political - a 'phenomenon of rural defiance against illegitimate management regimes' (von Hessen *et al.*, 2014: 649).

These poaching gangs were the target of legislation passed in 1723 – the Waltham Black Act and was enacted to stop the depredations which were being committed near Waltham, in Hampshire, by persons in disguise or with their faces blacked. It made poaching a capital offence whereas formerly many of the crimes referred to in the Act had been misdemeanours. This measure was titled 'An Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and

Properties of His Majesty's Subjects, and for the more speedy bringing the Offenders to Justice.'

It was observed that the technique of these offenders, who operated in the forests of Waltham, seemed to have been modelled on the criminal activities of the famous band of Roberdsmen, or followers of Robert (or Robin) Hood, who committed great outrages in the reign of Richard the First on the border of England and Scotland (Radzinowicz, 1945: 56).

The Act catered for 'any offender who was armed and with a blacked face, armed and otherwise disguised, merely blacked, merely disguised, accessories after the fact or "any other person or persons"' (Radzinowicz, 1945: 57). Anyone in one of the above categories was found in a forest, chase, down or Royal Park could be executed. The Act also made it an offence to hunt, kill, wound or steal deer in those locations, with the first offence punishable by a fine and the second by transportation. Other criminalised activities included fishing, the hunting of hares, the destruction of fish-ponds, the destruction of trees and the killing of cattle in those locations, the last of which also punishable by death. An offender could also be executed for setting fire to corn, hay, straw, wood, houses or barns or shooting another person. The same penalties applied to attempting to rescue anyone imprisoned under the Black Act or attempting to solicit other people to participate in crimes that violated it (Radzinowicz, 1945: 58-9, 60-67, 68 and 72).

In total, the Act created over 50 new criminal offences that were punishable by death. Radzinowicz (1945: 57) observed that no other single statute passed during the eighteenth century equalled this measure in severity and that 'none appointed the punishment of death in so many cases'. He added that it constituted 'a rigid system of widely framed and indiscriminately applied laws, the sole purpose of which is to inspire terror' (Radzinowicz (1945: 73).

The Act provides a useful illustration of approaches compatible with twentieth-century Marxist criminology whereby the state and its institutions are 'primarily concerned with serving the interests of those who owned or controlled the means of production and in particular to ensure that conditions existed for the accumulation of capital which was needed both to buy labour and invest' (Joyce and Laverick, 2023: 26).

This measure remained on the statute books for exactly 100 years when poaching, whilst remaining illegal, became no longer a capital offence. Poaching remained relatively widely practiced for much of the nineteenth century but was on the decline from around the late 1870s onwards.

The growth of towns and new forms of crime in the early eighteenth century

The growth of towns opened new opportunities for crime. Although it is argued that between 1700 and 1750, the population of England remained relatively stagnant (Wilde, 2020: [Online]), London was an exception: it has been estimated that in the mid-1670s, its population was around 500,000 and that this figure rose to 630,00 by 1715 and 740,000 by 1760 (The Proceedings of the Old Bailey, 2018: [Online]). This population increase created new opportunities for crime in the capital, leading to the conclusion that 'in eighteenth century England crime was overwhelmingly a London phenomenon' (McLynn, 1989: 1).

Early eighteenth century crime – anomie theory

Criminological concerns as to why people committed crime had not been comprehensively developed in the early years of the eighteenth century. However, subsequent criminological examination contains ideas that are of relevance to the commission of crime in the early eighteenth century (and which remain valid for crime conducted later in that century which is discussed in Chapter 4). This section focuses on the theory of anomie since this closely relates to themes and ideas discussed in this chapter and in Chapter 4 regarding the character and nature of crime throughout the eighteenth century.

Émile Durkheim was a leading figure in early nineteenth century sociological positivism, in which crime was depicted as the consequence of social upheaval. Durkheim developed the concept of anomie to describe a state of social indiscipline affecting the way in which individuals seek to achieve their personal goals. His theory of crime was devised 'in the context of an overall theory of modernisation' (Vold *et al.*, 1998: 132) whereby societies progressed from feudalism to capitalism (which Durkheim referred to as a transition from a mechanical to an organic society). He asserted that all societies were in the process of transition with none being totally one or the other (Vold *et al.*, 1998: 125).

Durkheim's concept of anomie was initially put forward in 1893 and was subsequently developed in 1897 (Durkheim, 1893; 1897). Anomie occurred in two separate sets of circumstances, the first was in the initial period of transition from one society to another. In this circumstance, the old social order and its methods of enforcing social control broke down but the new social order and rules to regulate the behaviour of its members were not fully developed. In such periods of transition, he believed, a diversity of behaviour was tolerated, and punishment was characterized by its relative lack of severity.

Durkheim also considered whether crime played a useful or harmful role in society. His view on this matter was influenced by the key positivist concept of consensual values.

He believed that social cohesion was based upon the division of labour and consequent specialization of tasks arising from it. He argued that a mechanical society was characterized by little division of labour and consequent uniformity in the work and beliefs of most of its members. The solidarity of this society was maintained by the pressure for uniformity exerted by the majority against the minority who held different standards. In a society in which consensual values were adhered to by most of its members – which was the feature of a mechanical society, although it might also arise in stable organic societies whose characteristics could thus be described as 'tending towards the mechanical' – diversity was inevitable.

Crime was normal in such a society and also useful as the negative views held by the majority of law-abiding citizens towards those who contravened its legal or moral standards helped to promote a sense of social solidarity by affirming the boundaries of what society regarded as right and wrong behaviour. Although this gave rise to a legal system that was repressive in nature, crime performed a further useful role by acting as a spur to progress, challenging the status quo and contributing towards a debate regarding what should be regarded as acceptable conduct.

For Durkheim, therefore, social upheaval was the key to understanding both crime and society's responses to it. As Chapter 1 has argued, 'lack of severity' did not reflect the overall response to crime in the early eighteenth century (since for most part a mechanical society prevailed in most of the country in which social order was maintained by traditional methods that included deference and transgressions were punished by a harsh penal code), it was the case (as is argued in Chapter 6) that as urbanisation accelerated during the early years of the nineteenth century, the consequences of the transition from a mechanical to an organic

society became more far-reaching. In this early nineteenth century period of societal transition, the severity of the criminal code (and especially the circumstances under which the death penalty could be used) became lessened – albeit the key influence was the concern of classicist criminologists for a penal system that was consistent in its operation which required, amongst other issues, the gradation of punishments in order that they would ‘fit the crime’.

Later in the twentieth century, Durkheim’s concept of anomie was developed by social strain theory. This developed from the functionalist perspective that human behaviour was determined by the social structure. Robert Merton was a leading social strain theorist who concentrated on explaining deviancy. His ideas were originally put forward in 1938.

Robert Merton developed Durkheim’s concept of anomie. He suggested that there were a number of behavioural patterns which individuals could exhibit in reaction to the culturally approved goals of the society in which they lived and the institutionalized ways of achieving them (Merton, 1938: 676). One of these was by what he termed innovation - an individual prevented from obtaining society’s success goals by legitimate means might attempt to achieve them by abandoning the ‘rules of the game’ and attain them by criminal methods.

Merton thus argued that the state of anomie arose from a mismatch between the culturally induced aspirations to strive for success (which he asserted in Western societies was the pursuit of wealth) and the structurally determined opportunities to achieve it. The ‘differential application of opportunity’ (Williams, 2001: 345) imposed a strain on an individual’s commitment to society’s success goals and the approved way of attaining them and resulted in anomie which was characterized by rule-breaking behaviour by those who were socially disadvantaged.

Unlike Durkheim (who believed that an individual set his or her own success goals subject to the constraints imposed by society), Merton contended that these and the means to achieve them were set by society. Merton further asserted that social inequality was the key reason for deviancy. It was not, as Durkheim contended, dependent on social disintegration but was an endemic condition that was particularly associated with the working class. As will be argued in the following section, views of this nature were expressed with regard to early eighteenth century crime which was especially associated with the poor.

The nature of early eighteenth century crime

It has been remarked that although both at the time and subsequently by crime historians there was and has been a tendency to devote attention to (in)famous criminals such as Jack ‘The Lad’ Shepherd (executed in 1724), Jonathan Wild (executed in 1725) and to highwaymen such as Dick Turpin (executed in York in 1739), these should be regarded as ‘the more extreme examples of London criminality, made even more extreme by literary, and sometimes visual, characterisation’ (Shore, 2003: 139). Much urban crime which was brought to the attention of the authorities (which ruled out most crimes such as domestic violence which were committed behind closed doors) was of a more mundane nature. Shore (2003: 139) used Sessions of the Peace records in the early 1720s as evidence of ‘the petty and mundane nature of most crimes’ with assault cases being the chief form of petty crime in urban areas in the early decades of the eighteenth century (Gray, 2015: 76). Nonetheless, crime of this nature was of considerable concern to the respectable classes of the time.

The early decades of eighteenth century witnessed what has been described as ‘a heightened concern about crime in the metropolis’ (Shore, 2003: 147). Much crime was committed

locally, within the boundaries of the parish (which was the main social and administrative unit at that time) and thus criminals were part of the local neighbourhood in which they operated (Shore, 2003: 145). It has been asserted that 'the workplace, domestic service [theft by servants], familial connections, sociability and street-life were all points in the lived experience that may have provided opportunities for theft' (Shore, 2003: 140). This made for local reactions designed to limit crime and immorality.

However, urban living also served to extend the opportunities for crime to be committed, especially whilst shopping, at sporting or social events which attracted rich and poor alike and provided new opportunities for the rich to be victimised through crimes such as pick pocketing in which crowd situations provided the criminal with a degree of anonymity to perform illegal acts. This form of crime was especially attributed to women (sometimes posing as prostitutes) and youths.

There was a tendency to locate the criminal classes (or more accurately, the criminal sub-classes) with the urban poor where it has been argued that crime in urban environments was 'part of the broader makeshift economy of the poor' (Shore, 2003: 141) with workplace theft, prostitution and receiving being key aspects of the 'makeshift economy' (Shore, 2003: 144). It has been argued that 'workplace theft, begging and vagrancy, prostitution, petty theft, shoplifting, and receiving of stolen goods are all points on the continuum linking poverty and criminality' (Shore, 2003: 144) and that what might be seen straight-forwardly as criminal behaviour by the authorities, might by the offender be viewed as solutions to poverty, dearth, crisis, under-and unemployment' (Shore, 2003: 139).

It was concluded that 'many poor Londoners undoubtedly resorted to crime, especially property theft, because it offered them their only chance for earning a living' (Ultimate History Project, undated: [Online]). Accordingly, it was argued that it was hard to distinguish between 'a "criminal" population of London and the poor population as a whole we can say of the hanged that they belonged to the poor' (Linebaugh (2006): xxi). The availability of cheap gin in the early part of the eighteenth century was also seen as a factor in the commission of crime and one which linked the vices of the poor to illegal actions (Ultimate History Project, undated: [Online]).

The perceived relationship between crime and poverty suggests that crime played an important role in 'survival strategies' but it also makes it hard to draw a distinction between 'the poor' and 'the criminal' as 'overlaps of 'deviant' and 'normal' life in the metropolis were much more ambiguous' (Shore, 2003: 141). The extent to which crime was tolerated by poor people within neighbourhoods is one factor that serves to blur the distinction between the criminal classes and the poor in general.

Nonetheless, contemporary commentators did draw such a distinction by attributing urban crime to 'organised gangs of criminals' which thrived comfortably in an inverted world of robbery, gambling, whoring, vice and idleness' (Shore, 2003: 147) and which gave a certain degree of professionalism to crime in that period. It also resulted in certain areas of the City being viewed as 'no go' areas by contemporaries of the period (McLynn, 1989: 3). Such places manifested many of the characteristics that the Chicago School of Human Ecology, building on Durkheim's theory of anomie, would later in the 1930s and 1940s identify as 'social disorganisation' (discussed in Joyce, 2017: 14-15). Specific features of these areas of London in the early eighteenth century included a highly transient population, a high proportion of young and unmarried people (most of whom had migrated from rural Britain), loosened family ties and the inability to apply traditional methods of social control based on deference to control behaviour (Hay, 2011: 55, Linebaugh, 2011: 79-80).

In the 1720s and 1730s fears about crime, especially street crime such as pick pocketing, were especially articulated. Concerns arose from a number of factors which included the activities of Jonathan Wild (which will be considered later) and the demobilisation of troops after the 1713 Treaty of Utrecht (Shore, 2003: 148). The actual extent to which crime actually grew in London in this period is probably incapable of accurate calculation, but there was a moral panic about crime in this period, inflamed by writing of authors such as Daniel Defoe. This concern was especially focused on criminal gangs as opposed to the poor in general.

It has thus been concluded that ‘the early eighteenth century was a period of heightened anxiety about crime and order, and consequently one in which the combined forces of media attention, social policy and elite commentary created a vision of the metropolis infested and overrun by organised criminality’ (Shore, 2003: 138). This concern extended to numerous forms of criminal activity.

Women and Crime

Beattie’s (1975) essay on the criminality of women in seventeenth-and eighteenth-century England examined the judicial records of two south-eastern counties, Surrey and Sussex. Beattie examined cases dealt with in the principal courts of these counties in 63 sample years selected between 1663 and 1802. He argued that

apart from poaching and forgery, women participated in the same range of crimes as men and that the patterns of male and female crime were similar in the sense that for each, property offences accounted for roughly half of the charges laid and crimes against the person, roughly a third. But the numbers involved were markedly different. Except in some of the less common offences, like counterfeiting, men decisively outnumbered women in all crimes, predominating by more than three to one in the largest categories of property offences and personal violence

He noted, however, that the records of the courts in Surrey revealed that 80 percent of those charged with felonies were men and that ‘A strikingly lower level of criminality of women is clearly apparent’ (Beattie, 1975: 80). However, he also concluded that

Women's crime ... was very much more extensive in the city than in the rural parishes and market towns of the rest of the county of Surrey or in the essentially rural county of Sussex. And women not only committed a larger number of offences in these urban parishes, but also accounted for a much higher proportion of the total crime in the city than in the countryside” (Beattie, 1975: 81)

This led him to suggest that

The contrasting urban and rural crime patterns ... derive from and are evidence of differences in the nature of women's lives and work in these different settings, in the range of their social contacts and in their economic opportunities and difficulties (Beattie, 1975:81).

Records of cases tried at London’s Old Bailey also revealed that the scale and nature of female criminality was different to that conducted by males, although women accounted for around 40% of the defendants from the 1690s to the 1740s (and over half the defendants in the first decade of the eighteenth century (The Proceedings of the Old Bailey, 2018b:

[Online]). This situation may have arisen as the consequence of migration into London which led to women facing significant economic hardships

New immigrants to the metropolis were often cut off from networks of support such as family and friends, and women's wages were typically significantly lower than men's, and their jobs less secure (The Proceedings of the Old Bailey, 2018b: [Online]).

It was stated that throughout the period 1674-1913, female defendants at the Old Bailey

account for a significant proportion of the accused in only a small number of offences, particularly certain kinds of theft (pickpocketing, shoplifting, theft from lodging houses, theft from masters, and receiving stolen goods) and coining, kidnapping, keeping a brothel, and offences surrounding childbirth. On the other hand, relatively few women were accused of deception, other sexual offences, breaking the peace, and robbery (The Proceedings of the Old Bailey, 2018b: [Online]).

This situation was in part explained by the prescribed gender roles (with passivity being emphasised as a female attribute which tended to reduce their involvement in crimes of violence) and to the different nature of the lives led by men and women -

Women, for example, were less likely to carry weapons or tools, or to spend time in alehouses, so they were less likely to become involved in spontaneous fights, and when they did they rarely had a lethal weapon to hand. Since they spent more time in the home they may have had fewer opportunities to commit crime, particularly temptations to steal (The Proceedings of the Old Bailey, 2018b: [Online]).

In agreement with Beattie (1975) it was argued that life styles also influenced the way in which men and women carried out specific types of crime in London -

It is certainly likely that male and female patterns of theft differed, owing to the different types of work and leisure engaged in by each sex. Thus prostitutes stole from their clients and were accused of pickpocketing; female servants stole from their masters; and female customers, possibly motivated by desires to keep up with the latest fashions, stole from shops. In addition, women's participation in trading networks gave them skills suitable for buying and selling stolen goods. On the other hand, men were far more likely to be involved in thefts from places of work such as ships, warehouses, docks, and places of manufacture; and, in rural areas, thefts of livestock (The Proceedings of the Old Bailey, 2018b: [Online]).

Box 2.3

Gender and Employment Opportunities

It has been noted above that female criminality was influenced by employment opportunities.

Drawing on archival research on women in Aberdeen and Edinburgh, Colchester and Kingston-Upon-Thames, Simonton noted that women worked in a myriad of ways during the eighteenth century, with husbands, in families, and as independent workers, both married and single. Middling women 'left bequests...managed household economies, bought luxury goods and fostered cultural production. They were also - and significantly- active in urban commerce and their status as traders was widely recognised' (Simonton, 2013a: 95-6).

Women dominated certain areas of urban activity, such as clothing trades, food trades, innkeeping, midwifery, and service, also having roles in the informal and sometimes illegal economy, also playing a central part in the development of both local and international commerce in several towns of England in the eighteenth and early nineteenth centuries.

Examining agency as a mosaic of changing opportunities, Simonton and Montenach addressed different local and national contexts, and the constraints and obstacles with which women had to fight or cope - such as laws, guilds or hierarchical relationships - in the private and public spheres' and accommodated, negotiated or manipulated social rules and gender roles' (Simonton and Montenach, 2013: 5)

In their study of female servants in eighteenth-century European towns, it was suggested that women utilised 'diverse strategies, to accommodate, negotiate or manipulate social and gender regulations and restrictions, in order to gain access to major social resources such as work and mobility (both physical and hierarchical), thereby illustrating both the constraints and opportunities presented to women in an urban environment.' (Simonton and Montenach, 2013: 5-6)

It was noted that 'As places that disseminated and fostered key social, economic, political and cultural developments, towns were central to the creation of gendered identities and the transmission of ideas across local, national and transnational boundaries' (Simonton, 2013b:2).

The role of receivers

The crime with which women were especially associated which included shoplifting was also often conducted by some form of criminal gang (Shore, 2003: 150). Young children also operated in gangs whose stolen goods were passed on to receivers. This suggested that crime in the late seventeenth and early eighteenth centuries possessed a degree of organisation.

The way in which crime was alleged to be organised focused on factors which included family or neighbourhood links or criminal networks in which receivers (sometimes called 'fences') were deemed to play a crucial role (Shore, 2003: 155).

Many early eighteenth century commentators felt that the criminal law was poorly structured in the way it dealt with receivers -

receiving was not actually a felony in common law; the inherent problem was in the link between the receiver and the offender. Thus to convict a receiver, the thief had first to be convicted of felony. By 1718 receivers who were found guilty of being accessories to a felony could be transported for fourteen years. However, there were substantial difficulties in convicting receivers Receivers were portrayed as a central feature of the world of organised crime, an agent linking the individual criminal to the broader networks of crime in the city (Shore, 2003: 153-4).

Those who were accused of receiving tended to be pawnbrokers, old clothes shop keepers, publicans and lodging-house keepers, persons who 'occupied roles, ran trades or small businesses, at the heart of the community' (Shore, 2003: 154). Receivers were described as 'central players in the interlinking of community and criminal networks in the metropolis' (Shore, 2003: 154).

It is finally important to point out that crime was not confined to the urban working class. Fraud and forgery were two examples of what we would now refer to as white collar crime (McLynn, 1989: 133) while offences such as arson and animal maiming afflicted rural areas.

Conclusion

The eighteenth century was often depicted as a period when the customary activities of the poor ‘increasingly came under the orbit of the criminal justice system’ (Shore, 2003: 137). This especially applies to the activities of the rural and labouring poor (Shore, 2003: 138) whose customary rights and perquisites were eroded’ (Shore, 2003: 143) by the twin processes of urbanisation and industrialisation (McLynn, 1989: 301). The erosion of customary rights and ‘perks’ especially effected rural and coastal locations.

Such a sentiment is compatible with an attempt to draw a distinction between two distinct types of offence and offenders - many forms of which have been considered above – ‘good criminals (which included rioters, poachers, smugglers and primitive rebels in industry) to which the term ‘social crime’ (where ‘the perpetrators operated within a broad local or customary consensus of right’) (Hay *et al.* 2011: xlviii) was applied and those who committed crime without qualification – such as thieves, robbers, highwaymen, forgers, arsonists and murderers (Hay *et al.* 2011: xv-xvi), activities that were branded ‘individualistic, selfish or cruel’ (Hay *et al.*, 2011: xlviii).

It was argued that those engaged in social crime often did so in support of a traditional way of life which drew them into conflict with the propertied classes and which was likely to secure a degree of support from the local community in which the crime was committed (Hay *et al.* 2011: xvi). It was remarked about smugglers, for example, that they were overwhelmingly plebian

Drawn from the labouring poor of the countryside ... far from being seen as criminals, they were held to be defending traditional and customary rights, as well as resisting unpopular authorities and an evolving national market (Hay *et al.* 2011: xxviii)

It was further suggested that poaching, wrecking as well as smuggling ‘often had the support of or silent acquiescence of significant parts of the community giving rise to them’ and sometimes involved a ‘a tinge of redistributivism’ (Hay *et al.* 2011: xxviii).

There was, however, some degree of fuzziness at the edges of a distinction between social and other forms of criminal activity, as witnessed by events that included manifestations of popular support for criminals such as Jack Shepherd (a thief, burglar, pickpocket, highwayman and shoplifter) when was executed in 1724.

Further resources

“Highway Robbery”, available at the link

- <https://www.youtube.com/watch?v=oiMfEwTQOVA>]

“The True Story of the Golden Age of Piracy” available at the link

- <https://www.youtube.com/watch?v=sKNW1J6i0Rg>

"The History of Smuggling and Smugglers on the Kent Coast", available at the link

- <https://www.youtube.com/watch?v=5Xjwsu4MG40>

"Poaching 1500-1750" available at the link

- https://www.youtube.com/watch?v=-N4et01_9R0

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