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The magistrate and the community:
summary proceedings in rural England
during the long eighteenth century

Submitted for the Degree of Doctor of Philosophy
At the University of Northampton

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Abstract

The study of how the law worked at a local level in rural communities, and in the role of the rural magistrate at summary level, has been the subject of relatively little attention by historians. More attention has been given to the higher courts, when the majority of plebeian men and women who experienced the law during the long eighteenth century would have done so at summary level.

Although some work has been carried out on summary proceedings, this has also tended to focus either on metropolitan records, a small number of sources, or on a specific, limited, number of offences. There has not been a broader study of rural summary proceedings to look at how the role and function of the rural magistrate, how local communities used this level of the criminal justice system, as complainants, defendants and witnesses, and how they negotiated their place in their local community through their involvement with the local magistrate.

The research presented here uses the surviving summary notebooks of 13 magistrates working across central and southern England as primary sources, taking both a quantitative and qualitative approach to examine how rural summary proceedings operated. It shows that there was wide participation in the summary process in rural England, and that rural magistrates had a more individualised approach to their summary work and decision-making than their London equivalents. It reveals how even the poorest members of rural societies were able to employ agency and display authority in their appearances before the magistrate, and demonstrates the extent to which the use of discretion, mediation and arbitration were key functions of the rural justice.

Acknowledgements

In addition to my supervisory team of Drew Gray and Cathy Smith, I would like to thank the community of criminal historians who I have got to know during my research, and who have proved to be an incredibly supportive, encouraging group of researchers. Particular thanks are due to Peter King, Peter Rushton and Dave Cox for sharing research with me and suggesting areas to research further.

The archivists at the Centre for Buckinghamshire Studies, Shropshire Archives, Nottinghamshire Archives, East Sussex Record Office, Wiltshire and Swindon History Centre, British Library, and the National Archives have all been unfailingly helpful.

Undertaking this research would not have been possible without the love and support of my family, in particular my mother, Carolyn Ford, husband John Darby, and my children, Jake and Eva Darby. Thanks must also go to Lucy Bailey for her friendship and encouragement throughout this process.

Finally, this thesis is dedicated to the memories of Elizabeth Garbett and Kathleen Harper, with love.

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Glossary

BL	British Library
CBS	Centre for Buckinghamshire Studies
ESRO	East Sussex Record Office
NRO	Northamptonshire Record Office
TNA	The National Archives
WRO	Warwickshire Record Office
WSHC	Wiltshire and Swindon History Centre

Note

Figures in this thesis taken from magistrates' notebooks only use entries where the offence type can be obtained. Unfinished entries, for example, where only names are given but no details of the case beyond that, are not included for analysis.

Chapter one: Introduction and themes

This study will analyse the records of rural summary proceedings over the course of the long eighteenth century. Summary proceedings were relatively informal civil or criminal proceedings, heard without a jury. As King has argued, such proceedings were where most people came into contact with the law during the eighteenth century, and over this period, magistrates' powers of summary jurisdiction were greatly extended and proceedings became increasingly well-organised and regular.¹ Therefore, a study of summary proceedings during this time offers an insight into how communities used the law, and how magistrates reacted to them and the cases that individuals brought before them.

This thesis studies the notebooks of 13 magistrates working in central or southern England over the course of the long eighteenth century.² This represents a far larger group of such notebooks than has previously been studied – although a handful have been published, and historians of crime have asserted their importance, they have never previously been analysed as a group. This corpus of notebooks includes some that have been published, with introductions and, occasionally, a note of subsequent action or outcomes in cases, researched by the editor. Others are handwritten, unpublished, and taken from county

¹ Peter King, 'The Summary Courts and Social Relations in Eighteenth-Century England', *Past & Present*, 183 (2004), 126; David Lemmings, *Law and Government in England during the Long Eighteenth Century: From Consent to Command* (Basingstoke, 2011), 45.

² A brief biography of each magistrate studied in this thesis, and the area in which they worked, is given at Appendix 1 (page 383).

archives. These notebooks vary both in format and the amount of detail they record, and in the duration of time they cover.

The published notebooks are those of William Hunt, Samuel Whitbread and Thomas Horner. The other ten magistrates studied in this thesis are William Bromley, William Brockman, Roger Hill, Thomas Thornton and his grandson Thomas Lee Thornton, Edmund Waller, George Spencer, Thomas Netherton Parker, Richard Colt Hoare and Richard Stileman. These magistrates recorded their summary work in notebooks that remain unpublished, although an edited version of Waller's notebook has been in preparation for several years. Two separate notebooks are used for each of Whitbread, Brockman, Spencer, and Hoare.³ Together, these notebooks cover the period 1685 to 1836, with William Bromley's Warwickshire notebook being the earliest, and Stileman's, in Sussex, being the latest. Five more notebooks are used for comparative purposes, being located in other regions of England. These are the notebooks of Henry Norris in Hackney, Richard Wyatt in Surrey, Gervase Clifton in Nottinghamshire, Thomas Dixon in Lincolnshire and Edmund Tew in County Durham.

a. What magistrates' notebooks recorded.

Although magistrates were advised to keep notebooks of their cases, they were not told exactly what they should record, and therefore they vary in what they

³ In addition, the published version of Thomas Horner's justicing work uses two separate notebooks (Michael McGarvie (ed), *The King's Peace: The Justice's Notebooks of Thomas Horner, of Mells, 1770-1777* (Frome, 1997)).

show and how they record cases.⁴ The typology of notebooks listed below shows the main information recorded by individual magistrates, and the differences and similarities between them.

Table 1.1 A typology of justicing notebooks.

	Summons issued	Warrants issued	Information or complaints	Depositions	Examinations
William Bromley (1685-1706)	No	Yes	Yes	Yes	Yes
Roger Hill (1689-1705)	No	Yes	Yes	No	No
William Brockman (1689-1721)	No	Yes	Yes	Yes	No
Thomas Thornton (1700-1718)	Yes	Yes	No	Yes	Yes
William Hunt (1744-1749)	Yes	Yes	Yes	No	Yes
Thomas Horner (1770-1777)	Yes	Yes	Yes	No	Yes
Edmund Waller (1773-1788)	Yes	Yes	Yes	No	Yes
Richard C. Hoare (1785-1834)	Yes	Yes	Yes	No	Yes
George Spencer (1787-1794)	No	Yes	Yes	No	Yes
Thomas L. Thornton (1789)	Yes	Yes	Yes	No	Yes
Thomas N. Parker (1805-1813)	No	No	Yes	No	Yes
Samuel Whitbread (1810-1814)	No	No	Yes	No	Yes
Richard Stileman (1819-1836)	Yes	No	Yes	Yes	Yes

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, NRO Th1681, WSHC 383/955, WSHC 229/1, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

⁴ This will be discussed further in chapter two.

As can be seen from table 1.1, magistrates used their notebooks primarily to record the initial stages of a case - the information given by a complainant, and warrants ordered as a result of a complaint. Those complained about were likely to have their examinations recorded, but it was more unusual to record formal, signed, depositions in the notebooks. None of the magistrates studied here recorded action being taken in all cases, and they were more likely to record initial action, such as a warrant or summons following a complaint, than a summary punishment.⁵ The justicing notebooks did not record all the legal instruments that magistrates employed, but only a selection. There is commonality across the notebooks in terms of information being taken and recorded, but there is also individuality in terms of other stages of a complaint being recorded, and the amount of detail given - as well as in whether the outcome of a case was recorded.

It is also important to note that the magistrates' notebooks only formed one part of the recording and processing of summary cases. The legal instruments that formed the basis of the magistrate's summary work during this period resulted in other written documents being produced, such as warrants, writs, summons, orders, passes and conviction certificates. These procedures were recorded and preserved elsewhere, so a magistrate might not have thought that the recording of all steps in the process within his notebook to be necessary. In poor law cases, an order of removal might be made, or place of settlement recorded, outside of

⁵ The extent to which they recorded action taken in a particular case varied; Richard Stileman, for example, only recorded his decisions in six cases, where Thomas Netherton Parker did in 98 per cent of his cases (ESRO AMS 6192/1; SA 1060/168-70).

the notebooks. They, therefore, do not necessarily record all the stages in a case, but perhaps only the parts not recorded elsewhere. This is not, however, consistent. Although it is rare that a notebook recorded all the steps of the process, what they chose to record differed.

Figures 1.1 to 1.6 show a page from each of six magistrates' notebooks studied in this thesis, and demonstrate both the similarities and differences between them. Phillip Ward kept a notebook of his cases as a JP in Northamptonshire that differed greatly from the other magistrates studied here; Ward's is largely what Gray has described as a forum where Ward 'hypothesised on the application of the law and left notes for himself to refer back to'.⁶ In this sense, it is very different to other surviving notebooks, and is not considered here as a primary source because of its distinct nature. Although the magistrates studied here did not discuss the application of the law in detail, some did note specific legislation they had used to make a decision, whereas others referred to generic 'Game Laws', for example, or failed to record such detail at all. Edmund Waller's notebooks contained the least detail, summarising cases in a line or two, whereas Samuel Whitbread's two notebooks contained a lot more background information. Whitbread recorded the action he took in most cases, whereas Richard Stileman rarely recorded outcomes. Again, this reflects both what the magistrate thought was important to record, and what he saw the purpose of his

⁶ Drew Gray, 'Making law in mid-eighteenth century England: legal statutes and their application in the justicing notebook of Phillip Ward of Stoke Doyle', *The Journal of Legal History*, 34.2 (2013), 212.

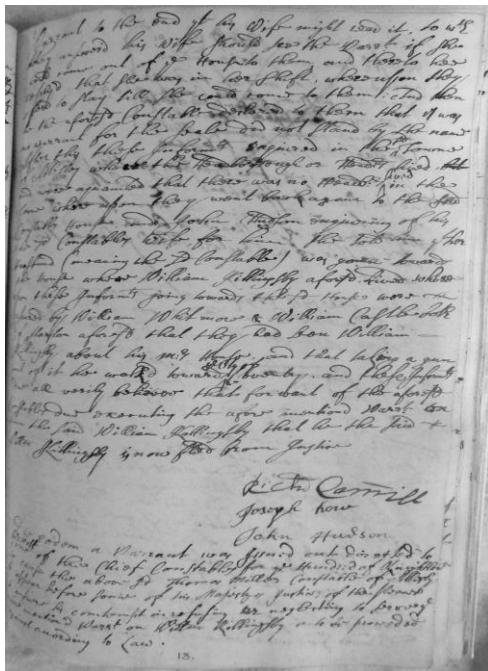
notebook as being – whether it was an aide memoire, or a protection in the case of future complaints about his work and decision making.

The notebooks also differ in terms of who actually wrote or contributed to them, and whether the cases recorded in the books were heard by that magistrate sitting alone, or with others. As chapter two will discuss further, justices could sit alone to hear particular cases, but in others, they were supposed to sit with other magistrates. The rise in formalised petty sessions in the countryside by the early nineteenth century led to magistrates increasingly sitting together, but there was some flexibility in how rural justicing operated in practice, and some magistrates did not always sit in pairs for cases that were supposed to be heard with another justice.⁷ It is difficult to get a conclusive view on this by looking at the notebooks, though, as some magistrates were more assiduous than others in recording whether they were sitting singly or not. Two of the most assiduous were Thomas Netherton Parker and George Spencer. In other notebooks, it is sometimes evident that entries have been made by a clerk or other magistrate (recording his initials or name).⁸

⁷ Although petty sessions gradually became more formalised, this did not occur wholesale across the country at the same time, with homogenisation of the process only taking place under the 1848 Summary Jurisdiction Act (11 & 12 Vict. c.43) (J.H. Baker, *An Introduction to English Legal History* (Oxford, 2007), 511).

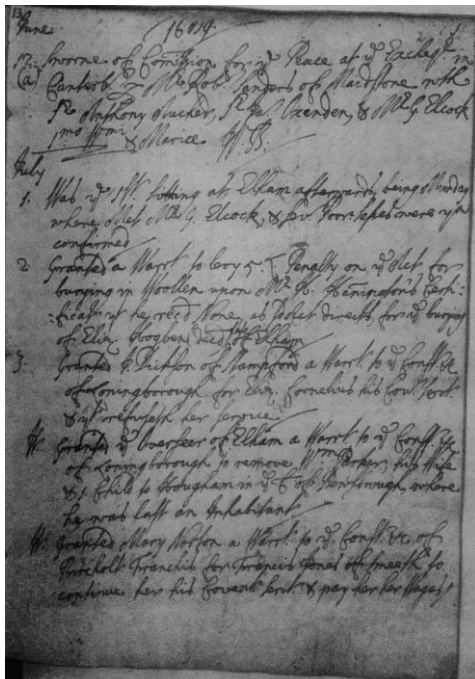
⁸ There is an element of doubt in certain cases as to who has recorded the case, but given that JPs preferred to sit with those of similar minds to themselves - Landau has noted, in relation to William Brockman, the importance of finding 'allies' to work with at a local level - this does not negate conclusions made about the rural magistrate and his decision-making (Norma Landau, *The Justices of the Peace* (Berkeley, 1984), 26).

Figure 1.1 A page from William Bromley's notebook



Source: WRO CR0103

Figure 1.2 A page from William Brockman's notebook



Source: BL Add MS 42598

Figure 1.3 A page from Thomas Lee Thornton's notebook

May 9th 89
 Robert Perkins examined to his settlement day
 he lived with Robert Sand over a year & quarter, then
 went to Brampton where he lived a year &
 half without quitting his service. He after w^{as}
 married & his wife lived in a house at
 Charles Brampton two years without paying any rents
 settled at Church Brampton
 being sworn to that
 Robert Collet of Stone, in the publick street of
 Stone about 7 o'clock at night, was violently
 assaulted by W^m Lettis butcher; May 9th

The examination of Mary Britten charged with
 having been delivered of a female Bastard Child
 & refusing to declare the father
 Elizabeth of Little Houghton removed to Great
 Billing having never gained any legal settlement
 elsewhere. May 9th

William Lettis bound in a recognisance
 of ten pounds to appear at the next
 general Quarter Sessions. May 10th

John Moses Hazard apprentice to the
 w^{as} J^r Bailey.

The information of the Rev^d J^r John Croxley
 w^{as} the w^{as} of Mr Robt Marriott of
 Haggerthorpe Harpole field parish for riding
 in his waggon & refusing to let Mr Croxley
 see his horse or the waggon. June 3rd
 after he got out of the waggon he rode
 on the High.

Source: NRO Th1681

Figure 1.4 A page from George Spencer's notebook

19 Nov 8. 1758 Cozenhoe settlement
 James Th^o Stirling examined to his settlement
 he lived with Robert Sand over a year & quarter
 then went to Brampton where he lived a year &
 half without quitting his service. He after w^{as}
 married & his wife lived in a house at
 Charles Brampton two years without paying any rents
 settled at Church Brampton
 being sworn to that
 Robert Collet of Stone, in the publick street of
 Stone about 7 o'clock at night, was violently
 assaulted by W^m Lettis butcher; May 9th

The examination of Mary Britten charged with
 having been delivered of a female Bastard Child
 & refusing to declare the father
 Elizabeth of Little Houghton removed to Great
 Billing having never gained any legal settlement
 elsewhere. May 9th

William Lettis bound in a recognisance
 of ten pounds to appear at the next
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John Moses Hazard apprentice to the
 w^{as} J^r Bailey.

The information of the Rev^d J^r John Croxley
 w^{as} the w^{as} of Mr Robt Marriott of
 Haggerthorpe Harpole field parish for riding
 in his waggon & refusing to let Mr Croxley
 see his horse or the waggon. June 3rd
 after he got out of the waggon he rode
 on the High.

Source: BL Add MS 76337

Figure 1.5 A page from Thomas Netherton Parker's notebook

by Mr. Yates - 1 June 1816
 Mr. Jones of St. Andrew's afterwards agreed that
 Mr. Phil Jones should pay 50 to the poor of
 the Poor at Merton Chapel, 50 to the Poor of
 Lambeth, and 50 to the Poor of St. Andrew's
 in good. Mr. Phil Jones to pay Mr. Yates' demand
 and then all proceedings to drop - 1 June 1816.

June 7 1816 Mr. Edwards of Maresfield Hall
 Mr. Davis of Lymington for pound breach.
 Mr. Davis to pay 5 to Mr. Edwards, and if he
 does do an damage of trespass in the parish before
 this time and Christmas, Mr. Edwards will allow
 the 5 - otherwise the 5 to be given in kind to Merton
 Chapel.

13 June 1816. Maria Evans complained that
 Bentley of West people had charged her with sheep
 a shirt of their hedge - Mr. Bentley was to have
 paid her a guinea as an acknowledgment for the
 injury done to her character; but Maria Evans having
 reported that Mr. Bentley's shirt had been found upon
 and which report was traced back to her, it was
 that Mr. Bentley should pay her only half a guinea.

Source: SA 1060/171

Figure 1.6 A page from Richard Stileman's notebook

16/12/18
 That the Rev. Dr. Eggleston wife
 of the Parish of St. Andrew's, Lymington
 of Eden in the County of Southampton
 made to Bath and on the 30th day of Dec.
 on Thursday the 30th day of Dec.
 met at Eden a poor Edward
 called the younger of the
 Parish labourer did voluntarily
 a assault & threat her
 by seizing hold of and
 her down ~~with~~ ^{striking}
 and otherwise abusing and
 ill treating her

Lymington at
 Winchester the
 31st day of Dec. 1816 } The Court
 of }
 the }
 Bishopric of }
 Winchester }
 Richard Stileman
 Complaint Discharged

Summons
 for Sunday
 2nd party

Source: ESRO AMS 6192/1

The individuality in the notebooks will both limit of enhance different aspects of the analysis in the rest of this thesis. In terms of looking at the decision making of magistrates at summary level, notebooks such as Samuel Whitbread's are undoubtedly more useful than those of Richard Stileman, who rarely records such information. Yet Stileman's is useful for looking at the effects of economic depression on a community, as reflected in the types of cases coming before the magistrate. Therefore, each notebook has something to say about the nature of summary proceedings at a local level, as well as improving an understanding about how summary proceedings worked and what their function was perceived as being amongst members of the community in which the magistrate was a central figure.

b. Methodology

This thesis focuses on treating the 13 magistrates' notebooks as a distinct corpus, taking a 'horizontal' approach in analysing the cases that came before magistrates at summary proceedings. Where necessary, cross-referencing specific cases with other archive records, such as baptism records, has been carried out, for example, to look at the age of specific offenders in rioting cases, there has not been an attempt to take a 'vertical' approach. Although it would be an interesting subject for further study, by tracing individuals referred to in summary proceedings back into parish records and also into criminal records, such as Quarter Session and Assize records, time and the number of cases involved mean that this has not been possible in this study. Instead, a statistical approach has been taken, using the categories of case or offence derived from existing histories of crime, and focusing on the relative proportions of each case

type or offence, and sub-categories, within this corpus of notebooks. This has some limitations in terms of the disparity of how cases are recorded by individual magistrates, the timescale covered by individuals, and the wide time range covered. However, it does enable a comparison to be drawn of sources across the long eighteenth century to see how summary proceedings operated in rural England, and the cases that came before the rural magistrate at this level of the criminal justice system. It is the first study to look at a wide range of notebooks, rather than analysing a single notebook, or a couple, and drawing conclusions from a limited sample. It is the first study of a large group of summary justice notebooks and thus enables a more detailed investigation into how rural magistrates worked, and whether the nature of their work or attitudes changed, over the long eighteenth century.

Within the notebooks being studied, both published and unpublished, there are inconsistencies in both approach and timescale. These are very much the notebooks of individuals who have different methods of organising and recording their work. Magistrates such as William Bromley and Richard Colt Hoare recorded cases in different ways within the same notebook - some at the time the cases were heard, and some written up later. It also appears that some magistrates had several notebooks, used for a time, and then abandoned or lost. New books would then be started, or in a later desire to find a scrap of unused paper, old notebooks would be found, dug out and used again. What survives today is a fragment of what would have been originally used, and the changes in recording methods between magistrates and across time means that there might

not be a consistent approach throughout one notebook, let alone across several. In some instances, entries are unfinished or even limited to the names of complainant and defendant with no details of what the complaint was. For the purposes of analysis in this thesis, only those entries where an offence or issue can be identified are studied. Unfinished entries where the offence type cannot be identified are omitted.⁹

The choice of notebooks to be studied in this thesis has been determined partly by what material survives, by geography, and also by time. Firstly, the survival of magistrates' records of summary proceedings over the long eighteenth century is poor, given the number of magistrates working over this period, and the number of cases they dealt with. This poor rate of survival is due primarily to two interconnected reasons. Firstly, the recording of cases heard in summary proceedings was not mandatory, although it was advised.¹⁰ In addition, the importance of summary proceedings to magistrates may have affected their survival rates. Although they were advised to keep them primarily in the case of future conflict or argument, the chances of a rural magistrate being held to account and asked to justify his decisions was small.¹¹ If they were unlikely to be

⁹ This follows the approach taken by both King and Steedman, whereby only entries that can be categorised are included (Steedman, *An Everyday Life*, 128, Peter King, "The Summary Courts and Social Relations", 170-172).

¹⁰ Chapter two will look in more detail about the advice magistrates were given in manuals and handbooks about how and why they should record their cases.

¹¹ Although there was a procedure by which those convicted of offences at summary level could appeal to Quarter Sessions, parliament, over the course of the long eighteenth century, 'invented a legal structure which exonerated each individual justice from the imputation of tyranny' and 'reinforced the justices' autonomy' (Norma Landau, *The Justices of the Peace*, 352). The cost of appealing

asked to explain their decisions, they may not have seen the necessity of keeping voluminous records, or may have had them destroyed after a certain period of time. But in addition, the nature of their survival may also be to do with the type of magistrate whose notebooks survive. Overwhelmingly, the surviving books belonged to gentry JPs rather than clerical magistrates, despite the number of clerical magistrates doubling between 1761 and 1831.¹² Gentry JPs tended to have more substantial homes, passed, along with their contents, through the generations. These contents, including the notebooks, were seen as part of the estate, and therefore have been more likely to be kept and preserved. This is a somewhat simplistic explanation, however, that does not wholly explain the survival of notebooks from families who did not stay in the same houses, or derive from the same backgrounds, but instead perhaps owe their survival to family members who had a keen appreciation of literacy or genealogy and actively sought to preserve their ancestors' personal writings.

Secondly, the choice of notebooks studied here has also been dictated by geographical area. Notebooks have been chosen that cover a geographical area covering central and southern England. Other notebooks from outside of this area are used for contrast where necessary, but this thesis attempts to draw comparisons between magistrates working in broadly rural communities within a closer geographic distance from London than, for example, Edmund Tew,

a magistrate's decision, or making a formal complaint about his actions, also limited his accountability.

¹² Eric Evans, 'Some reasons for the growth of English rural anti-clericalism, c.1750-1830', *Past & Present*, 66.1 (1975), 101.

working with coastal communities in the north-east of England.¹³ In order to get a broad range of notebooks, some discretion has had to be used – this thesis does not attempt to compare all surviving notebooks. Some have been omitted in order to avoid an over-reliance on a particular county.¹⁴ In addition, the notebook of Richard Wyatt in Surrey has been omitted because, unlike other notebooks studied here, the content of cases is far more influenced by London than others; it is, in many ways, a more metropolitan notebook rather than a rural one, and this is reflected both in the type of case dealt with by Wyatt, and the prominence of London-dwellers within it.¹⁵

Figure 1.7, below, shows the locations of the magistrates studied in this thesis. Although the material studied is largely governed by the availability of surviving

¹³ Gwenda Morgan and Peter Rushton (eds), *The Justicing Notebook (1750-64) of Edmund Tew, Rector of Boldon* (Woodbridge, 2000).

¹⁴ In particular, the notebook of Phillip Ward, a JP based in Oundle, Northamptonshire has been omitted for this, and an additional reason detailed later in this chapter (*The Justicing Notebook of Phillip Ward of Stoke Doyle* (Lincoln's Inn Library, Misc MS 592). In addition, further notebooks of the Brockman family, which survive in the British Library, are not studied, in order to avoid an over-emphasis on one particular family or specific geographic area. William Brockman recorded a prodigious number of cases, as did his successors, James Brockman and Ralph Drake-Brockman. For the purposes of this study, I look at two of William Brockman's surviving notebooks, which overlap in terms of time, and which are both recorded entirely by him or his clerk (BL Add MS 42598 and BL Add MS 42600 – a subsequent notebook changes hands between William and James Brockman, with the latter taking over the recording of cases in the book after his father's death). This still enables a substantial period of time to be covered, some 32 years, without this becoming a thesis solely about the way the Brockmans administered the law. In addition, the Brockmans have already been the focus of attention in Norma Landau's *The Justices of the Peace*.

¹⁵ Wyatt's notebook is also more formal than other magistrates' notebooks, in terms of it being a deposition book, formally recording the examinations and informations taken by Wyatt. However, it has primarily been omitted from this study because of its more urban feel (Elizabeth Silverthorne (ed), *Deposition Book of Richard Wyatt, JP, 1767-1776* (Guildford, 1978)).

justicing notebooks, there is a broad range of material both in terms of time period and county. The emphasis is on the midlands and southern England, with the most 'northern' magistrate being located in Shropshire and most 'southern' in the coastal areas of Kent and Sussex.

Figure 1.7 Map showing locations of magistrates studied in this thesis.



Key (the period the individual justice's notebooks cover are in parentheses):

- 1: William Bromley, Warwickshire (1685-1721)
- 2: Roger Hill, Buckinghamshire (1689-1705)
- 3: William Brockman, Kent (1689-1721)
- 4: Thomas Thornton, Northamptonshire (1700-1718)
- 5: William Hunt, Wiltshire (1744-1749)
- 6: Thomas Horner, Somerset (1770-1777)
- 7: Edmund Waller, Buckinghamshire (1773-1788)
- 8: Richard Colt Hoare, Wiltshire (1785-1834)
- 9: George Spencer, Northamptonshire (1787-1794)
- 10: Thomas Lee Thornton, Northamptonshire (1789)
- 11: Thomas Netherton Parker, Shropshire (1805-1813)
- 12: Samuel Whitbread, Bedfordshire (1810-1814)
- 13: Richard Stileman, Sussex (1819-1836)

To determine what magistrates could be categorised as working in rural counties within central and southern England, Wrigley's comparison of counties in the eighteenth and early nineteenth centuries was used as a starting point. Wrigley used a sample of counties and split these into three groups. Firstly, he identified the 'London group', counties affected by their proximity to London, comprising Kent, Middlesex and Surrey. Secondly, he classified some primarily north-west areas and Nottinghamshire as the 'industrial group', with the third group being classified as the 'agricultural group'.¹⁶ However, Wrigley was inconsistent with some of his definitions. At one point, he included Warwickshire in the industrial group, but his tables defined Warwickshire as agricultural. However, this thesis loosely follows his categorisations, including Warwickshire in its 'agricultural group', under which classification Wrigley also included Bedfordshire, Buckinghamshire, Northamptonshire and Wiltshire.¹⁷ Somerset is also included, although Wrigley did not use this county in his study, as it is similar to Wiltshire in location and its rural nature.¹⁸ This is not to say that all agricultural counties

¹⁶ Wrigley defined an agricultural county as being one where the majority of employment was in agricultural work (E.A. Wrigley, 'English county populations in the later eighteenth century', *Economic History Review*, 60.1 (2007), 38-39).

¹⁷ There is further justification for including Warwickshire, and particularly, the notebook of William Bromley of Baginton, in an 'agricultural group'. Bromley was working in the pre-industrial era, and covered a range of villages and areas that even today are largely rural. Although he lived in fairly close proximity to Coventry, his cases largely involve residents from villages, rather than this larger centre. In addition, Coventry in the late seventeenth century and early eighteenth century was a relatively poor market town rather than a centre of industry (W.B. Stephens, 'The City of Coventry: Crafts and industries: Modern industry and trade', in W.B. Stephens (ed), *A History of the County of Warwick: Volume 8: The City of Coventry and Borough of Warwick* (London, 1969), 162-189. www.british-history.ac.uk, 13 January 2013).

¹⁸ Horner and Hoare both lived three miles from their nearest market towns (Frome and the smaller Mere). Hunt was nearly six miles from his nearest market town at Devizes. Brockman dealt primarily with residents of villages such as Elham, Lyminge and Newington, with Hythe being the nearest market town.

were the same, however. Such counties could, as Wrigley noted, contain both very rural areas, as well as market towns.¹⁹ Crimes committed in a well-populated market town, for example, might be different to those committed in narrow country lanes, and so studying different agricultural counties, albeit only a section of those counties, enables a comparison of offences that are committed in larger settlements to those committed in more isolated areas.

As this study is focused on the central and southern regions of England, I also include Kent. Although Wrigley considered it a member of the 'London group' because of its proximity to London, his study looks at the period 1750-1850. The Kentish notebooks I use in this thesis are William Brockman's, covering the period 1689-1721, which is prior to the period Wrigley considered to be affected by industrialisation (and therefore by its proximity to urban London). In addition, Brockman's notebook covers coastal and near-coastal south Kent, and is therefore less affected by London developments than, say, Bromley or Bexley. In this way, comparisons can be made between different counties that share certain geographical characteristics or primary occupations, in order to be able to ascertain whether certain issues before the magistrate affected particular types of community, and whether judicial decision making was affected by the

Folkestone was, during Brockman's time, a small fishing village, surrounded by pasture. The population in Tudor times was only around 500, and growth until Victorian times was slow (Edward Hasted, 'The town and parish of Folkestone', *The History and Topographical Survey of the County of Kent: Volume 8* (London, 1799), 152-188).

¹⁹ Wrigley, 'English county populations', 53. The current UK government classification of rural areas similarly includes market towns, villages, hamlets and dispersed communities as rural (Department for Environment, Food and Rural Affairs, 'Rural Urban Classification'. www.gov.uk. 13 June 2014).

locale, or can be explained by the individual magistrate's mentality and personality.

A third factor in the choice of notebooks to be studied is time. This thesis takes a broad timespan, from the late seventeenth century to the 1830s, thereby looking at notebooks over the course of the long eighteenth century. Table 1.2, below, shows which magistrates studied in this thesis were recording cases in their justicing notebooks over specific periods within this timescale.

Table 1.2 The timespan of the justicing notebooks.

	Number of magistrates studied	Individual magistrates
1685-1700	3	William Bromley, Roger Hill, William Brockman
1701-1725	3	Roger Hill, William Brockman, Thomas Thornton
1726-1750	1	William Hunt
1751-1775	2	Thomas Horner, Edmund Waller
1776-1800	4	Thomas Horner, Edmund Waller, George Spencer, Thomas L. Thornton
1801-1825	4	Thomas N. Parker, Samuel Whitbread, Richard C. Hoare, Richard Stileman
1826-1840	2	Richard C. Hoare, Richard Stileman

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, NRO Th1681, WSHC 383/955, WSHC 229/1, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

As can be seen from table 1.2, the notebooks studied here can be divided up into specific periods within the long eighteenth century. This enables a comparison to be made not only across geographic region but also over time, to study any changes in the type and number of cases dealt with by JPs over time, and also the

impact of changes to the role of a magistrate over this period. This will be analysed by a study of legal manuals and legislation passed over this period, and also by looking at how the role of the justice was discussed in popular literature and in the press during the period studied. This permits a fuller picture to be painted of changes in society over this time and create the context of the world in which the justices operated, as well as provide a more qualitative approach than the inconsistent recording within the individual notebooks might otherwise allow. It is important to set the justices' work into the context of their society given the relatively large time period looked at here; rural society was impacted on by the dawn of the industrial age, and the impact of the wars that broke out over the period, creating pressures on employment and living standards that one would expect to be reflected in the cases heard before the rural magistracy. In terms of newspaper reports, accounts became both more frequent and more detailed towards the end of the period covered in this study, so is more useful for the period in which the likes of Parker, Whitbread, Hoare and Stileman operated. However, the potential for bias by the newspapers, and the potential that a particular type of story would be favoured by a publication over another, will mean that such cases need to be treated with caution. Literary sources are rich in social context for this period, and include the works of Henry Fielding, novelist as well as magistrate. Again, though, the tendency of such works to focus on the atypical and the dramatic needs to be taken into account. The main source for contextualisation will be the various manuals and guides that were published for magistrates to use, which aid an investigation of how magistrates reached their decisions.

c. The neglect of rural summary proceedings, and why they should be studied.

The history of crime has become increasingly popular since the 1960s, before which point, as Styles has demonstrated, historians failed to treat crime as seriously as other elements of history. Prior to the 1960s, he argues, the emphasis was more on exoticism and ‘otherness’ rather than a ‘genuine’ attempt to understand criminality during the eighteenth century.²⁰ Since then, conversely, the study of the history of crime has become a ‘fashionable’ discipline.²¹ However, there have continued to be aspects of criminal history that have been less popular areas of discussion. In 1986, Sharpe bemoaned the lack of work that had been carried out on local government, and in particular on the work of post-Restoration JPs, and although criminal history continues to be studied in depth, many studies have focused on the upper levels of the criminal justice system – the Quarter Sessions and Assizes, where records survive in greater quantity.²² Williams has rightly commended the work of King in recognising the limitations of Quarter Session and Assize material in establishing, for example, the relationship between the accused and the accuser in a crime. However, she has stated that King was only able to avoid the limitations of ‘traditional’ crime evidence by using London material, suggesting

²⁰ John Styles, ‘Crime in Eighteenth Century England’, *History Today*, 38 (1988), 36.

²¹ J.A. Sharpe, *Crime in Early Modern England* (2nd edition, London, 1999), 124.

²² J.A. Sharpe, ‘*William Holcroft his Booke*’: local office-holding in late Stuart Essex (Colchester, 1986), xi; Peter King, *Crime and Law in England, 1750-1840: Remaking Justice from the Margins* (Cambridge, 2006), 230; Elizabeth Silverthorne (ed), *Deposition Book of Richard Wyatt, JP, 1767-1776* (Guildford, 1978), vii; Ruth Paley (ed), *Justice in Eighteenth-Century Hackney: the Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London, 1991), xvii. .

that no historian of non-metropolitan England would be able to access the same type of material.²³ This study will, though, build on King's work to show that the summary process was widely used by rural communities for both civil and criminal matters.²⁴ Only by a detailed study of summary proceedings can we develop a greater understanding of how rural society used the criminal justice system to negotiate relationships and issues within that society.

This study looks at who used the rural summary process, assessing both Hay's argument, in relation to the higher courts, that the eighteenth-century criminal justice system was a tool of the ruling elite and Brewer and Styles' conclusion that the criminal justice system was a 'multi-use right' used by the lower and middle orders of society.²⁵ This work seeks to examine the use of the law and the magistrate by the different orders of rural society, and the impact of gender on how the summary process was used, studying a far wider range of sources than has previously been examined. It builds on the relatively small body of work that has been carried out on summary proceedings in England, providing a greater understanding of who used the process, why they used it, and how the

²³ Amy Williams, *The Criminality of Women in the Eighteenth Century in the South-West of England* (PhD thesis, University of Plymouth, 2000), 44.

²⁴ Peter King, 'The Summary Courts and Social Relations in Eighteenth-Century England', *Past & Present*, 183 (2004), 126.

²⁵ Douglas Hay, 'Property, Authority and the Criminal Law', in Douglas Hay, Peter Linebaugh, John Rule and E.P. Thompson (eds), *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975); John Brewer and John Styles (eds), *An Ungovernable People: The English and their law in the Seventeenth and Eighteenth Centuries* (London, 1980), 20.

summary process functioned in rural England during the long eighteenth century.²⁶

This study will analyse the records of summary proceedings to show how they were used for different purposes by different people. Although they were a place where criminal offences were prosecuted summarily, or indicted to be heard at Quarter Sessions and Assizes, they were primarily a forum where disputes could be arbitrated and mediated by the magistrate, with his role becoming increasingly about civil and personal matters, and involving the provision of financial advice and counselling. This thesis will show that the magistrate was a central figure within his community, ensuring a stable society, but also that his exact role was dependent both on his own beliefs and individuality, and on how the law was interpreted by him. This thesis shows that throughout the long eighteenth century, the summary process in rural England continued to offer a

²⁶ Of particular relevance to this study is the research into summary proceedings carried out by King, Gray, Morgan and Rushton, Greg T. Smith, and Bruce P. Smith (Gwenda Morgan and Peter Rushton, 'The magistrate, the community and the maintenance of an orderly society in eighteenth-century England', *Historical Research*, 76.191 (2003), 54-77; King, 'The Summary Courts and Social Relations'; Bruce P. Smith, 'The Presumption of Guilt and the English Law of Theft, 1750-1850', *Law and History Review*, 23.1 (2005), 117-160; Drew Gray, *Crime, Prosecution and Social Relations: the Summary Courts of the City of London in the Late Eighteenth Century* (Basingstoke, 2009); Lemmings, *Law and Government in England*, Chapter 2. This study also links to the wider historiography on gender and crime in England, such as the work carried out by Beattie, Kermode and Walker, King, Shoemaker, Walker and Palk (J.M Beattie, 'The Criminality of Women in Eighteenth-Century England', *Journal of Social History*, 8 (1975), 80-116; Jenny Kermode and Garthine Walker (eds), *Women, Crime and the Courts in Early Modern England* (Chapel Hill, 1994); Peter King, *Crime and Law in England*, Chapter 6; Robert Shoemaker, *Gender in English Society: The Emergence of Separate Spheres?* (Harlow, 1998); Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003); Deirdre Palk, *Gender, Crime and Judicial Discretion 1780-1830* (Woodbridge, 2006).

localised and personalised form of justice, even as the rural magistrates continued to act 'as statutory instruments rather than creatures of the common law'.²⁷ Although the magistrate was steadily given further powers over the course of the eighteenth century, with laws being passed, codified or extended, and magistrates' handbooks or manuals were published steadily over the century that were designed to tell magistrates how to do their job, the role of a magistrate at summary proceedings continued to be a flexible and discretionary process.²⁸ This study will assess to what extent discretion was employed by the rural magistrate, and whether this discretion was limited to what the law permitted. It will ask whether gender based discretion, or leniency, was prevalent and consistent across the century, or across rural England, or whether other factors, such as age and economic background were considered by the magistrate in his decision making. It also investigates whether an individual's reputation was a significant factor in the rural magistrate's decision-making, and questions the extent to which magistrates employed discretion in their decision-making at summary level. This study provides an original investigation into the interaction between members of rural communities and the magistrate at summary level, and due to the wide range of sources, will be able to look at changes in how people used summary proceedings, and in the nature of summary proceedings themselves, in different communities in rural England over the course of the long eighteenth century.

²⁷ Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718-1800* (London, 1998), 216; Lemmings, *Law and Government in England*, 34.

²⁸ Lemmings, *Law and Government in England*, 8, 34.

Rural and provincial summary proceedings have been more neglected than those within London. Historians have frequently focused on London when exploring eighteenth-century criminal history, partly because of the accessibility of sources for the capital, with the Old Bailey Proceedings Online detailing trials over a long period. Yet in the eighteenth century, the majority of the population lived outside the metropolis, and the majority of England was rural. Outside of studies of Quarter Session and Assize records, centred on the provincial towns, rural crime has been marginalised, with studies tending to either look at a specific 'rural' offence, or compare how rural offences differed to offences reported in London.²⁹ Where work has been done on summary proceedings, it has fallen into one of four main categories. There have been a couple of studies of the records of summary proceedings in London or the surrounding counties.³⁰ Secondly, a number of individual magistrates' notebooks, with introductions of varying lengths, have been published over the past 40 years.³¹ Thirdly, individual

²⁹ Griffin, 'Wood-taking and customary practice'; P.B. Munsche, *Gentlemen and poachers: the English game laws, 1671-1831* (Cambridge, 2008); Shakesheff, *Wood and crop theft in rural Herefordshire*; R.A.E. Wells, 'Sheep-rustling in Yorkshire in the Age of the Industrial and Agricultural Revolutions', *Northern History*, 20.1 (1984), 127-145), and, moving into the early nineteenth century, Steve Poole, "'A lasting and salutary warning": Incendiarism, Rural Order and England's Last Scene of Crime Execution', *Rural History*, 19.2 (2008), 163-177).

³⁰ Gray, *Crime, Prosecution and Social Relations*; J.M. Beattie, *Policing and Punishment in London 1660-1750: Urban Crime and the Limits of Terror* (Oxford, 2002); Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c1660-1725* (Cambridge, 1991); Tim Hitchcock, *Down and Out in Eighteenth-Century London* (London, 2004).

³¹ Alan F. Cirket (ed), *Samuel Whitbread's Notebooks, 1810-11, 1813-14* (Bedford, 1971); Silverthorne (ed), *Deposition Book of Richard Wyatt*; Elizabeth Crittall (ed), *The Justicing Notebook of William Hunt 1744-1749* (Devizes, 1982); Paley (ed), *Justice in Eighteenth-Century Hackney*; Michael McGarvie (ed), *The King's Peace: The Justice's Notebooks of Thomas Horner, of Mells, 1770-1777* (Frome, 1997); B.J. Davey and R.C. Wheeler (eds), *The Country Justice and the Case of the Blackamoor's Head: The Practice of the Law in Lincolnshire, 1787-1838* (Woodbridge, 2012). Two slightly earlier magistrates' notebooks have also been

notebooks have been the focus of analysis, for example, looking at a specific offence or at how the individual magistrate operated.³² Lastly, some limited comparative work has been undertaken.³³ Oberwiltler and Durston used four and five notebooks, respectively, in their research, but stressed the 'rarity' of such books.³⁴ This study, then, uses a far wider selection of sources than has previously been used to undertake a wider comparative analysis of the summary

published - J.A. Sharpe (ed), *William Holcroft, His Booke* and James M. Rosenheim, *The Notebook of Robert Doughty, 1662-1665* (Norwich, 1989).

³² John Styles, 'An Eighteenth-Century Magistrate as Detective: Samuel Lister of Little Horton', *The Bradford Antiquary*, XLVII (1982), 98-113; Morgan and Rushton, *Rogues, Thieves and the Rule of Law*; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society'; David J. Cox and Barry S. Godfrey, *Cinderellas and Packhorses: A History of the Shropshire Magistracy* (Woonton Almeley, 2005); Carl Griffin, 'Wood-taking and customary practice: William Hunt's justices [sic] notebook, 1744-49', *Regional Historian*, 13 (2005), 19-24; Elizabeth Foyster, *Marital Violence: An English Family History, 1660-1857* (Cambridge, 2005), 22; Carolyn Steedman, 'At Every Bloody Level: A Magistrate, A Framework-Knitter, and the Law', *Law and History Review*, 30.2 (2012), 387-422; Carolyn Steedman, *An Everyday Life of the English Working Class: Work, Self and Sociability in the Early Nineteenth Century* (Cambridge, 2013). Shakesheff also makes reference to an early nineteenth century Herefordshire minute book of magistrates' meetings in relation to wood and crop theft (Timothy Shakesheff, *Rural Conflict, Crime, and Protest: Herefordshire, 1800 to 1860* (Woodbridge, 2003), 115).

³³ Namely Landau's use of the Brockman notebooks to analyse the work of Kent justices, Shoemaker's comparison of Henry Norris and William Hunt in Middlesex and Wiltshire and Welby's exploration of the work of magistrates in the East Midlands (Norma Landau, *The Justices of the Peace* (Berkeley, 1984), Shoemaker, *Prosecution and Punishment*, Glynne Welby, 'Rulers of the Countryside: the justices of the peace in Nottinghamshire, 1775-1800', *Transactions of the Thoroton Society*, 78 (1974), 75-87)).

³⁴ Oberwiltler commented in 1990 that 'only a few' eighteenth century magistrates kept notebooks and that of those, 'very few' had survived Oberwiltler used five notebooks as the basis for his article on eighteenth-century crime. Durston used four notebooks for his study on provincial crime, but classified any non-metropolitan magistrate as 'provincial', thus using William Hunt in rural Wiltshire in the same context as Richard Wyatt in provincial Surrey and Edmund Tew in coastal County Durham (Dietrich Oberwiltler, 'Crime and authority in eighteenth century England: law enforcement on the local level', *Historical Social Research*, 15.2 (1990), 10; Gregory J. Durston, *Wicked Ladies: Provincial Women, Crime and the Eighteenth-Century English Justice System* (Newcastle, 2013)).

work of magistrates outside of the metropolitan area. It offers a complementary perspective to Gray's work on the London summary courts, looking at a wide range of both sources and offences in order to investigate the operation of rural summary proceedings over the course of the long eighteenth century.

This study of the rural magistracy enables a closer investigation of how summary proceedings operated in the rural midlands and south of England, and how it differed from the London summary courts. It also enables a challenge to the assumption that the magistracy can be divided into two types - the London magistracy and the provincial. As this study will investigate, summary proceedings were in some ways as individual as the magistrate and the community themselves. The country justice was an 'unpaid amateur', and the level of commitment that justices gave to their role varied, with King noting that 'only a small handful were truly active'.³⁵ Some were absent from the community for considerable periods, and others only heard cases on certain days.³⁶ Others were available to the extent of conducting judicial business from early in the morning every day, or travelling around the local community to ensure that people could access the magistrate relatively easily.³⁷ To what extent did the

³⁵ Peter King, *Crime, Justice and Discretion in England, 1740-1820* (Oxford, 2000), 117. King was referring to magistrates in Essex, Kent, Oxfordshire and Surrey. Eastwood goes further by stating that during the eighteenth century, 'the great majority of justices were inactive' (David Eastwood, *Governing Rural England – Tradition and Transformation in Local Government 1780-1840* (Oxford, 1994), 76).

³⁶ King, *Crime and Law in England*, 26; Gray, *Crime, Prosecution and Social Relations*, 7; J.A. Sharpe, 'Crime, Order and Historical Change', in John Muncie and Eugene McLaughlin (eds), *The Problem of Crime* (London, 2001), 121.

³⁷ Cirket (ed), *Samuel Whitbread's Notebooks*, 8; Crittall (ed), *The Justicing Notebook of William Hunt*, 25.

availability of the rural magistrate affect the number and type of case that came before him? Did the level of his knowledge about the local community affect his decision-making? This study will consider if there were differences between the individual magistrates and their ways of working, their accessibility, and the nature of the community they worked in, and how these differences were reflected both in the cases they heard and the decisions they made.

d. Outline of chapters.

Chapter two will look in more detail at the role and function of the rural magistrate so that their work in summary proceedings can be put into context. It will look at what summary proceedings encompassed, and how they operated. It will compare the different working environments used by magistrates and discuss how this affected their accessibility and availability to their community. It will set the magistrates into the context of their social and geographic environment, illustrating the fairly large areas they covered, and the types of industry within that area. It will also look at the individual magistrates, constructing a typology of justices' backgrounds to show how magistrates' legal, political or educational background could affect their attitudes and decision-making within the summary process context. It will suggest that the magistrates' involvement in a local community would make their role one of negotiators and mediators, making their task one of social cohesion as much as discipline and correction.

Chapter three then looks at the men and women who used rural summary proceedings. It will look at the class, social and occupational status of those who used the rural summary process, both as complainants and defendants, to assess how different sectors of society used the summary process for different reasons, and why. It studies the extent to which summary proceedings offered plebeian people a chance to exert their authority and challenge the decisions of others, and assesses whether the involvement of the middling and lower orders of rural societies changed over the course of the long eighteenth century.

Chapter four looks at the impact of gender and the representation of gender in summary proceedings. It studies the five primary areas in which the magistrate worked - poor law administration, economic and social regulation, employment issues, offences against the person, and property offences - to analyse how men and women used the system and why. It looks at how the law restricted the involvement of women, but also at how women were able to use the summary process to negotiate their relationships with other family and community members. It analyses how women's relationships with each other and with men in their locality were expressed and negotiated through their involvement in the summary process.

Chapter five then returns to the rural magistrate himself, studying how he made decisions at a summary level, and what factors influenced him. It will look at the evidence for judicial discretion, and assess the extent to which his discretion was

limited or permitted by the law, before discussing how the magistrate's decision-making changed over time. It will study whether gender was a key factor in decision-making, or whether other factors, such as age, economic background or personal reputation were equally important. It will assess whether any changes in judicial decision-making were the result of political or geographic sensibilities, or changes in the law, or whether the discretion and leniency displayed by a magistrate was largely due to his own personality and individual sensibilities.

Lastly, this thesis will look at what conclusions can be drawn about the role of summary proceedings in rural English society. It will assess what the function of the magistrate was, and how summary proceedings were used by rural communities. This thesis will draw together aspects of class, gender, crime, the law and its administration, to address both the role of the rural magistracy during the long eighteenth century, the magistracy in practice, with relation to the summary process, and the involvement of societal groups within this summary process. It will analyse the role of the justicing room and establish whether its primary purpose, in theory and practice, was to punish crime or to work in a more social context, resolving community conflict and dealing with poverty-related issues. It will look at how men and women used this system, what they hoped to gain from it, and how magistrates dealt with their complaints. It will analyse gender and class differences in terms of complaints and action taken, and investigate the issues, problems and disputes that individuals dealt with in rural society during the long eighteenth century. It will provide an original investigation into the interaction between members of rural

communities and the magistrate at summary level, and due to the number of sources used, is able to look at changes in how people used summary proceedings, and in the nature of summary proceedings themselves, in different communities in rural England.

Chapter two: The magistrate and summary proceedings in rural England.

The most important of their [the magistrates'] duties was their residence in the various places of the county where they lived, and where they were enabled to act as friends of the poor and heal disputes as arbitrators and referees.¹

This chapter aims to provide an overview of rural summary proceedings during the long eighteenth century in order to contextualise the work of rural magistrates. The first part of the chapter will show how summary proceedings operated in rural communities, exploring their purpose and the type of case dealt with at summary level, and how the magistrates undertook their work. This section will show how although the magistrates operated in an individual way in terms of recording cases and where they held proceedings, and that they were allowed considerable discretion, there was a commonality underlying proceedings, both as a result of the legal guidance magistrates received from manuals and the help of their clerks, and from the same types of offence and complaint being heard at summary level across rural central and southern England.

The second part of the chapter will look at the individual magistrates whose work is analysed in this thesis, looking at their social, educational and political background. It will study how active and accessible they were and how this impacted on the willingness of the local community to approach them. This section will show how the background of the rural magistrate changed over the

¹ Sir John Eardley-Wilmot, magistrate and MP for North Warwickshire, in Hansard, *House of Commons Debate on County Boards, Volume 6, c.419*, 10 February 1837.

course of the long eighteenth century, from the dominance of landed gentry to an increase in magistrates from business backgrounds. However, this chapter will argue that because rural magistrates continued to be drawn largely from landowning families, despite having other business interests, there was therefore continuity in their backgrounds and attitudes. This chapter will also demonstrate how magistrates were shown in an increasingly negative light in literature and journalism over the late eighteenth century, and that although part of the focus of such negative portrayals was on the urban trading justice, the rural justice was also the subject of satire. Such depictions did not reflect the experience of most rural people towards their JP, but can be seen as part of a more general concern about a magistrate's authority and power, resulting from the extension of a magistrate's summary jurisdiction over the course of the eighteenth century.

This chapter has an overarching theme, which is continuity and change - continuity in terms of the social background and education of the rural magistrate over the long eighteenth century, and the continuing importance of summary proceedings in providing a more accessible means of gaining justice, and resolving disputes, than a prosecution at Quarter Sessions or Assizes. The magistrate continued to have an important role within the rural community, but there was change in terms of the help available to him to carry out this role, and how the magistrate himself perceived his role within the rural community. However, ultimately, gaining access to the magistrate depended on the

willingness of the individual justice to make himself accessible and available to the community, as this chapter will explore.

a. Summary proceedings in rural England.

i. The function and purpose of summary proceedings.

Summary proceedings were the means by which minor offences could be tried by one or two magistrates sitting without a jury.² In terms of criminal offences, the justice was, as Sharpe summarises:

empowered to conduct the preliminary examination of suspects and witnesses in cases of felony, take recognizances, commit suspected felons to prison, and bind over the unruly to be of good behaviour.³

But summary proceedings were not just an arena where minor offences could be heard, and more serious charges indicted to the higher courts. They dealt with a wide range of administrative tasks, with regulatory infringements and Poor Law cases. Summary proceedings were arguably the arena where most people first came into contact with the law.⁴

² A.H. Manchester, *Modern Legal History* (London, 1980), 160. Lieberman describes it as 'the judicial process empowering magistrates... to receive accusations and try offenders without the assistance of juries' (David Lieberman, *The province of legislation determined: legal theory in eighteenth-century Britain* (Cambridge, 1989), 59).

³ Sharpe, *Crime in Early Modern England*, 40.

⁴ King, 'The Summary Courts and Social Relations', 126; Gray, *Crime, Prosecution and Social Relations*, 4; Greg T. Smith (ed), *Summary Justice in the City: A Selection of Cases Heard at the Guildhall Justice Room 1752-1781* (Woodbridge, 2013), xi.

A magistrate at summary proceedings also had the power to determine punishments in summary convictions. In addition to Sharpe's recognition of the magistrate's role in taking recognizances or committing individuals to prison, the justice could also order an individual to be whipped, to be fined, or simply to apologise to the complainant.

The number of offences that could be dealt with at summary proceedings rapidly increased over a period of time between 1663 and 1776.⁵ Landau calculated that the number increased from 70 to over 200.⁶ This extension of powers - which, it has been argued, was a 'legislative response to the slowness and solemnity of formal conviction by trial jury' was noted by magistrate and legal writer Richard Burn, who in 1766, commented on the 'vast number of offences over which they [magistrates acting summarily] have a jurisdiction given to them by many statutes'.⁷ These increasing powers gave magistrates the ability to decide what course of action to take in a variety of cases without having to refer a complaint onto Quarter Sessions, and enabled them to act on their own or with another justice in many different areas. Hay has noted that in eighteenth-century Staffordshire, over 80 per cent of criminal cases were tried in summary proceedings rather than at Quarter Sessions or Assizes - 'the judicial role of justices in quarter sessions was dwarfed by their activity in summary

⁵ Munsche puts the date at which the increase in summary powers started as slightly later, 1671 (P.B. Munsche, 'The Game Laws in Wiltshire', in J.S. Cockburn (ed), *Crime in England 1500-1800* (London, 1977), 212).

⁶ Landau, *The Justices of the Peace*, 246. Also discussed in Lieberman, *The province of legislation determined*, 14-15.

⁷ Williams, *The Criminality of Women*, 54; Richard Burn, *The Justice of the Peace and Parish Officer, Volume 3* (13th edition, London, 1776), 22.

conviction'.⁸ Summary proceedings therefore played an increasing part in the criminal justice system as the long eighteenth century progressed.

However, this extension in the jurisdiction of magistrates at summary level was noted with concern by Blackstone, also in the 1760s. He found that a system designed for 'speedy justice' had been so far extended that it could 'threaten the disuse of our admirable and truly English trial by jury'.⁹ A further concern about the increase in summary powers lay in the nature of summary conviction. Whereas a trial enabled the defendant to be convicted by a group of his peers, summary justice enabled a single magistrate to convict individuals of misdemeanours, perhaps without reference to the correct statute, or according to their own beliefs.¹⁰ Summary jurisdiction was not 'homogenised' until the

⁸ Douglas Hay, 'Legislation, magistrates, and judges: high law and low law in England and the empire', in David Lemmings (ed), *The British and their Laws in the Eighteenth Century* (Woodbridge, 2005), 62-63.

⁹ William Blackstone, *Commentaries on the Laws of England, Book 4* (4th edition, Oxford, 1770), 278.

¹⁰ Gray has noted Lord Hardwicke's concern in 1756 that the number of statutes had increased to such a volume that not even an experienced lawyer could 'pretend to be master of all the statutes that related to any one case that comes before him' (Gray, 'Making law in mid-eighteenth century England', 212). Given that many justices were not legally trained, they were at a distinct disadvantage to these experienced lawyers. Burn made this explicit, complaining that so many acts affecting summary conviction had been passed that 'there is not one [justice] in ten who knows how to draw up a conviction in form, without a special precedent before him in every particular case' (Richard Burn, *History of the Poor Laws, with Observations* (London, 1764), 249. Also in Lieberman, *The province of legislation determined*, 193). Burn noted that some acts gave JPs a 'power, without any special direction for the manner of execution'. Although this did not mean they should 'do it by their own wills arbitrarily', he then asked, 'but how then is it to be done?' It is significant that he recognised that a lack of instructions might lead to the magistrate making personal decisions that might differ from those of another magistrate (Burn, *History of the Poor Laws*, 253).

mid-nineteenth century, and, as I will now discuss, this heterogeneity resulted in a particularly individualised form of justice in rural England.¹¹

ii. How summary proceedings operated in rural communities.

Summary proceedings in both rural and provincial England differed from those in London.¹² In the city, the process was more formal and necessarily involved greater organisation and numbers of magistrates.¹³ City magistrates, operating under the Lord Mayor, were not formally commissioned into the peace as they were elsewhere. The greater workload caused by London's ever expanding population meant that by 1737, all aldermen served as magistrates, working on a formal rotation pattern at the Guildhall.¹⁴ There were other key differences between how rural summary proceedings operated and the operation of the London summary courts, for example. The criminal justice system was more immediately accessible to those in the capital, with there being a range of options open to Londoners wishing to complain about an issue or offence, with all of them 'in relatively easy reach'.¹⁵ If a case was taken to, or referred to, sessions,

¹¹ J.H. Baker, *An Introduction to Legal History* (Oxford, 2007), 511.

¹² Paley (ed), *Justice in Eighteenth-Century Hackney*, xxix; Gray, *Crime, Prosecution and Social Relations*, 6.

¹³ Smith (ed), *Summary Justice in the City*, xiii-xiv.

¹⁴ Smith (ed), *Summary Justice in the City*, xiv-xv. As Smith notes, this situation continued until the Mansion House was completed in 1752, and from this date, the Guildhall and Mansion House operated in parallel to each other.

¹⁵ Gray, *Crime, Prosecution and Social Relations*, 7.

there was a shorter wait involved, with sessions sitting eight times a year rather than the quarterly arrangement that existed elsewhere.¹⁶

In rural England throughout the eighteenth century, summary proceedings continued to be more informal and flexible, although not haphazard, affairs.¹⁷ They were seen to be arenas where disputes could be mediated and settled, rather than simply places where crimes were prosecuted.¹⁸ It was perceived that summary proceedings offered an informal environment whereby justices had considerable scope to use their individual discretion, as opposed to the quarter sessions, which 'focused, regularised and ritualised magistrates' authority'.¹⁹ The

¹⁶ In the 13th edition of *The Justice of the Peace* (1776), Burn made no reference to this arrangement, but in the 26th edition edited by Joseph and Thomas Chitty, it was noted 'in consequence of the large population of the districts of London and Middlesex, their sessions are in fact holden eight times of the year' (Joseph Chitty and Thomas Chitty (eds), *The Justice of the Peace and Parish Officer, by Richard Burn, Volume 5* (26th edition, London, 1831), 449). Beattie states that the Old Bailey sessions had 'settled into the pattern of meeting eight times a year' in 1669, and that this frequency of meetings continued throughout the eighteenth century (J.M. Beattie, 'London Juries in the 1690s', in J.S. Cockburn and Thomas A. Green (eds), *Twelve Good Men and True: The Criminal Trial Jury in England, 1200-1800* (Princeton, 1988), 222).

¹⁷ King, *Crime, Justice and Discretion in England*, 84. Morgan and Rushton state that 'informal but not haphazard processes were at the heart of the local law enforcement system, which consequently bore little resemblance to the strict letter of the law as laid down in Westminster' (Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 33).

¹⁸ Landau, *The Justices of the Peace*, 173, 194; King, *Crime, Justice and Discretion in England*, 86; Shane Sullivan, 'Violence, local magistrates and the informal law 1700-1833: Magistrates and mediation' (Australasian Law Teachers Association, 2007. www.alta.edu.au. 20 July 2012); Morgan and Rushton, *Rogues, Thieves, and the Rule of Law*, 31-33. Although mediation was involved in city proceedings, Smith's selection of Guildhall proceedings suggests that more formalised action, such as reprimands or committals to Bridewell, were used, rather than informal mediation or refereeing between parties.

¹⁹ David Eastwood, 'Local Government and Local Society', in H.T. Dickinson (ed), *A Companion to Eighteenth-Century Britain* (Oxford, 2002), 48.

perception of the informal nature of summary proceedings also reflected the perception of the rural community as a more stable world than that of urban environments such as London: a world where 'parents, parsons, gentry and magistrates maintained a close surveillance over village society', maintaining social cohesion.²⁰ As Sharpe has stated, 'Whether one sees the justice of the peace as a benevolent paternalist or an agent of class oppression, it is clear that his role as a law enforcer was strengthened by his position in the local social hierarchy'.²¹ This is evident in justicing notebooks when an individual's reputation or character was commented on by the magistrate. In a relatively small community, the justice learned who the unreliable figures were, either through gossip, reports from his clerk, constables, overseers and workhouse masters, or through prior dealings with an individual. This was a situation that, although not impossible, was harder to achieve in the City summary courts, with magistrates operating on a rota from the 1730s, so that the individual magistrate might not get to see the same faces on a regular basis to the extent that a provincial or rural magistrate did. Even in Hackney, not far from London, magistrate Henry Norris dealt with one particular family on so many occasions that he must have recognised them when they kept coming before him, and in smaller communities, this was even more evident.²² In the summary proceedings recorded by William Hunt, in Wiltshire, various members of the Draper family

²⁰ J.M. Beattie, *Crime and the Courts in England, 1660-1800* (Oxford, 1986), 29.

²¹ Sharpe, 'Crime, order and historical change', 122.

²² John Wheeler repeatedly assaulted his wife Thomasin before deserting her, and left her and her children reliant on parish help. The Wheelers are mentioned nine times in Norris's notebook. (Paley (ed), *Justice in Eighteenth-Century Hackney*, 2, 12, 21, 26, 27, 96, 97-98, 100, 114).

were mentioned as defendants in 18 different cases.²³ In this way, with this knowledge of local families, individuals could be kept to account in ways that were less possible in more anonymous urban areas.

Rural justices also benefited from their distance from the metropolis, creating separate systems of governance and law enforcement. Page has noted that after 1688, the 'loosening of contact' between central government in London on one side and non-metropolitan England on the other meant that 'the country justices ceased for a time to be accountable to superior authority'²⁴. Even as late as the 1830s, de Tocqueville, when asking Lord Radnor whether the Justice of the Peace was accountable to anyone, was told that, 'the central government has nothing to do with provincial matters, nor even their supervision'.²⁵ De Tocqueville expressed surprise both at this lack of accountability, and the fact that JPs were still, in his opinion, 'exclusively chosen from among the landowners'.²⁶ This suggests that the system of rural governance remained the same in the first decades of the nineteenth century as it was a century earlier, revolving around the overseer, the parish constables, and the landowning magistracy.

²³ Although not all the Drapers were explicitly stated to be related to one another, in some cases a relationship was stated, and in others the various members lived either in the same hamlet or in neighbouring ones, making it probable that they were kin of some kind (Crittall (ed), *The Justicing Notebook of William Hunt*, 28, 30, 32, 34, 35, 39, 40, 41, 46, 52, 57, 66, 67, 69, 70).

²⁴ Leo Page, *Justice of the Peace* (3rd edition, London, 1967), 23.

²⁵ Alexis de Tocqueville, *Journeys to England and Ireland* (New Haven, 1958), 58.

²⁶ de Tocqueville, *Journeys to England and Ireland*, 58.

iii. The types of case heard at summary level.

The eighteenth century magistracy was a 'blend of judicial, police and administrative functions'.²⁷ Magistrates working at summary level, both in metropolitan and rural areas of England, heard a diverse range of complaints and cases.²⁸ Sitting on their own, they could hear complaints regarding assaults, drinking, begging, and thefts, including offences under the game laws, and wood thefts, which were both common offences in rural societies.²⁹ They dealt with a wide range of cases that came under the Old Poor Laws, such as bastardy cases and settlement examinations. Although certain vagrancy offences and employment cases, for example, were supposed to be dealt with by two magistrates sitting together, there is evidence that some justices heard such cases on their own.³⁰

Table 2.1 shows the primary type of case dealt with by rural magistrates at summary proceedings, using the 13 primary magistrates studied in this thesis. It shows that the most common type of case recorded across the magistrates'

²⁷ Styles, 'An Eighteenth-Century Magistrate as Detective', 98.

²⁸ This has been noted in terms of the London summary courts by Gray (Drew Gray, *Summary Proceedings and Social Relations in the City of London, c.1750-1800* (PhD thesis, University of Northampton, 2006), 33).

²⁹ This thesis uses both the terms 'assault' and 'offences against the person'. Although the latter term encompasses both fatal and non-fatal violence, and assault comes under the wider title, the notebooks recorded predominantly non-fatal assaults, and thus this term is used somewhat interchangeably with 'offences against the person' to differentiate such cases from property offences, for example.

³⁰ Steedman, *An Everyday Life*, 144; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 64.

notebooks was not a criminal offence, but, instead, issues relating to the poor law.

Table 2.1 The most common type of case recorded by rural magistrates in notebooks of summary proceedings.

Type of case or hearing	Number	Percentage of total cases
Poor Law	1587	32%
Property offences	938	19%
Employment	698	14%
Offences against the person	685	14%
Regulation	590	12%
Bastardy	438	9%
Total	4936	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, NRO Th1681, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Poor law cases include vagrancy, desertion, poor relief disputes, and settlement examinations. Employment includes both employment disputes such as those relating to wages, misbehaviour or bad usage by an employer, and the approval of indentures for apprentices. Regulation offences include cases involving highway duty, non-payment of rates, wagon driving, turnpikes, non-payment of excise, weights and measures, queries about rent, army pensions and bounties, evictions or taxes, lewd behaviour, swearing and oaths, drinking and gaming.

With poor law issues constituting nearly one-third of the rural magistrate's workload at summary level, table 2.1 shows that criminal offences only formed a part of his summary work. Although the categories of issue or offence dealt with in rural areas were similar to those dealt with by the London magistrates, reflecting the legal jurisdiction of magistrates at summary level, some cases did reflect the nature of rural society and thus made rural summary proceedings different in content to those of their urban equivalent.³¹ Poor law cases could

³¹ Gray similarly notes the property offences, regulatory offences, assaults and poor law cases that came before the London summary courts (Gray, *Crime, Prosecution and Social Relations*, 20, 93).

involve the continuance of vagrancy passes, for example, when paupers were being passed from London or elsewhere in the south to other parts of England. Rural thefts, such as poaching or wood theft, also came before the magistrate in summary proceedings, together with offences related to sporadic social protests in rural communities.³² Harvest failures and agricultural depressions had an impact on the offences heard in rural areas, both in terms of poverty-related cases, property offences and employment disputes.

Conversely, in London, magistrates dealt with far more cases involving prostitution and the keeping of disorderly houses, reflecting the newspapers' calls for 'stricter regulation of [the] social and moral order of the poor'.³³ Other offences were related to London-specific occupations. As Gray has pointed out, at the London summary courts, Hackney coachmen appeared to complain about those who had either avoided paying their fare, or who had disputed the amount they had been charged.³⁴ So although the jurisdiction of magistrates at summary level determined the type of case that could be heard in summary proceedings, there were some differences between different areas. Magistrates in London and other urban areas, with larger populations, and particular concerns, did not

³² Andrew Charlesworth, Richard Sheldon, Adrian Randall and David Walsh, 'The Jack-a-Lent Riots and Opposition to Turnpikes in the Bristol Region in 1749', in Adrian Randall and Andrew Charlesworth (eds), *Markets, Market Culture and Popular Protest in Eighteenth-Century Britain and Ireland* (Liverpool, 1996), 52; Nicholas Rogers, *Mayhem: Post-War Crime and Violence in Britain, 1748-53* (New Haven, 2013), 5, 114.

³³ Richard M. Ward, *Print Culture, Crime and Justice in 18th-Century London* (London, 2014), 121, 123.

³⁴ Gray, *Crime, Prosecution and Social Relations*, 117. Bull-running and lottery offences were other offences that came in front of the London magistrate but were absent from rural notebooks.

always hear the same particular type of case as their rural equivalent, even if the broad categories of case that came before them were the same.

In terms of their power to take action against individuals, magistrates could examine defendants, issue warrants and summons, and convict people of summary offences. They could make orders, issue vagrancy passes, issue recognizances and bind people over to keep the peace, or, of course, indict an individual to be tried at a higher level, at Quarter Sessions or Assizes.³⁵ They could levy fines, which could be payable either to the complainant or given to the use of the local poor, or a mix of the two, as well as sending vagrants to be whipped, sending the convicted to prison and sending those who defaulted on paying fines, the mothers of illegitimate children, and others deemed to have committed petty crimes or an act that harmed social relations to the House of Correction. In fact, the rural magistrate at summary level had an important function in maintaining social relations within his local community, and was used widely by the local population to act as mediator or referee in personal disputes.³⁶ This was a fact acknowledged by Blackstone, who saw the magistrate's key role as 'healing petty differences' and by Burn, who repeatedly stressed the primary role of the justice as being, as his name suggested, to keep

³⁵ As Styles notes, 'virtually all those who faced trial had appeared initially before a justice of the peace' ('An Eighteenth-Century Magistrate As Detective', 101).

³⁶ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 75; Morgan and Rushton, *Rogues, Thieves, and the Rule of Law*, 31, 34; Sharpe, *Crime in Early Modern England*, 127; King, 'The Summary Courts and Social Relations', 126.

the peace amongst residents of his county.³⁷ Therefore, his role involved mediating between parties in a range of disputes. These parties involved a range of people in rural society in a variety of relationships, from family members and neighbours to those in dispute with their landlords or with parish officers. Although rural justices all saw the type of cases described above, the extent to which they heard different categories of offence or case varied, as table 2.2, on page 45, demonstrates.

³⁷ Blackstone, *Commentaries, Book 1*, 8; King, 'The Summary Courts and Social Relations', 147; Burn, *The Justice of the Peace, Volume 3*, 7, 12, 14.

Table 2.2 A comparison of the summary caseloads of 13 rural magistrates.

	Poor law		Property offences		Bastardy		Offences against the person		Employment offences		Economic/ social regulation		Total entries	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	68	51%	21	16%	14	10%	12	9%	5	4%	14	10%	134	100%
Roger Hill (1689-1705)	145	56%	36	14%	12	5%	5	2%	26	10%	34	13%	258	100%
William Brockman (1689-1721)	335	38%	126	14%	61	7%	56	6%	194	22%	99	11%	871	98%
Thomas Thornton (1700-1718)	31	35%	18	20%	15	17%	6	7%	3	3%	15	17%	88	99%
William Hunt (1744-1749)	45	12%	164	44%	23	6%	91	24%	22	6%	30	8%	375	100%
Thomas Horner (1770-1777)	493	34%	199	14%	196	14%	222	15%	150	10%	177	12%	1437	99%
Edmund Waller (1773-1788)	52	23%	91	39%	25	11%	29	13%	16	7%	18	8%	231	101%
Richard C. Hoare (1785-1834)	14	8%	99	55%	27	15%	4	2%	23	13%	14	8%	181	101%
George Spencer (1787-1794)	133	56%	30	13%	23	10%	13	6%	12	5%	25	11%	236	101%
Thomas L. Thornton (1789)	14	33%	5	12%	3	7%	6	14%	5	12%	9	21%	42	99%
Thomas N. Parker (1805-1813)	7	2%	33	11%	13	4%	121	40%	100	33%	25	8%	299	98%
Samuel Whitbread (1810-1814)	237	38%	93	15%	26	4%	57	9%	93	15%	121	19%	627	100%
Richard Stileman (1819-1836)	13	8%	23	15%	0	0%	63	40%	49	31%	9	6%	157	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340; NRO Th1681, WSHC 229/1, WSHC 1060/168-70, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. The grey boxes indicate the most common type of case recorded by the individual magistrate. Entries in the notebooks where the issue is not specified (for example, where names have been entered but no further details provided) have not been included in the total entries. Poor law offences comprise poor relief, desertion, settlement and vagrancy; Economic and social regulation includes weights and measures offences, swearing, and drinking offences, as well as entries relating to poor rates, window taxes, and other financial queries. Entries that are unfinished or do not specify what the issue being heard are not used in this table.

The figures for rural justices' caseloads show that poor law issues took up a substantial part of the majority of magistrates' time out of sessions. However, there were some differences. The most common type of case Hunt, Waller and Hoare recorded involved offences against property, whereas Parker's and Stileman's notebooks emphasised offences against the person. I have deliberately stated that these were the most common cases *recorded* in the notebooks. This thesis will look not only at how individual magistrates recorded the cases they heard, but also at how some were particularly interested in certain issues, or perceived to be sympathetic towards complainants in certain categories of offence, which could result either in individuals seeking that magistrate's help with an issue, or the magistrate taking particular care to record the cases that interested him. However, this analysis of summary caseloads does show what broad type of issues the magistrate dealt with at summary level, and how they comprised both criminal activity and social regulation, reflecting the diverse role of the justice within his community.

This chapter will now move on to assess the justice himself - who he was, what background he was from, and how the justice was perceived and depicted in the press and literature of the long eighteenth century. This will show how the magistrate was perceived as a stereotype, when, despite being from similar backgrounds, the rural magistrate operated as an individual, dispensing an individual form of justice.

b. The rural magistrate.

i. Depictions of the rural magistrate: fact and fiction.

The wide jurisdiction that an individual magistrate had, and the discretion he was allowed, enabled him to wield a considerable amount of power over his local community.³⁸ As Landau has described it, the single magistrate, acting summarily, had ‘impressive’ powers, the range of offences he could deal with, and the convictions he could make, being ‘sufficiently arbitrary to insure dominance of a neighbourhood’.³⁹ But what sort of man was the rural magistrate? He was, firstly, an affluent man. To be considered for a commission of the peace, the individual had to be from a propertied background.⁴⁰ King has described the magistrate as being drawn from the ‘social groups of relatively high status and independent means’, a voluntary and unpaid official, unlike the infamous trading justices of Middlesex and London, whose discretionary powers were often underestimated.⁴¹ Yet the eighteenth century rural magistrate has also been caricatured as a ‘bucolic, roistering squire’.⁴² One letter-writer to *The Gentleman’s Magazine*, in 1788, described one of his local rural justices as:

a good-natured fox-hunter, who spends his days on horseback, and his evenings in eating and drinking. He regularly attends the justice-

³⁸ Swift, ‘The English Magistracy Past and Present’, 4; Baker, *An Introduction to English Legal History*, 511-512.

³⁹ Landau, *The Justices of the Peace*, 23.

⁴⁰ Under medieval laws, magistrates were drawn from ‘the most sufficient knights, esquires, and gentlemen of the law’. In 1744, 18 Geo 2 c.20 further stated that a magistrate had to have an estate ‘of the clear yearly value of 100l., above what will discharge all incumbrances affecting the same’ (Burn, *The Justice of the Peace, Volume 3*, 10).

⁴¹ King, *Crime, Justice and Discretion in England*, 82.

⁴² Welby, ‘Rulers of the Countryside’, 83.

meeting; and, when business begins pouring in, he opens as follows, first taking out his watch: 'Well, Gentlemen, you are better acquainted with Burn and Blackstone than I am; you will recollect that dinner is to be at four.' He then retires to an adjoining room, which he devotes to a more pleasing amusement with the landlord's daughter...⁴³

This depiction of the rural magistrate mocked his lack of legal knowledge, his prioritising of his personal enjoyments and country pursuits, such as food, drink, sex and fox-hunting, over his justicing business, and his willingness to give the impression of commitment by attending meetings regularly whilst, in practice, taking part in little business. The caricature acknowledged the existence of manuals designed to help the justice carry out his work effectively, yet suggested that magistrates ignored such help and made decisions without it. The caricatures of magistrates were also related to the increase in summary powers that magistrates received over the eighteenth century. As magistrates gained more powers, the literary representations of magistrates by the likes of Fielding and Smollett became harsher caricatures, although the most biting criticism was

⁴³ *The Gentleman's Magazine*, April 1788, 315; Esther Moir, *Local Government in Gloucestershire 1775-1800* (Bristol, 1969), 40.

of the entrepreneurial trading justice, an urban phenomenon.⁴⁴ As Davey has noted, 'magistrates have received a harsh press'.⁴⁵

Yet there was also a more positive image of the paternalistic magistrate 'whose major task was ensuring social peace rather than enforcing every letter of the law' - and it was also recognised that their job was an 'onerous, unpaid position'.⁴⁶ In the early nineteenth century, John Clare, although he saw 'Justice Terror' as being 'a blunt opinionated odd rude man/he reigns with much caprice and whim', also noted that 'the poor can name worse governors than him'.⁴⁷ The rural justice was seen, therefore, to straddle two conflicting interests. On the one hand, he had that paternal role, looking after those in his local community, for example, by ordering poor relief to those who had been refused it by their parish, but on the other, he was likely to be a landowner, a member of the propertied

⁴⁴ Fielding described the character of Justice Thrasher in *Amelia* as having 'some few imperfections in his magistratical [sic] capacity' such as ignorance and 'self-love' (George Saintsbury (ed), *The Works of Henry Fielding in Twelve Volumes: Volume 1: Amelia* (London, 1893), 3). Smollett's Justice Gobble is corrupt and has 'committed a thousand acts of cruelty and injustice amongst the poorer sort of people, who were unable to call him to a proper account' (Tobias Smollett, "The Adventures of Sir Launcelot Greaves", *Select Works of Tobias Smollett in Two Volumes, Volume 2* (Philadelphia, 1835), 74); Lemmings, *Law and Government in England*, 34.

⁴⁵ Davey, 'Introduction' in B.J. Davey and R.C. Wheeler (eds), *The Country Justice and the Case of the Blackamoor's Head: The Practice of the Law in Lincolnshire, 1787-1838* (Woodbridge, 2012), 4.

⁴⁶ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 56; Moir, *Local Government in Gloucestershire*, 43.

⁴⁷ John Clare, *The Parish, A Satire* (Harmondsworth, 1986), 66; King, 'The Summary Courts and Social Relations', 66-67.

class, who was self-interested, seeking to maintain his own 'economic interests and prosperity'.⁴⁸

This critical perception of the magistrate was not ameliorated by the extension in summary jurisdiction and the resulting need for magistrates to be drawn from a slightly wider social background. In 1693, Bohun had suggested that encouraging 'men of smaller estates and greater industry' to become magistrates had a benefit, as the 'men of great estate do too commonly leave the country, and spend their times and estates in London, and other great cities, in perfect idleness, and luxury'.⁴⁹ Yet by 1836, the Duke of Buckingham was complaining that magistrates from commercial and manufacturing backgrounds were unable to be impartial because they were too close to the 'lower orders'.⁵⁰

These were the stereotypes of the magistrate, but how did the rural justice studied here reflect these images? This section will now look at the individual magistrates studied in this thesis in terms of their socio-political background, to ascertain to what extent they fit a contemporary stereotype. It will also look at whether the chronological change in the magistrate's background, from landed

⁴⁸ Swift, 'The English Magistracy Past and Present', 7.

⁴⁹ Bohun, *The Justice of Peace, His Calling and Qualifications* (London, 1693), 18-19.

⁵⁰ David Eastwood, *Governing Rural England* (Oxford, 1994), 13. Swift has also alluded to the 'questioning' over whether the "middle-class manufacturers" appointed to the bench in the early nineteenth century inhibited 'the impartial administration of justice of working people' (Roger Swift, 'The English Urban Magistracy and the Administration of Justice during the Early Nineteenth Century: Wolverhampton 1815-1860', *Midland History*, 17.1 (1992), 76).

gentry in the early eighteenth century to lesser gentry, clerical or professional background by the start of the nineteenth century, is apparent. It also looks at the evidence for legal training or career, to see how many magistrates were working with a prior knowledge of the law, before moving on to look at how active the magistrates were within their community, on the evidence of their notebooks, what resources they had recourse to in order to aid their work, and, lastly, how they recorded their work at a summary level.

Table 2.3, on page 52, shows the background of each of the 13 magistrates studied in this thesis. Although not all details can be ascertained, there is sufficient evidence to show the educational and social backgrounds of these men. It shows a good degree of continuity over the long eighteenth century, with the rural magistrates studied here all being from affluent backgrounds, having land and property, and the majority (ten out of 13) being educated at Oxford or Cambridge.

Table 2.3 The educational, legal and social backgrounds of rural magistrates.

	University education	Was he admitted to an Inns of Court?	Was he a lawyer?	Was he an MP?	Political affiliation	Economic background
Roger Hill (c.1642-1729)	Cambridge	Inner Temple	No	Amersham 1679-1681, Wendover 1702 and 1705-1722	Whig	A landowner – he purchased the Denham estate in Buckinghamshire c.1670 ⁵¹ . His family owned Poundisford Park, Somerset ⁵² , which he inherited in 1673.
Thomas Thornton (1654-1719)	No ¹	No	No	No	-	From a “gentry family” ⁵³ and lord of the manor of Brockhall.
William Brockman (1658-c.1742)	Cambridge	Middle Temple	No	Hythe 1690-1695	Whig	Brockman was “owner of the mansion of Beachborough... heir to the family which had dominated Newington since the sixteenth century” ⁵⁴ .
William Bromley (1663-1732)	Oxford	Middle Temple	Yes	Warwickshire 1690-1698, Oxford University 1701-1732	Tory	A member of the “county elite” ⁵⁵ and member of an old Staffordshire family.
William Hunt (1696-1753)	Oxford	Middle Temple	Yes	No	-	“Middling gentry” ⁵⁶ , a landowner with various estates in Wiltshire.
Edmund Waller (c.1725-1788)	Oxford	Lincoln’s Inn	No	Chipping Wycombe 1747-1754, Chipping Wycombe 1757-1761	Not specified	His father had estates in Great Marlow and Chipping Wycombe and inherited further Gloucestershire estates ⁵⁷ – he left the bulk of his estates to his son.
Thomas L. Thornton (1725-1790)	Oxford	No	No	No	-	Member of a gentry family, and lord of the manor of Brockhall.
Thomas Horner (1737-1804)	Oxford	No	No	No	-	From a gentry family, lord of the manor of Mells but lived at Mells Park, rather than at the manor house ⁵⁸ .
George Spencer (1758-1834)	Cambridge	No	No	Northampton 1780-1782, Surrey 1782-3, Home Secretary 1806-7	Whig	Aristocrat, landowner, became 2 nd Earl Spencer in 1783 – ‘vast estates’ ⁵⁹ including Althorp in Northamptonshire
Richard C. Hoare (1758-1838)	No	No	No	No		Gentry. 2 nd Baronet Hoare of Barn Elms. He was the son of a banker – his family owned C. Hoare & Co. He was also a landowner, having inherited Stourhead from his grandfather in 1785 ⁶⁰ . Previously Deputy Lieutenant for Somerset ⁶¹ .
Samuel Whitbread (1764-1815)	Oxford and Cambridge	No	No	Bedford 1790-1815	Whig	Whitbread entered his father’s brewing business. His father bought Southill Park the year before his death, and Whitbread inherited it. However, the Whitbread family had been landowners elsewhere in Bedfordshire since at least the early seventeenth century ⁶² .
Thomas N. Parker (1772-1848)	Oxford	No	No	No	-	A landowner, but through his wife’s family rather than his own (his wife inherited the Sweeney Hall estate in Shropshire) ⁶³ .
Richard Stileman (1787-1844)	Oxford	Lincoln’s Inn	No	No	-	Stileman was known as “the Squire of Winchelsea” ⁶⁴ , owning The Friars, a mansion and park in Winchelsea.

¹ Thomas Lee Thornton was admitted to Oxford University, but there is no record of his grandfather Thomas having attended. Magistrates are listed chronologically, according to their year of birth. **Sources:** Joseph Foster (ed), *Alumni Oxonienses: The Members of the University of Oxford, 1500-1714* (Oxford, 1888-1892), Joseph Foster (ed), *Alumni Oxonienses: The Members of the University of Oxford, 1715-1886* (Oxford, 1888-1892), J.A. Venn (ed), *Alumni Cantabrigienses*, (Cambridge, 1922-1954), D. Hayton, E. Cruickshanks and S. Handley (eds), *The History of Parliament: the House of Commons 1690-1715* (Woodbridge, 2002). www.historyofparliamentonline.org. 6 May 2014; R. Sedgwick, *The History of Parliament: the House of Commons 1715-1754* (Woodbridge, 1970). www.historyofparliamentonline.org. 6 May 2014; L. Namier and J. Brooke (eds), *The History of Parliament: the House of Commons 1754-1790* (Woodbridge, 1964). www.historyofparliamentonline.org. 6 May 2014; Inner Temple Archives, *The Inner Temple Admissions Database*. www.innertemplarchives.org.uk. 12 February 2014.

⁵¹ ‘Financial calculations relating to Temple Bulstrode, Denham, Hedgerley, Stoke Poges, Farnham Royal and Upton’, 15 December 1670, D192/1/1. Centre for Buckinghamshire Studies.

⁵² Nikolaus Pevsner, *The Buildings of England: South and West Somerset* (London, 2001), 278.

⁵³ Northamptonshire Record Office, ‘A guide to family and estate archives held at the Northamptonshire Record Office: Taylor to Tryon’, 2-3. www.northamptonshire.gov.uk. 12 February 2014.

⁵⁴ Landau, *The Justices of the Peace*, 26.

⁵⁵ Andrew A. Hanham, ‘Bromley, William II (1663-1732), of Baginton, Warws. and St James’s, Westminster’, in D. Hayton, E. Cruickshanks, S. Handley (eds), *The History of Parliament: the House of Commons 1690-1715* (Boydell and Brewer, Woodbridge, 2002). www.historyofparliamentonline.org. 6 May 2014.

⁵⁶ Crittall (ed), *The Justicing Notebook of William Hunt*, 3.

⁵⁷ Romney R. Sedgwick, ‘Waller, Edmund (c1699-1771), of Hall Barn, Beaconsfield, Bucks’, in R. Sedgwick (ed), *The History of Parliament: the House of Commons 1715-1754* (Woodbridge, 1970). www.historyofparliamentonline.org. 6 May 2014.

⁵⁸ Somerset County Council, ‘Park, Mells’, *Somerset Historic Environment Record*. <http://webapp1.somerset.gov.uk/her/details.asp?prn=23827>. 12 February 2014.

⁵⁹ Malcolm Lester, ‘Spencer, George John, second Earl Spencer (1758-1834)’, *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 12 February 2014.

⁶⁰ Victoria Hutchings, ‘Hoare, Sir (Richard) Colt, second baronet (1758-1838)’, *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 12 February 2014.

⁶¹ *The London Gazette*, 6 February 1798, 118.

⁶² Bedford Borough Council, ‘The Whitbread Family’. n.d. www.bedfordshire.gov.uk. 12 February 2014.

⁶³ Shropshire Council, ‘Sweeney Hall Miscellany’, *Discovering Shropshire’s History*. 2011. www.shropshirehistory.org.uk. 22 January 2015.

⁶⁴ Winchelsea.net, ‘The Ancient Town of Winchelsea’. www.winchelsea.net. 12 June 2013. The will of his father Richard, who died in 1795, describes Richard Senior as ‘gentleman of Winchelsea’ (TNA PROB 11/1259/144). The same description is offered in ‘Modern Winchelsea’, which notes that Richard Stileman JP’s memorial tablet described him as ‘Esquire, late of the Friars’. (William Durrant Cooper, *The History of Winchelsea, one of the Ancient Towns added to The Cinque Ports London, 1850*), 139.

Table 2.3 shows that several magistrates had political interests, having been Members of Parliament, although only one, Samuel Whitbread, was a serving MP at the time of writing his justicing notebook. Of those who had served as MPs, the majority were Whig. The Whig supremacy between 1714 and 1760 led to the government's desire to fill the ranks of the magistracy with their supporters; however, Moir suggests that this 'political manipulation' decreased as the century wore on.⁶⁵ Only two of the justices here took on a parliamentary seat that was controlled by his family. One was Edmund Waller, who became MP for Chipping Wycombe after his father, and the second was George, 2nd Earl Spencer, who 'was returned to parliament on the family interest for Northampton' at the age of 22.⁶⁶ However, other justices became MPs in the footsteps of their fathers, even if their family did not control the seat. Samuel Whitbread's father had wanted to buy him the parliamentary seat of Wendover, but Whitbread then 'forced' him out of his own Bedford seat, then maintaining it himself until his

⁶⁵ Moir, *Local Government in Gloucestershire*, 42.

⁶⁶ This was an example of a pocket or proprietorial borough, where a parliamentary seat was effectively controlled by the major landowner of the area, who could 'persuade' the electorate to vote for him (or sometimes his preferred candidate) by means of threatening eviction from property he owned, for example. Chipping Wycombe was a double borough, and during the mid to late eighteenth century one seat was controlled by the Waller family, and the other by the Earl of Shelburne. Each 'patron' recommended a representative to a seat. The Earl of Shelburne, who referred to borough such as Chipping Wycombe as 'family boroughs', had inherited property from the Petty family, and so members of the Petty family are well represented in his seat throughout this period. (John Brooke, 'Chipping Wycombe', in L. Namier and J. Brooke (eds), *The History of Parliament: the House of Commons 1754-1790* (Woodbridge, 1964), www.historyofparliamentonline.org. 6 May 2014; Malcolm Lester, 'Spencer, George John, second Earl Spencer (1758-1834)', *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 12 February 2014.

death in 1815.⁶⁷ Other JPs were following their father's interests, even if they had not been MPs themselves. William Brockman's father James had made public his desire to stand as a Whig candidate for Hythe in 1679, but then stood aside before the election.⁶⁸ Becoming a politician was in this sense a family tradition rather than a vocation, although Samuel Whitbread certainly saw himself as a career politician, showing both a commitment and passion for politics.

This family tradition, creating a standard form of education and employment for the sons of the gentry, also applied in terms of legal training. The fact that six magistrates studied here were admitted to one of the four Inns of Court might suggest that all six had legal training and backgrounds. However, it is important to note that most of the students admitted up unto the eighteenth century were members of the country gentry, and the Inns of Court were seen by their families as 'finishing schools for gentlemen'.⁶⁹ Their purpose was just as much to allow these men to network and make contacts, and further their general education, as to train them for a legal career. Although the majority did not go on to work as barristers, studying at the Inns of Court did involve legal training, studying common law, taking part in moots, having to learn to argue points of law and

⁶⁷ David R. Fisher, 'Whitbread, Samuel II (1764-1815) of Southill, Beds', in R. Thorne (ed), *The History of Parliament: the House of Commons 1790-1820* (Woodbridge, 1986). www.historyofparliamentonline.org. 6 May 2014.

⁶⁸ Sonya Wynne, 'Brockman, William (1658-by 1742), of Beachborough, Kent', in D. Hayton, E. Cruickshanks and S. Handley (eds), *The History of Parliament: the House of Commons 1690-1715* (Woodbridge, 2002). www.historyofparliamentonline.org. 6 May 2014.

⁶⁹ Celia Pilkington, 'Legal Education To 1920' (Inner Temple Archives, n.d.). www.innertemple.org.uk. 24 May 2013.

eventually delivering lectures.⁷⁰ Magistrates who had undergone this training would have been at an advantage to those who had not, being able to use their knowledge of the law and their learned skill at argument and debate within the justice's room.⁷¹ It is significant that the magistrates who were admitted to an Inn of Court were all from the early part of the period studied in this thesis, with the exception of Richard Stileman. This suggests that this was indeed part of a gentry man's education, rather than a desire to work in the legal profession.

Bohun had considered that the best magistrates were those from the higher echelons of society. Although he had seen the benefit of allowing those from slightly lower social backgrounds to become magistrates, he was not completely convinced that it was a good idea, speculating that 'men of small estates are very often of mean spirits...besides, their poverty will expose them to great temptations of bribery'.⁷² He saw wealthy men, then, as the most honourable, and not subject to financial temptation because of their own background. In the

⁷⁰ Pilkington, 'Legal Education To 1920'.

⁷¹ Law was not a regular part of the eighteenth century gentleman's classical education, prior to going to university, although some may have learned a little - indeed, there was little organised university-level education in the English law until 1729 (William P. Alford and Lionel Astor Sheridan, 'Legal Education', *Encyclopaedia Britannica*, n.d. www.britannica.com. 4 January 2013) and Lochée's plan for a military academy in Chelsea in the 1770s included the still novel idea of teaching law as a means of ensuring 'order and good government' in recruits (Lewis Lochée, *An Essay on Military Education* (2nd edition, London, 1776), 67; Nicholas Hans, *New Trends in Education in the eighteenth Century* (London, 1951), 104). One boarding school master in the late eighteenth century published a list of all the subjects taught to his pupils, and law and logic were not mentioned, although he did note the usefulness of learning about the 'government' [sic] of different countries as part of geography lessons (Thomas Whiting, *The London Gentleman's and Schoolmaster's Assistant* (London, 1787), v).

⁷² Bohun, *The Justice of Peace*, 14-15.

mid-eighteenth century, Blackstone had expressed concern with the extension of the authority and powers of JPs in terms of dealing with minor and disorderly offences such as swearing, drunkenness and vagrancy, which had previously been punished at a court leet. He was concerned that this increase in jurisdiction would create a burden that would discourage men of 'rank and character' from acting as justices - it would take up too much of their time, and take them away from their families. Worse still, Blackstone argued, if the onerous nature of summary proceedings dissuaded good men from acting as JPs, the role, and its powers, would be 'prostituted to mean and scandalous purposes, to the low ends of selfish ambition, avarice, or personal resentment'.⁷³ In other words, if gentlemen of rank did not want to take on the work of magistrate, those who wanted the power of the office without the responsibility would get a position that they were unworthy of.

As the role of the justice expanded, with a corresponding increase in workload, those from further down the social ladder - 'minor gentry, clergy, and professional men' - increasingly became justices.⁷⁴ Blackstone's comments about unsuitable men becoming justices illustrates the contemporary concern that a greater democratisation of the magistracy, with magistrates being drawn from a

⁷³ Blackstone, *Commentaries, Book 4*, 279. Lieberman, in discussing Blackstone's attitude to the extension of summary powers, adds that 'summary convictions constituted an increasingly important device in the administrative machinery of Hanoverian government' (Lieberman, *The province of legislation determined*, 59).

⁷⁴ King, *Crime, Justice and Discretion in England*, 17.

wider sphere than before, would damage the system and lead to magistrates seeking to use the position to improve their own standing in society.⁷⁵

Looking at the magistrates studied in this thesis, is there evidence of Blackstone's concerns being realised? There is little sign of an obvious change in the background of magistrates throughout the long eighteenth century. There are no clerical magistrates in this sample, which is surprising given Eric Evans' calculation of the increase in the number of magistrates who were drawn from this background, and the high percentage of clerical magistrates he has calculated for Bedfordshire and Northamptonshire, in particular.⁷⁶ This absence is, however, due more to the lack of survival of such magistrates' notebooks, rather than the absence of those magistrates themselves. But among the magistrates whose notebooks do survive, although there is evidence of business interests, Hoare being from a banking family, and Whitbread from a brewing background, there is continuity in the sense that these rural magistrates continued to be wealthy landowners. Hoare and Whitbread were still the owners

⁷⁵ This concern was reflected by Tobias Smollett in his depiction of the fictional Justice Gobble as a former journeyman hosier, whose 'insolence' and his wife's 'ostentation' was increased when he was given a commission of the peace (Smollett, 'The Life and Adventures of Sir Launcelot Greaves', 251). Landau, however, has argued that although a magistrate's ego may have been stroked by his powers to keep the peace in his local area, 'his ability to harass the lower orders did not of itself endow him with influence' as the poorer people he tended to deal with at summary level did not have the vote, and therefore could not provide him with any real power in society beyond what his family background had already granted him (Landau, *The Justices of the Peace*, 24-25).

⁷⁶ Evans calculated that the percentage of magistrates who were clergymen increased from just over 11 per cent in 1761 to nearly 22 per cent in 1831, but in areas where enclosure had been particularly widespread, the figures were far higher – 39.5 per cent in Northamptonshire, for example, and 41 per cent in Bedfordshire (Eric J. Evans, 'Some reasons for the growth of English rural anti-clericalism, c.1750-1830', *Past & Present*, 66 (1975), 101, 103-104).

of substantial estates, and all the magistrates studied in this thesis inhabited large estates.

The majority of these magistrates were, in a sense, Sharpe's 'gentlemen amateurs', but their lack of professional legal experience was, despite the concern of some,⁷⁷ no bar to working efficiently as a magistrate. Indeed, it was the administrative ability of the magistrate, rather than his legal or political skills, that became increasingly important over time.⁷⁸ Several magistrates without formal legal training sought to educate themselves and noted which legal sources and pieces of legislation had guided them to a response with their complaints. This was, perhaps, an extension of their organisational skills, in seeking to surround themselves with the appropriate aids to do their jobs as efficiently as possible. Northamptonshire magistrate Phillip Ward was a trained barrister, and was accordingly knowledgeable about the legislation he employed in his work out of sessions, as the notes in his justicing diary illustrate.⁷⁹ However, Richard Colt Hoare, who had no legal background, accumulated a library full of texts on law and crime, both legal books such as Blackstone's

⁷⁷ Moir, *Local Government in Gloucestershire*, 40.

⁷⁸ Landau and Glassey have argued that from the early 18th century onwards, there was a decreased emphasis on the justice as being a representative of a political party or interest, and that this gave 'greater prominence to the justice's administrative and judicial functions' (Norma Landau and LKJ Glassey, 'The commission of the peace in the eighteenth century: a new source', *Bulletin of the Institute of Historical Research*, 45 (1972), 260.

⁷⁹ *The Justicing Notebook of Phillip Ward of Stoke Doyle* (Lincoln's Inn Library, Misc MS 592).

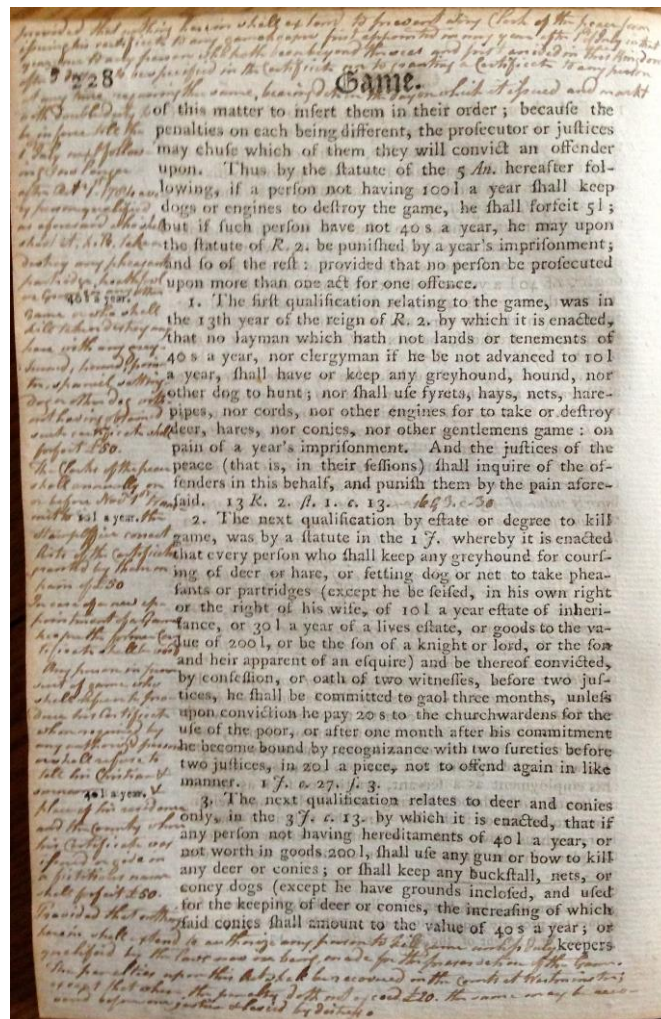
Commentaries, and more informal texts to refer to.⁸⁰ Whitbread referred to Burn's *The Justice of the Peace* in his notebook, and it is highly probable that other rural magistrates also had copies to use if necessary.⁸¹ Even into the nineteenth century, rural magistrates, such as members of the Hicks Beach family in Gloucestershire, referred to old copies of *The Justice of the Peace* that had been heavily annotated down the generations to note subsequent amendments to relevant legislation (see illustration on the next page).⁸²

⁸⁰ The back of the later of Richard Colt Hoare's two notebooks contains an inventory of the library in his house, which included several legal and criminal history books that had been published in or by Hoare's time. (WSHC 229/1).

⁸¹ Cirket (ed), *Samuel Whitbread's Notebooks*, 66.

⁸² Richard Burn, *The Justice of the Peace and Parish Officer, Volumes 1, 2, 3 and 4* (13th edition, London, 1776).

Figure 2.1 A page of Burn's *The Justice of the Peace* (13th edition), 1776.



A page taken from a copy of Burn's *Justice of the Peace, and Parish Officer* (13th edition, London, 1776), corrected by a previous owner "to the fifteenth [edition]" (1785). This entry has many annotations, not surprising as it relates to the notoriously complex game laws. *Author's copy.*

Magistrates also relied on their colleagues for advice throughout this period, and would also refer cases onto other neighbouring magistrates if necessary. William Brockman heard the case of James Thompson, who, with two other men, was accused of breaking into a widow's house and threatening to poison her. When Thompson told Brockman that he would be able to obtain bail at Ashford, the magistrate sent all three men to Sir Nicholas Toke, a magistrate living nearer

Ashford, 'rather than commit a stranger etc for want of bail here that he could secure elsewhere'.⁸³ This case shows not just a desire to save the expense of committing the accused if this was possible, but also an awareness of the other magistrates in the area and a willingness to send cases onto others nearer their home parishes. Samuel Whitbread consulted with two neighbouring magistrates in particular - William Wilshere and a clerical magistrate, James Webster. Where cases needed two justices, Whitbread would often sit with one of these men.⁸⁴

In summary, there were gradual changes in the background of the rural magistrate that showed the slow infiltration of more industrial interests into rural society. However, generally, the rural magistrate continued to be from a gentry background throughout the long eighteenth century. He was the landowning gentry figure in the big house, distanced by class and education from the people who appeared before him in his justicing room, and reliant on his clerk, legal handbooks and colleagues for guidance. The next section of this chapter looks at whether these justices really were distanced from their community, not just in social terms, but in geographical terms as well.

⁸³ BL Add MS 42598, 24 February 1698.

⁸⁴ Cirket (ed), *Samuel Whitbread's Notebooks*, 9.

ii. The accessibility, and availability, of the rural justice to his community.

A magistrate was commissioned to serve his county, but in practical terms, the rural magistrate covered only part of that county.⁸⁵ At summary level, certainly by the early eighteenth century, the magistrate generally operated within a particular division, a group of parishes, within his county.⁸⁶ Looking at the range of justicing notebooks here, they show that the magistrates operated within a broadly similar areas in terms of size. Gervase Clifton may be an exception, as Steedman suggests that he covered a radius of around 20 miles, but the magistrates focused on here tended to cover a smaller distance.⁸⁷ Crittall states that William Hunt, in the middle of the eighteenth century, worked within a 'radius of roughly ten miles around his house in West Lavington', concentrating on the hundred of Swanborough, together with Potterne and Cannings.⁸⁸ Roger Hill at the end of the seventeenth century, and Richard Stileman in Sussex and

⁸⁵ The commission of the peace under George III was worded, 'we have assigned you, jointly and severally and every one of you, our justices to keep our peace in our county of ...', and later went on to refine this as being a 'county, riding, or division', unless they served 'liberties' which 'are counties of themselves', such as London, Norwich or York, in which case, they would execute their office within that town (Burn, *The Justice of the Peace, Volume 3*, 7, 10, 17).

⁸⁶ de Tocqueville, *Journeys to England and Ireland*, 51; Eastwood, *Governing Rural England*, 76.

⁸⁷ Steedman, *An Everyday Life*, 159. However, this 20 mile distance may reflect the occasional complainant choosing a magistrate from further afield who might not be so intimate with the complainant's situation or local vestry, in order to gain a more sympathetic hearing in a particular case. William Bromley, for example, heard one case from a person living 14 miles away from his home in Baginton, but this was an exception, and the majority of cases he recorded were from within a ten mile radius. Therefore, the distance noted by Steedman does not necessarily reflect the *average* distance that people travelled to visit Clifton (King, 'The Summary Courts and Social Relations', 128; WRO CR0103, 24 June 1693). This issue is discussed further in chapter three.

⁸⁸ Crittall (ed), *The Justicing Notebook of William Hunt*, 4.

Richard Colt Hoare in Wiltshire, both working in the early nineteenth century, covered a similar radius. This indicates that the rural magistrate working in the long eighteenth century tended to see people from within a similar, ten mile, radius of their own home.⁸⁹

This does not mean, however, that they heard all their cases at home. William Hunt recorded a variety of locations where he heard business; for example, in the first half of 1748, he was at the Horse and Jockey in West Lavington, the village where he lived, as well as at the Black Horse in Devizes, the George inn in Potterne, the Swan in Devizes and the Bell in Market Lavington.⁹⁰ Hunt's involvement in his community, and his use of different public houses to conduct business, helps to explain what Sharpe describes as his 'good knowledge of many of the local inhabitants who came before him'.⁹¹

A magistrate may have had a knowledge of his local community, but this could have been gleaned from others, rather than from their own interaction with people, as some were more involved in local justice than others. Although being named in the list of commissions of the peace transferred a certain level of prestige, this does not mean that everyone took their duties seriously. Although there were individual magistrates, such as Samuel Lister, who were 'consistently

⁸⁹ Veysey has noted that Sir Roger Hill had cases brought to him from as far afield as Amersham and Eton (Geoffrey Veysey, 'A Justice's Diary', *Records of Buckinghamshire*, volume XVII (1961-5, 183). Eton was around eight miles from Hill's home in Denham; Amersham was ten miles.

⁹⁰ Crittall (ed), *The Justicing Notebook of William Hunt*, 25.

⁹¹ Sharpe, *Crime in Early Modern England*, 127.

active', it has been stated that 'the great majority of justices were...inactive', and King has added that 'most JPs never established a regular pattern of availability'.⁹² In part, this could be to do with the life expected of a member of the gentry in the long eighteenth century. Some men, as Bohun had recognised, were often absent from their home counties, in order to enjoy the 'season' in London, or to stay at their other estates elsewhere. Nottinghamshire weaver Joseph Woolley noted his local magistrate, Gervase Clifton's, returning to the area after having been in London 'for the Shooting season' in 1801, and the JP was absent from his estate for 'verey near Eleven months' in 1812-1813.⁹³

It can be seen, then, that the involvement of rural magistrates with their local community could depend partly on their own attitude and commitment towards their justicing duties, together with their location and accessibility. Richard Williams has noted of justices of the peace in eighteenth century rural Berkshire that they were 'too few in number and too widely scattered throughout the county to be entirely effective'.⁹⁴ Gray has reiterated this, stating that,

In rural England plaintiffs seeking a hearing with one of a number of local Justices often faced a journey of several miles, a time consuming and expensive exercise that caused some to choose not to pursue their grievances.⁹⁵

⁹² Styles, 'An Eighteenth-Century Magistrate as Detective', 100; Eastwood, *Governing Rural England*, 76; King, *Crime, Justice and Discretion in England, 1740-1820*, 84.

⁹³ Steedman, *An Everyday Life*, 140-141.

⁹⁴ Richard J. Williams, *Crime and the Rural Community in Eighteenth Century Berkshire, 1740-1789* (PhD thesis, University of Reading, 1985), i.

⁹⁵ Gray, *Crime, Prosecution and Social Relations*, 18.

It is impossible to ascertain how many people may have chosen 'not to pursue their grievances' because of the inaccessibility of rural magistrates, but it should not be assumed that the necessity of a journey meant that rural people did not, or could not, access their nearest justice. Firstly, a study of the magistrates' notebooks suggests that the regularity with which some people approached the justice, and their poorer economic background, means they did regard the rural magistrate as 'local' and accessible. Visiting the magistrate at a summary level was also easier, in terms of immediacy, than having to wait for the next Quarter Sessions. In addition, the fact that the vast majority of the JPs studied here covered a similar area in terms of distance, suggests that in rural southern England, at least, many JPs were accessible to their local communities, or that the community saw the distance as little barrier to accessing a magistrate. Again, the frequency with which some made note of conferring with magisterial colleagues or of meeting with them on a regular basis, shows that magistrates were not 'inactive'.

This does not mean, though, that the magistrates studied here were available all year round, and did not have absences. Certainly, some of the rural justices analysed in this thesis did have periods where they do not appear to have been taking an active part in summary justice.⁹⁶ There was also, as King argued, a lack

⁹⁶ This is, of course, assuming that the notebooks represent a full account of cases. It is possible that some were not recorded or recorded elsewhere. In the case of the 2nd Earl Spencer, there appear to have been periods when he was busy elsewhere - for example, his notebook shows that he heard no cases

of regularity about when a magistrate was available, and individuals varied as to when they were willing to hear cases. Whitbread was perhaps the most committed, conducting hearings in his dressing-gown by eight o'clock in the morning, and hearing cases most days, including over Christmas.⁹⁷ Waller, though, limited his hearings to Mondays, and then only for around nine months of the year.⁹⁸ Horner, described as a loyal and dutiful servant of the state, sometimes heard cases once a week, and sometimes more often – but also had longer absences.⁹⁹ It is possible that he sat according to whether there were people who wished to see him, but given the steady numbers of individuals visiting him, this appears unlikely.

between April and August 1788, or between January and May 1789. His periods of less or no apparent justice activity do not coincide with parliamentary sessions, so they may have been related to either the London social season, which occurred when parliament was not sitting, or, in the case of 1789, the hunting season (which took place between November and March each year), but there is no consistency in this from year to year, so the absences may be more down to Spencer's lack of methodical recording practices. (The History of Parliament, 'Parliaments: 1784', *The History of Parliament*. (n.d. www.historyofparliamentonline.org. 6 May 2014); The History of Parliament, 'Parliaments: 1790', *The History of Parliament* n.d. www.historyofparliamentonline.org. 6 May 2014); F.H.W. Sheppard, 'The Social Character of the Estate: The London Season in 1841', in English Heritage, *Survey of London: volume 39: The Grosvenor Estate in Mayfair, Part 1* (London, 1977), 89-93.

⁹⁷ Cirket (ed), *Samuel Whitbread's Notebooks*, 8.

⁹⁸ King, *Crime, Justice and Discretion*, 84. As King notes, the establishing of regular petty sessions meetings was 'partly designed to overcome the uncertainty and expense' that the previous irregular proceedings had caused (*ibid*).

⁹⁹ McGarvie (ed), *The King's Peace*, 19. In May 1770, Horner heard cases on 7 May (the first entry in his published notebook), 11 May, 15 May, and 18 May, but then did not record a further case until 1 June. Three years later, he heard cases on three different days in the first week of June, but then only once a week until 24 June, when he then heard cases twice that week (McGarvie (ed), *The King's Peace*, 22-23, 95-96).

Shoemaker has recognised that people were more likely to use the courts if they lived near them.¹⁰⁰ Did this apply to those needing to see a magistrate, too? It has already been shown that the rural magistrates studied here saw people from around a ten-mile radius of their home, so although people may have had to travel some distance to visit a magistrate, the notebooks show that they still did so, suggesting that they were not put off by the distance. There were also differences in how the magistrate made himself accessible to dispersed rural communities. William Hunt, for example, in regularly holding justicing meetings in various inns across his part of Wiltshire, gave individuals an easily navigable, and probably nearer, location to reach, rather than having to travel to his home at the southernmost part of his jurisdiction. In this way, Hunt encouraged the attendance of the local community by travelling to be nearer them.

The justicing room itself could emphasise the differences between the magistrate and the people who came before him, and this, in turn, could distance him from his community. Richard Colt Hoare commissioned two paintings for his house depicting paupers, designed to illustrate his sympathy for the poor, yet he heard cases in his grand library at Stourhead (figure 2.2, page 69), constructing an exterior staircase to the room (figure 2.3, page 70) so that those with complaints would have to wait outside rather than traipse through his home.¹⁰¹ This attempt to keep the local community at a distance, having to enter and exit by a different means to the Hoare family, sits oddly with his attempt to show empathy for them

¹⁰⁰ Shoemaker, *Prosecution and Punishment*, 316-317.

¹⁰¹ Personal visit to Stourhead and conversation with National Trust archive assistant, May 2014.

through his purchased artworks.¹⁰² It also demonstrates the differences in attitude displayed by various rural magistrates, with Hoare creating barriers to his accessibility through emphasising the difference between him and many of the people who would have visited him, whereas Hunt sought to be part of that community by meeting in more neutral spaces.¹⁰³

¹⁰² Visit to Stourhead, May 2014.

¹⁰³ Navickas has noted the function of pubs, for example, as 'predominantly working-class environments' that could form 'convivial' sites of justice. Although her research focuses on northern England, this view of the pub or tavern similarly applies to the central and southern part of England studied in this thesis (Katrina Navickas, 'Space, place, and popular politics in northern England, 1789-1848', British History in the Long 18th Century seminar, Institute of Historical Research, 14 December 2011. www.history.ac.uk. 13 February 2015).

Figure 2.2 Richard Colt Hoare's justicing room at Stourhead.



Source: Author's photo

Figure 2.3 The exterior staircase (left) leading up to Richard Colt Hoare's justicing room at Stourhead.



Source: Author's own photo

It should not be suggested that summary justice was an ideal form of justice for those with no other means of legal representation or method of communicating grievances. The prosecution of offences could cost both time and money, and therefore was, theoretically, biased towards those with the money and opportunity to instigate proceedings, find witnesses, and pay for warrants. The magistrates' availability and accessibility also impacted on people's ability to seek redress. However, throughout the long eighteenth century, magistrates acting in their justicing rooms at home or in local inns provided the main means

by which ordinary people could bring complaints and seek restitution or resolution.

iv. The help magistrates had in undertaking their summary work.

This chapter has shown that only a minority of the magistrates studied in this thesis had professional experience of the law. They had recourse to the help of their clerks, who more often had a legal background, and could seek the advice of other magistrates.¹⁰⁴ However, as the long eighteenth century progressed, they were also aided by an increasing number of manuals and guides aimed at helping them to negotiate the country's increasingly complex statute and common laws.

In 1764, Burn's *History of the Poor Laws* had noted that there had been so many acts passed to extend the powers of summary conviction that fewer than one in ten magistrates knew 'how to draw up a conviction in form, without a special precedent before him in every particular case'.¹⁰⁵ Burn was drawing attention to the difficulty facing local JPs in executing the law at a local level. As Lieberman has noted, all the various pieces of legislation passed up to the mid eighteenth

¹⁰⁴ Although in the seventeenth century, the clerk was seen as 'an official of no great importance', his role gradually increased, and he was often able to offer 'professional guidance' to the justice, as he usually had a legal background himself. In eighteenth century Wiltshire, it was noted that a 'succession of attorneys...acted as clerks' in the county. (R.B. Pugh and Elizabeth Crittall, 'County government 1660-1835', in R.B. Pugh and Elizabeth Crittall (eds), *A History of the County of Wiltshire, Volume 5* (London, 1957), 170-194. www.british-history.ac.uk. 15 January 2013; Eastwood, *Governing Rural England*, 78; King, 'The Summary Courts and Social Relations', 127).

¹⁰⁵ Burn, *History of the Poor Laws*, 249.

century had 'left the justices further confused as to their powers'.¹⁰⁶ This helps explain why the number of manuals and guidance aimed at helping the justice do his work effectively increased over the long eighteenth century. Although manuals had been produced for justices of the peace in the sixteenth and seventeenth centuries, they increased in number over the eighteenth and early nineteenth centuries, with existing books being frequently updated and reissued.¹⁰⁷ It was Michael Dalton's *The Country Justice*, originally published in 1618, that first became the popular reference work for magistrates. Providing an overview of the magistrate's powers working out of session, by a barrister and justice of the peace, it proved so useful that it was in its eighth edition by the mid eighteenth century. Other guides swiftly followed, with works by Edmund Bohun, John Bond, William Nelson, Nathaniel and Samuel Blackerby being published over the late seventeenth and early eighteenth centuries.¹⁰⁸ Then, in 1755, Richard Burn's *The Justice of the Peace, and Parish Officer* was first published, becoming a standard work for magistrates and undergoing many editions. After Burn's death in 1785, it continued to be published with a series of editors undertaking the task of further extending the work to reflect new changes in legislation. Over the last half of the 1760s, William Blackstone's four-volume *Commentaries on the Laws of England* was also published. Although a

¹⁰⁶ Lieberman, *The province of legislation determined*, 193-194.

¹⁰⁷ Sir Anthony Fitzherbert's *L'office et auctoritee de justices de peace* (1514, English translation 1538) and William Lambarde's *Eirenarcha* (1610) were the first significant works (D.A. Orr, 'Dalton, Michael (1564-1644)', *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 11 February 2014).

¹⁰⁸ Edmund Bohun, *The Justice of Peace, his calling and qualifications* (1693); John Bond, *A Compleat Guide for Justices of Peace: according to the best approved authors* (1696); William Nelson, *The Office and Authority of a Justice of Peace* (1704); Nathaniel Blackerby, *The Justice of the Peace his Companion* (1723); Samuel and Nathaniel Blackerby, *The Second Part of the Justice of Peace his Companion* (1734).

treatise, rather than a practical handbook, the *Commentaries* offered guidance to magistrates on civil rights, property law, civil offences and the criminal law. Its wide-ranging remit including the classification of servants, and how a man should chastise his servants or his wife. These handbooks and treatises were added to in the early nineteenth century, creating a library of guides for the rural magistrate to consult.¹⁰⁹ Therefore, although some rural justices did have legal training, those who did not had access to these legal handbooks that were explicitly designed to help them to do their jobs as efficiently and knowledgeably as possible.

However, the role of the magistrate could be a very individual one, and not all magistrates responded to similar cases in the same way. For example, Edmund Tew in County Durham did very little criminal work, and subsequently handed down relatively few summary punishments, compared to some other local magistrates, such as William Hunt.¹¹⁰ Magistrates made individual decisions about cases, and interpreted justicing manuals in a similarly individualistic way. As Morgan and Rushton note of Tew, 'to some extent...a magistrate's justice was "personal justice", however much guidance was offered in the increasingly detailed handbooks'.¹¹¹

¹⁰⁹ For example, William Robinson's two main published works, which were *The Magistrate's Pocket-book* (1825) and *Formularies, Or, The Magistrate's Assistant* (1827).

¹¹⁰ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 72-73.

¹¹¹ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 74. Also Eastwood, *Governing Rural England*, 82.

Part of this 'personal justice' involved the employment of judicial discretion, which was acknowledged by Burn. He noted that whereas it was clear that with cases of murders and other felonies that his role at summary level was limited to taking the prisoner's examination, recording it in writing, and arranging bail or gaol delivery, with 'smaller matters', he could hear the matter or bind a defendant over to the sessions, this was a 'point of discretion and convenience'.¹¹² In this sense, all magistrates, whether urban or rural, had to use a combination of knowledge, experience, colleagues, reference materials, such as the justicing handbooks and, later, the philosophical works of key eighteenth century figures such as Bentham, Malthus and Smith which explored politics, law, economy and class.¹¹³ In addition, they could employ their own discretion in determining how to proceed with the cases that came before them.

¹¹² Burn, *The Justice of the Peace, Volume 3*, 20.

¹¹³ Jeremy Bentham intended to write a *Digest* in the late 1770s and early 1780s that would rid English law of its 'obscurity, uncertainty and confusion' – although he failed to complete and publish this, his *Principles of Morals and Legislation* was published in 1780 (Lieberman, *The province of legislation determined*, 278). Malthus's *An Essay on the Principle of Population* (1798) had implications for the operation of the Poor Law, whereas Adam Smith's *Wealth of Nations* (1776) urged caution in the proposal of new laws as they 'ought never be adopted till after having been long and carefully examined' (Adam Smith, *The Wealth of Nations* (Raleigh (2001), 178) but also argued for the benefits of self-interest in promoting the good of society.

v. The constraints on a magistrate's authority.

This lack of accountability does not mean that there were no constraints to the magistrate's authority. No criminal proceedings could be instigated without the involvement of the complainant. This was the person who had to travel to the magistrate to complain, who had to track down the person he or she suspected of an offence, and who had to find witnesses.¹¹⁴ This was also the person who might fight for an indictment to be drawn up, or who the magistrate had to persuade to reach agreement with the suspected offender.¹¹⁵ The rural magistrate was also under pressure from local landowners, particularly with regard to poaching offences. If the landowner was pushing for a particular penalty, when the offence was minor, the magistrate might find himself placed between conflicting interests.¹¹⁶ This again linked to class. The magistrate was aligned to the class of the wealthy prosecutor, such as the landowner, clergyman, or farmer, rather than the poorer members of society who came before him, creating a potential conflict between class interests. This constraint to the magistrate's authority, in having to justify a course of action to the complainant, could also, then, represent a problem with the nature of the magistracy in rural England.

¹¹⁴ Although not necessarily or always on their own, as the parish constable's tasks also included such activities. Burn referred to Dalton's description of a constable's duties - which included constables being expected to come to the 'aid and force of others, or arrest and pacify also such who in their presence and within their jurisdiction and limits, by word or deed, shall go about to break the peace' (Michael Dalton, *The Country Justice: Containing the Practice of the Justices of the Peace Out of their Sessions* (7th ed, London, 1690), 5) - as 'not contain[ing] the hundredth part of the constable's duty' (Richard Burn, *The Justice of the Peace and Parish Officer, Volume 1* (13th edition, London, 1776), 384).

¹¹⁵ As Morgan and Rushton describe it, 'individuals "created" the crime...by turning personal wrongs into official accusations' (Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 30).

¹¹⁶ This thesis will explore this issue, with particular relation to the notebooks of Richard Colt Hoare and Samuel Whitbread, in chapter three.

Although in some cases, the magistrate was able to hear and make decisions sitting on his own, in others, two or more justices were required to sit together. Several of the magistrates studied in this thesis referred to another justice sitting with them. This provided a level of accountability, in that the two justices had to reach a joint decision on a case, but it is clear that in some cases, the magistrates had a friendship or long-standing acquaintance that might affect their impartiality. Roger Hill, for example, recorded where he had issued vagrancy passes whilst sitting with either Sir Henry Seymour or Robert Tash, and he also sat with Nicholas Salter of Stoke Court, Stoke Poges, until the latter's death in 1693.¹¹⁷ William Brockman's notebook similarly detailed a couple of magistrates with whom he regularly sat. Samuel Whitbread recorded his consultations with other magistrates, such as William Wilshere and James Webster, and often sat with the latter when two justices were required. It made sense to sit with magistrates who were likely to be of a similar outlook in order to agree on cases and action to be taken (for example, William Wilshere was a business partner of Whitbread's as well as a fellow magistrate), but it did mean that there was a lack of accountability where two friends sat and dispensed justice together.¹¹⁸

¹¹⁷ Veysey, 'A Justice's Diary', 183. These three magistrates all lived within a six mile radius of Hill, with Seymour being based at Langley Park, Tash at Delaford Manor in Iver Heath and Salter in Stoke Poges.

¹¹⁸ Cirket (ed), *Samuel Whitbread's Notebooks*, 9. Wilshere was a partner in Whitbread's brewery from 1799, and after Whitbread's suicide in 1815, Wilshere continued as a partner alongside Whitbread's son William (Lesley Richmond and Alison Turton (eds), *The Brewing Industry: A Guide to Historical Records* (Manchester, 1990), 366). James Webster was from a different background, being a clerical magistrate (John Cox Hippisley, *Prison Labour, etc* (London, 1823), 167). As Hay has commented, there was already a lack of accountability with 'miscarriages of justice at the hands of country gentlemen magistrates' likely to go unpunished (Douglas Hay, 'Dread of the Crown Office: the English Magistracy and King's Bench, 1740-1800' in Norma Landau, *Law, Crime and*

This section has shown that the checks on a magistrate's actions and decision making also exposed a flaw in the nature of the magistracy and the operation of rural summary proceedings. The distance between a magistrate and many of those within his community was emphasised by his working relationships with those of similar backgrounds, and the influence of landowning complainants. This chapter will now show that the recording of cases heard at summary level did little to increase the accountability of magistrates, because of the voluntary nature of that recording, and the lack of scrutiny that magistrates' records were subject to.

vi. The recording of cases heard at summary level.

It was not mandatory to keep a written record of cases heard at summary proceedings during the long eighteenth century. However, Justices of the Peace were advised to keep notebooks recording at least the basic details of every case.

At the end of the seventeenth century, Edmund Bohun had stated:

It is an excellent Way to enter into a Paper Book to be kept for that purpose, first the Name of the Complainant, and of the Party against whom the Complaint is brought; and then the Complaint, in as few words as is possible, and then read them to the Complainant, that if any Mistake hath been made in the Names, or thing, it may be rectified.¹¹⁹

English Society, 1660-1830 (Cambridge, 2004), 44). Having two magistrates who were, at the least, from the same background, and were perhaps even friends, sitting together did not appear designed to increase this accountability.

¹¹⁹ Bohun, *The Justice of Peace*, 150.

In the mid eighteenth century, Burn also clearly set out the benefit of keeping such a notebook:

A record...made by a justice of the peace, of things done before him judicially, shall be of such credit, that it shall not be gainsaid. One man may affirm a thing, and another man may deny it; but if a record once say the word, no man shall be received to aver or speak against it.¹²⁰

These statements make clear that the aim of such records were to prevent mistakes and arguments, stressing the practical reasons why a magistrate, or his clerk, should spend the time detailing the complaints of those who appeared before them. In light of this guidance, it is interesting that several historians have noted the lack of surviving notebooks, and in one case, suggested that this means magistrates simply failed to record the cases they heard at summary level.¹²¹ It is true that it was not mandatory for magistrates to complete such notebooks, but given that it could save them time and trouble later, it is more realistic to believe that many completed such notebooks, but perhaps destroyed them after a period of time when they felt they no longer needed to refer to them, or that they have subsequently been destroyed by others, or lost. The lack of existence, today, of such notebooks should not be taken as evidence that they *never* existed, just that the evidence for their existence can no longer be ascertained. It is unlikely that

¹²⁰ Burn, *The Justice of the Peace, Volume 3*, 3.

¹²¹ Morgan and Rushton describe Tew's notebook as a 'rare source' of information about justicing business out of sessions (Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 55). Davey notes that Dixon's is the only surviving magistrate's notebook for Lincolnshire and is 'rare nationally' with 'only a handful' having been published (Davey, 'Introduction', 3). Hurl-Eamon has stated that 'many [JPs] did not' keep a notebook recording their daily business, giving as evidence of this 'the small numbers that have survived' (Jennine Hurl-Eamon, *Gender and Petty Violence in London 1680-1720* (Columbus, 2005), 133).

magistrates failed to maintain notebooks because of a concern about it later emerging that they had made mistakes in their judgements. As William Robinson later remarked, 'if a justice makes an unintentional mistake in his practice, through mere error in judgement, great lenity is shown him'.¹²² In addition, there was a 'deliberate policy of minimal supervision' of magistrates by the high courts, and few magistrates were punished for misbehaviour or corruption, let alone incorrect judgements.¹²³

In terms of how magistrates should fill in their notebooks, the surviving examples show that the method of entering cases, and detail provided, were as individual as the magistrates. Gray has touched on this, summarising Hunt's notebook as a 'cryptic' description of hearings, Whitbread's as a 'more detailed account' of hearings and Wyatt's deposition book as a notebook 'rich in detail' but that often failed to give the outcome of cases.¹²⁴ William Bromley and William Brockman varied in the amount of detail they gave when recording cases, and only recorded the action they took, beyond the issuing of a warrant or summons, in a minority of cases. Hill noted more summary punishments than Bromley or Brockman, but still failed to record them in the majority of cases, although he was more assiduous in recording such details as the costs involved and occupations of those who came before him.¹²⁵ At the other end of the period

¹²² William Robinson, *The Magistrate's Pocket-Book, Or, An Epitome of the Duties and Practice of a Justice of the Peace Out of Sessions* (London, 1825), 182.

¹²³ Hay, 'Legislation, magistrates, and judges', 61, 67-68.

¹²⁴ Gray, 'Making Law in Mid-Eighteenth Century England', 215.

¹²⁵ Hill recorded the cost of passing paupers through Warwickshire, and the mode of transport – for example, Sarah Nicholas was passed from Baginton to Stokenchurch by horse, at a cost of 8s 6d, whereas Sarah Arpin and her child

covered here, when analysing Gervase Clifton's notebook, covering late eighteenth century and early nineteenth century Nottinghamshire, Steedman described it as comprising 'partial, fragmentary records', noting that he 'did not record all his activity', and Welby has suggested that he tended to 'note only the more important cases that came before him'.¹²⁶ There is little evidence of a move over time towards a more professional, methodical form of recording cases, but rather that the recording of cases remained highly individual throughout the long eighteenth century. Although two of the most methodical magistrates - Thomas Netherton Parker, who detailed 'every one of the cases that came before him' between 1805 and 1813, and Samuel Whitbread - both worked towards the end of the period covered here, their more detailed approaches did not reflect a general increase in organisation but their personal, methodical, approaches to their magisterial work in general.¹²⁷

were passed to Stokenchurch by cart, costing 12s (WRO CR0103, 19 October 1704, 5 January 1705).

¹²⁶ Steedman, *An Everyday Life*, 129, 143-144; Welby, 'Rulers of the Countryside', 81. This may have been a common action. Rosenheim has noted that seventeenth-century magistrate Robert Doughty may not have recorded 'the informal business of mediation', and 'certainly omitted recording much routine administration' in his notebook (Rosenheim (ed), *The Notebook of Robert Doughty*, 9). Other magistrates' business only survives as brief mentions in more personal diaries. This is the case with Bedfordshire JP John Salusbury, whose diary combines entries such as, 'a cold wet day again, so that I had a fire in the evening', with notes about the payment of poor rates and window tax by local residents, his mediation of local work disputes, and his attendance at Bedford Assizes, as well as mention of cases heard by other neighbouring justices (Joyce Godber (ed), 'John Salusbury of Leighton Buzzard, 1757-9', *Some Bedfordshire Diaries* (Streatley, 1960), 46-94).

¹²⁷ David J. Cox, 'The Shropshire Magistracy in the Eighteenth Century', in Cox and Godfrey (eds), *Cinderellas and Packhorses*, 28.

There is also the question of who wrote up the details of cases. Some notebooks were written in a single hand and are identifiable as composed by the justice, whereas others were written in different hands, such as the justice, a clerk, or even one of the justice's colleagues.¹²⁸ In some cases, the justice was fairly detailed, noting where he had made a decision sitting with another magistrate, and noting who that was, but in other cases, a change in handwriting is the only clue. Other magistrates did not record all cases contemporaneously, but summarised them later, sometimes with an attempt made to 'group' them into subjects.¹²⁹ Some notebooks were lists of depositions, others were a more detailed explanation of cases and action taken.¹³⁰ Few made reference to the statutes that influenced their decision-making, although both Parker and Spencer, for example, occasionally noted in a margin the statute they had referred to, or a King's Bench case that had set a precedent in a particular area.¹³¹ Within this idiosyncratic method of recording cases, however, Gray recognised that there is 'considerable overlap' between the different types of

¹²⁸ Thomas Horner, as McGarvie notes, wrote only the first page and one half of his notebook himself, with the rest being transcribed by an unnamed clerk (McGarvie (ed), *The King's Peace*, 6-7). Cirket calculates that 80 per cent of Samuel Whitbread's earlier notebook was written in his hand, with 'the other 20 per cent by a young or less literate person', but that the whole of his second notebook, except for the index, was written by Whitbread (Cirket (ed), *Samuel Whitbread's Notebooks*, 7). Davey states that 'most' of the entries in Thomas Dixon's notebooks are in his hand (Davey, 'Introduction', 4).

¹²⁹ Both Gervase Clifton and Richard Colt Hoare appear to have organised and transcribed their cases at a later date. Of Clifton's, Steedman has described them as 'randomly collected, selectively-bound notes from many years of magisterial activity' (Steedman, *An Everyday Life*, 145).

¹³⁰ Silverthorne (ed), *Deposition Book of Richard Wyatt*. William Hunt's notebook lists his expenses and payments made to the poor, as well as noting proceedings before himself as a single justice, and those before he and another justice (Crittall (ed), *The Justicing Notebook of William Hunt*, 1).

¹³¹ Phillip Ward in Northamptonshire was a rare example of a magistrate who recorded the relevant legal statutes that had informed his decisions at summary level (Gray, 'Making Law in Mid-Eighteenth Century England', 211-233).

notebook.¹³² In terms of subject, although there were common themes, such as bastardy, assault, regulation and petty theft, reflecting the summary jurisdiction of magistrates, some cases were specific to the geographic locale of the individual magistrate and the type of work available there.¹³³ These relatively rare notebooks offer, as Morgan and Rushton have described the notebook of Edmund Tew in County Durham, 'a valuable insight into the way in which justices went about their business'.¹³⁴

Concluding remarks.

This chapter has established the rural summary proceedings in England during the long eighteenth century differed from those of urban London and Middlesex, both in terms of how proceedings were organised, and the availability of the magistrate to individuals in terms of numbers and distance. Although the broad range of offences and disputes dealt with at summary level applied to both urban and rural areas, there were some differences in the type of issue being heard by magistrates, reflecting the concerns of different communities.

Rural summary proceedings throughout the long eighteenth century were an individual, informal process. Magistrates were regarded as inactive, but some were, on the evidence of their surviving notebooks, more active than others. This chapter has found that an individual's use of the summary process might depend on whether he heard cases frequently, was largely resident in the county in

¹³² Gray, 'Making Law in Mid-Eighteenth Century England', 215.

¹³³ Such as cases of false or short reeling in Northamptonshire.

¹³⁴ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 55.

which he was magistrate, and his efforts to make himself accessible to the local population. Yet this chapter has also found that summary proceedings were valued by rural societies, and that individuals would travel some distance to visit the magistrate. The distance and expense of summary proceedings does not appear to have been a considerable barrier to rural participation in the process.

The range of magistrates studied here suggests that there was not a major change in the background of the rural magistracy over the long eighteenth century. In the last quarter of the eighteenth century, in rural central and southern England, the gentry still dominated, providing some stability to the nature of summary proceedings. What these magistrates' notebooks also show is a broad similarity in the issues they were involved with – but also regional differences in some issues, reflecting the nature of employment and activities in their areas. This thesis will now proceed to investigate the people who used the summary process in rural England, to determine if it was a process open to all sectors of the community.

Chapter three: Class and status: rural society's involvement with the summary process.

This chapter will look closer at the involvement of rural society with the summary process, analysing who used the process in terms of social class and occupational status in order to assess to what extent plebeian people used the process, and how their use was influenced by the extent to which they understood the law or their rights. Firstly, complainants and defendants will be categorised according to their occupational status or, in the case of gentry, their class, to indicate their status within rural society, and the prevalence of each particular social group as either complainants or defendants. This categorisation will then be looked at according to the individual magistrate, to assess whether there were any major differences in who used the summary process in different areas or at different times. This chapter will then look in more detail at particular issues dealt with by the rural magistrate, including wage disputes, complaints by servants of being put away within their contract, poor relief complaints, property offences and assaults, in order to assess how plebeian people used the process and why.

It will find that Brewer and Styles' statement that the eighteenth century law was a 'multiple-use right available to most Englishmen', accessible to both the middling and poorer members of society as well as to those higher up the social scale, applied in theory to rural summary proceedings during the period.¹

¹ Brewer and Styles (eds), *An Ungovernable People*, 20. Styles, together with Joanna Innes, later suggested that the 'limited' multiple-use right he and Brewer

However, in practice, it will find that the involvement of the gentry was limited to a couple of property offences where their role as local landowners was made explicit. This chapter will extend the work of other historians on summary proceedings to show that plebeian rural people were the primary users of summary proceedings, mainly complaining about others within their own social class or those near it, using the summary process to police their relationships with their social equals.

Through comparing the notebooks of magistrates across the period, this chapter will find that plebeian use of the summary process increased over the course of the long eighteenth century, in part due to the changing role of the rural magistrate and local awareness of his function. How plebeian people used the summary process differed from magistrate to magistrate, influenced by geographic factors that resulted in different offences being focused on or reported to individual magistrates. It will find that summary proceedings were seen by rural communities as a forum open to all, and that all sectors of society saw the magistrate as a person they could use as a mediator or arbitrator in relation to a variety of disputes and issues.

This chapter looks at the class and occupational status of those who interacted with the rural magistrate at summary level, either as complainants or defendants. The two terms, class and occupational status, are used, to an extent,

had detailed underestimated the extent to which labouring people could participate in the legal process (Joanna Innes and John Styles, 'The Crime Wave: Recent Writing on Crime and Criminal Justice in Eighteenth-Century England', in Adrian Wilson (ed), *Rethinking Social History: English Society 1570-1920 and its Interpretation* (Manchester, 1993), 253).

interchangeably, in that the latter impacted on what social class an individual was seen to belong to. Occupational status is a good indicator of social class in the long eighteenth century, but in terms of the gentry, the absence of formal occupation requires classification by social class alone. 'Class' and status within eighteenth century society was an issue debated by individuals both at the time and since, with different classifications made according to the individual researching the issues. Lindert and Williamson described the classifications of social status produced by Gregory King in 1688 and Joseph Massie in 1759 as 'those...treacherous social tables', arguing that they involved 'precocious guesses for political consumption' and therefore should be distrusted.² Class is seen, in this context, as a political and perhaps artificial construct. However, in order to analyse who used the summary process, a loose categorisation is used here (see table 3.1, on page 87) that takes into account both class and occupational status, using King as a starting point but adapting his classifications according to the wide variety of occupations mentioned in the justicing notebooks.³

² Gregory King published his *Natural and political observations and conclusions upon the state and condition of England* in 1696, which contained a social table based on the income and outgoings of families in 1688 (John Dodgson, 'Gregory King and the economic structure of early modern England: an input-output table for 1688', *The Economic History Review*, 66.4 (2013), 993; Peter Mathias, 'The Social Structure in the Eighteenth Century: A Calculation by Joseph Massie', *The Economic History Review*, 10.1 (1957), 30-45); also see Peter H. Lindert and Jeffrey G. Williamson, 'Revising England's Social Tables 1688-1812', *Explorations in Economic History*, 19 (1982), 385.

³ A more detailed explanation of how I have assembled my classifications is given in Appendix 2 (page 404).

Table 3.1 The classifications of social status used in this study.

Social class	Examples of occupations or descriptions given by the rural magistrate
Gentry/elite	Lord, Lady, baronet, gentleman
Yeoman class	Farmer, yeoman
Artisan class	Carpenter, blacksmith, shopkeeper
Labouring class	Labourer, agricultural labourer, servant
Paupers	Pauper, vagrant

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1.

Nearly half of those mentioned across the notebooks as complainants, who had details listed beyond name and place of abode, were listed as parish officers. These were not 'jobs', but roles taken on by those in the community who were likely to have had other paid occupations. In six of the magistrate notebooks studied here, officials were the most commonly specified type of complainant, and they were also the most complained about in six notebooks.⁴ This reflects

⁴ Parish officers were the most common type of complainant in the notebooks of William Bromley (49, or 64 per cent of complainants where an occupation or role was specified), Roger Hill (85, or 64 per cent), Thomas Thornton (31, or 76 per cent), Thomas Horner (520, or 60 per cent), Edmund Waller (31, or 60 per cent) and Thomas Lee Thornton (21, or 75 per cent) (WRO CR0103; CBS D-W/97/8; NRO Th1679; McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5; NRO Th1681). Parish officials were the most common type of defendant in the notebooks of Roger Hill (85, or 64 per cent of defendants where an occupation or role was specified), William Brockman (181, or 45 per cent), Thomas Horner (227, or 55 per cent), Edmund Waller (18, or 60 per cent), George Spencer (83, or 64 per cent) and Samuel Whitbread (176, or 65 per cent) (CBS D-W/97/8; BL Add MS 42598; BL Add MS 42600; McGarvie (ed), *The King's Peace*; CBS DC18/339/4-5; BL Add MS 76337; BL Add MS 76340; Cirket (ed), *Samuel Whitbread's Notebooks*).

the use of summary proceedings in dealing with poor law related cases, officials bringing settlement, desertion, bastardy and vagrancy related cases to the magistrate, or being brought before the magistrate to explain poor relief decisions. However, because the usual occupation of these individuals is very rarely mentioned, they have not been included for the purposes of this chapter, although they came primarily from the yeoman or, later, artisan classes.⁵ Their inclusion would also skew the proportions of other complainants, although their role in the summary process will be considered in this chapter. Another factor to consider is that magistrates did not consistently record the occupation of those who visited them, and this is particularly an issue when looking at females.⁶ A sampling strategy has therefore been employed in this chapter, using the occupations that were recorded by magistrates as a representative sample of the people using the summary process - a snapshot of the representation of various occupations.

a. The social background of complainants in rural summary proceedings.

This chapter will look first at who used the summary process in terms of complainants. It finds that plebeian people were the primary users of the

⁵ The 1601 Poor Relief Act had specified that those nominated to be unpaid overseers for their parish should be 'substantial householders' (43 Eliz. 1 c.2, cited in Burn, *The Justice of the Peace, Volume 3*, 285), and these were often farmers (W.R. Powell (ed), *A History of the County of Essex: Volume 4, Ongar Hundred* (London, 1956), 196. www.british-history.ac.uk. 13 January 2013). By 1835, one overseer reported that 'besides being overseer of the parish, he was a farmer, a miller, a baker, a butcher, a grocer, a draper, and a general dealer in all sorts of provisions and clothing' (*The Farmer's Magazine, Volume the Third, July to December 1835* (London, 1835), 105).

⁶ Married women were occasionally listed as the wife of a man whose occupation was provided, but this was not often the case.

process, their engagement with summary proceedings showing that the potential cost of bringing a case to the magistrate, together with the time it took to travel to a justicing room or inn, did not restrict the participation of either the labouring class or the poorest members of a rural community. As table 3.2, below, shows, the majority of complainants in rural summary proceedings were from the lower orders of society.

Table 3.2 The social background of those appearing before the rural magistrates as complainants.

	Gentry/ Elite	Yeoman class	Artisan class	Labouring class	Paupers	Total
Number	76	204	191	289	527	1287
Percentage	6%	16%	15%	22%	41%	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1.

Crime historians have stressed the involvement of the lower social orders in the summary process, with King noting a 'massive plebeian presence' among those using the Essex summary courts and a 'very high' plebeian usage of the summary system in Bedfordshire.⁷ Table 3.2 emphasises this, showing that over half the complainants, on average across the notebooks of the 13 justices studied here, were drawn from the two lowest social categories, those of the labouring class, and paupers. The evidence of these notebooks suggests that individuals from a wide range of occupations were using the rural summary process throughout the long eighteenth century, but that plebeian people were far more likely to use the process to complain about offences or issues than those from higher up the

⁷ King, 'The Summary Courts and Social Relations', 145.

social ladder. In addition, it is evident that the summary process was not, largely, a forum used by the gentry, who had the resources to bring cases to jury trial.⁸

Conversely, though, table 3.2 also shows that potential barriers to involvement in the criminal justice system, such as the cost of bringing a case and of physically travelling to the justice's home or other location, did not act to limit the involvement of the poorer members of rural society. As King has noted, the 'vast majority of potential prosecutors' at summary level were 'middling men or labourers'.⁹ This suggests both that magistrates were largely accessible to all members of the local community, and that the smaller costs involved in bringing a case to a magistrate at summary level worked to encourage the participation of plebeian society.

This chapter will now look at a different types of complaint brought to the magistrate at summary level, and analyse the ways in which different social classes used the magistrate. It will look firstly at the airing of wage disputes and contract grievances by servants, before looking at poor relief complaints, property offences and assaults.

⁸ This is inferred by Knafla, for example, when he states that 'often victims before the Assizes were wealthier than their defendants', whereas at the lower level, 'many crimes involved the lower class both as prosecutors and victims' (Louis A. Knafla, 'Aspects of the Criminal Law, Crime, Criminal Process and Punishment in Europe and Canada, 1500-1935' in Louis A. Knafla (ed), *Crime and Criminal Justice in Europe and Canada* (Waterloo, 1981), 12).

⁹ King, *Crime, Justice and Discretion*, 368.

i. How servants used the summary process to resolve employment issues.

One of the ways the lower class members of communities could air grievances about other people was in employment cases; indeed, the 'regulation of employment relations was one of the oldest duties of magistrates'.¹⁰ As Steedman has noted, 'masters and servants had to find a way of buying and selling labour within the boundaries of the law - or whatever they understood that law to be', and the magistrate was the conduit to this.¹¹ This section will show how the majority of employment cases at summary level were brought by servants and apprentices, giving these plebeian workers a forum to air their concerns, enabling them to demonstrate agency in complaining about money owed to them, or of being put away within their contract. However, there was a fundamental inequality in the master/servant relationship in legal terms. The breaking of an employment contract by a master was seen as a civil offence, resulting in the payment of unpaid wages and possibly compensation, but if a servant broke his or her contract, this was a criminal offence that could be punishable with up to three months in the house of correction.¹² This section will also show that although there were differences in their understanding of the law, this, and the inequality of masters and servants in terms of that law, did not act as a deterrent to servants bringing their cases to the rural magistrate.

¹⁰ Hay, 'Legislation, magistrates, and judges', 72.

¹¹ Steedman, *Labours Lost: Domestic Service and the Making of Modern England* (Cambridge, 2009), 212.

¹² Douglas Hay and Paul Craven, 'Introduction' in Hay and Craven (eds), *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill, 2004), 1-2, Christopher Frank, *Master and Servant Law: Chartists, Trade Unions, Radical Lawyers and the Magistracy in England, 1840-1865* (Farnham, 2013), 2; Davey, 'Introduction', 24.

This section first needs to address who the rural worker was. What type of worker approached the magistrate with a complaint? In rural areas, there was often not a clear definition of a person's occupational role. Eighteenth-century writers wrote of occupational status and class in vague terms, generalising those in agricultural work as 'rustics', 'the peasantry', 'country people' or 'labourers'.¹³ These writers focused on the employer rather than the employed, thus, as Lis and Soly have argued, relegating the poorer rural worker to the background.¹⁴ Farmers were sometimes put in the same group as the labourers who worked for them, and agricultural servants were rarely defined as a separate entity. Instead, servants were included under the category of labourers, and apprentices were sometimes simply recorded as servants.

When magistrates recorded an individual as a 'servant' or 'labourer', this could cover many different tasks and duties.¹⁵ For example, William Brockman differentiated between agricultural labourers employed reaping wheat, mowing barley, or threshing, and more industrial labourers, helping bricklayers as well

¹³ James Nelson, *An Essay on the Government of Children, Under Three General Heads: viz Health, Manners and Education* (Dublin, 1763), 254; Daniel Defoe, *The Review*, 25 June 1709, in George F.E. Rudé, *Hanoverian London, 1714-1808* (Berkeley, 1971), 37; Penelope J. Corfield, 'Class by Name and Number in Eighteenth-Century Britain', *History*, 72.234 (1987), 115; Catharine Lis and Hugo Soly, *Worthy Efforts: Attitudes to Work and Workers in Pre-Industrial Europe* (Leiden, 2012), 482. Massie recorded country workers as 'a Husbandman or Labourer' (Joseph Massie, *Calculations of Taxes for a Family of each Rank, Degree or Class: for One Year* (London, 1756), 46).

¹⁴ Lis and Soly, *Worthy Efforts*, 208.

¹⁵ The Cambridgeshire History site, for example, records a variety of agricultural jobs, such as ploughmen, herdsmen, bird scarers, cow boys, butter-makers, and dairymaids (Cambridgeshire History, 'Agriculture and the Labourer'. n.d. www.cambridgeshirehistory.com. 6 January 2015).

as butchers, bakers and sawyers.¹⁶ Therefore, the recording of a 'servant' in rural notebooks could cover a wide range of duties.

This broad categorisation of service, encompassing both agricultural and domestic work, has led to some differences in historians' work on employment disputes. Both Steedman and Hay have looked at servants' disputes, particularly involving wages, with Steedman comparing the cases before Gervase Clifton in Nottinghamshire and Thomas Netherton Parker in Shropshire, and Hay comparing six magistrates' work, including that of Clifton.¹⁷ However, both focused on master/servant relations. Hay did not specify which type of servants his statistics cover, and Steedman's particular area of interest was domestic servants. This explains a slight discrepancy between their sets of statistics, combined with differences in approach and research questions.¹⁸ It also raises the issue of what a magistrate's summary jurisdiction covered.

¹⁶ This echoes Schwarz's comment that the term 'servant' in fact 'covered a wide spectrum of employed persons' (Leonard Schwarz, 'English servants and their employers during the eighteenth and nineteenth centuries', *Economic History Review*, 52.2 (1999), 236).

¹⁷ Steedman, *Labours Lost*, 186, 194, Douglas Hay, 'England, 1562-1875: The Law and its Uses', in Hay and Craven (eds), *Masters, Servants, and Magistrates*, 72-73.

¹⁸ For example, Hay says that nine per cent of Gervase Clifton's cases involved master/servant relations, whereas Steedman gives the figure for employer/worker cases as 12 per cent. Steedman says that 50 per cent of Clifton's employment cases were brought by employers and the other 50 per cent by workers, whereas Hay's figures are that 42 per cent of Clifton's cases were brought by masters, and 58 per cent by servants. (Steedman, *Labours Lost*, 184; Hay, 'England, 1562-1875: The Law and its Uses', 72-73).

Table 3.3 Wage disputes, brought by workers, and heard by the rural magistrate.

	Wage disputes brought by workers	Total number of employment disputes ¹	Wage disputes as percentage of employment disputes
William Bromley (1685-1706)	1	5	20%
Roger Hill (1689-1705)	16	26	62%
William Brockman (1689-1721)	87	168	52%
Thomas Thornton (1700-1718)	0	3	0%
William Hunt (1744-1749)	13	22	59%
Thomas Horner (1770-1777)	48	92	52%
Edmund Waller (1773-1788)	5	16	31%
Richard C. Hoare (1785-1834)	8	23	35%
George Spencer (1787-1794)	7	12	58%
Thomas L. Thornton (1789)	2	5	40%
Thomas N. Parker (1805-1813)	57	100	57%
Samuel Whitbread (1810-1814)	45	90	50%
Richard Stileman (1819-1836)	44	49	90%
Total	333	611	55%

¹ Total employment disputes comprise cases relating to misbehaviour or misdemeanour, including absconding, on the part of the servant, wage disputes and bad usage by masters (including putting away servants within their contract). Cases do not include discharge of contracts (where it is not clear whether the discharge is mutual or instigated by either master or servant) and the binding of apprentices. **Sources:** WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, NRO Th1681, WHSC 229/1, WHSC 338/955, SA 1068/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

As table 3.3 shows, wage disputes formed an average of 55 per cent of a magistrate's employment cases, and in nine magistrates' summary caseloads, wage disputes formed more than half of the cases they heard involving employment disputes. This significant body of cases were brought by servants and other workers against their employers, but legally, a magistrate did not have the summary jurisdiction to hear cases brought by any worker. A magistrate's authority to hear master/servant disputes, either singly or with another justice, was set out under various pieces of legislation, the primary one being the 1562

Statute of Artificers.¹⁹ This statute had stated that magistrates only had the authority to act in cases involving husbandry servants, with a 1796 King's Bench reasserting this fact.²⁰ Yet throughout the long eighteenth century, magistrates were issuing orders in wage disputes involving a wider range of servants and other occupations, and at the start of the nineteenth century, it was noted that magisterial jurisdiction in dealing with wage disputes 'had been for a long time the practice for magistrates to exercise over domestic servants' and that this was undoubtedly 'useful to the public'.²¹ Parker's notebook suggests that although some of the women listed as complainants in wage disputes before him were involved in husbandry activities, others were working as domestic servants and had their wages ordered to be paid in the same way that husbandry servants' were.²² This echoes Burn's comment that although a magistrate's jurisdiction was only supposed to apply to husbandry servants, their orders in wage cases

¹⁹ 5 Eliz. c.4.

²⁰ *Rex v. the inhabitants of Hulcott*, KB (1796) T.R. 583, in Edward E. Deacon, *A Digest of the Criminal Law of England: As Altered by the Recent Statutes for the Consolidation and Improvement of It, Volume 2* (London, 1831), 1173.

²¹ Hay, 'England 1562-1875: The Law and Its Uses', 87; Deacon, *A Digest of the Criminal Law of England*, 1173. In March 1800, Daniel Coke's parliamentary bill proposed to formally enable a magistrate to have summary jurisdiction over disputes relating to domestic service, but it was never enacted (P.A. Symonds, 'Coke, Daniel Parker (1745-1825, of The College, Derby' in Thorne (ed), *The History of Parliament: The House of Commons 1790-1820*; Hay, 'England, 1652-1875: The Law and Its Uses', in Paul Craven and Douglas Hay (eds), *Masters, Servants and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill, 2004), 89-90; Steedman, *Labours Lost*, 213).

²² Thomas Netherton Parker's notebook recorded 23 wage cases brought by women, whose employers included both men and women, with an aleseller and 'gentlemen' and ladies being amongst the employers (SA 1068/168-170).

involving service not explicitly stated to involve husbandry tended to be 'held good'.²³

It has been shown here that legally, the rural magistrate only had jurisdiction to hear cases involving servants in husbandry. In practice, though, there was a grey area that enabled them to hear cases involving other types of servant, and certainly, by the early nineteenth century, cases involving domestic servants were clearly being heard.²⁴ The multi-faceted role of the rural servant facilitated the exploitation of this 'grey area', and it is clear by the number of complaints brought to the magistrate that servants believed that a magistrate had jurisdiction over their cases, and that decisions made by the magistrate would be upheld.²⁵

This chapter has suggested that the variety of rural service roles led to a range of servants approaching the magistrate, and that the magistrate may have heard cases that he did not legally have the authority to do. This echoes Hay and Craven's recognition of the 'disjuncture between the law as enacted by statute,

²³ Richard Burn, *The Justice of the Peace, and Parish Officer, Volume 4* (13th edition, London, 1776), 115.

²⁴ Hay has shown that by the mid-eighteenth century, judges had 'relaxed the interpretation' of wage clauses within the Statute of Artificers, 'implying' that magistrates could order wages for domestic servants and other groups of workers (Hay, '1562-1875: The Law and Its Uses', 88).

²⁵ Steedman has argued that many domestic servants owed wages would not have taken action against their employers, believing that magistrates had no jurisdiction in their cases. I would argue that the upholding of magistrates' orders in domestic cases would encourage those servants to bring their cases, but that this would depend on their knowledge of the law (Steedman, *Labours Lost*, 321).

[and] the law as applied by magistrates'.²⁶ Looking at the magistrates' notebooks studied here, it is clear that the majority of work-related complaints were brought by a servant or other worker, not by the master, despite the legal inequalities in the master/servant relationship.²⁷ This echoes King's conclusions in relation to Essex summary hearings.²⁸

The most frequent cause of work dispute brought to the magistrate by workers involved owed wages, and this study of the rural notebooks shows that the summary process served a vital purpose for plebeian workers trying to get their wages paid to them.²⁹ The civil nature of wage disputes meant that cases could be heard by magistrates quickly and cheaply.³⁰ In addition, as chapter five will discuss, the rural magistrate was likely to find in favour of the complainant.³¹ This, together with the fact that the civil nature of wage disputes meant that

²⁶ Hay and Craven, 'Introduction', 6.

²⁷ Across the 13 magistrates studied in this thesis, a total of 611 employment disputes were heard, of which, 389 were brought by workers. This means that, on average, 64 per cent of employment disputes were brought to the magistrate by the worker. Bromley, Thornton, Waller, and Hoare were the only magistrates who had a majority of employment disputes brought to them by employers, and this reflected both the focus of their summary work on other areas such as poor law administration or property offences, and how they and their interests or sympathies were perceived by the local community (WRO CRO103; NRO Th1679; CBS DC18/39/4; WSHC 229/1; WSHC 383/955).

²⁸ King, 'The Summary Courts and Social Relations', 141-142. Hay suggested that almost half of prosecutions in master and servant cases were brought by servants, but this study suggests that in the majority of JP notebooks, this percentage was larger (Douglas Hay, 'Patronage, Paternalism, and Welfare: Masters, Workers, and Magistrates in Eighteenth-Century England', *International Labor and Working-Class History* (53), 1998, 36).

²⁹ Out of the 389 employment disputes brought to magistrates by workers, 333, or 86 per cent, were wage disputes.

³⁰ Drew Gray, 'The People's Courts? Summary Justice and Social Relations in the City of London, c.1760-1800', *Family and Community History*, 11.1 (2008), 8.

³¹ See table 5.2 on page 291.

workers could resolve them before the magistrate relatively cheaply and quickly, helps to explain why plebeian workers were so evident in the rural summary process compared to their employers.³²

The percentage of wage disputes a magistrate heard depended in part on the impact of local conditions on employment, as well as on wider economic conditions. As table 3.2 (page 89) showed, there was some difference between the magistrates as to what percentage of cases brought by workers involved wages. At one end of the scale, less than one third (31 per cent) of Edmund Waller's employment cases involved wages, whereas 90 per cent of Richard Stileman's employment-related cases were demands for owed wages. This latter figure reflects the particular problem of under-employment and pauperism in Sussex at the time, which meant both the need for wages to be paid quickly, and the possibility of not finding alternative work soon enough to prevent the threat of parish relief if former wages were not paid in a fairly timely manner.³³ The localised economic conditions would have led to servants taking their cases to the magistrate as a matter of urgency, with wages being their primary concern, rather than work conditions.

³² Frank, *Master and Servant Law*, 2.

³³ Peter Dunkley, 'Paternalism, the Magistracy and Poor Relief in England, 1795-1834', *International Review of Social History*, 24.3 (1979), 375; Malcolm Pratt (ed), *Winchelsea Poor Law Records, 1790-1841* (Lewes, 2012), xi, xix. Sussex was one of the 'Swing' counties, where, post-1815, wages were cut and unemployment increased (Marjorie Bloy, 'Rural Unrest in the 1830s: the "Swing" riots'. *A Web of English History*. n.d. www.historyhome.co.uk. 6 January 2015). See also Adam Smith's description of the difficulties facing workers trying to 'subsist' without wages or employment, and the differing interests of masters and their workers, the former aiming to give the latter 'as little as possible' (Smith, *The Wealth of Nations*, 59).

The multiplicity of wage cases in the notebooks highlight the discretionary nature of employment over the long eighteenth century, and the inequality in master/servant relationships. William Brockman's notebooks show that the time that elapsed before men and women would visit the magistrate to complain about owed wages varied.³⁴ It was rare to be paid weekly, and certainly, some employers would try and delay paying their servants as long as possible in order to prevent them from leaving prematurely.³⁵ Others would use gratuities that would be granted on condition of good work and behaviour. Hindle has argued that in the case of the servants of the gentry, this could mean that 'the relationships between work, service and remuneration were discretionary rather than fixed'.³⁶ An annual hiring at a statute or fair would see the year's wages agreed in advance, but not necessarily the method of payment. And if a servant agreed to leave before the end of his or her term, having not been paid, he or she might then need to approach the magistrate to ensure that the employer did not try to prevaricate over what was owed for the time already

³⁴ Whitbread recorded the longest time between wages being earned and the worker bringing a complaint about non-payment, recording one man complaining that he was owed wages for plaiting from six years earlier (Cirket (ed), *Samuel Whitbread's Notebooks*, 56). One case before Brockman referred to wages "done last harvest" but not brought before the magistrate until the following February. Another asked for wages due 'last Michaelmas' (September) but again, not brought to the magistrate until February (BL Add MS 42598, 15 February 1697 and 18 February 1698). Complainants may have sought informal resolution of disputes, or only visited the magistrate when it became winter and agricultural jobs became scarcer, making it more imperative that earnings were received.

³⁵ Parker's notebook records several complainants being owed several months' wages (SA 1068/168-70, 8 September 1807; 20 December 1807; 14 January 1809; 29 August 1809; 5 May 1810; 28 October 1812).

³⁶ Steve Hindle, 'Below stairs at Arbury Hall: Sir Richard Newdigate and his household staff, c1670-1710', *Historical Research*, 85.227 (2012), 73.

worked.³⁷ It can be seen that the nature of employment contracts worked against servants and labourers, in often failing to set out how and when they would be paid - and the payment of wages could then be used as a bargaining tool by employers. Given this inequality, the fact that so many wage cases were brought by servants shows not only that the discretionary nature of employment and wage payment created many disputes further down the line, but also that servants regarded the magistrate as someone who could work for them to ensure the payment of their wages. They were both aware of his role in resolving such civil cases, and were able to use the summary process to get what was owed to them.

In the context of rural summary proceedings, it was comparatively rare for servants and other workers to complain about their employers in contexts other than the owing of wages. On average, 86 per cent of employment cases brought by workers involved wages, and nine per cent involved servants complaining of being put away within their contract, as table 3.4, below, shows.³⁸

³⁷ This is evident from Parker's notebook, where one servant demanded wages 'due up to the time of his quitting service' and another asked for wages after leaving her service six weeks before the end of her term (SA 1068/168-70, 21 August 1806, 8 May 1809). In such cases, the magistrate had to calculate the amount of wages owed, deducting money for absences or for failing to give 'warning' to the employer.

³⁸ The remainder of cases brought by workers involved allegations of bad or cruel usage on the part of employers, which will be discussed later in this chapter.

Table 3.4 Cases brought to the magistrate involving servants being put away within their contract.

	Cases involving being put away	Total employment disputes heard by magistrate ¹	Percentage of employment disputes involving being put away
William Bromley (1685-1706)	1	5	20%
Roger Hill (1689-1705)	2	26	8%
William Brockman (1689-1721)	21	168	12.5%
Thomas Thornton (1700-1718)	1	3	33%
William Hunt (1744-1749)	3	22	14%
Thomas Horner (1770-1777)	8	92	9%
Edmund Waller (1773-1788)	0	16	0%
Richard C. Hoare (1785-1834)	0	23	0%
George Spencer (1787-1794)	3	12	25%
Thomas L. Thornton (1789)	1	5	20%
Thomas N. Parker (1805-1813)	10	100	10%
Samuel Whitbread (1810-1814)	6	90	7%
Richard Stileman (1819-1836)	0	49	0%
Total	56	611	9%

¹ Total employment disputes comprise cases relating to misbehaviour or misdemeanour, including absconding, on the part of the servant, wage disputes and bad usage by masters (including putting away servants within their contract). Cases do not include discharge of contracts (where it is not clear whether the discharge is mutual or instigate by either master or servant) and the binding of apprentices. **Sources:** WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, NRO Th1681, WHSC 229/1, WHSC 338/955, SA 1068/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

This section will show that servants in rural areas were not generally put away close to the end of their annual contract, but were, instead, put away during the winter months when there would be less work for husbandry servants and labourers to do. The rural nature of the communities in which the magistrates studied here worked therefore impacted on the type of case they heard, and the status of those who complained to them.

Under the 1562 Statute of Artificers, employers, both of servants and numerous other occupations from weavers to bakers, were only allowed to put away their workers within the term of their contract if it was for 'some reasonable cause', and the discharge of the contract had to be formally allowed by the magistrate.³⁹ William Brockman's notebook, covering the period 1689 to 1721, contained ten complaints from servants that they had been put away by their masters before the end of their terms. Although their employers' occupations were not listed, given that no complaints were received during the busy harvesting months, it is likely that most of these servants, if they complained as soon as they were discharged, were employed as agricultural labourers. 60 per cent of the complaints were made during winter and early spring (December to March), and no complaints were made in either August or September. These months were not just harvesting months; in the south and east, in areas such as Kent, Michaelmas, at the end of September, would have been the traditional hiring time.

Brockman was dealing with cases that occurred during a time when servants in husbandry and agriculture were common across England, and by the mid eighteenth century, there was a peak in this type of service.⁴⁰ However, as the century progressed, times changed, with population growth, low wages, seasonality of work and pressure on poor relief during the Napoleonic Wars eventually leading to the destruction of this way of life in southern England by

³⁹ Burn, *The Justice of the Peace, Volume 3*, 109, citing 5 Eliz. c.4 .

⁴⁰ Ann Kussmaul, *Servants in Husbandry in Early Modern England* (Cambridge, 1981), 97.

the early nineteenth century.⁴¹ The evidence for a change in lifestyle or work conditions that might result from this alteration is not immediately obvious from the later magistrate notebooks. Neither Hoare nor Stileman dealt with any cases regarding a master putting away a servant before the end of his term, and Parker dealt with only one case, involving a waggoner.⁴² The relative lack of cases does not enable research into whether the servants at summary proceedings were being put away after what Kussmaul calls the 'notorious fifty-one weeks', shortly before the end of their annual term, in order to avoid them gaining settlement and thereby be able to claim relief from the parish they had been working in, potentially adding pressure to the increasingly stretched parish resources.⁴³ What evidence there is points more to a tendency of rural employers to put their workers away during the quieter months. Hoare, for example, noted of a case involving Thomas Trimby, a Wiltshire shepherd, whose mistress had refused to find him work during the slow winter months, leading to him hiring himself to someone who could.⁴⁴ The winter months were always problematic for agricultural, pastoral and arable workers, with work being harder to find, and those paid by the day or week being easy to let go. In Trimby's case, he was made to complete the work agreed with the second employer before returning to his mistress.

⁴¹ Kussmaul, *Servants in Husbandry*, 122. Kussmaul notes that there was a north/south divide in terms of husbandry service, with the north, including Yorkshire, continuing to employ servants when the more southerly regions had moved to employing labourers rather than servants (Kussmaul, *Servants in Husbandry*, 130).

⁴² SA 1060/168-70, 17 November 1808.

⁴³ Kussmaul, *Servants in Husbandry*, 123; Steedman, *Labours Lost*, 106, 176; Burn, *The Justice of the Peace, Volume 3*, 365.

⁴⁴ WSHC 383/955, 14 April 1796.

The relative paucity of complaints about masters putting away their servants within their covenanted service, compared to the number of complaints about servants absconding or deserting their service, does not mean that masters did not put servants away, or that there was not the change in agricultural employment that Kussmaul argues for. It instead suggests that there was a geographical aspect to the magistrates' work, with being put away being more of an issue at quieter agricultural times, rather than being a significant problem throughout the year. But it suggests that the putting away of servants within their term was not a major issue for magistrates in summary proceedings, and that wage disputes and absconding servants were the primary employment issues that were brought to the justice. In addition, Hay has suggested that despite the 'legal and social ideal' of the justice hearing cases where an employer wanted to put away his servant, this might not have happened all the time in practice.⁴⁵

Workers approached the magistrate to complain about wages, and, in smaller numbers, to complain about being put away. They were less likely to accuse their employers of abuse, and this was due to problems in defining what was unreasonable behaviour on the part of a master. Just as it was accepted that wives could be 'chastised' by their husbands, so too was it accepted that servants could be physically chastised by their masters.⁴⁶ In fact, wives were compared to

⁴⁵ Hay, 'England, 1562-1875: The Law and Its Uses', 112.

⁴⁶ Gray, *Crime, Prosecution and Social Relations*, 163.

servants in the eighteenth century legal manuals - Blackstone considered the relationship of a master and servant as being similar to those of a husband and wife or parent and child.⁴⁷ In terms of chastisement, he clearly stated:

A master may by law correct his apprentice or servant for negligence or other misbehaviour, so it be done with moderation: though, if the master's wife beats him, it is good cause of departure.⁴⁸

As with cases involving husbands and wives, what was 'moderation' was open to debate. Some masters believed that they had the right to 'correct' their servants, but equally, some servants believed that this correction was not moderate, and therefore not acceptable. The magistrates' notebooks suggest that the behaviour of masters could be condoned, as accusations of assault were not always dealt with. When Anne Commins accused her master, yeoman John Hayward, of 'beating and kicking of the said Anne Commins out of his house and also his refusing to pay her £1 1s due to her for wages', William Hunt reached an agreement with Hayward's father that he would pay Anne her wages, but the 'beating and kicking' went unpunished.⁴⁹ This was both because the law was clear on the jurisdiction of magistrates with regard to wages, but it is also likely that Anne was manipulating the summary process in order to gain her wages. By stressing her involuntarily leaving of her employment, and thereby her own innocence in the situation, she ensured the payment of her wages, rather than seeking restitution for the assault.

⁴⁷ Blackstone, *Commentaries, Book 1*, 432.

⁴⁸ Blackstone, *Commentaries, Book 1*, 416.

⁴⁹ Crittall (ed), *The Justicing Notebook of William Hunt*, 68.

This section has shown how plebeian workers used the summary process to complain about three primary types of employment dispute, but that the quick resolution of wage disputes was the primary reason why they approached the magistrate. In some ways, their employers had an advantage - the advantage of literacy and education, which meant that they had a better knowledge of their rights and the latest master-servant legislation than their servants. Although plebeian people may have had an idea of their 'rights', this may have been based on custom or their perceptions of entitlement, rather than based on law. Therefore, an appearance before the magistrate risked a collision between the worker's notions of customary entitlement and 'rights' and the employer's and magistrate's greater knowledge of the law in relation to master-servant relations. However, the use of the summary process to bring wage disputes, for example, shows that plebeian workers, encompassing servants and labourers undertaking a variety of work, could and did use the summary process, and saw it as a forum where their employer could be held to account.

If servants from plebeian rural society were able to use their agency, and show authority, in their use of the summary process, were the lowest rank of society, paupers, similarly able to employ agency in their dealings with the magistrate, or were they lacking in agency? This chapter now moves on to show how paupers were able to exert some authority, holding parish officers to account in their appearances before the rural magistrate.

ii. How paupers exercised authority in summary proceedings.

Contemporary depictions of the magistrate's involvement with the poor expressed a lack of sympathy towards the latter, and a suggestion that they were to blame for their own situation. The individuals brought before the magistrate at summary level were 'almost universally his inferiors, and commonly in the lowest ranks of society', 'the most worthless members of the community' who 'seldom suffer more than they deserve'.⁵⁰ Although this was an extreme depiction of the poor, it suggests an ambivalence about the poorest members of society by contemporaries. They were responsible for their own indigence, an attitude reflected in the use of the word 'idle' to describe those classified as vagrants, and the differentiation between deserving and undeserving poor.⁵¹ This section will show that although perceptions of the poorest members of rural society varied, the summary process offered the poor the opportunity to demonstrate some agency and authority in calling parish officers to account. The magistrate's role involved mediating between parish and poor in determining issues such as settlement and poor relief, and in bringing poor relief complaints to the magistrate, the poor were able to force the parish officers to the justice to justify their own decision-making.

⁵⁰ Thomas Gisborne, *The Works of the Rev Thomas Gisborne, MA, in Nine Volumes: Volume 1: An Inquiry into the Duties of Men* (London, 1813), 427-430.

⁵¹ The classification of vagrants as 'idle' had existed since at least the fifteenth century, with the 1494 Vagrants and Vagabonds Act (11 Henry 7, c.2) referring to 'vagabonds, idle and suspected persons' and a 1536 Vagabonds Act referring to punishments for the 'idle and able-bodied poor'. The 1601 Poor Relief act (43 Eliz. c.2) also differentiated between those 'not able to work' and those who 'use no ordinary and daily trade of life'. (David J. Cox, *Crime in England 1688-1815* (Abingdon, 2014), 39; Paul Slack, *The English Poor Law, 1531-1782* (Cambridge, 1995), 9; Dalton, *The Country Justice*, 101)

It is clear that the magistrate's role at summary level involved a substantial amount of work related to the administration of the poor laws. As table 2.1, on page 41, showed, on average, poor law cases were the most common type of case recorded by rural magistrates, constituting 32 per cent of their summary workload. Over half of the entries in both Hill's and Spencer's notebooks were related to poor law administration, specifically, issues related to poor relief and settlement, or vagrancy.⁵²

The summary process was one where the poor were both complainants and defendants. Settlement examinations and the removal of paupers suggests a lack of agency and authority on the part of the poorest members of society, but conversely, once rejected by parish officers for poor relief, they were then able to take their complaints to the magistrate. This was a system where disputes and conflict between paupers and parishes were played out before the magistrate.

The poor were able to use summary proceedings as a means of appealing poor relief decisions by parish officers, and there were clear reasons why it was worth taking such cases, along with wage disputes, to the justice. The poor were frequently successful in such cases, and the costs of bringing cases, which were low at summary level, were sometimes reimbursed by the defendant.⁵³ The

⁵² Poor law related cases constituted 56 per cent of both Spencer and Hill's recorded workload, or 145 out of 258 cases for Hill and 133 out of 236 for Spencer (CBS D-W/97/8; BL Add MS 76337; BL Add MS 76340).

⁵³ King, *Crime and Law in England, 277-279*; Shoemaker, *Prosecution and Punishment*, 202.

function of the magistrate in poor relief cases therefore gave the poor some authority, enabling them to appeal against decisions made by parish overseers.⁵⁴ Their complaints revolved not only around money, but also clothing, rent and medical expenses. Other pauper complainants stressed the fact that they were injured or in ill-health, knowing that an emphasis on illness, something outside of their control, would increase their chances of a sympathetic hearing. As has been noted by Kent and King, 'no other category of the casual poor seems to have been viewed with the same sympathy, or to have been treated as generously, as the sick'.⁵⁵ The magistrates could order officers to appear before them to justify their rejection of relief requests, or order them to grant relief. There was a clear motivation for the poor, then, to approach the magistrate when their initial request for relief had been refused by their parish.

As with employment cases, the poorest, less educated members of society were theoretically at a disadvantage because of their lack of knowledge of the law or of the correct procedure they were supposed to follow. Certainly, in a few cases,

⁵⁴ This type of case also put pressure on the parish officers. The period Whitbread's notebook covered was a time of crisis in terms of relief spending, and as Jones has noted, parishes would have been 'overwhelmed by the cost of relief' at this time. In light of this, it is to be expected that many requests for relief at such times would have been rejected by parish officials seeking to limit expenditure and pressure on their resources, and subsequently resulted in complaints to the magistrate (Peter D. Jones, "'I cannot keep my place without being deascent": Pauper Letters, Parish Clothing and Pragmatism in the South of England, 1750-1830', *Rural History*, 20.1 (2009), 38).

⁵⁵ Joan Kent and Steve King, 'Changing Patterns of Poor Relief in Some English Rural Parishes, circa 1650-1750', *Rural History*, 14.2 (2003), 131. David Turner has also emphasised the growing sympathy generally towards the sick and disabled during the eighteenth century (David M. Turner, *Disability in Eighteenth-century England: Imagining Physical Impairment* (Abingdon, 2012), 7).

paupers made their initial request for relief to the magistrate, either being unaware that they could only approach the magistrate after an initial request to the parish had been rejected, or believing that the magistrate would be more sympathetic to their plight than the parish officers.⁵⁶ But whereas the administration of the poor law by the parish officers has been described as 'a very effective means of disciplining the poor', the appeals 'system' served as a useful means of both ensuring that parish officers had a check on their activity.⁵⁷ It illustrated the function of the magistrate in mediating not only between people of different classes or backgrounds, but also mediating between parish officers and the community. It also ensured that those members of the community who genuinely needed help were afforded it. The numbers of poor men and women approaching the magistrate about relief suggests a general awareness of his role in this area, and in the magistrate's role in ordering relief when it had been refused by overseers or vestrymen was a means of granting the poor some power, rather than disciplining them.

Where magistrates ordered relief, in money, clothing, food or household goods, they were overruling overseers' decisions and finding in favour of the poor.⁵⁸ But summary proceedings served to check the behaviour of parish officers even prior to an overseer appearing before the magistrate. As Dunkley has stated, in

⁵⁶ Whitbread noted that he had sent one individual away because he had not made an application to the overseer first (Cirket (ed), *Samuel Whitbread's Notebooks*, 68).

⁵⁷ Sharpe, *Crime in Early Modern England*, 128.

⁵⁸ The magistrates ordered different types of relief to complainants. Although they most commonly detailed money as being ordered, household goods, food, linen and clothing, such as shirts and shoes, were also detailed (see, for example, Cirket (ed), *Samuel Whitbread's Notebooks*; McGarvie (ed), *The King's Peace*).

some cases, the mere act of threatening to take overseers before the magistrate could result in paupers being given more generous relief, either because the overseer did not want to confront the magistrate, or because he knew that the magistrate was likely to overrule him.⁵⁹ Roger Hill ordered overseers to provide relief or 'shew cause' why they would not, meaning that overseers had to formulate a good argument as to why they had refused relief, and attend the magistrate in person if they wanted to dispute the granting of relief.⁶⁰ Taking cases to the JP occurred often enough to enable overseers to predict how a magistrate might respond, and pre-empt him by giving a more generous response to the pauper seeking relief.⁶¹

As Kent and Beattie have suggested, the poor were not impotent when it came to seeking relief, and nor were they 'remote' from the magistrate.⁶² The prevalence of poor relief cases brought by the poor suggests that they were both able and willing to refute the decisions of the overseer and exert pressure on him by taking their complaints to the magistrate, such as with Thomas Bates and George Giddens, two residents of the Clifton workhouse in Bedfordshire. Both in their 70s, they complained to Samuel Whitbread that the overseers had demanded that they work, when they felt they were unable to due to their age. Here, the elderly paupers evidently felt that Whitbread would be able to convince the

⁵⁹ Peter Dunkley, 'Paternalism, the magistracy and poor relief in England, 1775-1834', *International Review of Social History*, 24.3 (1979), 379.

⁶⁰ CBS D-W/97/8, 17 September 1691.

⁶¹ Peter Dunkley, 'Paternalism, the magistracy and poor relief', 379.

⁶² Joan Kent and Steve King, 'Changing Patterns of Poor Relief', 119 and Beattie, *Crime and the Courts*, 197.

overseers to drop their request, where the men themselves had been unable to.⁶³

The poor also showed an awareness of what others in their community had received, what their 'rights' were in terms of relief, and a refusal to accept an initial decision. In another case recorded by Whitbread, for example, a man argued that he only had 2s a week relief for his sons when others had up to double that, and so he wanted his relief increased. On his first approach to Whitbread, he was turned away as he had not first approached the overseer. He did so and was rejected, and so approached Whitbread for a second time the following week.⁶⁴ This repeated approach reiterates that the poor demonstrated agency through their contact with the magistrate, and were both willing and able to use the magistrate as a mediator between themselves and the parish officer.

King has argued that the poor may have 'exploited the triangular nature of local social relations', choosing which magistrate to take their complaint to according to which justice was known to be more paternalistic toward the community.⁶⁵ This study suggests that some triangulation occurred in relation to poor law cases, but that it was limited in scope. This thesis has already shown that most of the rural magistrates studied here dealt with individuals living within a ten mile

⁶³ Cirket (ed), *Samuel Whitbread's Notebooks*, 87. That their age was the issue is shown by Whitbread's meticulous recording of it (the men being recorded as being 74 and 79 years old), which he did not do in other cases.

⁶⁴ Cirket (ed), *Samuel Whitbread's Notebooks*, 89, 91.

⁶⁵ King, *Crime, Justice and Discretion*, 364; King, *Crime and Law in England*, 162.

radius of their home.⁶⁶ However, this does not mean that the majority lived that distance away - many of those who approached the magistrate lived in neighbouring villages to himself. Although Crittall has noted William Hunt's focus on the Swanborough hundred of Devizes, which is reflected in the number of cases from those in Urchfont, Tilshead, Market Lavington and Easterton, only a few cases came to him from the further reaches of this or the other hundreds he dealt with.⁶⁷ These further cases are particularly evident in poor relief complaints. Although individuals again came from the villages listed above, there were also complaints from those living in Manningford Bruce, 14 miles away from Hunt's home in West Lavington, and Chirton and Hilcott, both near Pewsey, 11 miles away from Hunt's home.⁶⁸ Although these three villages were within the Swanborough hundred, they were in the opposite direction to where most of Hunt's complainants lived, and further away. This suggests that on occasion, individuals sought the help of Hunt rather than another Wiltshire magistrate, presumably due to Hunt's reputation for mediation and willingness to use his discretion. There is no evidence from his notebook that this form of triangulation was used widely or regularly. However, the presence of numerous other magistrates in the local area suggests that many individuals living fairly locally actively chose Hunt over other magistrates.⁶⁹ It does not appear that this decision was made because Hunt was more accessible or available than other

⁶⁶ Crittall similarly notes that William Hunt functioned 'within a radius of roughly ten miles around his house in West Lavington' (Crittall (ed), *The Justicing Notebook of William Hunt*, 4).

⁶⁷ Crittall (ed), *The Justicing Notebook of William Hunt*, 4.

⁶⁸ Crittall (ed), *The Justicing Notebook of William Hunt*, 61, 59, 64.

⁶⁹ Crittall has recorded at least ten other local magistrates whom Hunt sat or worked with on occasion (Crittall (ed), *The Justicing Notebook of William Hunt*, 10).

magistrates, as other magistrates such as William Talbot and John Talbot appear to have been as active as Hunt, and lived near him.⁷⁰ Samuel Whitbread, who some people saw as an advisor and mediator, also heard complaints from paupers from a further distance away.⁷¹ The situation was different in Kent, with individuals who approached William Brockman about poor relief being drawn from a fairly small geographic area, primarily villages within a few miles of his home at Beachborough.⁷² Given the distances that the poor might have to travel on foot to approach a magistrate, it is realistic to assume that they would seek the nearest magistrate's help unless one further afield had such a significant reputation that complainants felt it was worth the time and effort to approach him instead.⁷³ This shows that triangulation existed, in terms of choosing an individual magistrate where he had a significant reputation in a particular area, but that it was limited in scope and practice.

This chapter has looked at the more humble members of society in terms of employment and poor relief cases, showing that rural summary proceedings offered plebeian people, labourers, servants and paupers, a means of obtaining

⁷⁰ Crittall (ed), *The Justicing Notebook of William Hunt*, 10.

⁷¹ Whitbread heard from paupers in Wootton, 13 miles away, and Houghton Conquest and Wrestlingworth, both over ten miles away from his home at Southill (Cirket (ed), *Samuel Whitbread's Notebooks*, 20 December 1814; 26 October 1813; 2 August 1811; 30 July 1814).

⁷² Where poor relief complainants approached Brockman from further afield, from beyond Ashford to the west, and Canterbury to the east, over 15 miles away, they were parish officers asking other parishes to take financial responsibility for paupers (BL Add MS 42598, 4 May 1696; 20 February 1720; 14 June 1721).

⁷³ Unless they were able to gain a lift with someone on a cart. None of the magistrates' notebooks contain enough detail to record the mode of transport individuals took to reach their magistrate.

justice relatively cheaply and quickly. The summary process enabled the lower echelons of society to have a voice and to exert some authority over their lives in these areas of complaint. This chapter now moves on to look at property offending, the primary type of case where the gentry were represented in rural summary proceedings, to see whether plebeian society were able to demonstrate the same agency and authority in such cases as they were elsewhere.

iii. Property ownership and property offence complaints at summary level.

This section will show that at summary level, property offences that came before rural magistrates were largely brought by those from the middling sections of society - those from the yeoman or artisan classes. It will show that although both the labouring class and the gentry were also evident as complainants, the latter's involvement was restricted to game or wood offences, and increased over time, demonstrating not only the nature of property ownership in eighteenth-century rural England, but also the continuing criminalisation of customary rights that particularly affected rural areas.⁷⁴ However, this section will also show that property complaints were not only made by those with the most property, as those from more humble backgrounds and with less property were also present, and took their complaints to the magistrate.

⁷⁴ In game and wood offences, I describe the landowner as the complainant, although in the majority of such cases, the case was brought to the magistrate's attention by a gamekeeper or other representative of the landowner.

Firstly, what proportion of the magistrate's summary work was spent on dealing with property offences, and who brought those complaints? Property offences made up a varying percentage of a magistrate's summary workload, from 11 per cent of Parker's cases, to over half (55 per cent) of Hoare's.⁷⁵ The two Wiltshire magistrates, Hunt and Hoare, had the highest percentage of cases.⁷⁶ The proportion of property offence cases reflected the economy and geography of the magistrate's area of jurisdiction, with Hunt dealing with a large number of wood thefts, and Hoare with offences under the Game Laws, reflecting the proximity of their homes to former royal forests and large estates, and the particularly rural nature of Wiltshire.⁷⁷

Table 3.5, on the next page, looks at the social class or occupational status of complainants in property offence cases, where given, taken as an average across the notebooks of all 13 magistrates studied in this thesis. It shows that those from the yeoman class predominated as complainants, but also that people from all classes complained of theft, showing that thefts were not just committed by

⁷⁵ 33 out of Parker's 299 notebook entries related to property offences, compared to 99 out of 181 cases for Hoare (SA 1060/168-70; WSHC 383/955; WSHC 229/1). Breakdowns of property offences for each magistrate are included at Appendix 3 (page 408).

⁷⁶ Taking the 13 primary magistrates studied in this thesis, property offences constituted an average of 22 per cent of their summary caseload, although around 15 per cent was more of the normal amount (the figures for Hoare (55 per cent), Hunt (44 per cent) and Waller (40 per cent) skewing the average).

⁷⁷ Elizabeth Crittall, 'Royal Forests', in Elizabeth Crittall (ed), *A History of the County of Wiltshire, Volume 4* (London, 1959), 391-433. www.british-history.ac.uk. 15 January 2013.

the poor on the rich.⁷⁸ As Linebaugh has warned, by categorising eighteenth-century thieves and victims as ‘social criminals taking from the rich, or criminal-criminals stealing from the poor’, we ignore how men and women challenged ‘both law and their own class’ through their actions.⁷⁹

Table 3.5 The social background or occupational status of complainants in property offence cases, where stated.

	Number	Percentage
Yeoman class	111	37%
Artisan class	88	29%
Gentry	53	18%
Labouring class	47	16%
Paupers	1	0%
Total	300	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King’s Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread’s Notebooks*, ESRO AMS 6182/1.

Table 3.5 also shows that artisans and tradesmen were the second most frequent group to bring complaints of property theft to the magistrate, reflecting the prevalence of the theft of work goods.⁸⁰ The number of yeomen and artisans also reflects two other factors. Firstly, these were the groups with items that could be stolen, who had sufficient income to make them less likely to commit

⁷⁸ Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1993), xxv.

⁷⁹ Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1993), xxv.

⁸⁰ Here, I am referring more to small-scale thefts of items used by rural farmers and artisans in the course of their own work production, rather than the theft of raw materials or finished products from manufacturing centres (Clive Emsley, ‘Crime and Punishment: 10 years of research (1)’, *Crime, History and Societies*, 9.1 (2005), 118).

thefts but to complain of them, and who were more likely to have the knowledge to know how to seek legal redress for property offences without necessarily wanting to take the time, or pay the money, to take such cases to trial.

This section will show that the involvement of the gentry in poaching complaints highlights questions about the impartiality of the magistrate, as a member of the gentry and a landowner, in hearing such cases. It is significant that the gentry were fairly well represented as complainants in property offence cases. Their involvement, or, more commonly, the involvement of their gamekeepers and agents, in the summary process was limited to cases involving poaching or wood thefts, reflecting their status as landowners in rural communities. Poaching cases were recorded in all the magistrates' notebooks analysed in this thesis, although the number varied greatly. Therefore, the number of poaching or wood theft cases heard by an individual magistrate impacted on the number of gentry complainants recorded in his notebooks.

There has been a recent move by historians towards marginalising the importance of game offences, with Oberwitler, for example, commenting that the 'importance of the [game laws] and the role of the justices in rigorously executing them have been exaggerated' and that 'offences against the game laws were not frequent in the everyday work of the justices: only two per cent of all cases in the notebooks...were related to the game laws'.⁸¹ King echoes this,

⁸¹ Oberwitler, 'Crime and Authority', 15.

arguing that game law cases, 'in which class antagonism is so clear and the law so flagrantly biased towards the rich, played only a very marginal role outside a few forest areas'.⁸² Oberwitiler's arguments are compromised by his choice of a few selected notebooks that do not compare similarly rural areas; one would not expect to find many poaching cases in Henry Norris's Hackney notebook, for example.⁸³ In addition, looking at game law offences within the overall total number of cases in the notebooks ignores the fact that property offences generally took up a relatively low percentage of the magistrate's time at summary level. However, this analysis of rural notebooks shows that poaching offences were a part of all the rural magistrates' workloads, with a broad increase in the percentage of property offences it constituted over the later eighteenth and early nineteenth centuries. This was due to the expansion of the Game Laws, which enabled the magistrate to summarily convict and punish poachers, and landowners to get swift justice to those who poached on their land, and the accompanied increased involvement of the gentry and their representatives in bringing such cases to the magistrate. Those magistrates in the most rural areas - Hunt and Hoare - saw the highest percentage of gentry complainants reporting poaching or wood thefts.⁸⁴ In addition, when wood stealing and poaching are taken together, it can be seen that these offences were a significant part of the magistrates' summary workloads, reflecting the nature of property offending in rural areas and how it was different to that in urban

⁸² King, 'The Summary Courts and Social Relations', 154.

⁸³ Eighteenth century Hackney was, as Paley has stated, an area of market gardens and brickfields rather than wooded areas where game could be kept or taken (Paley (ed), *Justice in Eighteenth-Century Hackney*, ix).

⁸⁴ 12 per cent of complainants in property offence cases before William Hunt were drawn from the gentry, and 14 per cent of those complainants before Richard Colt Hoare (see table 3.1 on page 76).

centres. These were primarily offences committed by the lower members of society against property owned by those higher up the social ladder, and so in being taken before the magistrate, the property owner could be seen to be exerting the power of their status over the more humble members of society.⁸⁵

The laws covering game and poaching were a form of class control, with those unqualified persons caught gaming - unqualified because of their lack of money and status - punished for carrying out an act that landowners and legislators had decided they were not allowed to do.⁸⁶ The complexity of the legislation relating to poaching was also a way of exerting control over those with less or no say in how those laws were passed. Poaching was subject to a body of legislation known collectively as the Game Laws - some 24 parliamentary acts being passed

⁸⁵ Although Knafla has warned against the simplistic assumption that crime was 'an activity of the poor or unemployed against the propertied', wood theft was still an offence involving 'the unpropertied', and this is emphasised by the fact that where the occupation of wood thieves was recorded, 'labourer' was the usual description (Louis A. Knafla, 'Structure, Conjuncture, and Event in the Historiography of Modern Criminal Justice History', in Clive Emsley and Louis A. Knafla (eds), *Crime History and Histories of Crime: Studies in the Historiography of Crime* (Westport, 1996), 38).

⁸⁶ Emsley describes poaching as a social crime, an offence that 'while subject to legal sanction, can nevertheless receive a wide measure of legitimation within a specific community' (Clive Emsley, 'Albion's Felonious Attractions: Reflections upon the History of Crime in England', in Knafla and Emsley (eds), *Crime History and Histories of Crime*, 68). Although Munsche has noted that 'gentlemen' themselves were on occasion responsible for poaching - gaming that was unsportsmanlike - the term was more associated with plebeian members of society. In 1796, one gentleman stated referred to the 'lower class of people' who poached, and commented that 'they were a class of person much too insolent' and therefore should not be permitted to (Munsche, *Gentlemen and Poachers*, 51, 53). Blackstone noted that one of the qualifications for killing game was that one should be 'the son and heir apparent of an esquire...or person of superior degree' (Blackstone, *Commentaries*, Book 4, 175). Munsche has also stated that attempts to limit poaching to the upper echelons of society was a means of helping the gentry 'define their social identity' (Munsche, *Gentlemen and Poachers*, 18).

between 1671 and 1831 in order to regulate game hunting.⁸⁷ These authorised the confiscation of dogs and nets kept by those wishing to take game, who were not deemed to be 'qualified' to do so. The 1707 Game Act set out the penalties for poaching, with the 1722 Act giving an informant half of a poacher's fine, and double the prosecution costs, on conviction before a JP. Until 1784, the standard penalty for poaching was a fine of £5, but after this date, hunters had to take out an annual game licence costing two guineas. Poaching without it was subject to a penalty of £20 and three months in prison. However, this Game Duty Act gave the prosecutor in poaching cases the option of deciding whether a defendant should be charged under the old or the new systems.⁸⁸ It is no wonder that Burn described the game laws as 'very numerous, and the sense sometimes a little perplexed', whilst Blackstone, noting Burn's concerns, added that 'the statutes for preserving the game are many and various, and not a little obscure and intricate'.⁸⁹

Given that the magistracy was, throughout the long eighteenth century, largely gentry, the conflict which could emerge between their personal interests and the need for an impartial judiciary was evident here. This is particular true with Richard Colt Hoare, for example, who was both a magistrate and a landowner with an estate that was the target of poachers, although only one entry in his notebooks explicitly stated that men had been caught poaching in his grounds at

⁸⁷ Munsche, *Gentlemen and Poachers*, 8.

⁸⁸ Munsche, *Gentlemen and Poachers*, 24.

⁸⁹ Burn, *The Justice of the Peace and Parish Officer, Volume 2* (13th edition, London, 1776), 218; Blackstone, *Commentaries, Book 4*, 175.

Stourhead.⁹⁰ Given this personal interest in poaching, it is not surprising that he recorded lists of convicted local poachers in the second of his two notebooks, in particular.⁹¹ Just as the notebook of Lincolnshire magistrate Thomas Dixon reflected a concern with the behaviour of servants, so too did Hoare's reflect a similar preoccupation with a specific type of offender - the poacher.⁹² Hoare's equal status with those who complained of poaching to him, and his status as a landowner affected by poaching, brings to the forefront the question of who the magistrate acted on behalf of, and how impartial he could be in cases that he had a close involvement in - could he really be a model of 'rural paternalism'?⁹³ Although there is no evidence that his status or self-interest in poaching cases affected his decision-making, it is clear that Hoare was particularly interested in such cases and recorded them assiduously.

The advantages the gentry had in taking property offences to summary proceedings was emphasised in how the magistrate dealt with cases that involved his own, or his family's, property. This difficult situation that magistrates could find themselves in terms of dealing with complaints from those who believed they were on the 'same side' as the magistrate was complicated by cases that involved the magistrate himself. Burn advised that a single justice should not hear cases that involved them, but should either refer

⁹⁰ Edward Bird of Kilmington had been 'detected at night in company with two other men shooting at pheasants in the garden at Stourhead' (WSHC 229/1, n.d., c.5 December 1819). Hoare was said to have a keen interest in poachers, and kept at least one mantrap on his property at Stourhead (talk with National Trust archive assistant at Stourhead, July 2014).

⁹¹ WSHC 383/955.

⁹² Davey and Wheeler (eds), *The Country Justice*.

⁹³ Landau, *The Justices of the Peace*, 191.

them to be heard by another justice, or hear them with another justice being present.⁹⁴ This was to ensure impartiality in hearing the case, but Burn's advice was unlikely to achieve this. Even if two justices were present, the magistrate involved in the case was still there and so could have a say in proceedings. If he preferred the case to be taken to another magistrate, he was able to recommend another local magistrate whom he might be friends with. The notebooks studied here show that four out of the 13 rural magistrates studied in this thesis brought cases involving their own land or property.⁹⁵ The system, in this sense at least, was both fallible and faulty, and biased against the defendant, who was likely to be from a lower class of society to the magistrate.⁹⁶

However, as table 3.1, on page 87, showed, members of the gentry were, despite their presence in poaching and wood theft offences, in the minority when it came to other complainants before the rural magistrate. An analysis of the background of male complainants in theft cases shows that the people who used summary proceedings to deal with other types of property offence came from a range of occupational backgrounds.⁹⁷ King has suggested that, at least from the second half of the eighteenth century, the law was open to both labouring men

⁹⁴ Burn, *The Justice of the Peace, Volume 3*, 27.

⁹⁵ These were William Hunt, Edmund Waller, Richard Colt Hoare and William Brockman (Crittall, *The Justicing Notebook of William Hunt*, 84; CBS DC18/339/4-5, 15 March 1786; WSHC 229/1, n.d., c. 5 December 1819; BL Add MS 42598, 24 November 1694, 3 October 1698, 16 November 1713, 14 July 1715, 27 December 1720). In addition, Thomas Horner had cases reported to him by his son and his park-keeper, both concerning his estate (McGarvie (ed), *The King's Peace*, 28, 109).

⁹⁶ Given the lack of gentry defendants in the summary notebook, as this chapter will discuss.

⁹⁷ Women rarely had their occupational or social status recorded in the justicing notebooks.

and those of the 'middling' sort to protect their property and resolve their disputes, and that they, in fact, mainly used the criminal law for that purpose.⁹⁸ The notebooks of the magistrates studied here echo King's analysis and show that labouring and 'middling' men and women throughout the long eighteenth century used summary proceedings to resolve property disputes and offences to a far greater extent than the gentry. Where occupations were stated, farmers were the largest group, but labourers were second. There were also those in occupations that can also be counted within the 'middling group', which made up around one-third of the nation's population in the eighteenth century – 'broadly speaking, tradesmen, manufacturers, commercial men, farmers and freeholders'.⁹⁹ This group was represented amongst theft complainants by such tradesmen as a plumber, pipe-maker, butcher and glazier. This illustrates a wide usage of summary proceedings to report property offences, with farmers, artisans and labourers all participating in the process.

Complainants in property offence cases heard at summary proceedings were therefore similar to those at Quarter Sessions level, where Beattie concluded that 'artisans and labouring men were simply not as unconcerned about theft...nor as shut out from the courts by poverty and ignorance' as might be assumed.¹⁰⁰ Summary proceedings were seen as a more informal, accessible form of justice than the formal courts, so it is not unexpected to find artisans and labourers amongst the complainants in property offence cases heard at

⁹⁸ Peter King, 'Decision-Makers and Decision-Making in the English criminal law, 1750-1800', *The Historical Journal*, 27.1 (1984), 25.

⁹⁹ King, 'Decision-Makers and Decision-Making', 55-56.

¹⁰⁰ Beattie, *Crime and the Courts*, 196-197.

summary level. Outside of the most rural property offences of poaching and wood theft, offences which displayed the widest social disparity, complainants in property offence cases were drawn from the middling and lower orders. The gentry's limited involvement, as complainants in cases involving their land, created a dichotomy for the magistrate, with most being drawn from that class themselves. However, it does show that the summary process was a forum where all members of society could be involved as complainants. This chapter will now show how the complainants in offences against the person were drawn from a narrower social group, one more focussed on those from the labouring class.

iv. Plebeian use of the summary process to complain about offences against the person.

The occupational status of those who complained to the magistrate of being assaulted, or who complained of other offences against the person, differed from complainants in property offences, and, as table 3.6, below, shows, this was an area in which the labouring class engaged more with the summary process as complainants.

Table 3.6 The social background or occupational status of complainants in cases involving offences against the person, where stated.

	Number	Percentage
Labouring class	64	41%
Artisan class	45	29%
Yeoman class	45	29%
Gentry	2	1%
Paupers	0	0%
Total	156	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6182/1.

The willingness of the labouring poor to bring assault cases to the magistrate was due to the nature of the offence, and how it was punished. Assault cases, both in rural and urban societies, tended to be agreed between individuals either informally or before the magistrate, the summary process being described by Morgan and Rushton as the 'first and last resort' for many people seeking to resolve assault cases, rather than seeking redress in the jury courts.¹⁰¹ This is due to two primary reasons. Firstly, as the rural notebooks show, many assault complainants and defendants were known to each other. They lived in the same small community, or they worked together. They were not accusing unnamed strangers of assault, but people known to them. As this chapter will show, they were often of the same occupational status, and sought to reconcile matters rather than seek financial compensation, or token damages rather than a formal prosecution, which would have cost the complainant more in terms of time,

¹⁰¹ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 68; Drew Gray, 'The regulation of violence in the metropolis: the prosecution of assault in the summary courts, c.1780-1820', *The London Journal*, 32.1 (2007), 76, King, 'The Summary Courts and Social Relations', 149-150.

money or result.¹⁰² These were primarily plebeian people, who sought some kind of action, but not necessarily a punitive punishment.

A study of the magistrates' notebooks shows that geography played a part in the number of assault cases a magistrate heard, and the class of person involved. On average, 14 per cent of rural magistrates' caseloads were taken up with assault cases, but this varied a great deal from magistrate to magistrate, with the earlier magistrates, Bromley, Hill, Brockman, and Thornton, only recording a percentage in single figures.¹⁰³ Hunt, Horner and Waller recorded a higher percentage, but only two per cent of Hoare's notebook involved assaults.¹⁰⁴ It has already been stated that Hoare's focus was on poaching offences, but he also operated within an area of small, dispersed settlements that did not include 'centres' of community, such as an inn or market, where tempers might fray, and where work disputes were less likely to take place. These arguments show why plebeian violence might be prevalent in the notebooks, echoing King's assertion that 'the labouring poor used the summary courts very extensively in assault cases'.¹⁰⁵

¹⁰² Shoemaker, *Prosecution and Punishment*, 84-85.

¹⁰³ Assaults constituted nine per cent of Bromley's caseload, two per cent of Hill's, six per cent of Brockman's and seven per cent of Thornton's (WRO CRO103; CBS D-W/97/8; BL Add MS 42598; BL Add MS 42600; NRO Th1679).

¹⁰⁴ Just four out of Hoare's 181 recorded cases involved assault (WSHC 229/1; WSHC 383/955).

¹⁰⁵ King, 'The Summary Courts and Social Relations', 140.

Lemmings has argued that during the eighteenth century there was a 'diminishing popular engagement' with the courts, but the situation was the opposite in relation to summary proceedings.¹⁰⁶ This section uses assault complaints to show how rural society engaged with the summary process, and how plebeian usage of it in relation to assault increased over time. As occupational status was not consistently recorded by all the magistrates studied here, a sampling strategy is used for table 3.7, on page 130, analysing the three magistrates who were most consistent in recording occupations - Brockman at the start of the eighteenth century, Hunt in the middle, and Stileman at the end of the long eighteenth century. An analysis of occupation types found in their notebooks gives an indication of who was using the summary justice system to complain of assault, who they were complaining about, and whether this changed over time.

¹⁰⁶ Lemmings, *Law and Government in England*, 31.

Table 3.7 The social background or occupational status of assault complainants before William Brockman, William Hunt and Richard Stileman.

	Gentry		Yeomen class		Artisans		Labouring class		Total	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage of assault cases
William Brockman (1689-1721)	0	0%	6	26%	4	17%	13	54%	23	40%
William Hunt (1744-1749)	0	0%	7	25%	18	64%	13	46%	38	30%
Richard Stileman (1819-1836)	0	0%	7	16%	10	23%	27	61%	44	70%

Sources: BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, ESRO AMS 6192/1. Farmer class includes vicars, yeomen, clerks and those described as 'mister', as artisans and tradesmen were not described in this way, and where gentry were mentioned, their title or estate is usually given, rather than the prefix 'mister'.

Table 3.7 shows that the involvement of the labouring class had increased by the early nineteenth century, suggesting an increased engagement with the summary process in terms of the bringing of assault cases. The gentry were absent as complainants in assault cases, and whilst the percentage of complainants drawn from the farming class remained steady from Brockman's to Hunt's time, their involvement had decreased by the early nineteenth century. The majority of Hunt's complainants were artisans, craftsmen, or tradesmen, but Brockman's and Stileman's were predominantly labourers or servants. Stileman's notebook, which recorded the highest percentage of occupations among complainants at 70 per cent of the assault cases, shows that the summary process was being used predominantly by the labouring class, with the plebeian members of society making complaints of assault against each other or those only slightly higher than them in class.¹⁰⁷

However, all classes apart from the gentry were well represented, showing that summary proceedings were used by both the middling and lower orders to make complaints about offences against the person. Although these statistics are limited by the lack of detail in many of the notebooks, table 3.7 does suggest a decrease over time in the percentage of complainants being drawn from those of farming status, and an increase in both the artisan and labouring class participation.

¹⁰⁷ For example, William Brockman heard cases of servants or labourers assaulting each other, but also of labourers assaulting those of artisan status, and artisans assaulting those of farmer status. There was only one case where the situation was reversed, with a clerk accused of assaulting a carpenter (BL Add MS 42598, 3 June 1700).

Table 3.7 showed how assault cases were brought largely by plebeian people, and therefore that they saw the law as having a valuable function for them in the resolving of interpersonal disputes. These were labouring people who were aware of the function of the magistrate and were willing to bring what appear to be often minor assaults to his attention. This awareness may have increased in time, with assault forming a larger part of the rural magistrate's workload over the early nineteenth century, as shown in chapter two.¹⁰⁸ Although it has been stated that plebeian participation in the legal process declined over the eighteenth century due to increasing costs, the evidence presented here shows that, conversely, plebeian participation in the summary process, in terms of assault cases, actually increased over the course of the long eighteenth century.¹⁰⁹

The increase in assault cases being heard at summary level also reflected the decrease at Quarter Sessions, with such cases being regarded as relatively minor, and therefore suitable to be dealt with by a magistrate, thus freeing up the Quarter Sessions to hear more serious offences, and also reflecting this 'preoccupation' with property offences which resulted in more of these cases being taken to trial. This change is evident in the higher proportion of assault cases heard by the later magistrates, specifically Parker and Stileman. The bringing of assault complaints, particularly by the labouring class, was also an expression of authority. Bringing a case to the magistrate was part of the same

¹⁰⁸ Table 2.1, on page 41.

¹⁰⁹ Des Newell, 'Order in Disorder in England: Masculinity, Violence and the Eighteenth Century Plebeian Honour Fight', *European Perspectives on Cultures of Violence Conference* (2013). www.academia.edu. 7 January 2015.

strategy as that of the actual assault. As Dwyer Amussen has argued, violence was a way of claiming authority or power over another person, and a magistrate's decision making emphasised that authority of one person over another.¹¹⁰ Assaults within rural communities over the long eighteenth century served the same function amongst the less well-off as duels had amongst the gentry. They were both part of a desire to enforce patterns of behaviour whilst asserting authority over another. But in bringing a case, plebeian men and women were also using their awareness of the law and the function of the magistrate, as they did in poor relief cases, to exert their authority and gain a satisfactory outcome, but in airing their disputes in the justicing room, they also gained a voice that was often absent from other arenas.

b. The social background of defendants in rural summary proceedings.

This chapter will now look at the status of those who were brought before the magistrate as defendants. Sharpe has noted that although the association of violent offending with the poorer members of society did not occur until the eighteenth century, property offending had 'always been committed mainly by the poor, from whose ranks other deviant types, notably vagrants and prostitutes, were also recruited'.¹¹¹ This led to the development of theories of the 'criminal class'. However, Emsley noted that this idea 'was, indeed remains, a convenient one for insisting that most crime in society is something committed on law

¹¹⁰ Susan Dwyer Amussen, 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies*, 34.1 (1995), 23, 26.

¹¹¹ J.A. Sharpe, 'The History of Crime in England c.1300-1914, An Overview of Recent Publications', *British Journal of Criminology*, 28.2 (1988), 129.

abiding citizens by an alien group'.¹¹² This chapter will show that, in terms of the rural summary process, offences were more likely to be committed by those of the same or similar status to their victims. However, it will also show that although the summary process was predominantly used by the middling and lower orders, defendants were accused of offences against those from a class above them as well as against those from the same class, and where defendants were of significantly lower status than those who complained about them, this was a reflection of the type of case dealt with by the magistrate, the mix of civil and criminal affairs they dealt with, and the community they worked in and for.

Table 3.8 The status of those appearing before the rural magistrates as defendants.

	Gentry/ elite	Yeoman class	Artisan class	Labouring class	Paupers	Total
Number	17	135	335	425	28	940
Percentage	2%	14%	36%	45%	3%	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1.

As a comparison of table 3.2 on page 89, and table 3.8 (above) shows, those from the gentry and yeoman classes, the top two social classes, were even less visible as defendants than as complainants throughout the long eighteenth century, with the majority of defendants across the notebooks being drawn from the labouring class. However, the broad timespan of the notebooks studied here does show a

¹¹² Clive Emsley, *Crime and Society in England 1750-1900* (London, 1987), 133.

change over the late eighteenth and early nineteenth century. From this time, there is evidence that complaints were increasingly being brought against those from higher up the social classes, with artisans and tradespeople forming the majority of defendants in cases where occupation is stated by both Thomas Lee Thornton and Thomas Netherton Parker, and the yeoman class being well represented in both the notebooks of Parker and of Richard Stileman. This corresponds with my earlier conclusion that the labouring class and impoverished members of society increasingly dominated complainants at summary proceedings over the course of the long eighteenth century, creating a process whereby the poorer members of society were increasingly complaining about those higher up socially in their local communities. Paupers formed a minority of defendants, on average across the summary work of the 13 rural justices, suggesting that they were far more likely to complain about the rejection of poor relief by parish officers, than to be brought before the magistrate to be examined regarding their settlement, or accused of vagrancy.

Looking at the recording of defendants before the magistrate, it is clear that the rural JP was not as assiduous in recording the occupations of those accused of offences, or those appearing before him as the subject of complainants, as he was with complainants' occupations. In part, this reflects the authority of the complainant in summary proceedings, as the instigator of complaints - the victim of an offence was 'central to the prosecution process in the eighteenth century'.¹¹³

¹¹³ Gray, *Crime, Prosecution and Social Relations*, 29. King also notes that prosecutors were 'vitally important, since without their initiative the rest of the

The complainant was more important to the system, in this sense, than the defendant, and so his details were more likely to be recorded by the justice. Magistrates recorded the occupations of those bringing complaints in an average of 50 per cent of their cases, but only recorded the occupations of those complained against in an average of 35 per cent of cases. Although there was relatively little difference in the percentage of occupations recorded for complainant and defendant in some JPs' notebooks, such as Thomas Netherton Parker's, where he only recorded either in around one-fifth of his cases, the disparity found in other notebooks does not result just from how meticulous the individual JP was in recording cases in his notebook.¹¹⁴ For example, Thomas Lee Thornton, who only recorded a limited number of cases in his notebook for 1787, recorded complainants' occupations in 67 per cent of cases, but defendants' occupations in just 24 per cent of cases.¹¹⁵

Part of the reason for this lies in the occupation of those complained by or against. For example, the rural JP was more assiduous in recording when a parish official was involved.¹¹⁶ Given that officials constituted the majority of eight JPs' complainants, but only the majority in six magistrates' defendants, it would be expected that the level of recording might be slightly lower in those notebooks with lower percentages of officials being represented. This is true to an extent,

judicial system would lie virtually dormant' (King, 'Decision-Makers and Decision-Making', 53).

¹¹⁴ ESRO AMS 6192/1.

¹¹⁵ NRO Th1681.

¹¹⁶ A parish official may also have been a tradesman or have an occupation alongside his parish role, but his usual occupation was usually not recorded. For this reason, parish officials have not been included in my statistics for occupational status.

with Hill, Brockman, Spencer, and Whitbread all recording higher levels of both complaints against officials and corresponding occupations of those complained against. However, both Horner and Waller saw the majority of their defendants drawn from officials, yet their levels of recording defendants are two out of the three lowest of all the JPs studied here. The assiduousness of recording defendants' occupations, then, was influenced by the relevance of the individual's occupation to the complaint made against them. The parish officer's occupation was fundamental to complaints regarding relief, just as the servant's occupation was relevant to a complaint of misbehaviour made against them by their employer. In such cases, the magistrate would record their occupation more diligently than in, for example, a case of assault between two members of the same community. What was recorded was what was relevant to the case.

This chapter now considers various types of complaint brought to the rural magistrate, in order to assess who was complained about in terms of occupational status and background, and in what context. One of the primary ways in which class and occupational status are relevant to a discussion of the summary process is in the employment disputes brought to the magistrate, where both masters and their servants and apprentices are evident as defendants. This chapter will assess the employment disputes recorded at summary level to show how although masters did use the system to complain about their workers, the most common disputes were brought by servants against their employers. This illustrates how the summary process offered those from the lower orders of rural society the

opportunity of redress and an opportunity to exert their authority over their masters.

i. The negotiation of employment terms and conditions between master and servant at summary level.

This chapter has already established that the majority of cases brought to the rural magistrate involving employment were brought by the worker against his master. Table 3.9, below, shows that around two-thirds of defendants in employment cases were employers.

Table 3.9 Defendants in employment-related cases before the rural magistrate.

	Employer	Worker (servant or apprentice)	Total
Number	389	220	609
Percentage of employment cases ¹	64%	36%	100%

¹ Cases involving misdemeanour or misbehaviour by servants including absconding, wage disputes, bad usage by master. Excludes other employment related cases, primarily requests for discharge of contract (as it is not always clear whether request is mutual or instigated by and indentures/binding of apprentices. **Sources:** WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

The prevalence of employers as defendants in such cases suggests that the summary process was a way in which those of a higher occupational status could be held to account by their workers. In detailing wage disputes brought by

servants against their masters, this chapter earlier argued that employers had an advantage over their workers in their levels of literacy and education, and therefore in their understanding of the law.¹¹⁷

This section focuses on the cases that were brought against servants, to show how, in some ways, the worker was at a disadvantage, and could be brought to the magistrate accused of a range of acts under the general description of 'misdemeanour' or 'misbehaviour' whilst in service. One of the most commonly cited reasons for misbehaviour was a servant absconding or going on leave without permission, either to attend a fair, for example, or because he or she simply wanted to leave service.¹¹⁸ Burn stated that every hour's absence by a servant should result in a penny's wages being deducted, but that an employer could not discharge the servant for misbehaviour without applying to the magistrate to do so.¹¹⁹ In this way, as Hay noted, 'the traditional authority and role of the justice of the peace was emphasised' in relation to employment cases throughout the long eighteenth century.¹²⁰

¹¹⁷ Steedman has described the Reverend William Clifton, in early nineteenth century Nottinghamshire, as a 'man with employment trouble - partly because he was so keen to use the very latest master and servant legislation to his own advantage' (Steedman, *An Everyday Life*, 154).

¹¹⁸ William Brockman, who dealt with 60 cases of misbehaviour brought by employers, detailed neglect of duties, disorderly conduct, swearing, drunkenness, refusal to work, and absconding amongst the reasons why masters had brought such cases (BL Add MS 42598; BL Add MS 42600).

¹¹⁹ Although Burn had noted that previous King's Bench cases had established a precedent that masters could discharge their servants 'at a moment's warning' for misconduct such as absence without leave, he still stated that legally, a magistrate's agreement to the discharge was still necessary (Burn, *The Justice of the Peace, Volume 4*, 162).

¹²⁰ Hay, 'England, 1562-1875: The Law and Its Uses', 112.

Table 3.10, below, shows how many employment cases before the rural magistrate were directed against servants and apprentices. It shows that there was considerable variation both in the number of misdemeanour cases each magistrate heard, and the percentage of employment cases they constituted within each magistrate's summary workload.

Table 3.10 Misbehaviour and misdemeanour cases brought against servants and other workers, expressed as part of the magistrates' employment cases.

	Number of misdemeanour entries	Number of employment cases ¹	Misdemeanours as a percentage of employment entries
William Bromley (1685-1706)	3	5	60%
Roger Hill (1689-1705)	8	26	31%
William Brockman (1689-1721)	60	168	36%
Thomas Thornton (1700-1718)	1	3	33%
William Hunt (1744-1749)	6	22	27%
Thomas Horner (1770-1777)	36	92	39%
Edmund Waller (1773-1788)	11	16	69%
Richard C. Hoare (1785-1834)	15	23	65%
George Spencer (1787-1794)	2	12	17%
Thomas L. Thornton (1789)	2	5	40%
Thomas N. Parker (1805-1813)	31	100	31%
Samuel Whitbread (1810-1814)	39	93	42%
Richard Stileman (1819-1836)	5	49	10%

¹ Cases do not include the discharge of contracts (where it is often not clear if the request is mutual or instigated by master or servant) and the binding of apprentices. **Sources:** WRO CRO103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

Some magistrates dealt with far more misdemeanour cases than others; but this reflects the lower number of employment cases heard before some of these magistrates generally. For example, Thomas Thornton, Thomas Lee Thornton and William Bromley heard only a few employment complaints. This is unlikely to be

due to geographic reasons as Spencer, also in the midlands, heard a higher number of employment-related complaints, with also a relatively high number of misdemeanour cases.

Although most applications for discharges were as the result of a complaint of misbehaviour or ill-usage by one of the parties, Brockman's notebook shows that others approached him after 'mutually agreeing' to end a contract. In 19 cases before him, Brockman heard these cases and allowed the discharge of the contract.¹²¹ Apprenticeship indentures would also be signed before the magistrate. The rural magistrate's work in employment issues, then, incorporated the administration of employment contracts as well as disputes caused by a breakdown in the master-servant relationship or occasioned by violence. The magistrate was both an arbitrator of disputes, the person who could dissolve contracts, and the advisor on legislation and best practice. This can be seen in Parker's advice to a sickly kitchen maid and pig feeder, Mary Hughes, about being able to take on paid needlework whilst she was recuperating without fearing reneging on her contract, and the need to give a week's notice to her employer before returning to work.¹²² The magistrate negotiated between employer and servant in the manner of an arbitration service today. It is in this light that plebeian workers were able to seek redress, and that employers were better able to ensure that the servants they contracted would do the work they were needed to do.

¹²¹ BL Add MS 42598.

¹²² SA 1068/168-70, 9 June 1810.

The use of the magistrate by employers complaining about the behaviour of their labourers, servants and apprentices echoes Oberwitiler's belief that such cases were part of a social policy that was directed against the poor, and Morgan and Rushton have also shown how the employment cases brought before Edmund Tew in County Durham could also be seen to act against the worker, noting that 'in many cases...Tew acted to reinforce employers' obligations'.¹²³ Yet the number of employers who appeared as defendants suggests that the system also served to 'control' employers too. Dixon's attitude, too, and Tew's to a lesser extent (for Tew heard complaints made by workers as well as employers), appears to have been atypical of the rural magistrate, and the continuity across the long eighteenth century in terms of the percentage of plebeian workers bringing complaints to the magistrate reflects what Sir John Eardley-Wilmot, in 1837, described as magistrate's role in acting as a 'friend of the poor', working to resolve 'differences between masters and servants'.¹²⁴

The decision to bring a case to the magistrate, whether by an employer or a servant, was affected by who that magistrate was, and knowledge of his interests and sympathies. Although this chapter has found that eight out of the rural magistrates studied here saw the majority of their employment related cases brought by servants, 70 per cent of Thomas Horner's employment cases were

¹²³ Oberwitiler, 'Crime and Authority', 12; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 64.

¹²⁴ Hansard, *House of Commons Debate on County Boards, Volume 6, c.419*. www.parliament.uk. 12 February 2014.

brought by employers complaining about their servants.¹²⁵ All of the master-servant cases brought before another magistrate, Thomas Dixon in Lincolnshire, were brought by the employer, with employment cases forming nearly half (45 per cent) of his total workload at summary level. The willingness of employers to take their cases before Dixon in particular was, as Davey has argued, due to his known severity in dealing with servants in such cases - a result of his status as a farmer, who had his own negative experiences of servants leaving his employ without completing their work.¹²⁶ Therefore, when looking at who employment cases were brought by and against, the reputation and sympathies of the individual magistrate should also be considered, as this would have affected who approached him for help.

This section has shown how both employers and servants used the magistrate and the summary process to complain about the other's behaviour, and the magistrate's role in discharging employment contracts and ordering the payment of wages to servants. The latter type of case formed the majority of employment cases before the magistrate, illustrating the usefulness of the summary process in ensuring that plebeian workers were paid what they were owed, as well as providing a forum where disputes and complaints could be aired and resolved. In this arena, the lower orders were allowed an element of authority and a means of holding those who employed them to account. However, this chapter will now explore property offences that came before the rural magistrate to look at who

¹²⁵ This excludes cases involving the indenturing of apprentices, which accounted for a further 58 employment related cases (McGarvie (ed), *The King's Peace*).

¹²⁶ Davey, 'Introduction', 25-26.

was accused of such offences, and the lack of agency and authority they had in their appearances before the justice.

ii. The emphasis on plebeian defendants in property offence cases.

This chapter has noted that the type of property offending found in different geographic areas impacted on the class or status of the complainant in such cases. It also had an impact on the class of those accused of theft. Wiltshire saw a higher percentage of thefts due to the prevalence of poaching and wood theft offences recorded by William Hunt and Richard Colt Hoare. Wood theft has been seen as an act carried out by the rural poor, who saw it as a customary right to take wood to help heat their homes and use on fires for cooking.¹²⁷ Poaching has similarly been seen as the preserve of poorer members of rural societies, whether taking game for domestic consumption or for selling on for profit.¹²⁸

Table 3.11, below, shows the social class or occupational status of defendants accused of property offences at summary level, where such information was provided. It shows that members of the labouring poor were overwhelmingly detailed as defendants in such cases. The prevalence of the labouring poor in poaching and wood theft cases emphasises the nature of such offences during the

¹²⁷ However, historians have also noted that although wood theft was a means of alleviating poverty, it could also be interpreted as a form of social protest against landowners (Peter Linebaugh, *Stop, Thief! The Commons, Enclosures, and Resistance* (Oakland, 2014), 255-256; Rachel G. Fuchs, *Gender and Poverty in Nineteenth-Century Europe* (Cambridge, 2005), 97; Shakesheff, *Rural Conflict, Crime, and Protest*, 130.

¹²⁸ Munsche, *Gentlemen and Poachers*, 53.

long eighteenth century, with customary rights enjoyed by the rural poor were being criminalised, despite such acts being committed for subsistence reasons as well as for financial gain.¹²⁹

Table 3.11 The social background or occupational status of those accused of property offences, where stated.

	Number	Percentage
Labouring class	143	63%
Artisan class	66	29%
Yeoman class	15	7%
Paupers	3	1%
Gentry	0	0%
Total	227	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6182/1.

As table 3.11 shows, many property offences committed by the labouring poor were poaching or wood theft offences, the number of which depended on the nature of the area in which the magistrate worked. Summary proceedings were increasingly used to deal with minor property offences over the long eighteenth century, and the geography of rural locations affected the type of goods stolen, and the person who committed such offences.¹³⁰ The most common type of theft

¹²⁹ Munsche, *Gentlemen and Poachers*, 44, 230; Shakesheff, *Rural Conflict, Crime, and Protest*, 114; Harvey Green, *Wood: Craft, Culture, History* (London, 2007), 162.

¹³⁰ Although prosecutors were always able to take cases directly to the jury courts, the summary notebooks show that as the long eighteenth century progressed, fewer capital animal thefts, for example, were brought before the magistrate at summary level. 19 per cent of Bromley's property offences (four out of 21 cases) were capital animal thefts, and 15 per cent (19 out of 126) of William Brockman's, compared to one per cent (one out of 91) of Edmund Waller's and three per cent of both Thomas Netherton Parker's (one out of 33) and Samuel Whitbread's (three out of 93) (WRO CR0103; CBS D-W/97/8; BL Add MS 42598; BL Add MS 42600; CBS DC18/39/4; SA 1060/168-70; Cirket (ed), *Samuel Whitbread's Notebooks*).

reported to five of the magistrates studied here was the theft of wood.¹³¹ The prevalence of this offence throughout the notebooks shows that this continued to be a common activity in rural areas throughout the long eighteenth century. All of the magistrates studied here heard cases involving wood theft, but where it was reported less frequently, such as in Thomas Horner's notebook, this reflected both differences geographically, and in terms of the range of employment available to residents, with Horner's area of Somerset having more opportunities for both men and women in terms of employment, primarily in the flax and yarn industries.¹³²

A closer look at the class or occupational background of those accused of wood theft shows that nearly 90 per cent were members of the labouring poor, as table 3.12, below, shows.

Table 3.12 The social background or occupational status of defendants in wood theft cases before the rural magistrate, where stated.

	Gentry	Yeoman	Artisan	Labourer	Pauper	Total
Number	0	1	4	46	1	52
Percentage	0%	2%	8%	88%	2%	100%

¹³¹ Wood theft was the most commonly reported type of theft in the notebooks of Thomas Thornton, William Hunt, Edmund Waller, Thomas Netherton Parker and Richard Stileman (NRO Th1679; Crittall (ed), *The Justicing Notebook of William Hunt*; CBS DC18/39/4; SA 1060/168-70; ESRO AMS 6182/1).

¹³² One of the nearest wooded areas to Frome was Stourhead – home of Richard Colt Hoare – but those living nearer the latter would have been more reliant on poaching and wood theft than those in Frome, where there were industrial opportunities for work - and more places to steal from. The cloth-working industry was well established in Frome and there is evidence of some local quarrying taking place, although the extent of this in the latter eighteenth century is not known (Andy Farrant, Mark Woods and Elaine Burt, 'History - East Mendip Quarries', British Geological Survey. 2014. www.bgs.ac.uk. 10 January 2015).

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. The occupational status of defendants in wood theft cases is not given in NRO Th1681, WSHC 229/1 and WSHC 383/955.

As minor property offences, including wood theft and game offences, were dealt with at summary level, the poor were brought face to face with the rich - the affluent, respectable face of the community as represented by the local magistrate. Summary proceedings were a forum in which the rights of rich and poor to property that both saw as 'theirs' were debated. The taking of wood had been perceived over the centuries as a customary right of the poor, with manorial charters recording the custom of taking wood for fuel.¹³³ However, from the sixteenth century onwards, increasing attempts were made to criminalise the act. A 1601 act put two categories of offence together - the breaking of hedges and the robbing of orchards - and stated that both were summary offences that could be dealt with by a single justice.¹³⁴ A 1663 act subsequently gave magistrates the power to apprehend anyone they suspected of carrying away wood, making it a summary offence punishable by a 10 shilling fine plus damages for the first offence, and a month in prison with hard labour for the second.¹³⁵ Both acts recognised that these offences were often carried out by poorer members of the

¹³³ R.W. Bushaway, 'Custom, Crime and Conflict in the English Woodland', *History Today*, 31.5 (1981), 37. Karl Marx in 1842 had defended the 'poor, politically and socially propertyless' who had long depended on being able to the taking of wood. (Karl Marx, 'Proceedings of the Sixth Rhine Province Assembly. Third Article: Debates on the Law on Thefts of Wood', Karl Marx and Frederick Engels, *Collected Works, Volume 1, Marx: 1835-1843* (London, 1975), 230-235; Peter Linebaugh, 'Karl Marx, the theft of wood, and working class composition: a contribution to the current debate', *Crime and Social Justice*, 6 (1976), 7).

¹³⁴ 43 Eliz c.7.

¹³⁵ 15 Charles 2, c.2. See also Griffin, 'Wood-taking and customary practice', 19.

community, as the fine levied in such cases was limited to a maximum of ten shillings.¹³⁶

However, the law in relation to wood theft also differentiated between an initial offence and repeated offenders. A second offence could be punishable with the House of Correction for one month with hard labour; a third offence would make the offender be 'deemed an incorrigible rogue'.¹³⁷ Another piece of legislation in 1766 further differentiated between rich and poor in terms of rights to timber, and, as Griffin has explored, created a political situation with the poor increasingly trying to take wood because they were seeking to legitimise their rights.¹³⁸ So it can be seen that there continued to be a struggle between rich and poor to assert their rights - the rich over their land and property, and the poor over what they saw as their common rights over the same. This was reflected in the passing of various statutes to restrict and criminalise those traditional rights, including, but not restricted to, wood theft.¹³⁹

¹³⁶ Burn, *The Justice of the Peace, Volume 4*, 378.

¹³⁷ Burn, *The Justice of the Peace, Volume 4*, 381.

¹³⁸ 6 Geo 3, c.48; Griffin, 'Wood-taking and customary practice', 20. Bushaway has described the 1766 act as a 'significant strengthening of the law' that firmly established the 'criminality' of taking wood (Bushaway, 'Custom, Crime and Conflict', 37).

¹³⁹ Peter King, 'Legal Change, Customary Right, and Social Conflict in Late Eighteenth-Century England: The Origins of the Great Gleaning Case of 1788', *Law and History Review* 10.1 (1992), 1-31; Peter King, 'Customary Rights and Women's Earnings: The importance of gleaning to the rural labouring poor 1750-1850', *Economic History Review*, 44.3 (1991), 461-476; Peter King, 'Gleaners, Farmers and the Failure of Legal Sanctions in England, 1750-1850', *Past & Present*, 125 (1989), 116-150; Frank McLynn, *Crime and Punishment in Eighteenth Century England* (London, 1989), 316; E.P. Thompson, *Customs in Common* (London, 1991), 6; Naomi Tadmor, *Family and Friends in Eighteenth-Century England: Household, Kinship, and Patronage* (Cambridge, 2004), 86; Steve Hindle,

Status was important if magistrates were considering the relative wealth of an individual in the setting of fines, or poverty as a mitigating factor in such offences. However, economic need does not appear to have been the main motivation behind such offences, and a mix of customary rights and financial gain may have been more common reasons why members of rural communities poached. The labouring poor were less prevalent as offenders in such cases compared to wood thefts.¹⁴⁰ The occupation or status of defendants listed in poaching and game offences before the rural magistrate was listed less frequently than in wood theft cases, which suggests that it was not perceived as an offence carried out by the labouring poor in need of food.

Where the occupational status of defendants in poaching cases was given, the labouring poor still formed the majority of such defendants, but to a lesser extent than in wood theft cases. The lack of evidence that poachers were primarily members of the labouring poor reiterates criticism of the reputation given to poachers by historians of being 'downtrodden, agricultural labourers' as opposed to criminals.¹⁴¹ It is evident that members of the community from the artisan class

'Persuasion and Protest in the Caddington Common Enclosure', *Past & Present*, 158 (1998), 37-78.

¹⁴⁰ The poaching offences recorded by the rural magistrates listed the labouring class as the accused in a total of 59 per cent, or 16 out of 27, cases where occupational status was recorded (CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, NRO th1681, WSHC 229/1, WSHC 383/955, Cirket (ed), *Samuel Whitbread's Notebooks*. There were no poaching cases in WRO CR0103 and the occupation of poaching defendants was not recorded in NRO Th1679, CBS DC18/39/4, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70 or ESRO AMS 6192/1).

¹⁴¹ Harvey Osborne and Michael Winstanley, 'Rural and Urban Poaching in Victorian England', *Rural History*, 17.2 (2006), 187.

also committed game offences.¹⁴² This echoes Osborne and Winstanley's conclusions for the nineteenth century, when they found that many poachers, particularly in the north and midlands of England, were 'industrial workers such as weavers, framework knitters, potters, colliers, masons and metal workers' - those both from the labouring class but also from the artisan and tradesman class.¹⁴³ The variety of occupations that Osborne and Winstanley found in the nineteenth century industrial north and midlands is also evident in eighteenth century rural midland and southern England.

This is not to say that the eighteenth century gentry, the landowners whose land was targeted by poachers, would have distinguished between the two classes. As Munsche has noted, the lower classes, plural, were perceived by the gentry as a threat to social order, because rather than just working, as a labourer or in another trade, to earn, they were also trying to kill game to make money.¹⁴⁴ Therefore, although the game laws were an example of class legislation, aimed at protecting the rights of the gentry, and poaching was carried out by plebeian members of rural society, it was not the preserve of the labouring poor and not necessarily committed out of poverty.

¹⁴² Artisans formed 33% of the accused in poaching cases, where defendants' occupation was listed, or 9 out of 27 cases (CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, NRO Th1681, WSHC 229/1, WSHC 383/955, Cirket (ed), *Samuel Whitbread's Notebooks*).

¹⁴³ Osborne and Winstanley, 'Rural and Urban Poaching', 196.

¹⁴⁴ Munsche, *Gentlemen and Poachers*, 53.

If poaching was committed both by labourers and artisans, were other thefts also committed by both classes, and were there differences in what artisans and the labouring poor were accused of stealing? The notebooks suggest that wood theft was prevalent amongst labouring defendants, being the most common type of theft charged against the labouring class, with poaching being the most common type of property offence levied against defendants from an artisan or tradesman background.¹⁴⁵

Artisans here were more likely to be accused of stealing money or household goods than labouring defendants, which reflects the opportunities they may have had to be near or in local houses.¹⁴⁶ Goods stolen by the labouring poor were more likely to be goods found outside, such as game, wood, fruit and vegetables, whereas artisan defendants were, apart from game, more likely to seek goods inside a property. This includes items such as hay or other crops located within stables or other buildings adjoining houses.¹⁴⁷ Whether goods were stolen due to

¹⁴⁵ Amongst labourer defendants, 51% (46/91) of property offences they were accused of involved wood theft; 29% (9/31) of property offences committed by those from the artisan class were poaching offences (WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 229/1, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO 6192/1).

¹⁴⁶ Artisans were accused of stealing money in 23% of cases (7/31) where an artisan defendant was specified, compared to labourers, who were accused in 7% (6/91) of cases where a labouring defendant was specified (WRO CR0103, CBS D-W/97/8, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 229/1, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1).

¹⁴⁷ Artisan defendants were accused of stealing household goods in 23% of case (7/31) cases where an artisan was accused, compared to only 10% of labourers

need or want is difficult to ascertain, as Kilday has similarly found in her analysis of Oxfordshire thefts. She has also warned about basing economic need on the occupation given by defendants, as they 'could have been describing the trade they knew...rather than what their current employment status was', possibly being looking for work in that area, in part-time work, or being employed but poorly paid.¹⁴⁸ Therefore, both artisans and labourers may have stolen due to economic need, opportunity, or desire, although given the prevalence of minor thefts of foodstuffs and wood, it is likely that need, together with a continuance of belief in customary rights, played a significant part in such thefts. However, the existence of a few members of the yeoman class amongst theft defendants suggests that although the lower classes predominated, theft cases brought to the magistrate could be brought against a fairly wide range of people in terms of occupational status.

iii. How the background of assault defendants at summary level changed over time.

If theft defendants were drawn both from the artisan and labouring classes, with 92 per cent of such defendants being described as being from one of these two

(9/91 cases specifying a labouring defendant). 15% of cases specifying a labouring defendant (14/91) involved the theft of food; and 13% of cases specifying an artisan defendant (4/31) similarly involved food (WRO CR0103, CBS D-W/97/8, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 229/1, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1).¹⁴⁸ Anne-Marie Kilday, "'Criminally Poor?'" Investigating the Link between Crime and Poverty in Eighteenth Century England', *Cultural and Social History*, 11.4 (2014), 512-514.

classes (where occupations were recorded), were assault defendants drawn from the same classes, and to the same extent? This chapter now moves to look at defendants in cases involving assaults, and, as table 3.13, on the next page, shows, finds that three-quarters of assault defendants, on average, before the rural magistrate were members of the labouring poor or artisan class, with the yeoman class being more likely to be recorded as defendants in assault cases. This shows that the involvement of different classes or occupational status depended on the type of offence being brought before the magistrate, with a wider range of people being accused of interpersonal offences. This reflects the wide range of scenarios and situations that could result in a verbal or physical assault.

Table 3.13 The social background or occupational status of defendants in cases involving offences against the person, where stated.

	Number	Percentage
Labouring class	81	44%
Artisan class	58	31%
Yeoman class	44	24%
Paupers	1	0.5%
Gentry	1	0.5%
Total	185	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6182/1.

Table 3.13 shows that assault defendants were drawn from across a wider social strata than theft defendants, with nearly one-quarter of defendants being from the yeoman class. The gentry were largely absent from assault accusations, reflecting the fact that violence between members of the gentry would have been dealt with outside of summary proceedings.¹⁴⁹ It certainly does not mean that the upper classes were not involved in acts of violence, as they were, but reflects how the criminal justice system was affected by class in terms of the desire to prosecute cases and the money to do so.¹⁵⁰

¹⁴⁹ As gentry violence was more likely to involve weapons such as swords or, from the mid-eighteenth century, pistols, it was also more likely that such violence would result in serious injuries or fatalities and thus result in a formal trial (Robert Shoemaker, 'The taming of the duel: masculinity, honour and ritual violence', *The Historical Journal*, 45.3 (2002), 526; Randall Collins, *Violence: A Micro-sociological Theory* (Princeton, 2008), 213; Lawrence Stone, 'Interpersonal Violence in English Society, 1300-1980', *Past & Present*, 101.1 (1983), 25).

¹⁵⁰ As Shoemaker has observed, gentlemen fought each other in order to demonstrate authority and their social position, and 'social competitiveness' was a factor in much gentry violence (Robert Shoemaker, 'Male honour and the decline of public violence in eighteenth-century London', *Social History*, 26.2 (2001), 196-197).

This section will look at who defendants were accused of assaulting, to ascertain whether they assaulted those of the same class or occupational status as themselves, or whether they assaulted those from other classes. Table 3.14, below, details the class or occupational status of complainants and defendants in assault cases before the rural magistrate, where the status of both parties is recorded. Although the occupational status of both complainant and defendant was not consistently recorded, this table provides an indication of how the classes interacted with each other in terms of assault cases.

Table 3.14 The status of complainants and defendants in cases involving offences against the person, where both were stated.

	Gentry defendant		Yeoman defendant		Artisan defendant		Labouring defendant	
Gentry complainant	0	0%	0	0%	0	0%	2	4%
Yeoman complainant	0	0%	3	20%	6	20%	8	16%
Artisan complainant	1	100%	4	27%	14	47%	10	21%
Labouring complainant	0	0%	8	53%	10	33%	29	59%
Total	1	100%	15	100%	30	100%	49	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6182/1.

Table 3.14 shows that people tended to be accused of assaulting those from the same class as themselves, so artisans were more likely to complain about artisans, and labourers about labourers. This shows that assaults were common between people who knew each other and were therefore likely to be of similar status -

neighbours, work colleagues, family members, for example. In this sense, the bringing of assault cases was a more egalitarian process than that of theft, where the class divide was more evident. However, it is also clear that individuals also assaulted those from other social backgrounds. This was both an upward and downward movement. Labourers assaulted artisans, but yeomen assaulted both artisans and labourers. Again, these assaults reflected the nature of work and life in rural societies, with workplaces - including the harvest field for labouring class defendants - homes, and community locations such as the local inn, markets and the public street being given as locations for disputes.¹⁵¹ Their prevalence reflects Shoemaker's summary that 'violence was a common feature of early modern England, occurring in a range of contexts, including...tavern brawls', even though the cases brought before the rural magistrate in summary proceedings tended to be of a minor type.¹⁵² Shoemaker has stressed that men of all classes were involved in violence. Although he concentrates on violence in London, his detailing of how different classes were engaged in violent acts applies equally to rural England. He notes that boys were brought up to associate fighting with play, learning and following the 'rules followed by adult men' - so as adults, servants and apprentices might quarrel over a game, and gentlemen take part in fights in order to 'demonstrate their social position'.¹⁵³ In this light, and taking into account the fact that the most serious assaults and those involving gentry would

¹⁵¹ For example, one labouring class defendant before William Hunt was accused of assault in the harvest field whilst at work (Crittall (ed), *The Justicing Notebook of William Hunt*, 67) and another before Richard Stileman was accused of committing an assault whilst haymaking (ESRO AMS 6192/1, 26 July 1826). Dispute locations are specified, for example, at ESRO AMS 6192/1, 5 October 1824; BL Add MS 42598, 14 April 1721; ESRO AMS 6192/1, 10 April 1820.

¹⁵² Shoemaker, 'Male honour and the decline of public violence', 190.

¹⁵³ Shoemaker, 'Male honour and the decline of public violence', 196, 199.

be mainly heard at the jury courts, it is not surprising that assault cases heard by the rural magistrate at summary level list a relatively wide range of social and occupational backgrounds.

In terms of change over time, a qualitative approach is required, to assess how the status of assault defendants may have changed over the course of the long eighteenth century. This approach is necessary because of the lack of consistency in how magistrates recorded cases, with some occupations or status not being noted. Table 3.15, on the next page, therefore studies the notebooks of three rural magistrates who were more systematic in recording such detail - William Brockman for the earlier part of the eighteenth century, Hunt for the mid-eighteenth century, and Stileman for the beginning of the nineteenth century - to see if the status of those brought before the rural magistrate accused of assault changed as the long eighteenth century progressed.

Table 3.15 The social background or occupational status of defendants in cases involving offences against the person, heard before William Brockman, William Hunt and Richard Stileman, where stated.

	Gentry		Yeomen class		Artisans		Labouring class		Total	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	As percentage of assault cases
William Brockman (1689-1721)	0	0%	11	37%	4	13%	15	50%	30	54%
William Hunt (1744-1749)	0	0%	10	20%	13	27%	26	53%	4	54%
Richard Stileman (1819-1836)	0	0%	6	13%	12	26%	28	61%	46	73%

Sources: BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, ESRO AMS 6192/1.

In terms of defendants, table 3.15 shows that although the gentry continued to be absent from these magistrates' notebooks throughout the long eighteenth century, and that those from the yeoman, artisan and labouring classes continued to be evident as assault defendants, the representation of the labouring class increased over time, as the representation of the yeoman class decreased. Although this evidence is based on qualitative analysis, it suggests that rural summary proceedings increasingly became the place where assaults committed by the poorer members of society, by the labouring class, were brought. The discussion in this chapter of complainants and defendants in assault cases makes it clear that by the early nineteenth century, most of the assaults reported to these rural magistrate at summary level were committed on artisans or the labouring class by people of a similar or lower status. The evidence studied here suggests that the summary process was therefore increasingly being used by those from the lower ranks of society to regulate their own behaviour, rather than used by those of higher rank to regulate the behaviour of their social inferiors, or by the lower orders to bring their social superiors to account.¹⁵⁴

This section has shown that the summary process was used to accuse people from across the social sphere of offences and to air grievances against a variety of people in the community. However, it has shown that the process was used

¹⁵⁴ This change is not due to there being few farmers in the area, due to Winchelsea being a port town with substantial marshland unsuitable for farming and agriculture; Malcolm Pratt notes that in the first half of the nineteenth century, the principal employment of the area was in agriculture (Pratt (ed), *Winchelsea Poor Law Records*, xiv).

predominantly from those from the middling and lower orders to accuse those of similar or lower status of offences. Although the summary process offered the opportunity for plebeian people to complain about others, it similarly enabled complaints to be made about plebeian members of rural society. It tended to be those from poorer backgrounds who were accused of assault or theft, but, conversely, in terms of employment cases, it was primarily masters and mistresses who were complained about by their servants. Therefore, this exploration of the participation of the rural community in the summary process reiterates Fletcher and Stevenson's belief that 'it is hard to see the law at this time as the tool of a particular class', as it could be, and was, used by all sectors of the community.¹⁵⁵

Concluding remarks.

This chapter has found that the summary process was the level of the law that was both available to, and used by, all members of rural society, from the gentry down to the poorest members of the community. However, it found that it was primarily used by the middling and lower orders, with gentry participation limited to complaining about poaching and wood offences, reflecting the nature of land ownership in the long eighteenth century. Their participation echoes King's conclusion, in relation to the Essex summary courts, that there was a 'massive plebeian presence' at summary level.¹⁵⁶ This engagement with the summary process shows that the potential costs or time implications of taking a

¹⁵⁵ Anthony Fletcher and John Stevenson (eds), *Order and Disorder in Early Modern England* (Cambridge, 1985), 20.

¹⁵⁶ King, 'The Summary Courts and Social Relations', 145.

case to the magistrate did not limit the participation of poorer members of a community, and that they used the process to police and negotiate their relationships both with their social equals and with those from other strata of society.

The evidence shows that labouring class usage of summary proceedings as complainants increased over the course of the long eighteenth century, suggesting an increased user engagement with the process amongst this class. This increase, together with a corresponding decrease in artisan complainants, suggests that the rural summary process became increasingly the forum for the lower orders of society to air their grievances and to complain about offences as the long eighteenth century progressed. However, this study has shown that plebeian people's use of the summary process was influenced by the extent to which they understood the law and their rights. In this way, they had a disadvantage compared to their employers or more educated, literate complainants who in some respects had a good understanding of the law that they used to assert what action they wanted taken with the magistrate. However, their involvement with the process suggests that many servants, and others from the labouring class, had an awareness of the role and function of the magistrate in dealing with wage disputes and poor relief complaints, for example, even if they did not have a full understanding of the law.

In terms of defendants, those accused of offences by others, this chapter found that the status of defendants was recorded by magistrates far less often than that of the complainant, reflecting the importance of the complainant within the legal process, and the relevance that the magistrate felt an individual's status had to the offence. However, defendants were likely, particularly in the earlier part of the long eighteenth century, to be of the same or similar status to their victims or complainants. Although the gentry and yeoman class were far less visible as defendants than as complainants, as time progressed, complaints were increasingly being brought against artisans and members of the yeoman class. This again shows the increasing domination of the labouring class as complainants, creating a process whereby they were increasingly complaining about those from higher up the social ladder.

Although different classes might be represented to differing extents in different types of cases, this study of rural summary proceedings suggests that the process was fairly egalitarian, and that although the lower orders of society may have lacked a detailed knowledge of the law, as shown by the gentry and some employers, they were aware of the function of the rural magistrate and how he could help them. Therefore, although the system was used by the elite and middling classes to make complaints primarily about the lower and middle orders, it was also increasingly used by labourers and servants to complain both against their equals and those of slightly higher status. In this, it reiterates the

findings of both Beattie and King.¹⁵⁷ Given that labourers, and others of the labouring class, would have made up the bulk of rural society, it is not unexpected that they would feature so heavily in rural magistrates' notebooks. In this, the rural notebooks reflected the nature of the society they were located within.

¹⁵⁷ Beattie, *Crime and the Courts*, 9, 47; King, 'The Summary Courts and Social Relations', 145.

Chapter four: How men and women used the summary process in rural England.

The aim of this chapter is to explore the relevance of gender to the summary process. Firstly, I will look at the range of issues that came before the rural magistrate, before studying the gender composition of complainants and subsequently of defendants. Within each of these, it will look at each type of hearing, studying the relative balance of men and women and the reasons for any differences. In summary proceedings, female complainants were offered a 'less intimidating forum for the resolution of disputes than the male-dominated jury courts', but to what extent did they use it, and how did they use it?¹ This chapter will explore the issues that men and women complained about, what they were accused of, and whether the rural experience was the same or similar to the urban, and consider how this affects our understanding of how rural men and women used the summary process.

It will find that in rural summary proceedings, women were less evident than men, with men being evident in greater numbers both as complainants and defendants, echoing work on the higher courts.² What this chapter finds, though, is that women formed a higher percentage of complainants at summary level than

¹ Gray, *Summary Proceedings and Social Relations in the City of London*, 12.

² Beattie, 'The Criminality of Women', 80; Clive Emsley, *Crime and Society in England*, 158; King, *Crime and Law in England*, 201-203; Anne Laurence, *Women in England 1500-1760, A Social History* (London, 1996), 254, 262; Anne-Marie Kilday, 'Women and Crime' in Hannah Barker and Elaine Chalus (eds), *Women's History: Britain, 1700-1850: An Introduction* (Abingdon, 2005), 175.

has been found in the higher courts.³ In rural summary proceedings, women were more likely to complain to the magistrate than to be complained about. Men and women used the process to complain about different issues, with men focusing on property offences, whereas women sought to resolve interpersonal disputes. Women used a process, and laws, created and administered by men, to negotiate their relationships with others and to manipulate rather than challenge the patriarchal nature of the courts. This work will demonstrate that they were able to demonstrate agency through their use of language and description, and that they saw the magistrate as a mediator and advisor, whereas men saw him more as a regulator of community behaviour.

This chapter will then establish that women were found more often as defendants in specific types of hearings, most commonly in poor law and bastardy cases. It will be established that this dominance of such offences was a reflection of women's vulnerable position within society, being dependent on their husbands and fathers for their settlement. It finds that men formed the vast majority of defendants in property offence cases, with women less represented in such cases than in the higher courts.⁴ It will also be argued that rural property offences were

³ D'Cruze and Jackson's statistics on the gender of complainants or victims at the Old Bailey show that women constituted an average of 14 per cent of complainants/victims between 1725 and 1799 (Shani D'Cruze and Louise A. Jackson, *Women, Crime and Justice in England since 1660* (Basingstoke, 2009), 27). However, the historiography on the gender of complainants or victims is somewhat limited compared to the greater body of work on the gender of defendants.

⁴ D'Cruze and Jackson, *Women, Crime and Justice in England*, 31; Beattie, "The Criminality of Women", 89; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (Cambridge, 2003), 159. Walker states that 'more than three-quarters' of suspects in property offence cases prosecuted in Cheshire were

especially gendered, as historians have found by analysing property crime at the jury courts and in urban situations, with women stealing from a more domestic sphere than men.⁵ Women were largely absent from some property offences, such as poaching, illustrating how their inhabiting of some spaces was not acceptable and restricted the offences which they committed in rural societies.

This chapter will also look at the impact of geography, and the different types of rural society, on the issues being complained about and committed. It will find that geography had a fundamental impact on the nature of cases heard by individual magistrates, and the gender composition of those appearing before them. Where employment opportunities for women were more limited, women's involvement in the rural summary process was also more limited. The chapter also uses the work done by Hay and King as a starting point to look at the impact of war and dearth not only on the crimes being committed by men and women, but also on the complaints they took to the magistrate.⁶ It finds that wars impacted not only on the gender of poor law complainants, but also on how the magistrate was used, with both genders seeking advice on the welfare of relatives serving in the forces. It finds, though, that women were dominant in such requests, their dependence on the income of husbands and sons evident in their approaches to the magistrate. This chapter also finds that legislation passed

male, meaning up to 25 per cent were female. D'Cruze and Jackson point to this as meaning a relatively high level of female involvement in theft, whereas Walker is actually making the point that theft was still overwhelmingly a male activity.

⁵ Kilday, "Criminally Poor?", 512; Beattie, 'The Criminality of Women', 95.

⁶ Douglas Hay, 'War, Dearth and Theft in the Eighteenth Century: The Record of the English Courts', *Past & Present*, 95.1 (1982), 117-160; King, 'Decision-makers and decision-making', 25-58.

throughout the long eighteenth century had a clear impact on the gender of defendants brought before the rural magistrate.⁷ This legislation was primarily related to minor forms of property appropriation that affected men and women in different ways, with the Worsted Acts resulting in more women being brought before the magistrate, and the Game Laws bringing more men to the magistrate, in a reflection of the gendered nature of some rural property offences.⁸

This chapter will demonstrate how the involvement of men and women in the summary process reflected their position within rural society, but also that the disadvantages of the system for the poor and for women was balanced by the evidence for the use of agency by both genders. This chapter provides new research into how men and women in rural societies used the summary process, and the ways in which they negotiated and used rhetoric and language in their appearances before the magistrate. It shows how the summary process in rural England was a system that offered a forum for both men and women to air their grievances, whilst also emphasising the gendered nature of life in rural England.

⁷ Landau has noted the 'increase in the powers assigned to the justices' and the fact that 'parliament continually added to the offences which could be adjudged summarily by the justices' over the course of the eighteenth century (Landau, *The Justices of the Peace*, 346).

⁸ Munsche only refers to male poaching offenders in his book on the Game Laws, recording that he found 'very few instances of women shooting game' (Munsche, *Gentlemen and Poachers*, 200). King, *Crime, Justice and Discretion*, 196; D'Cruze and Jackson, *Women, Crime and Justice in England*, 31. Although Walker critiques the assumption that women took part in 'easy' thefts, she does recognise that women's thefts did not entail 'the same degree of overt conflict with the victim' as male-dominated robberies and that women and men did steal different goods (Walker, *Crime, Gender and Social Order*, 160-161, 162).

a. The gender of complainants.

This chapter will look first at the gender composition of complainants before the rural magistrate. The role of the complainant or prosecutor in the eighteenth century criminal justice system has been under-explored, despite victims being 'central to the prosecution process'.⁹ The involvement of women as complainants has been studied even less. Despite Morgan and Rushton stating that 'women may have engaged most closely with the legal system at its base', and that the summary notebook of Edmund Tew in County Durham shows large numbers of women among both complainants and accused, it is those women accused of committing offences who have been the focus of historians' attention.¹⁰ Walker studied female defendants in criminal cases in Cheshire, rather than prosecutors, and although she noted that 'existing historiography presents women as victims rather than perpetrators of violence', did not cite examples.¹¹ Gowing, however, did look at female prosecutions for slander in the London consistory court, and Hurl-Eamon has also focused on London, looking at victims of violence, including marital violence.¹² The study of gender in terms of complainants has been limited to relatively brief studies, focusing on London or a specific county's records, on only specific types of offence, and primarily, on higher courts. A study of the

⁹ Gray, *Summary Proceedings and Social Relations in the City of London*, 101.

¹⁰ Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 99; Williams, *The Criminality of Women*; Margaret L. Arnot and Cornelia Osborne (eds), *Gender and Crime in Modern Europe* (London, 1999). Although Arnot and Osborne refer briefly to women's 'place on the receiving end of crime', their criticism of the relative lack of studies into gender and crime concentrates on women in terms of being criminals, or defendants (Arnot and Osborne (eds), *Gender and Crime*, 1-3).

¹¹ Walker, *Crime, Gender and Social Order*, 75.

¹² Laura Gowing, 'Language, power and the law: women's slander litigation in early modern London', in Kermode and Walker (eds), *Women, Crime and the Courts*, 26-47; Hurl-Eamon, *Gender and Petty Violence*.

gender of complainants before the magistrate during eighteenth-century summary proceedings has been neglected in comparison, and this study builds on the work of Morgan and Rushton, who have looked at female prosecutors in Edmund Tew's notebook, to look at the gender of complainants across a range of notebooks and counties.¹³

It is clear that men complained to the magistrate at summary proceedings more often than women, which echoes the work done by historians on Quarter Session and Assize records.¹⁴ To what extent women were involved in the rural summary process, though, and whether they used the process in a different way to men, has not been explored. Table 4.1, on page 170, shows the gender of complainants in each category of case heard by the rural magistrate. Analysis of the magistrates' notebooks, as displayed in table 4.1, shows that in cases brought by single gender complainants, men dominated the summary process, constituting 71 per cent of those bringing cases. However, this does not mean that women were poorly represented. Excluding bastardy cases, which were usually instigated by parish officers, nearly one quarter (24 per cent) of complainants across the other five primary types of hearing at summary level were female, a higher proportion of complainants than has been found at higher court level.¹⁵

¹³ Gwenda Morgan and Peter Rushton, 'The magistrate, the community and the maintenance of an orderly society', 54-77.

¹⁴ D'Cruze and Jackson, *Women, Crime and Justice in England*, 1; Kermode and Walker (eds), *Women, Crime and the Courts*, 4.

¹⁵ Both in London, at the Old Bailey, and at county Quarter Sessions. At the Old Bailey, 'only about a seventh [14 per cent] of the victims of prosecutors of crime...were women', although this is an average over the period 1674 to 1913 (Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Gender in the Proceedings', *Old Bailey Proceedings Online*. www.oldbaileyonline.org, 9 December 2014). Using

Table 4.1 The gender of those appearing before the rural magistrates as the instigators of cases.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Property offences ¹	752	90%	86	10%	838	100%
Poor Law (excluding bastardy) ²	447	63%	267	37%	714	100%
Offences against the person ³	395	60%	260	40%	655	100%
Employment ⁴	506	80%	123	20%	629	100%
Social/economic regulation ⁵	328	87%	48	13%	376	100%
Bastardy ⁶	44	15%	244	85%	288	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1. Figures do not include complaints against unnamed individuals and mixed gender couples or groups. This is significant with regard to bastardy cases, where a further 152 cases were brought by unnamed parish officials. These would have been predominantly, but not solely, male, and for a consistent methodology throughout this thesis, they have not been included in gender statistics.

Key

¹ Comprising petty larceny, grand larceny, burglary, robbery, arson, attempted arson, and damage to property.

² Comprising vagrancy, settlement, and poor relief.

³ Comprising verbal abuse, physical assault, riot, marital violence, slander and defamation.

⁴ Comprising wage disputes, allegations of misbehaviour against both employers and workers, cruel usage, absconding by servants and apprentices and refusal to come to service contrary to agreement. Workplace thefts are included under the category of property offences.

⁵ Comprising turnpike offences, regulations for the driving of waggons (including the size and number of wheels, owner's name being present on the waggon, presence of a guide), swearing oaths, being drunk in public, keeping a disorderly alehouse, drinking on a Sunday, failure to pay Poor Rate, failure to perform Highway Duty, constables failing to execute warrants or perform their duty, issues surrounding the payment of burial levies, keeping a bawdy house, cohabiting without being married.

⁶ Bastardy includes bastardy examinations - both voluntary before birth and obligatory afterwards - and orders of filiation.

D'Cruze and Jackson's table of complainants/victims' gender in the Old Bailey Proceedings, which is broken down by period, an average of 14 per cent of complainants between 1725 and 1799 were female. In 1633, women formed around 13 per cent of complainants in the Sussex Quarter Sessions (D'Cruze and Jackson, *Women, Crime and Justice in England*, 26-27).

Although the range of offences that a magistrate could hear either on his own or with another justice at summary proceedings increased over the course of the eighteenth century, cases continued to fall under one of the six broad categories named in table 4.1. The justice could only punish misdemeanours at summary level, with felonies in law requiring indictment to the higher courts, and part of his role at summary level was to hear and determine non-criminal cases, including determining settlements, passing vagrants, and hearing bastardy examinations.¹⁶ Table 4.1 shows that women were more likely to come to the magistrate regarding offences against the person, but also poor law and bastardy issues, but they were clearly using the summary process for a range of issues, including complaints in regard to property offences. Women were less likely to prosecute thefts at court due to the patriarchal nature of the law and society. If they were married, their property was deemed to be their husband's in law. Therefore, summary proceedings, where most people encountered formal law, was a system where they could bring complaints about property.¹⁷

There were also practical reasons why women might bring more complaints than in the higher courts. Summary proceedings were a cheaper, more accessible form of justice than bringing a prosecution at Quarter Sessions or Assizes. However, gender relations still had an impact on who took part in summary proceedings, and this is shown through the still higher percentage of men involved in the process than women. Approaching the magistrate took time and money, and

¹⁶ Rhiannon Markless, *Gender, Crime and Discretion in Yorkshire, 1735-1775: Decision-Making and the Criminal Justice System* (Saarbrücken, 2014), 304; Landau, *The Justices of the Peace*, 358.

¹⁷ King, 'The Summary Courts and Social Relations', 128.

might involve a journey of several miles to reach the justicing room.¹⁸ This applied to both men and women, but women with domestic responsibilities might find it harder to justify the time needed to make a complaint, or have to justify the cost of a summons or warrant to the breadwinner of their family if married or living at home. This section will now look at each type of offence, looking at the relative balance of men and women and societal and legal reasons for any differences.

i. How property offence complaints were particularly gendered.

King has noted that ‘theft and illegal appropriation have received little attention in recent years’, and this is particularly true in terms of looking at the prosecutors of property offences, and even more so in terms of gender.¹⁹ King is one of the few historians to have studied prosecutors as well as defendants, but with a focus on indictable felonies, and not on gender.²⁰ The role of women as instigators of property complaints at summary level has been sidelined, but although women represented a minority of property offence complainants at summary level, as table 4.1 showed, what they complained of, and against whom, is important in establishing how men and women used the summary process in the context of reporting property offences.²¹

¹⁸ King, *Crime, Justice and Discretion*, 30; Gray, *Crime, Prosecution and Social Relations*, 7.

¹⁹ King, ‘Decision-Makers and Decision-Making’, 25.

²⁰ King, ‘Decision-Makers and Decision-Making’, 25-58.

²¹ Work on women’s involvement in theft cases has focused on defendants, rather than complainants. For example, Kathy Callahan, ‘On the Receiving End: Women and Stolen Goods in London 1783-1815’, *The London Journal*, 37.2 (2012), 106-

Table 4.1 showed that on average, across the long eighteenth century, property offences were the most common type of offence or issue complained about to the rural magistrate. They were also the most gendered, with men being far more likely to complain about property offences - nine out of ten (90 per cent) of complainants were men, compared to just ten per cent of women. This does not echo the conclusion by Emsley *et al*, in their discussion of gender at the Old Bailey. They found that 'only about a seventh of the victims or prosecutors of crime at the Old Bailey were women' because theft was the most common offence to be prosecuted there, and most married women's property was regarded to be her husband's in law.²² They argued that women would 'account for a higher proportion of the victims' who used summary proceedings because of its relative informality.

However, the research offered here demonstrates that although women were more likely to use summary proceedings, they were actually less evident in property cases at summary level. This is due to three primary reasons. Firstly, the lower percentage of female complainants was impacted by the nature of the thefts reported to the magistrates, which reflected the continuing gendered spheres of male and female life in rural England. Secondly, as in the higher courts, there was

121, D'Cruze and Jackson, *Women, Crime and Justice in England*, 30-46; Sharon Howard, 'Investigating responses to theft in early modern Wales: community, thieves and the courts', *Continuity and Change*, 19.3 (2004), 409-430; Walker, *Crime, Gender and Social Order*, 159-209; Williams, *The Criminality of Women*.

²² Emsley, Hitchcock and Shoemaker, 'Gender in the Proceedings'.
www.oldbaileyonline.org. 9 December 2014.

also be the fact that property belonged to a woman's husband in law, and therefore the husband would be more likely to report a theft than his wife. Lastly, the community had a valuable part to play in the administration of justice in rural areas.²³ Not all offences would be reported to the magistrate. Many unreported offences would have been resolved within the community, either deemed too trivial to report, or the complainant may have wished to resolve the matter informally. It is possible that women were more likely to seek this informal resolution and the restitution of goods rather than undergo the expense of visiting the magistrate. These three issues will be considered in more depth in this section. Firstly, the gendered spheres of eighteenth-century rural life are evident from the types of stolen goods detailed to the magistrate, as table 4.2, on page 175, shows.

²³ Emsley notes that in the eighteenth century, 'many offences were resolved within the local community' (Clive Emsley, 'The changes in policing and penal policy in nineteenth-century Europe', in Barry Godfrey and Graeme Dunstall, *Crime and Empire 1840-1940: Criminal justice in local and global context* (Cullompton, 2005), 8-9).

Table 4.2 The primary type of goods stolen, as reported by men and women to the rural justice.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Wood	186	97%	6	3%	192	100%
Game	132	99%	1	1%	133	100%
Work goods	96	95%	5	5%	101	100%
Food	85	91%	8	9%	93	100%
Animal	64	98%	1	2%	65	100%
Household goods	49	77%	15	23%	64	100%
Clothing	24	63%	14	37%	38	100%
Money	24	77%	7	23%	31	100%
Poultry	18	95%	1	5%	19	100%
Total	678	92%	58	8%	736	100%

Figures only refer to cases where the type of goods stolen is stated. **Sources:** WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1.

Table 4.2 shows that there was a clear distinction between what men and women complained had been stolen. Women were most likely to complain that clothing, household goods or money had been stolen. Walker, in her analysis of Cheshire records, found that 'when clothes, cloth and household utensils were stolen, wives and female servants, not just male heads of households, reported the theft to justices'.²⁴ Walker argued that the theft of such items reflected the gendered nature of both culture and exchange networks in England, which meant that women were more likely to steal clothes that they could alter and exchange, with men more likely to steal animals, for example, that they could sell on to other

²⁴ Walker, *Crime, Gender and Social Order*, 164.

men.²⁵ But this gendered culture also applied to those who had goods stolen from them, as well as those who stole.

Men most commonly complained about the theft of game, animals or wood. This was partly because of the nature of property ownership. Men were the primary landowners, and thus more likely to either report poaching activity on their land or the theft of wood from their land.²⁶ The theft of larger animals, such as horses, sheep or cattle, also tended to be both from and by men. These thefts represented the two extremes of larceny as reported to the magistrate at summary level.

The nature of women's work in rural societies was rarely alluded to in property cases. For example, there was just one case in Whitbread's notebook involving Bedfordshire's straw-plaiting industry, where one woman accused another of 'stealing her plait'.²⁷ Property cases brought by women were generally unlikely to revolve around work items, and instead primarily involved more domestic goods. Conversely, men were more likely to complain of work-related goods being stolen. Where both men and women worked, it is likely that men's work goods were both more prevalent and more valuable and either more likely to be stolen or more likely to be reported.

²⁵ Walker, *Crime, Gender and Social Order*, 273.

²⁶ This was due to the nature of property ownership and primogeniture, with estates being passed onto males within a family (Mark Rothery and Henry French (eds), *Making Men: The Formation of Elite Male Identities in England, c.1660-1900: A Sourcebook* (Basingstoke, 2012), 8).

²⁷ Cirket (ed), *Samuel Whitbread's Notebooks*, 50.

The primary reason why women, specifically married women, were less likely to appear as complainants in property offence cases heard by the magistrate was due to the law, in terms of property ownership. The common law of coverture meant that on marriage, any property that a woman owned became her husband's²⁸. Laurence has stated that 'married women could not by themselves initiate a prosecution for theft', and Styles has added that in trial records of clothing thefts, the legal owner of the clothes rather than the wearer of them would be recorded, meaning that a male head of household would be listed as the owner of his wife's or daughter's clothing.^{29 30} However, Blackstone made it clear that married women could bring a case on their own, on condition that they obtained the agreement of their husbands to do so.³¹

In practice, an analysis of complainants in property offences at summary level suggests that women, and particularly wives, displayed increasing independence over the course of the long eighteenth century in bringing cases themselves. In William Brockman's notebooks, covering the late seventeenth and early eighteenth centuries, the majority of property offence cases brought by women were brought by those who had no husband, father or other male relation to bring

²⁸ Andrew W. Barnes, *Post-closet Masculinities in Early Modern England* (Cranbury, 2009), 104.

²⁹ Laurence, *Women in England 1500-1760*, 263.

³⁰ John Styles, *The Dress of the People: Everyday Fashion in Eighteenth-Century England* (New Haven, 2008), 40.

³¹ Blackstone, *Commentaries, Book 1*, 443.

the case on their behalf.³² In other cases, it was clearly stated that men were bringing a complaint on behalf of female relatives.³³

Although marital status was not recorded regularly by all magistrates, the lack of status given to female complainants in the later notebooks indicates that the status of women bringing such complainants was regarded as less important by the end of the eighteenth century.³⁴ Whitbread recorded one complainant as 'girl', which suggests that she was able to bring a complaint without the involvement of her father or other male relative.³⁵ Wives also featured more frequently as complainants in summary records because of the relatively minor nature of the thefts being complained about, with husbands being more likely to bring a formal prosecution at the higher courts, where goods may have been of a higher value. In addition, as Erickson has suggested, coverture may have been more of an issue to those with the most property, with those men further down the social and property ladder being more egalitarian with their property, and thus more egalitarian regarding the bringing of cases involving its loss.³⁶

³² These included a widowed woman, and a married woman whose husband had deserted her (BL Add MS 42598, 18 October 1697, 26 November 1715).

³³ BL Add MS 42598, 6 August 1713 and 21 January 1719; BL Add MS 42600, 17 February 1701.

³⁴ I am referring specifically here to the notebooks of Richard Colt Hoare, Edmund Waller, Thomas Netherton Parker, Samuel Whitbread and Richard Stileman.

³⁵ Cirket (ed), *Samuel Whitbread's Notebooks*, 117

³⁶ Amy Louise Erickson, *Women and Property in Early Modern England* (London, 1995), 157.

The most common property offence after larceny was property damage, and in this, women constituted a quarter (25 per cent) of complainants. In some cases, the damage referred to involved broken windows or other damage caused by throwing stones at a property, and such offences were also treated as a breach of the peace.³⁷ Cases suggest that women were the target of such offences, with young men gathering and singling out properties to damage.³⁸ Women's complaints to the magistrate also suggest that they saw the role of the justice as helping to protect their property in the absence of family members - he was a source of protection for vulnerable women. The absence of cases brought by men suggests that here, the breaking of windows may have been either what Shoemaker refers to as 'branding a household as anti-social, labelling the residents as violators of community norms', or simply taking advantage of the vulnerability of females who do not appear to have had a husband to take action on their behalf.³⁹

However, the breaking of windows could be a means of making a political statement, and the instances of property damage in Thomas Horner's notebook, and related cases of rioting, hint also at local political unrest. The 1760s and 1770s were a time of social unrest in both Somerset and Wiltshire, which included bread riots in the late 1760s and early 1770s, and anti-machinery riots

³⁷ Paley classifies damage to property as part of the category of property offences, together with theft, and this thesis follows her categorisation (Paley (ed), *Justice in Eighteenth-Century Hackney*, xviii).

³⁸ There were seven such cases in Thomas Horner's notebook, with one woman complaining on two occasions, one local man appearing to be the instigator of the damage on both occasions (McGarvie, (ed), *The King's Peace*, 97, 128).

³⁹ Robert Shoemaker, *The London Mob: Violence and Disorder in Eighteenth-Century England* (London, 2004), 122.

starting around 1776.⁴⁰ These were local manifestations of wider uprisings by shopkeepers and artisans as well as by the labouring class at this time.⁴¹ It is possible that the offences reported to Horner originated with this social unrest, but targeted particular individuals, thus becoming a gendered offence often committed by men against women.

The linking of social unrest and property damage shows that geography might influence the offences being heard by the magistrate, but to what extent did complaints of property offences reflect regional or local differences in the various rural societies investigated here, and how did this impact on gender? The primary differences are located within male complaints of game offences and also in wood thefts. Poaching was a particularly gendered activity, overwhelmingly complained about, and committed by, men. Similarly, complainants in wood theft and hedgebreaking cases were primarily male. In both types of offence, women represented less than the ten per cent they constituted in terms of property offence complainants generally, illustrating how men dominated the ownership of land in the long eighteenth century. Therefore, in specific rural locales where poaching and wood theft were prevalent, men also dominated the summary process in terms of property offence complainants to an even greater extent than elsewhere.

⁴⁰ Sandra Halperin, *War and Social Change in Modern Europe: The Great Transformation Revisited* (Cambridge, 2004), 71.

⁴¹ *ibid.* 30 years later, the Frome area was regarded as a safe place to use spinning machinery, as one manufacturer chose to move to the area from Bath in order to avoid intimidation by cloth workers (Nicholas von Behr, 'The Cloth Industry of Twerton from the 1780s to the 1820s', *Bath History, Volume VI* (Bath, 1996), 92).

ii. Women, work and the use of agency in poor law complaints.

The second most common category of offences complained about at summary level was the category encompassing poor law issues, and here women were better represented as complainants, where a gender was stated.⁴² Poor relief cases were brought by local men and women where their original application for relief had been rejected by the parish, giving them the authority to seek the magistrate's intervention, and possible ordering of relief.⁴³ It was in the interest of both genders to take such complaints to the magistrate, as he overruled the parish officials in the majority of such cases.⁴⁴ In this area, the poor of both genders had a clear motivation to bring their case, and a good chance of gaining a successful outcome, but, as Williams has noted, 'gender was...particularly important. Access to regular poor relief was heavily gendered: many more women were relieved than men'.⁴⁵ The perception that the magistrate was likely to order relief where it had previously been refused explains both the high percentage of poor law cases dealt with at summary level, and the higher percentage of women

⁴² The majority of poor law cases were brought by parish officials, such as overseers, and several magistrates did not record the name of the complainant, simply listing the parish. Although the vast majority of overseers were men, women could be parish overseers (Samuel Whitbread, for example, named two), and so it has not been assumed that where a parish is listed as a complainant, the complainant must have been male. Of the 32 vagrancy cases heard by William Bromley in Warwickshire, 31 were brought by village constables. Complainants are therefore discussed here largely in relation to poor relief cases, as to include overseers and constables as complainants would give an incorrect impression of how 'ordinary' members of the community used the summary process.

⁴³ Lorie Charlesworth, *Welfare's Forgotten Past: A Socio-Legal History of the Poor Law* (Abingdon, 2010), 144.

⁴⁴ Samuel Whitbread found in favour of poor relief claimants in "a very large proportion of cases, at two-thirds" (Samantha Williams, *Poverty, Gender and Life-Cycle under the English Poor Law 1760-1834* (Woodbridge, 2011), 94).

⁴⁵ Samantha Williams, *Poverty, Gender and Life-Cycle*, 101.

who complained about poor relief to the magistrate compared to other issues or types of offence.

Poor relief complaints before the 13 magistrates studied in this thesis show that it was unusual for a couple to be jointly named as complainants, with complaints involving a married couple or family tending to be brought by the husband, unless he was ill, or otherwise absent due to work or enlistment. Women made up, on average, 36 per cent of poor relief complainants across the notebooks studied here, and in the notebooks of four magistrates, they constituted the majority of poor relief complainants.⁴⁶

As Williams has noted, in some areas, such as in parts of Bedfordshire, relief to families with a male and female head were restricted and parishes favoured giving relief to lone parents, particularly women.⁴⁷ This would explain why the majority of Whitbread's poor relief complainants in Bedfordshire were male, being more likely to be refused relief by the parish overseer. The high percentage of female complainants in other areas, though, suggests that women were not universally likely to gain relief from the parish, and that in some areas, parishes

⁴⁶ Women formed 59 per cent of Hunt's poor relief complainants (10 out of 17 complainants where gender was stated), 57 per cent of Spencer's (47 out of 82), and 53 per cent of Horner's (100 out of 188). 100 per cent of Hill's poor relief complainants were female, but he only recorded three relief cases (CBS D-W/97/8; Crittall (ed), *The Justicing Notebook of William Hunt*; McGarvie (ed), *The King's Peace*; BL Add MS 76337; BL Add MS 76340). These percentages do not include cases where men and women were listed as joint complainants.

⁴⁷ Samantha Williams, *Poverty, Gender and Life-Cycle*, 107.

were grudging in ordering relief. This resulted in both men and women using the magistrate to gain relief.

The gender of poor relief complainants did not always correlate to whether the magistrate dealt with a high or low proportion of poor relief cases. Whitbread, for example, had a high percentage of poor relief cases, but a low proportion of female complainants, whereas both Horner and Spencer had a high percentage of poor relief cases, with the majority of complainants being women.⁴⁸ Economic factors relating to the nature of work and industry in specific geographic areas explain the different situation in Northamptonshire and Somerset. Decline of the worsted industry in Northamptonshire, and the introduction of mechanisation in Somerset during the periods when Spencer and Horner were writing their notebooks, would have led to increased risk of poverty for local clothworkers with fewer jobs to go round.⁴⁹ Female outworkers, who are evident in Spencer's notebook particularly in relation to yarn offences, were likely to have found themselves without work, or men being prioritised for employment in the

⁴⁸ Whitbread heard 185 poor relief complaints, which accounted for 29 per cent of his total cases. Horner heard 228 such complaints, which constituted 16 per cent of his total cases, and Spencer 86 complaints, which constituted 36 per cent of his recorded cases (Cirket (ed), *Samuel Whitbread's Notebooks*; McGarvie (ed), *The King's Peace*; BL Add MS 76337; BL Add MS 76340).

⁴⁹ In Somerset in the 1770s, there were protests related to the introduction of the spinning jenny, which Frome men were concerned would 'affect female employment' within the home. The late eighteenth century also saw Northamptonshire's worsted industry go into a 'steep and terminal decline', overtaken by the success of the industry in other regions such as Yorkshire (Paul Minoletti, 'The Transition to Factory Production in the English Wool Textile Industries: Individual and Family Desires for Labour Regulation, 1720-1850', in Perry Gauci (ed), *Regulating the British Economy, 1660-1850* (Farnham, 2011), 225-226; Wendy Raybould, *Open for business: textile manufacture in Northamptonshire, c.1685-1800* (PhD thesis, University of Leicester, 2005), 9).

industry. Increased pressure on the poor rate may also have worked against women at this time, with officials recognising the strains on male employment and thus approving more applications for relief involving men, and rejecting those brought by women. This shows that the cases dealt with by the rural magistrate, and the gender of complainants bringing poor relief cases to them, was impacted by geography, and the economy of the local area. This created differences in the magistrates' summary workload, as a result of changes in how the individual parish dealt with increased pressure on their resources.

Poor relief complaints were the primary area within poor law administration where both poor men and women could demonstrate agency, in refusing to accept the rejection of an application for relief, and approaching the magistrate in order to get relief ordered, or at least call on the overseers to justify their decision. Agency is also evident in reading the way in which they shaped their testimony and their use of rhetoric. Agency was available to both men and women, and both used it. However, it is clear that the responses to poverty made by parish officials and magistrates were gendered, with a higher percentage of men having to appeal to the magistrate against a rejected claim for relief. The only times in which the situation was reversed was during times of local economic pressures or decline.

iii. Why women were most likely to complain of offences against the person.

In their appearances before the rural magistrate, women were most likely to complain about offences against the person committed against them, and constituted, on average, 40 per cent of complainants out of the total number of such cases, as table 4.3, on the next page, illustrates.

Table 4.3 The gender of complainants in cases involving offences against the person.

	Male complainant		Female complainant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	5	45%	6	55%	11	100%
Roger Hill (1689-1705)	2	40%	3	60%	5	100%
William Brockman (1689-1721)	38	72%	15	28%	53	100%
Thomas Thornton (1700-1718)	3	60%	2	40%	5	100%
William Hunt (1744-1749)	53	58%	38	42%	91	100%
Thomas Horner (1770-1777)	126	61%	79	39%	205	100%
Edmund Waller (1773-1788)	20	69%	9	31%	29	100%
Richard C. Hoare (1785-1834)	3	75%	1	25%	4	100%
George Spencer (1787-1794)	5	38%	8	62%	13	100%
Thomas L. Thornton (1789)	3	50%	3	50%	6	100%
Thomas N. Parker (1805-1813)	63	55%	51	45%	114	100%
Samuel Whitbread (1810-1814)	31	56%	24	44%	55	100%
Richard Stileman (1819-1836)	42	67%	21	33%	63	100%
Total	394	60%	260	40%	654	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1.

The average percentage of female complainants in this category of offence in rural summary proceedings was higher than that found by Hurl-Eamon in her study of petty violence at the London courts, where a third of complainants were female.⁵⁰ This difference suggests that rural women were active participants in the summary process as complainants in cases involving petty violence and assault, but also that their participation also reflects the desire to reach agreement in cases at a more local, accessible, level, without the need for the expense, time and travel involved in taking a case to Quarter Sessions.

Was there a gender divide in terms of who men and women complained about, in the context of offences against the person? Firstly, looking at the gender of complainants and defendants across the magistrates' notebooks, table 4.4, on the next page, shows that women were more likely to accuse men of committing assaults against them, with over 70 per cent of women's complaints being made against men. Similarly, the vast majority of men's complaints were also made against other men.

⁵⁰ Hurl-Eamon, *Gender and Petty Violence*, 67.

Table 4.4 Who men and women made complaints about in cases involving offences against the person.

	Male defendant		Female defendant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Male complainant	361	94%	23	6%	384	100%
Female complainant	184	74%	63	26%	247	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1. Unnamed defendants are not included.

If the bringing of offences against the person cases were not gendered, in so far as both men and women complaining of assaults committed by men, were the causes of those disputes common to both genders? Although not all magistrates recorded the motivations for assaults, and those that did failed to do so consistently, the notebooks of William Brockman, William Hunt, George Spencer, Thomas Netherton Parker and Samuel Whitbread suggest that disputes between neighbours were one of the common causes of assault cases heard by rural magistrates at summary level.⁵¹

⁵¹ Although the number of cases where a motive is given or suggested is small, where one is given, 29 out of the 74 cases brought by men to these five magistrates involved a neighbour dispute - 39 per cent of these cases. 22 out of the 76 cases brought by women, where a motive was specified or suggested, involved neighbour disputes - 29 per cent of such cases (BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*).

In small communities, it is unsurprising that arguments would flare between those living in close proximity to each other. Work disputes were more commonly specified by male complainants, whereas women were more likely to complain about personal relationships, involving relatives or other people close to them, either physically or in terms of personal relationship, than men's, and take place within a smaller geographic sphere. This reflects Hurl-Eamon's work on the Westminster Quarter Sessions, when she found that 'feminine violence was generally a result of more immediate neighbourhood tensions'.⁵² Men's disputes took place in a wider sphere, including both the work environment and local taverns. However, more significant, gendered, types of complaint were those of marital violence and sexual assault.

King has highlighted the fact that it was summary proceedings that were 'the main formal judicial forum in which disputes relating to marital violence were settled'.⁵³ However, marital violence only constituted a small part of the rural magistrate's summary workload. Bailey, analysing four magistrates' work, calculated that marital violence constituted between three and six per cent of their summary cases.⁵⁴ Across the 13 rural magistrates studied here, marital

⁵² Hurl-Eamon, *Gender and Petty Violence*, 3.

⁵³ King, *Crime and Law in England*, 181.

⁵⁴ Bailey analysed the notebooks of Edmund Tew, Henry Norris, William Hunt and Richard Wyatt (Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800* (Cambridge, 2003), 39). Morgan and Rushton gave a slightly more modest calculation of Tew's marital cases, suggesting that 2.5 per cent of his workload was taken up with marital violence cases (Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 61).

violence constituted an average of one per cent of their business at summary level, with only Hunt hearing a higher percentage of such cases.

Although marital violence, then, constituted a very small part of the rural magistrate's overall summary workload, it needs to be looked at within the context of assault complaints brought by women. How many of women's complaints involving offences against the person were levied against their own husbands? Table 4.5, on the next page, shows marital violence cases as a percentage of offences against the person cases brought to each magistrate by women.

Table 4.5 Marital violence cases brought before the magistrate, and as a percentage of cases involving offences against the person brought by women.

	Number of marital violence cases	Number of assault cases brought by women	Marital violence as percentage of assault cases brought by women
William Bromley (1685-1706)	1	6	17%
Roger Hill (1689-1705)	2	3	67%
William Brockman (1689-1721)	1	15	7%
Thomas Thornton (1700-1718)	0	2	0%
William Hunt (1744-1749)	10	38	26%
Thomas Horner (1770-1777)	8	79	10%
Edmund Waller (1773-1788)	2	9	22%
Richard C. Hoare (1785-1834)	0	1	0%
George Spencer (1787-1794)	1	8	12.5%
Thomas L. Thornton (1789)	0	51	2%
Thomas N. Parker (1805-1813)	1	24	29%
Samuel Whitbread (1810-1814)	6	24	26%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4-5, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, WSHC 383/955, WSHC 229/1, ESRO AMS 6192/1.

Table 4.5 shows that marital violence constituted an average of 15 per cent of offences against the person complaints brought by women, showing that women saw the magistrate as serving a useful purpose in resolving cases of marital

violence. These cases were unlikely to represent the first time a husband had made threats or been violent towards his wife. Approaching the magistrate was the first step in taking legal action in such cases, but it was the local community that initially dealt with cases of marital violence, and legal action was seen as a last resort.⁵⁵

Women were viewed as akin to children, who were also to be the subject of reasonable chastisement by their fathers.⁵⁶ Although by Blackstone's time, this situation had changed to the extent that women were able to ask to bind their husbands over to keep the peace, the onus remained on a woman to show that the violence displayed towards her was not reasonable, but excessive.⁵⁷ Only a minority of female complainants before the rural magistrate requested sureties of the peace against their husbands, showing that this was not the primary aim of bringing cases.⁵⁸ The relatively high percentage of such complaints brought to the

⁵⁵ Gwenda Morgan and Peter Rushton (eds), *The Justicing Notebook (1750-1764) of Edmund Tew, Rector of Boldon* (Woodbridge, 2000), 11. A woman might be reluctant to complain about abuse in case it encouraged further violence, or resulted in the incarceration of her husband, which would impact negatively on her in terms of financial support, so might only approach the magistrate after several instances of violence, and where community intervention had failed. This is evident in a case before William Brockman in 1718, where Mary Page reported her husband for having abused her "several times" (Susan Dwyer Amussen, "'Being Stirred to Much Unquietness': Violence and Domestic Violence in Early Modern England", *Journal of Women's History*, 6.2 (1994), 78; Robert Shoemaker, *Gender in English Society, 1650-1850: The Emergence of Separate Spheres?* (Harlow, 1998), 105; Emsley, *Crime and Society in England*, 159; BL Add MS 42598, 6 September 1718).

⁵⁶ Blackstone, *Commentaries, Book 1*, 444.

⁵⁷ *ibid.*

⁵⁸ 16 per cent of the women who brought marital violence cases to the magistrate requested sureties of the peace or were granted recognizances against their husbands (five out of 32 cases). There was one before William Bromley, three before William Hunt and one before Edmund Waller (WRO CR0103, 16 July 1686;

mediating magistrate William Hunt, suggests that women were using the magistrate to negotiate a better relationship with their husband, or in the hope of embarrassing their spouse into behaving better.

It was more common for women to allege marital violence against their husbands than it was for them to report sexual assaults. Only seven out of the 13 magistrates studied here recorded any allegations of sexual assaults, and these were all in the single figures.⁵⁹ In total, there were just 12 cases alleging sexual assaults across the notebooks of the magistrates studied here. As Walker has commented, the history of rape has involved the mitigation of the sexual violence by men by 'rape law, the criminal justice system, the attitudes of legal officials, and widely accepted ideas about male and female behaviour'.⁶⁰ This is not to say, as Walker notes, that there was public acceptance of acquittals in such cases, but that there were impediments legally in gaining a conviction. Rape was a felony and not heard at summary level, but attempted rape was a misdemeanour and came under the category of assault.⁶¹ The lack of such cases at summary level reflected the reluctance to bring such cases, with their low chance of a successful

Crittall (ed), *The Justicing Notebook of William Hunt*, 41, 53, 55; CBS DC18/39/4, 4 September 1786). In one case before Thomas Horner, the wife bringing the complaint of marital abuse 'refused to require sureties of the peace from him' (McGarvie (ed), *The King's Peace*, 66).

⁵⁹ William Bromley, William Brockman, Edmund Waller and George Spencer recorded a single case each. William Hunt and Samuel Whitbread recorded two cases, and Thomas Horner four (WRO CR0103; BL Add MS 42598; Crittall (ed), *The Justicing Notebook of William Hunt*; McGarvie (ed), *The King's Peace*; CBS DC18/39/4; BL Add MS 76337; Cirket (ed), *Samuel Whitbread's Notebooks*).

⁶⁰ Garthine Walker, 'Rape, Acquittal and Culpability in Popular Crime Reports in England, c.1670-1750', *Past & Present*, 220.1 (2013), 115.

⁶¹ Garthine Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender and History*, 10.1 (1998), 1.

conviction.⁶² A woman was disadvantaged by the nature of her gender. She had to detail an assault before a male magistrate and clerk, which meant that these officials, as Walker has stated, might have framed a story in a particular way.⁶³ In addition, the woman would be caused embarrassment by having to describe very personal, sexual, events before men who were strangers as well. The cases that did come before the magistrate illustrated how the woman had to show not only an unreasonable act by the man, but also stress her own innocence and vulnerability.⁶⁴ Given the challenges to women both in framing their stories in a way to garner the sympathy of the individual magistrate, and the way the law constrained how such cases could be punished, it is not surprising that so few cases explicitly alleging sexual assault were recorded by the rural magistrates.

The relatively large number of women willing to bring assault complaints to the rural magistrate throughout the long eighteenth century shows that they regarded summary proceedings as a forum where they could air grievances and gain resolution. In terms of agency, Hurl-Eamon has stated that, 'as prosecutors...assault victims were empowered'.⁶⁵ Yet there is evidence that women chose which cases were worth bringing to the magistrate, such as when they complained of repeated acts of marital abuse, and phrasing their testimony in a particular way to conform to expectations of female behaviour. This choice

⁶² There is the possibility that some of the assaults recorded in vague terms by magistrates may have had a sexual element, but that this was not explicitly recorded in the notebooks.

⁶³ Garthine Walker, 'Rereading Rape and Sexual Violence', 4.

⁶⁴ Walker notes that physical self-defence was seen as male, and that women's honour was not linked to physical assertion (Walker, 'Rereading Rape and Sexual Violence', 8).

⁶⁵ Hurl-Eamon, *Gender and Petty Violence*, 3, 57.

suggests that there was an awareness of how the law operated and of the function of the magistrate not just in indicting more serious offences, but in mediating and negotiating both men's and women's relationships with each other.

It has been shown that women used the summary process to complain about their relationships with neighbours and family. They were less likely to complain about assaults with those they worked with, compared to men, and this chapter will now argue that they were also less prevalent as complainants in other work related disputes.

iv. The gendered nature of employment and employment complaints.

The magistrates' notebooks show that women were better represented as complainants in cases involving offences against the person than they were in employment related cases. This is despite the challenges that faced those who worked in farm or domestic service in the long eighteenth century applying to both male and female workers, such as:

Low wages, monotonous and often constant work, lack of job security in sickness or times of economic difficulty, and abuses of authority...by master and mistress.⁶⁶

Although King's comment, above, relates to those in service in London, the same issues faced those working in more rural areas, too. Employment issues brought

⁶⁶ Peter King, 'Female offenders, work and life-cycle change in late-eighteenth-century London', *Continuity and Change*, 11.1 (1996), 76.

by named men or women constituted around 18 per cent of the rural magistrate's workload, slightly higher than in London in the second half of the eighteenth century.⁶⁷ However, men made up the majority, 80 per cent, of complainants in employment cases, with 20 per cent of complainants being women.

Table 4.6, on page 197, shows how men and women were represented as complainants in each type of employment case. It shows that women only formed, on average, around one fifth of complainants in employment related cases. They were most likely to be found complaining that their employer had treated them badly, but such cases were rarely brought to the magistrate, with there being only 55 recorded cases across the notebooks studied in this thesis.

⁶⁷ Gray has found that just over 16 per cent of hearings in front of City magistrates involved disputes relating to work and contracts (Gray, *Summary Proceedings and Social Relations in the City of London*, 240).

Table 4.6 The gender of complainants in different types of employment case heard in summary proceedings.

	Male		Female		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Wage disputes	252	77%	77	23%	329	100%
Servants misbehaving or absconding	203	94%	12	6%	215	100%
Bad usage by master or mistress	32	58%	23	42%	55	100%
Contract discharges	13	57%	10	43%	23	100%
Apprentice indentures	6	86%	1	14%	7	100%
Total	504	81%	122	19%	629	100%

Sources: WRO CRO103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Figures only include cases where a male or female complainant is named, and not cases brought by unnamed individuals or parish officers (such as in the cases involving parish apprenticeships heard by William Brockman and Thomas Horner (BL Add MS 42598, McGarvie (ed), *The King's Peace*).

Women were least likely to be found complaining about the behaviour of their servants, with only six per cent of complainants in misbehaviour cases being female. Given the nature of women's lives and concepts of what their role should be during the long eighteenth century, this is not surprising. Where a woman was married, it is likely that her husband would bring a case of misbehaviour to the magistrate even if the wife was in charge of the day to day running of the household and organisation of domestic servants. In addition, in rural societies, farmers were often the complainants in cases involving the misbehaviour of servants and agricultural labourers, and women were far less likely to appear as complainants in these situations.

In terms of wage disputes, the most common type of employment issue brought to the rural magistrate, the number of women bringing complaints was fairly small. Ten of the magistrates studied here recorded ten or fewer wage cases brought by women. Women constituted, on average, 18 per cent of complainants in wage disputes heard before the rural magistrate. However, as table 4.7, on the next page, shows, there was considerable variation between individual magistrates.

Table 4.7 The gender of complainants in wage disputes heard by the rural magistrate.

	Male complainants		Female complainants		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	1	100%	0	0%	1	100%
Roger Hill (1689-1705)	10	67%	5	33%	15	100%
William Brockman (1689-1721)	68	80%	17	20%	85	100%
William Hunt (1744-1749)	11	85%	2	15%	13	100%
Thomas Horner (1770-1777)	40	83%	8	17%	48	100%
Edmund Waller (1773-1788)	3	75%	1	25%	4	100%
William C. Hoare (1785-1834)	6	75%	2	25%	8	100%
George Spencer (1787-1794)	5	71%	2	29%	7	100%
Thomas L. Thornton (1789)	2	100%	0	0%	2	100%
Thomas N. Parker (1805-1813)	34	60%	23	40%	57	100%
Samuel Whitbread (1810-1814)	38	84%	7	16%	45	100%
Richard Stileman (1819-1836)	34	77%	10	23%	44	100%

Sources: WRO CRO103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. There were no wage disputes listed in the diary of the elder Thomas Thornton of Northamptonshire (1700-1718).

Table 4.7 shows that across all the magistrates' notebooks, an average of 94 per cent of complainants in wage disputes were men. However, Parker, in Shropshire, had a more even balance between men and women, the latter forming 40 per cent of wage disputants. This reflects the larger percentage of female complainants across most types of case heard by Parker.

Overall, women brought complainants involving smaller amounts of money than men, which is not surprising given the nature of their work, and the fact that they were generally paid less than men.⁶⁸ This was particularly true of the Wiltshire flax-spinners, for as Hill has noted, 'because it [spinning] was seen as supplementary employment, it was underpaid'.⁶⁹ However, the lowest specified amount in Horner's case was actually in a case brought by a man, and several complainants before Richard Stileman, both male and female, were hop-pickers, a seasonal job that was regarded as 'one of the best-paid of agricultural occupations', showing that workers of both genders, on a variety of wages, sought payment through the summary process.⁷⁰

⁶⁸ Wrightson has stated that female servants in husbandry were paid less than men, and that more generally, 'women received half to two-thirds the wages paid to men', representing the same kind of different that existed between the wages of male skilled workers and male unskilled workers (Keith Wrightson, *Earthly Necessities: Economic Lives in Early Modern Britain, 1470-1750* (Harmondsworth, 2002), 312).

⁶⁹ Bridget Hill, *Eighteenth-century women: an anthology, volume 21* (London, 1984), 198.

⁷⁰ McGarvie (ed), *The King's Peace*, 22; ESRO AMS 6192/1, 26 January 1820, 18 September 1820, 13 September 1821, 9 October 1822, 21 July 1825, 6 September 1826; Joan Thirsk (ed), *The Agrarian History of England and Wales* (Cambridge, 1985), 99. The short-term nature of this occupation meant that the wages were especially important to workers who might have earned far less the rest of the

Although the number of cases is limited, there is some evidence of a sexual division in terms of what servants and other workers went to their magistrate to complain about, and what they hoped to get from that contact. The cases before Thomas Netherton Parker suggest that men argued for wage rises, particularly during the onerous harvest time, and additional 'payments' of beer.⁷¹ Female servants also visited their local magistrate to negotiate for better working conditions. Instead of beer and higher wages, though, they argued for sufficient food, or a greater variety of food whilst working, and additional servants to be hired to help them with onerous workloads.⁷² In a society where men's voices were heard so much louder than women's, the summary process provided poorer working women with a means to make their views and opinions heard and recorded in the same way as men's.

Conversely, though, employers used the summary process to complain about their workers. The vast majority of such cases were brought by men, with male employers constituting 203 out of 215 (94 per cent) of complainants in misbehaviour cases.⁷³ Women were therefore far less prevalent in the magistrate notebooks as employers than as servants, comprising just six per cent of

year, and hence their representation in Stileman's notebook, trying to ensure that they got swift payment for their work.

⁷¹ SA 1060/168-70, 10 August 1810. 33 per cent of male complainants in wages cases before Parker made their complaints to him during the busiest farming time of July to September (SA 1060/168-70).

⁷² SA 1060/168-70, 7 February 1810.

⁷³ All the complainants in misdemeanour cases before William Bromley, Roger Hill, Thomas Thornton, Thomas Horner, Richard Colt Hoare, George Spencer, Thomas Lee Thornton, Thomas Netherton Parker and Richard Stileman were male. 83 per cent (five out of six complainants) before William Hunt were male, as were 89 per cent (51 out of 57) before Brockman and 92 per cent (36 out of 39) before Whitbread were male.

complainants in misbehaviour cases, despite 'substantial numbers' of women running their own shops and businesses in eighteenth century England.⁷⁴ This shows the influence of rural life on summary proceedings, with small communities having fewer shops and a smaller variety of businesses than might be found in more urban areas. That married women had a role in the employment of servants is clear from the few cases that mention them. In the eight complaints against female employers made by servants, three of them named a married couple as the employers, but it is likely that many more involved women who were not named on the complaint, because the complaint only specified the head of the household.⁷⁵

Both male and female servants complained of bad usage on the part of their employers, with being put away within their term of contract specified as the main cause of complaint in 59 per cent of bad usage cases brought by men, and 41 per cent of those brought by women, as table 4.8, on page 203, shows. This suggests that although the recording of mutual discharges of contracts suggested a dialogue between master and servant, even if coercion outside of the magistrate's justicing room had taken place, sometimes, the decision to end a contract could be far more one-sided. However, the decision by servants to take their case to the magistrate shows that they did not believe that their employer would be able to justify their actions.

⁷⁴ Amy Louise Erickson, 'Review of *Women's Work in the Eighteenth Century* (review no. 708a)', *Reviews in History*. www.history.ac.uk. 6 November 2014.

⁷⁵ BL Add MS 42598, 19 April 1699, 1 July 1700, 24 December 1701.

Table 4.8 Complaints of bad usage made by servants against their master and mistresses.

	Male		Female		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Being attacked, abused or insulted whilst working	16	70%	7	30%	23	100%
Being put away within their term	10	59%	7	41%	17	100%
Unspecified "misuse" or complaint against master or mistress	5	50%	5	50%	10	100%
Inadequate food or drink	1	33%	2	67%	3	100%
Being made to perjure oneself by the master	0	0%	1	100%	1	100%
Detaining servant's property	0	0%	1	100%	1	100%
Total	32	58%	23	42%	55	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. There are no employment ill-use cases in the notebook of Edmund Waller, or the two notebooks of Richard Colt Hoare.

Table 4.8 shows that there was little gender difference in what these servants complained about, with verbal or physical attacks, and contractual disputes forming the majority of cases for both genders, in terms of numbers. However, looking at the percentages, it suggests that men were more likely to be assaulted by their masters in the workplace. Other complaints were rare in number, with the female servant who complained to William Bromley that she had been forced by her male employer to commit perjury on his behalf in a court case being the most unusual.⁷⁶

Looking at the cases before the individual magistrates here, it is evident that the percentage of female complainants in employment cases varied over time. On average, women formed 19 per cent of complainants in employment cases, but as table 4.9, on the next page, shows, some magistrate dealt with a higher percentage, and some with far lower. These percentages do not correlate to chronological change, but instead appear to fluctuate according to the magistrate's known sympathies and 'specialisms' at summary level.

⁷⁶ Anne Wilcox had complained that her employer, Thomas Avery, had made her perjure herself in a trial at the Warwick Assizes, even though she had told him that if she lied, 'there would be many wives' heads that would turn' (WRO CR0103, 27 July 1695).

Table 4.9 The gender of complainants in employment cases, by individual magistrate.

	Male complainants		Female complainants		Total employment cases where complainant's gender was stated	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	3	75%	1	25%	4	100%
Roger Hill (1689-1705)	20	80%	5	20%	25	100%
William Brockman (1689-1721)	142	77%	42	23%	184	100%
Thomas Thornton (1700-1718)	2	67%	1	33%	3	100%
William Hunt (1744-1749)	18	82%	4	8%	22	100%
Thomas Horner (1770-1777)	82	87%	12	13%	94	100%
Edmund Waller (1773-1788)	12	80%	3	20%	15	100%
Richard C. Hoare (1785-1834)	21	91%	2	9%	23	100%
George Spencer (1787-1794)	9	75%	3	25%	12	100%
Thomas L. Thornton (1789)	5	100%	0	0%	5	100%
Thomas N. Parker (1805-1813)	70	70%	30	30%	100	100%
Samuel Whitbread (1810-1814)	83	89%	10	11%	93	100%
Richard Stileman (1819-1836)	39	80%	10	20%	49	100%

Sources: WRO CRO103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Employment related cases include wage disputes, disputes over clothing given during employment, misconduct by servants, absconding by servants, and bad usage by masters or mistresses towards their servants.

It can be seen that there were fluctuations in the percentage of female complainants in employment cases over the duration of the long eighteenth century. This is due to various reasons. Firstly, female complainants would be more likely to approach a magistrate who they felt would be sympathetic to their complaints. The relatively high percentage of women approaching Parker with regard to employment issues reflects the significant number of female complainants who approached him across the areas dealt with in this thesis. Out of 282 cases before Parker that named a male or female complainant, women constituted 100, or 35 per cent, of complainants.⁷⁷ However, women were also present in larger numbers where the magistrate dealt with a higher number of employment cases. For example, Parker's notebook contained the highest proportion of employment cases, where a male or female complainant was named, and one of the highest proportions of female complainants. William Brockman, similarly, heard a substantial number of employment cases, of which, 23 per cent were brought by women.⁷⁸ Conversely, in rural Wiltshire, both Hunt and Hoare dealt with a similarly low number of employment cases, of which, fewer than ten per cent were brought by women.⁷⁹ This suggests that women were more likely to complain where they felt a magistrate had more experience of dealing with the type of case they were involved in. Geography also had an impact, with women being less represented in the most rural areas. Snell's argument that women's position in the rural labour market was marginalised by a combination of decline and technology may be evident here, with women's work becoming

⁷⁷ ESRO AMS 6192/1.

⁷⁸ One-third (33 per cent) of cases in Parker's notebook that specified a male or female complainant were brought by a woman (ESRO AMS 6192/1).

⁷⁹ Crittall (ed), *The Justicing Notebook of William Hunt*; WSHC 383/955; WSHC 229/1.

marginalised and men, therefore, forming the bulk of employed workers complaining about their wages or conditions.⁸⁰

v. How men and women used the magistrate as an advisor in regulatory and financial cases.

This chapter has suggested that men formed the overwhelming majority of complainants in property offence and employment cases, and that this reflected the gendered nature of property ownership and, to a varying amount, employment. Women took on fewer official or regulatory roles in rural societies than men as well, and so it is not surprising that women formed the minority of complainants in the regulatory cases that came before the rural justice.⁸¹ Such cases did not form the bulk of the magistrate's work at summary level, but within the relatively few cases, women were in a minority, forming 11 per cent of complainants in cases involving economic regulation, and 19 per cent of complainants in social regulation cases, as table 4.10, on page 208, shows.

⁸⁰ K.D.M. Snell, *Annals of the Labouring Poor: Social Change and Agrarian England, 1660-1900* (Cambridge, 1987), 21-22, 45, 49; also Steven King, "Meer pennies for my baskitt will be enough": Women, work and welfare, 1770-1830', in Penelope Lane, Neil Raven and K.D.M. Snell (eds), *Women, Work and Wages in England, 1600-1850* (Woodbridge, 2004), 119.

⁸¹ Although Whitbread recorded one female turnpike gate keeper and two female overseer in his notebooks, neither were mentioned in relation to regulatory offences. As Gray has noted in relation to the London summary courts, the domination of men in property offences and regulation cases is 'to be expected, given that most property was controlled by men and that most of the business of regulation was carried out by constables and other City officers' (Gray, *Summary Proceedings and Social Relations in the City of London*, 115).

Table 4.10 The gender of complainants in regulatory cases before the magistrate.

	Male complainant		Female complainant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Economic regulation ¹	270	89%	32	11%	302	100%
Social regulation ²	59	81%	14	19%	73	100%
Total	329	88%	46	12%	375	100%

Sources: WRO CRO103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Cases do not include those brought by unnamed parish officials.

¹ Economic regulation includes cases involving highway duty, non-payment of rates, wagon driving offences, turnpike offences, non-payment of excise, weights and measures offences, and cases involving queries about rent, army pensions and bounties, evictions or taxes.

² Social regulation includes lewd behaviour, swearing and oaths, drinking and drinking on a Sabbath.

Women's interaction with their community, either whilst working in or near their homes, or whilst travelling to, or attending, local markets, meant that they were in a position to observe and report behaviour which was seen to be anti-social or offensive. Table 4.10 shows that women were more likely to bring cases to the magistrate that involved social regulation, such as drinking and swearing offences. The representation of women as complainants in such cases should not be exaggerated, however. Women only brought regulatory cases before five out of the 13 magistrates studied in this thesis, and, as table 4.10 illustrates, it was more common for cases involving economic regulation to be brought to the magistrate, the vast majority of which were brought by men. It is likely that many social offences were resolved with within the community, rather than being dealt with formally. King has noted that there were 'complex motivations' behind some

prosecutions, such as those for swearing oaths, those bringing complaints to the justice may have been seeking to punish troublesome members of the local community.⁸² However, there is no evidence that women took on this role, as the notebooks show that both women and men acted as enforcers of a moral or patriarchal code. The rarity of offences such as swearing being recorded at summary level suggests, though, that such behaviour was generally tolerated, or regulated by the community itself, unless it was part of a specific conflict between two individuals. This echoes Walker's comment that 'individuals used elite notions of the law largely to offset the actions of their peers'.⁸³

There is evidence for a change in how women used the summary process in the early nineteenth century in terms of economic regulation, with women being far more evident as complainants before Samuel Whitbread than in any other of the magistrate notebooks studied here. At the end of this period, 28 per cent of complainants in economic cases before Whitbread were women (23 out of 81 complainants), and 25 per cent of those before Richard Stileman.⁸⁴ Women used Whitbread as a source of advice regarding finances, rather than to report offences or complain about assessed rates.⁸⁵ In the ten such cases where women's status was given or suggested, the women were all married or widowed, seeking advice

⁸² King, 'The Summary Courts and Social Relations', 144.

⁸³ Walker, *Crime, Gender and Social Order*, 226.

⁸⁴ Although it should be recognised that far fewer such cases were dealt with by Stileman than by Whitbread, with the former only hearing four cases, of which one was brought by a woman (ESRO AMS 6192/1, n.d., c. August 1822).

⁸⁵ This is in comparison to William Brockman's notebooks, where two widows were recorded as complaining about their assessment for the poor rate, but no women were recorded as seeking financial advice from him (BL Add MS 42598, 3 August 1713, 4 April 1715).

about their sons' or husbands' wills or pensions. This larger number of women is also clearly a result of the wider economic situation. The queries were recorded during the Napoleonic Wars, and the cases reflect the effect of the wars on women in Bedfordshire.⁸⁶ However, men also used Whitbread for similar purposes.⁸⁷ Both men and women sought the help of Whitbread in locating soldier or sailor relatives, and the enlistment of soldiers clearly had an impact, economically, on their families. However, men enquired after their brothers' welfare, whereas women asked about their husbands and sons, who they were more likely to be dependent on financially.

The impact of the Napoleonic Wars and the aftermath of war was clearly visible in Whitbread's notebook, but the impact of other wars were less visible in records of summary proceedings. Hunt's notebook, for example, covered the end of the War of Austrian Succession, when the demobilisation of soldiers had an impact on other aspects of the criminal justice system.⁸⁸ Yet Hunt's notebook did not indicate any concerns among the local community involving the war or its incipient end.⁸⁹ The only two regulatory issues he dealt with in 1748 both involved the retailing of drink.⁹⁰ It is clear that Hunt's notebook stopped at around the same time as the end of the war, but it is also clear that complaints

⁸⁶ Cirket (ed), *Samuel Whitbread's Notebooks*, 29, 44, 117, 118, 121, 122, 125, 133.

⁸⁷ Cirket (ed), *Samuel Whitbread's Notebooks*, 35-36, 42, 73, 83, 88, 112, 118, 129.

⁸⁸ Ward, *Print Culture, Crime and Justice*, 51.

⁸⁹ Only two of the entries in Hunt's notebook immediately post-date the end of the war, one on 23 July 1748 and the other on 27 July 1748, with their being seven further entries for 1749 (Crittall (ed), *The Justicing Notebook of William Hunt*, 85-86). All these entries related to petty sessions held by Hunt with another magistrate.

⁹⁰ Crittall (ed), *The Justicing Notebook of William Hunt*, 73.

regarding soldiers serving in the war from either male or female relatives were not taken to Hunt. It is possible that the impact of war was not as evident in the south-west of the country as it was nearer to London, but it is also evident that Hunt's summary proceedings served a different purpose to those of Whitbread, dealing primarily with rural property offences and offences against the person.

In terms of the reporting of regulatory infringements, women were restricted in what they witnessed and could report by the fact that men dominated in positions of authority in their communities, and that certain arenas were seen to be the domains primarily of men. There is little evidence of change in this over the long eighteenth century. However, there is evidence that by the nineteenth century, women were becoming increasingly willing to seek the magistrate's advice, seeing him as a more paternal figure who could investigate matters on their behalf and resolve non-criminal matters on their behalf. The nature of such cases also suggests that the magistrate's role was developing and changing from that of a law-maker to a more social, advisory and conciliatory role.

vi. How women benefited from voluntary examinations in bastardy cases.

Moving onto an area where women were far better represented, bastardy cases, an analysis of the cases heard by rural magistrates shows that women were able to use the summary process proactively to gain financial support or to publicly

name the father of their child. I have considered a woman to be the complainant in bastardy cases where she was named as coming before the magistrate to undertake a voluntary examination before the birth of her child. This is because a woman could not be forced to undergo an examination before birth, or until a month after the birth, at which point, an unmarried mother was required to give a bastardy examination in order to gain relief.⁹¹ Therefore, the willingness to be examined is regarded here as an indication of the woman's desire to bring a case against the putative father, in a way that can not be assumed with examinations where the woman was brought following the birth of her child. Although it is not possible to ascertain from the notebooks whether a pregnant woman has been coerced or persuaded to appear, this method of categorisation still enables a distinguishing of such cases from ones where the women was required to give an examination after birth, where fathers of reputed children were brought before the magistrate to agree maintenance, or where mothers were punished for refusing to name the father of their child.

Where women voluntarily appeared before the magistrate, they used the summary process both to gain public confirmation of the father's identity, and to gain financial support from him or his family. As Evans makes clear, an unmarried mother often 'initiated' the examination herself in order to gain relief from the parish or maintenance from her child's father, so there was a clear incentive for a woman to start the process herself.⁹² In addition, before the magistrate, the man

⁹¹ Tanya Evans, *'Unfortunate Objects': Lone Mothers in Eighteenth-Century London* (Basingstoke, 2005), 7.

⁹² Tanya Evans, *'Unfortunate Objects'*, 7.

alleged to be the father of an illegitimate child had to prove that he was not, thereby 'affording women some power' before the magistrate.⁹³

These pregnant women were able to employ agency through their use of language and description, volunteering information to prove their relationships that went far beyond Burn's suggested wording of bastardy examinations in *The Justice of the Peace*.⁹⁴ The detail given does not suggest that these women were either passive sexual partners or seduced innocents, but, rather, willing participants.⁹⁵

⁹⁶ It is possible that some of the women who voluntarily appeared before the magistrate did so in order to persuade or encourage marriage to the father of their child, although it was more usual for a man to be persuaded or ordered to

⁹³ Thomas Nutt, 'The Paradox and Problems of Illegitimate Paternity in Old Poor Law Essex', in Alysa Levene, Thomas Nutt and Samantha Williams (eds), *Illegitimacy in Britain, 1700-1920* (Basingstoke, 2005), 121.

⁹⁴ Burn, *The Justice of the Peace, Volume 1*, 202-203.

⁹⁵ Stone suggested that the poor were reluctant to undress before sex, to have foreplay, or to do anything other than the position of 'man on top, woman on bottom', in a reflection of 'prevailing social relationships' involving the patriarchal male (Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London, 1977), 307).

⁹⁶ Examinations included women's descriptions of having sex standing up at a hall window whilst the man's father was in the next room, having sex with two different men within 'a week or fortnight', having sex in the kitchen of her partner's father, in a meathouse and on land adjoining a local churchyard (NRO Th1679, 27 December 1701; BL Add MS 42598, 8 August 1697; WRO CR0103, 6 September 1692; WRO CR0103, 6 September 1687; WRO CR0103, 23 September 1692). However, these cases are all from the late seventeenth and early eighteenth centuries, and from three notebooks, suggesting that the individualistic nature of examination by magistrates impacted on the level of detail that was both requested and given, but also that the increase in the number of legal manuals available to justices, and the publication of pro forma bastardy examinations, may have helped regulate both how magistrates took such examinations, and the freedom women had to give such information.

marry once he appeared before the magistrate.⁹⁷ There is only one case across the notebooks studied here of a woman complaining that her partner had promised to marry her only to renege on that promise, and no explicit requests made by women to marry the father of their child.⁹⁸ This suggests that they wanted financial aid, but not necessarily marriage.

The cases in rural magistrates' notebooks suggest that rural areas of England were similar to London, where Evans has argued that bastardy examinations were a negotiation between the woman, desiring relief, and the parish's need to cut their costs, and that unmarried women 'knew how to manipulate the parish system for their own ends'.⁹⁹ In looking at the number of examinations given voluntarily by women, the naming of fathers and the descriptions of their relationships, it is clear that women recognised that usefulness of bastardy examinations not only in gaining maintenance or relief, but also in enabling the public acknowledgement of a named man's responsibility for their child.

⁹⁷ William Hunt recorded eight bastardy cases where the woman subsequently married the father of her child. In one case, the man 'consented' to marry the woman, in another case he 'chose' to marry as an alternative to imprisonment, and a third man was 'obliged' to marry by Hunt. Other cases suggest varying levels of persuasion by either the magistrate or parish officers (Crittall (ed), *The Justicing Notebook of William Hunt*, 28, 35, 44, 49, 51, 55, 60).

⁹⁸ Anne Spooner stated that she was pregnant by servant William Knot, and claimed that he had 'promised her marriage before debauching her' (BL Add MS 42598, 14 September 1701).

⁹⁹ Tanya Evans, *'Unfortunate Objects'*, 8, 27.

vii. Overview of the gender of complainants before the magistrate.

This chapter has looked at the gender of complainants across the primary categories of issues dealt with by rural magistrates, which encompassed criminal, civil and social complaints. It has been shown that although men formed the majority of complainants before the magistrate, their participation varied according to the type of case being heard, and local factors such as the nature of work. On the evidence of the notebooks studied here, the gender of complainants who used the summary process in rural England does not appear to have changed dramatically over the course of the long eighteenth century, and there is no apparent linear rise or fall over this time, as table 4.11, on the next page, shows. The three magistrates with the highest percentage of female complainants were George Spencer, Thomas Thornton, Thomas Horner, and Thomas Netherton Parker. The fact that these high percentages were spread out across the long eighteenth century, suggests that time may not have been the key factor. In other words, women's participation did not increase over the course of the century due to any social or legislative changes over time. Instead, it appears that women's involvement as complainants depended more on the type of case heard by that specific magistrate, and on their locality.

Table 4.11 The gender of complainants before each rural magistrate, where specified.

	Male		Female		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	65	77%	19	23%	84	100%
Roger Hill (1689-1705)	86	85%	15	14%	101	100%
William Brockman (1689-1721)	418	76%	130	24%	548	100%
Thomas Thornton (1700-1718)	31	61%	20	39%	51	100%
William Hunt (1744-1749)	226	73%	83	27%	309	100%
Thomas Horner (1770-1777)	555	63%	322	37%	877	100%
Edmund Waller (1773-1788)	146	78%	40	22%	186	100%
Richard C. Hoare (1785-1834)	97	73%	36	27%	133	100%
George Spencer (1787-1794)	106	60%	71	40%	177	100%
Thomas L. Thornton (1789)	18	82%	4	18%	22	100%
Thomas N. Parker (1805-1813)	182	65%	96	35%	278	100%
Samuel Whitbread (1810-1814)	423	73%	154	27%	577	100%
Richard Stileman (1819-1836)	119	76%	38	24%	157	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRC AMS 6192/1. Figures do not include mixed gender complainants, where men and women have approached the magistrate together.

Looking at table 4.11 and, specifically, the four magistrates' notebooks where women formed a higher percentage of complainants, there are some clear conclusions. Firstly, women formed a higher percentage of complainants in the notebooks of magistrates who heard fewer property offence cases, comparatively. Property offences, where males, the primary property owners in law, were likely to form the majority of complainants, formed a minority of cases heard by Spencer, Thornton, Horner and Parker. Where more poor law cases, or complaints of assaults, were heard, more women were evident as complainant. Therefore, the type of offence or case specialised in by the magistrate affected the percentage of women who came to him to complain.

In geographic areas where women had a wider range of options regarding work, women also appear to have been more prevalent as complainants. Three of the magistrates with the highest percentage of female complainants were located in centres of worsted or yarn industries, where women were found working as spinners.¹⁰⁰ The fourth, Parker, was also operating within a proto-industrial area where women had a wider variety of employment options open to them and, like Horner and Thornton, the area he dealt with was centred around a market town where there were more opportunities for work or independence.¹⁰¹ The gender

¹⁰⁰ Where there were such industries as weaving or shoemaking, for example, there were opportunities for married women to work at home, although their wages were considered as 'supplementary' to their husbands (John Rule, *The Labouring Classes in Early Industrial England 1750-1850* (Harlow, 1986), 118, 133).

¹⁰¹ D.C. Cox, J.R. Edwards, R.C. Hill, Ann J. Kettle, R. Perren, Trevor Rowley and P.A. Stamper, 'Domesday Book: 1750-1875', in G.C. Baugh and C.R. Elrington (eds), *A History of the County of Shropshire: Volume 4: Agriculture* (Oxford, 1989), 168-231. www.british-history.ac.uk. 10 November 2014. Lead and coal mining and limestone quarrying were activities carried out in the area, together with the

of complainants at summary level, then, echoes the individual nature of the rural magistrate and rural summary proceedings. Its use was affected both by geographic factors, such as the nature of local industry, by the wider economic situation, and by the type of offence focused on by each magistrate. This chapter now considers the gender of defendants before the rural magistrate to ascertain how their representation on the other side of the criminal justice process differed, or was similar to, complainants.

b. The gender of defendants.

This chapter will now move onto looking at the people brought into the justicing room as defendants, or those complained against. It is important to make the distinction between the different cases that were heard by the magistrate at summary level, as his workload comprised criminal, civil and social cases and therefore not all of those being brought before him were defendants in the criminal sense. However, 'defendants' is used here as a term to encompass all those who appeared before the magistrate after being complained about by others.

production of quicklime (English Heritage, *National Character Area 63: Oswestry Uplands*, 3. n.d. www.historicengland.org.uk, 10 November 2014). The market towns were Oswestry in Parker's case, Frome in Thomas Horner's, and Daventry in Thomas Thornton's. Pinchbeck argued that women's opportunities for work were wider in areas where industrialisation was evident (Ivy Pinchbeck, *Women Workers and the Industrial Revolution, 1750-1850* (Abingdon, 1930), 1).

Defendants within the criminal justice system have been the focus of considerably more attention by historians than complainants, and gender has been a distinct, albeit smaller, part of this study. In 1975, Beattie found that there was a distinct difference between women's criminality in rural and urban areas of England in the eighteenth century, finding that women committed far more crime in London than in more rural areas of Surrey and Sussex.¹⁰² King, focusing on property offences, has also compared London with more rural counties, similarly finding higher levels of indictments for women in London compared to the Home Circuit (which covered Essex, Surrey, Sussex, Kent and Hertfordshire).¹⁰³ This study of rural summary proceedings echoes Beattie's and King's findings. Women formed an average of 18 per cent of defendants before the rural magistrate over the long eighteenth century, significantly less than the percentages of female defendants at the Old Bailey calculated by Emsley *et al.*¹⁰⁴ Yet to concentrate simply on property offending, or to summarise rural offending by women simply as less prevalent than urban is to sideline the offences that rural women did carry out.¹⁰⁵ What were they accused of at a summary level, and were their offences particularly gendered? How did

¹⁰² Beattie, 'The Criminality of Women', 82.

¹⁰³ Peter King, 'Gender, crime and justice in late eighteenth- and early nineteenth-century England', in Arnot and Osborne (eds), *Gender and Crime in Modern Europe* (London, 1999), 45.

¹⁰⁴ Emsley *et al* stated that across the period 1674 to 1913, women constituted an average of 21 per cent of defendants at the Old Bailey. They formed 22 per cent of defendants in the early nineteenth century, 40 per cent in the period between the 1690s and 1740s, and over 50 per cent in the first decade of the eighteenth century (Emsley, Hitchcock and Shoemaker, 'Gender in the Proceedings').

¹⁰⁵ The difference in the percentages of female offending between the Old Bailey and the summary notebooks studied here lies both in the higher number of cases dealt with at the Old Bailey, and in the different types of offence and case heard in rural areas, many of which involved male employers, business owners and the fathers of illegitimate children.

their offending reflect the gendered nature of their lives in eighteenth century rural England? This section seeks to explore how men and women appeared before the rural magistrate as defendants, and what differences there were in their patterns of behaviour.

Table 4.12 The gender of defendants in rural summary proceedings.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Property offences	683	83%	139	17%	822	100%
Poor Law (excluding bastardy)	458	62%	276	38%	734	100%
Offences against the person	568	88%	79	12%	647	100%
Employment	566	89%	70	11%	636	100%
Social or economic regulation	401	91%	41	9%	442	100%
Bastardy	346	82%	74	18%	420	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Figures do not include unnamed individuals and mixed gender couples or groups. Figures include all types of property offence.

Table 4.12 shows, firstly, that men were more likely to appear before the magistrate as defendants than women across all the main categories of summary work, and this echoes the findings of historians of crime in other parts of

Britain.¹⁰⁶ Where the gender of defendants was stated, it is clear that women were more likely to appear before the rural magistrate to complain rather than be complained about.¹⁰⁷ Women constituted an average of 18 per cent of defendants, compared to 29 per cent of complainants, and were most likely to be defendants in poor law related cases, such as vagrancy or settlement cases. They were least likely to be found as defendants in cases involving regulatory offences, reflecting the male domination of many occupations. This chapter will now study the gender of defendants in each of the offence types listed above, and discuss further the reasons for the disparities between male and female representation as defendants at summary level.

i. The gendered opportunities for stealing goods.

Property offences were the dominant type of case dealt with by the rural magistrates studied in this thesis, and although men formed the majority of defendants in such cases, women formed 17 per cent of those accused. Table 4.13, on the next page, shows that larcenies and wood theft were the most common property offences recorded, but that women were represented in differing amounts as defendants, according to the type of property offence.

¹⁰⁶ Sharon Howard, *Law and Disorder in Early Modern Wales: Crime and Authority in the Denbighshire Courts, c.1660-1730* (Cardiff, 2008), 7; Shoemaker, *Prosecution and Punishment*, 208; Beattie, 'The Criminality of Women', 80.

¹⁰⁷ This echoes the conclusions of those working on both the seventeenth and nineteenth centuries. Laurence notes that in seventeenth century Sussex, 'the number of women victims exceeded the number of women perpetrators' (Laurence, *Women in England 1500-1760*, 262) and Emsley, writing of the nineteenth century, states that 'women were a minority among offenders' but 'figured highly among victims' (Emsley, *Crime and Society in England*, 158).

Table 4.13 The gender of defendants in property offences heard by the rural magistrate.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Larcenies	277	85%	49	15%	326	100%
Wood stealing	151	81%	36	19%	187	100%
Game offences	152	99%	1	1%	153	100%
Other property offences ¹	102	91%	10	9%	112	100%
Yarn offences	1	2%	43	98%	44	100%
Total	683	83%	139	17%	822	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. ¹Other forms of property offence include robbery, housebreaking, trespass, embezzlement of goods (excluding yarn), forgery and fraud.

Table 4.13 shows that women were best represented as defendants in yarn offences, constituting 98 per cent of defendants in these cases. This offence reflected the nature of women's work in rural England. 43 cases brought against women involved the embezzlement, short-reeling or false-reeling of yarn. These women were spinners, employed as outworkers and thus accused of offences committed within their own homes.¹⁰⁸ The relatively high percentage of women in this category, and within just four notebooks covering a similar period, is due to two factors.¹⁰⁹ Firstly, both Northamptonshire and Somerset were centres for yarn manufacture, employing outworkers in both to spin yarn for local manufacturers.¹¹⁰ Spinning was a gendered occupation, being primarily done by women, often aided by their children, and so the high proportion of females represented in property offences before these magistrates reflected their low-paid work from home, where honest mistakes might be made as mothers tried to combine work with childcare, or where there was a temptation to keep back part of the yarn and make more money from it. Such offences were gendered both because the accused workers were primarily women, and because those bringing complaints against them were male manufacturers or, after 1777, yarn inspectors. The absence of yarn offences in earlier magistrates' books does not

¹⁰⁸ Of the other three embezzlement cases, one woman was accused of embezzling parish goods, and two of embezzling household goods. In addition, one man was accused of a spinning offence, and two of embezzling work goods (WSHC 383/955, n.d., c. 3 October 1792; BL Add MS 42598, 18 March 1699 and 17 April 1699; McGarvie (ed), *The King's Peace*, 58, 76, 77).

¹⁰⁹ Yarn cases are only recorded in the notebooks of Richard Colt Hoare, Thomas Horner, Thomas Lee Thornton and George Spencer (WSHC 383/955; McGarvie (ed), *The King's Peace*; NRO Th1681; BL Add MS 76337).

¹¹⁰ Hoare was located very near the Somerset border, and although one of the yarn cases he dealt with did not specify a location, the other involved a defendant from Kilmington, which at the time was in Somerset (WSHC 383/955, 15 September 1794; Brett Langston, 'Boundary Changes affecting Mere Registration District', GENUKI. n.d. www.genuki.org.uk. 30 January 2015).

mean that spinning did not take place in other regions, or that women did not take part in false reeling. Instead, its particular presence in the period between 1770 and 1794 shows the impact of legislation brought in to reduce such acts and to punish those who carried out such offences.¹¹¹ Although Styles has disputed whether the acts 'transformed' the customary habits of outworkers into crimes, the rural magistrates' notebooks shows that the numbers of women being brought before the justice on charges of embezzlement was part of an increased criminalisation of customary rights that included gleaning and the taking of wood.¹¹²

This section has shown that women formed the majority of defendants in embezzlement cases, reflecting the nature of female employment in particular locales, and the opportunities for appropriating goods. Women were less evident in larceny cases, constituting 15 per cent of defendants in these cases, but as table 4.14, on the next page, shows, what they were accused of stealing similarly shows the gendered nature of work and home in eighteenth century rural England.

¹¹¹ Although Hoare's earlier notebook covers the period up to 1815, both the yarn cases he recorded took place in 1794 (WSHC 383/955, 15 September 1794).

¹¹² Emsley, *Crime and Society in England*, 155.

Table 4.14 What men and women were accused of stealing in larceny cases before the rural magistrate.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Food	71	86%	12	14%	83	100%
Animals	58	95%	3	5%	61	100%
Household goods	39	76%	12	24%	51	100%
Work goods	47	96%	2	4%	49	100%
Clothing	25	69%	11	31%	36	100%
Money	20	74%	7	26%	27	100%
Poultry	17	89%	2	11%	19	100%
Total	277	85%	49	15%	326	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

Table 4.14 shows that men and women stole certain goods that they were able to access within their gendered spheres of work and home. Therefore, women were more likely to steal household goods, smaller physical items such as money that could be concealed without arousing undue attention, and clothing. This is particularly reflected in one case before Richard Colt Hoare, where a woman hung out her shift to dry, had it stolen and later found it on another woman. The accused argued, unsuccessfully, that she had 'also put out some linen to dry and took it to her house by mistake'.¹¹³ The use of shared public washing spaces could lead to thefts, as Styles has noted, or, at best, misunderstandings over the ownership of clothing, but they were also female spaces that provided women with the opportunity to steal.¹¹⁴

It was very unusual for men and women to be accused of committing thefts together, reflecting again the gendered nature of society. As Howard has commented in relation to crime in the English and Welsh courts:

Studies of theft have indicated that theft was quite strongly gendered: male and female thieves did not tend to work together, with both men and women choosing targets, and markets for the sale of stolen goods, with which they were likely to be familiar in their everyday lives.¹¹⁵

Although this was true of most types of theft, the stealing of wood was less gendered than other forms of theft, and magistrates' notebooks suggest that this

¹¹³ WSHC 229/1, 18 July 1815.

¹¹⁴ Styles noted that the thefts of linen shirts, shifts and caps was common, because they 'were vulnerable to theft when left to dry in the open air, often on hedges' (Styles, *The Dress of the People*, 40).

¹¹⁵ Howard, *Law and Disorder in Early Modern Wales*, 7.

was the most common property offence committed by men and women together. As table 4.13, on page 222, showed, amongst the rural poor, both men and women took wood and were brought before the magistrate accused with its theft. Table 4.15, below, shows the total number of wood theft cases, including those with mixed gender couples or groups accused of the offence.

Table 4.15 The gender of wood theft defendants, where gender was recorded.

Gender	Number	Percentage
Single male	103	51%
Single sex group (male)	48	24%
Single female	27	13%
Mixed gender group	17	8%
Single sex group (female)	9	4%
Total	204	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

Table 4.15 shows that 36 per cent of wood theft cases were brought against groups of individuals, illustrating how wood theft was an activity often carried out by individuals working together, although it was still dominated by men working either alone or together.¹¹⁶ The communal nature of many of these offences indicates that the people committing wood theft did not regard it as an

¹¹⁶ Among male defendants, wood theft was the most common property accusation against them in the notebooks of six out of the 13 magistrates studied in this thesis (Thomas Thornton, William Hunt, Edmund Waller, George Spencer, Thomas Netherton Parker and Richard Stileman).

offence but as a customary or moral right.¹¹⁷ Given the fact that men and women both clearly stole wood, men may have been prosecuted more often for the offence because of their gender, with thefts by individual men or groups of men being regarded by landowners as more serious offences than those carried out by women. In this way, prosecutors and magistrates may have deemed women to have committed more minor, even trivial, offences as they were less likely, statistically, to commit the more serious property offences.¹¹⁸

Other types of property offence were more explicitly gendered. Men were more likely to be accused of animal theft, for example, whilst poaching was a rural property offence where the accused were overwhelmingly male, as table 4.14, on page 225, showed. Poaching was also treated increasingly harshly as the long eighteenth century progressed, and particularly under the 1784 Game Duty Act, which both increased the penalties for poaching, and gave the prosecutor the option of deciding whether a defendant should be charged under the old or new laws.¹¹⁹ Hunt and Hoare working in similar areas in Wiltshire, recorded different proportions of poaching cases. Hunt, in the 1740s, saw poaching constitute just 11 per cent of the property offence cases before him. Hoare, spanning the late eighteenth and early nineteenth centuries, saw poaching constitute 36 per cent of his property cases, similar to Waller and Whitbread over the same period.¹²⁰

¹¹⁷ Shakesheff, *Rural Conflict, Crime, and Protest*, 18.

¹¹⁸ King, *Crime and Law in England*, 171.

¹¹⁹ Munsche, *Gentlemen and Poachers*, 24.

¹²⁰ Poaching made up 32 per cent of Waller's property offence cases, and 35 per cent of Whitbread's. Horner's lower percentage, 11 per cent, in the 1770s reflected the wider range of property offences that were reported in the Frome area, which included a town described by McGarvie as 'populous (and riotous)'

The criminalisation of customary rights targeted both men and women, but the vast majority of poaching cases involved male defendants. This leads back again to notions of gendered spaces and networks. Men were able to occupy spaces where women would be noticed more, and to travel around the local area at night where women would not, or could not, due to household or childcare activities, and also because of perceptions that outdoor spaces, at night, were 'especially hazardous' for them.¹²¹ Men were also more likely to have networks where they could sell on stolen property, including game and animals. These factors explain the dominance of men in game related cases, and in cases involving animal theft.

This chapter has looked at the impact of legislation on the bringing of certain types of offences to the magistrate over the course of the long eighteenth century. In terms of other changes over time, King and Lacey have observed that the high proportion of female defendants noted by Feeley and Little in the late seventeenth century and early eighteenth century was due to it being an 'exceptional period' in British history. King has pointed out that this period coincided with 'a period of warfare and particular concern about offences in which women were involved'.¹²² Yet there are key differences between the

(McGarvie (ed), *The King's Peace*, 16), as opposed to the smaller, more dispersed settlements in Hoare and Hunt's areas of Wiltshire.

¹²¹ Amanda Flather, *Gender and Space in Early Modern England* (Woodbridge, 2007), 130.

¹²² Nicola Lacey, 'From Moll Flanders to Tess of the D'Urbervilles: Women, Autonomy and Criminal Responsibility in Eighteenth and Nineteenth Century England', *Law, Society and Economy Working Paper 5/2007* (London School of Economics, 2007), 8. www.lse.ac.uk, 12 December 2013; King, *Crime and Law in England*, 211; Malcolm M. Feeley and Deborah L. Little, 'The Vanishing Female:

findings of historians in relation to the higher courts, and the evidence presented here of summary proceedings. The relatively high proportion of female defendants noted by King related to defendants in property offence cases. However, the summary notebooks studied here suggest that the percentage of female property defendants at summary level was not high at the beginning of the period, unlike the overall percentage of female defendants before the magistrate, and that the involvement of women as defendants in property offence cases did not obviously correlate to periods of war or dearth. King has found that the mobilisation of men to fight in the Napoleonic Wars, which reached a peak around 1810, removed the group most vulnerable for prosecution for property offences, and thus the percentage of women being prosecuted for such offences might then correspondingly rise.¹²³ However, this does not appear to be the case at summary level, as table 4.16, on the next page, shows.

The Decline of Women in the Criminal Process, 1687-1912', *Law & Society Review*, 25.4 (1991), 722.

¹²³ King, *Crime and the Law in England*, 212.

Table 4.16 The gender of defendants in property offence cases, by individual magistrate.

	Male defendants		Female defendants		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1705)	18	86%	2	10%	20	100%
Roger Hill (1689-1705)	22	88%	3	12%	25	100%
William Brockman (1689-1721)	78	62%	17	13%	95	100%
Thomas Thornton (1700-1718)	16	89%	2	11%	18	100%
William Hunt (1744-1749)	109	66%	22	13%	131	100%
Thomas Horner (1770-1777)	135	75%	44	25%	179	100%
Edmund Waller (1773-1788)	83	91%	6	7%	89	100%
Richard C. Hoare (1785-1800)	43	80%	9	17%	52	100%
George Spencer (1787-1794)	12	40%	14	47%	26	100%
Thomas L. Thornton (1789)	4	80%	1	20%	5	100%
Thomas N. Parker (1805-1813)	24	73%	7	21%	31	100%
Samuel Whitbread (1810-1814)	79	85%	6	6%	85	100%
Richard C. Hoare (1815-1834)	37	86%	6	14%	43	100%
Richard Stileman (1819-1836)	23	100%	0	0%	23	100%

Sources: WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, WSHC 229/1, ESRO AMS 6192/1. Figures only refer to cases where a male or female defendant is stated, and not where there is a mixed gender or unknown gender defendant.

As table 4.16 shows, there does not appear to be a direct link between war and the percentage of female defendants in property offence cases.¹²⁴ The relative absence of men from property cases being heard at Quarter Sessions and Assizes, due to conscription, and corresponding increase in women, is not reflected at summary level, suggesting that war had less impact on the primarily minor property offences heard at summary level than it did on the prosecution of more serious offences. This reflects the fact that women tended to commit more minor types of theft than men, and thus might be expected to appear more frequently at summary level than in the higher courts throughout the period.¹²⁵

Other factors had more of an impact on the gender of property defendants at summary level, though. This is partly due to the nature of offences being heard at a local level. Legislation had an impact on different geographic areas. Spencer's high percentage of female defendants in property cases was a reflection of the passing of the Worsted Acts.¹²⁶ The Worsted Acts made outworkers subject to

¹²⁴ Richard Colt Hoare's notebooks have here been divided into their two constituent parts, as one was concerned with cases that took place up to the start of the Napoleonic Wars, and the second with cases starting the year the Wars ended (1815). There was only a slight decrease in the percentage of female defendants after the end of the war in his case, and very few female property defendants in Samuel Whitbread's notebooks, which covered cases that took place during the final years of the Napoleonic Wars. Hunt, recording cases during and immediately after the War of the Austrian Succession, recorded a lower percentage of female property offenders than Horner thirty years later.

¹²⁵ King, *Crime and Law in England*, 196

¹²⁶ Passed between 1777 and 1791, the legislation aimed to reduce the amount of embezzlement that occurred amongst outworkers in the textile industry and created a change in the complainants in embezzlement cases, from individual stockingmakers and manufacturers reporting offences, to a situation where Inspectors of Yarn, licensed by the justices, monitored the production of yarn and reported any short or false reeling. Previously, such offences could not be tried on indictment at Quarter Sessions or Assizes, so the only remedy open to

summary justice before the magistrate - a quicker, more affordable option. As a result of the acts, one would expect to find a higher number of women, who formed the majority of spinners, represented as defendants in property cases before magistrates in areas where the yarn industry was based.

The gradual criminalisation of customary rights impacted both men and women in rural areas, but men more than women in regard to poaching. The level of male involvement in poaching reflected both the gendered nature of offences, and also the nature of prosecutions. A man was more likely to be charged with a felony at the higher courts than women, and men were also more likely to appear accused of misdemeanours at summary level, too.¹²⁷ For example, men were more likely to be prosecuted for stealing wood than a woman, being perceived to be more likely to be able to pay a fine for the offence than a woman. So although the cases record by magistrates show that men were prosecuted more for thefts that both men and women have been shown to commit, this does not mean they necessarily committed more of those specific offences, but rather, that they were treated less leniently by the victims of theft. Given the higher number of poaching and wood theft cases in rural areas, it can be seen that rural summary proceedings were to some extent insulated from the changes that war and peace could bring to property offences heard in other areas, and in the higher courts.

employers had been to seek damages in the civil courts, which could be expensive for both parties (John Styles, 'Spinners and the law: Regulating Yarn Standards in the English Worsted Industries, 1550-1800', *Textile History*, 44.2 (2013), 145, 152).

¹²⁷ Laurence, *Women in England 1500-1760*, 254-255.

This section has found that women's involvement as defendants in property offences was, to a certain extent, limited by the sphere of their domestic and work lives. They were restricted in a way that men were not, and this had an impact on what they were able to steal. Women's lives could also be constrained by their relationships with, and dependence on, men, and this chapter will now examine how these constrictions, and subsequent vulnerabilities, are evident when looking at the members of rural communities brought before the magistrate in relation to poor law issues.

ii. The vulnerability of women in settlement and vagrancy cases.

Women constituted, on average, 38 per cent of defendants in poor law cases before the rural magistrate, where the gender of a defendant was stated. The vast majority of these women (99 per cent, or 273 out of 276 female defendants listed in poor law cases) were present in settlement examinations or in vagrancy cases.¹²⁸

Table 4.17, on the next page, shows that women were more likely to appear in relation to vagrancy cases, constituting an average of 44 per cent of defendants in such cases. The highest percentages of female involvement in vagrancy cases were in the two earliest notebooks studied here, those of William Bromley and Roger Hill.

¹²⁸ Poor relief cases are not considered here, as most were brought against unnamed parish officers. Whitbread was the exception in naming the majority of the parish officers in such cases (Cirket (ed), *Samuel Whitbread's Notebooks*).

Table 4.17 The gender of defendants in settlement and vagrancy cases, where gender was stated.

	Male		Female		Mixed gender group		Total	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Settlement	241	45%	165	31%	126	24%	532	100%
Vagrancy	124	50%	108	44%	15	6%	247	100%

Sources: WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, WSHC 229/1, ESRO AMS 6192/1.

The number of vagrancy cases that the rural magistrate heard varied, and reduced as the long eighteenth century progressed. William Bromley, at the start of the long eighteenth century, recorded a considerable number of vagrancy cases, 70 per cent of which involved women.¹²⁹ The number of such cases reflected the fact that Warwickshire was in the centre of transport routes from the north to the south of the country, and so Bromley heard cases involving the issuing or continuance of vagrancy passes from other parts of the country that involved travel through the midlands.¹³⁰ However, the high proportion of females in his vagrancy cases again shows how women could be at a disadvantage in terms of their place of settlement depending on fathers or husbands. The death of their husband and subsequent descent into poverty could result in them being sent across England, in some cases, to return to their husband's place of settlement. Vagrant passes had to be signed by a local official at regular points along their route 'home', and so a magistrate's work in this area reflected the way in which vagrants were transported, and the routes they used, rather than the number of vagrants in each magistrate's own geographical area.

In terms of change over time, there is evidence of change in the vagrancy cases dealt with by the magistrate. In the earlier part of the long eighteenth century,

¹²⁹ Bromley recorded 56 vagrancy cases, of which, 39, or 70 per cent, involved female vagrants, and a further three (five per cent) involved mixed gender defendants (WRO CR0103).

¹³⁰ Roger Hill in Buckinghamshire also dealt with a high proportion of women, explainable by his proximity to London, with many men and women being to their places of settlement by London parishes, such as Jane Cope, who was sent by a London parish to her settlement in Shropshire. Hill was required to continue her pass as far as Stokenchurch, the first parish in the next county of Oxfordshire (CBS D-W/97-8, 1 August 1702).

vagrancy cases recorded by the magistrate primarily involve the issuing or continuance of vagrancy passes. In the later part of the century, however, there is a change, with desertion forming the largest part of six magistrates' vagrancy related work. Although vagrancy legislation in the first half of the eighteenth-century had categorised those who deserted their families as rogues and vagabonds, the cases of desertion recorded by magistrates occurred after 1770.¹³¹ This is partly due to the nature of recording cases. Deserted wives may have been examined as to their settlement on becoming chargeable, or have sought poor relief, but the fact that their husband had left may not have been recorded in summary notebooks, even if it had been recorded in parish records.¹³² The cases recorded from 1770 were primarily brought by parish officers in response to the deserted partner seeking relief, and suggest a harder

¹³¹ The 1714 Vagrancy Act (12 Anne c.23) stated that rogues included 'all able-bodied persons deserting their families who, having no other source of income, loitered and refused to work'. The 1740 act (13 Geo 2 c.24), and its 1744 successor (17 Geo 2 c.5), reiterated this categorization of the deserting partner as a rogue and vagabond, with the 1744 act extending the classification to those who threatened to desert their families (Audrey Eccles, *Vagrancy in law and practice under the Old Poor Law* (Farnham, 2012), 10, 13). There were desertion cases recorded in the notebooks of Thomas Horner (27 cases, of which three involved women deserting their families), Richard Colt Hoare (two cases), George Spencer (two cases, one involving a woman deserting her family), Thomas Netherton Parker (three cases), Samuel Whitbread (eight cases) and Richard Stileman, who heard five cases, of which, one was brought against a woman (McGarvie (ed), *The King's Peace*; BL Add MS 76337; BL Add MS 76340; WSHC 383/955; SA 1060/168-70; Cirket (ed), *Samuel Whitbread's Notebooks*; ESRO AMS 6192/1). However, one case involving a woman threatening to desert her children was also recorded in William Bromley's notebook (WRO CR0103, 2 June 1687).

¹³² Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660-1800* (Cambridge, 2003), 37. Bailey has found that 'most information about desertion is found in poor-relief material' (Bailey, *Unquiet Lives*, 170).

line being taken by officers towards such cases in seeking to either get the husband to maintain his family, or to be punished for failing to do so.¹³³

Burn, in 1776, referred to deserters as being those who left 'their wives and children', making the assumption that deserted was caused by the husband, but legislation did not specify that this was the case.¹³⁴ Both Horner and Stileman recorded cases of women deserting, or threatening to desert, their children, and here, there is evidence that this act or threat was done in order to manipulate the poor law system. This was also a subverting of the ideal of motherhood, done in an attempt to force the overseer's or magistrate's hand when it came to poor relief, with the woman using her children as a tactic to gain additional or sufficient relief to maintain her family.

This can be seen in a couple of specific cases within the magistrates' notebooks. In one case before George Spencer in 1793, Elizabeth Grant initially came before him to explain that her husband was ill, in hospital and therefore not earning,

¹³³ For example, all the desertion cases in Thomas Horner's notebook were brought by local overseers. 24 stated that the defendant had 'run away' leaving his or her family chargeable, two stated that the husband was not maintaining his wife or family, and two recorded that the husband was 'refusing' to maintain his family (McGarvie (ed), *The King's Peace*).

¹³⁴ Much of the work that has been carried out on desertion has similarly focused on men (Erickson, *Women and Property*, 127; Bailey, *Unquiet Lives*, 36-37, 190; Tim Stretton, 'Marriage, separation and the common law in England, 1540-1660' in Helen Berry and Elizabeth Foyster (eds), *The Family in Early Modern England* (Cambridge, 2007), 19, Steve Hindle, "'Without the cry of any neighbours': A Cumbrian family and the poor law authorities, c.1690-1730', in Berry and Foyster (eds), *The Family in Early Modern England*, 139; Stone, *The Family, Sex and Marriage in England*, 35).

and that she had been refused relief. Spencer ordered that she should receive 1s 6d a week until her husband recovered.¹³⁵ But three days later, the local overseer complained to Spencer that Grant had left her three children at his door, saying she could not maintain them on the amount of relief that had been ordered. Although Spencer recorded Elizabeth's desertion of her children as a vagrancy case, he also ordered the overseer to try and agree an acceptable level of relief with her, stating that only if she refused to reach an agreement would he issue a warrant to be brought before him.¹³⁶ Elizabeth refused to accept both the initial rejection of her request for relief, and the subsequent order, and was willing to subvert traditional views on the role of women as mothers in order to negotiate a more acceptable amount.¹³⁷ This strategy was not unique. In 1687, for example, Mary Ward of Leamington threatened to 'abandon her children to the parish' and was promptly committed to the House of Correction by magistrate William Bromley.¹³⁸ This was not a misjudgement on Mary's part, for being in prison, she would be fed and maintained and her children likely to receive relief or maintenance in the poor house in her absence. This is a demonstration of agency on the part of these few women, albeit agency arising out of desperation. Whereas the continuance of vagrancy passes recorded by the

¹³⁵ BL Add MS 76340, 23 November 1793

¹³⁶ The 1744 Vagrancy Act (17 Geo 2 c.5) did not specify the gender of a person who could be charged in this way, but the fact that it referred to persons who left 'their wives and children' makes it doubtful as to whether this later legislation would have been applicable to women. It was certainly worded on the assumption that men were more likely to desert their families than women were (Burn, *The Justice of the Peace, Volume 4*, 307).

¹³⁷ This strategy worked, with Spencer suggesting weekly relief of over a shilling more than originally ordered (BL Add MS 76340, 26 November 1793).

¹³⁸ WRO CRO103, 2 June 1687. The vagrancy legislation operating in Bromley's time, 7 James c.4, did not specify who came under the description of 'idle and disorderly', so it could be applied to both men and women.

earlier magistrates gives an impression of lack of agency on the part of men and women, the recording of women threatening to desert their families in order to increase their poor relief shows them clawing an element of agency back.

Was agency also demonstrated by women who were subject to settlement examinations? Together with vagrancy and poor relief, settlement examinations formed a key part of a magistrate's workload. Women made up a lower percentage, on average, of settlement cases than they did of vagrancy cases, as table 4.17 illustrated. However, they were still well represented, constituting over 30 per cent of those examined on their own or with children in the notebooks of six different magistrates.¹³⁹ The percentage underestimates the number of women involved in settlement examinations taken before the magistrate, as male cases only look at the person being examined. Some of these would have included married men who were being examined on their own, or whose wife was not mentioned. Nearly one quarter (24 per cent) of all settlement examinations were of married couples or other male and female relatives who were both present before the magistrate. Combining the female and mixed gender percentages shows that women were present in over half of all settlement examinations.¹⁴⁰

¹³⁹ WRO CR0103; BL Add MS 42598; BL Add MS 42600; Crittall (ed), *The Justicing Notebook of William Hunt*; McGarvie (ed), *The King's Peace*; CBS DC18/39/4; ESRO AMS 6192/1. However, Stileman's notebook only contains one settlement examination, which is of a woman, so the figure this gives of 100 per cent female involvement is not based on a range of cases.

¹⁴⁰ A breakdown of settlement examinations by magistrate is included in Appendix 4 (page 409).

This relatively high percentage of female defendants reflected the vulnerable status of poorer women within both rural and urban societies in the long eighteenth century, with women's settlement status based on that of their husband or father. The presence of women within the examinations of men also illustrates how settlement for women could be a 'deeply problematical' concept, where, on marriage, they could lose the right to live in a place where their family lived, or where they themselves may have lived most of their lives.¹⁴¹ The vulnerability of married women can be seen in a case before William Bromley, where Hannah Evans of Stoneleigh, who had recently married, was ordered to 'go to her said husband's last legal settlement', her legal settlement no longer being Stoneleigh.¹⁴² Women could face additional difficulties where they did not know where their husband was settled. When the Kenilworth overseer asked William Bromley to remove Mary Chambett from the parish, it was noted that her husband had deserted her some time back, and the parish was unable to find out where his settlement was. As she had previously worked as a servant in Coventry, Bromley decided to send Mary there instead.¹⁴³

This dependence on men for settlement might suggest that women lacked agency in their dealings with magistrates in this area. However, settlement examinations did permit women some limited agency. Mary Chambett either could not or would not tell the overseer and magistrate where his settlement had

¹⁴¹ K.D.M. Snell, 'Belonging and community: understandings of "home" and "friends" among the English poor, 1750-1850', *The Economic History Review*, 65.1 (2012), 10.

¹⁴² WRO CR0103, 8 March 1687.

¹⁴³ WRO CR0103, 24 March 1698.

been, ensuring that she could not be removed there. By such strategies, deserted or widowed women may have avoided being sent back to parishes they had limited knowledge of. This was not an option that men could similarly use, as their work history was the basis for their settlement. However, many of the examinations present detailed work and life summaries, showing, as Evans has recognized, that families 'shared the details of settlement amongst them knowing that it might be useful in times of future hardship'.¹⁴⁴ This suggests that examinations were useful not only for the parish but for the individual examined. By being examined, both men and women would ascertain where their settlement was, and know who was responsible for their relief. In this sense, examinations were useful for both genders, enabling them to gain a sense of identity and belonging, in relation to a parish having financial responsibility for them.

Women's vulnerability in terms of the poor law is evident from the magistrates' notebooks, and this vulnerability transcended geography and time. Women were dependent on men for their settlement, and this had an impact not only on their presence in settlement examinations, but in vagrancy cases too. The desertion of a husband might leave them chargeable to the parish, and they would also be left having to maintain their families. Yet they were able to use agency in a way in which men were not. Being sent back to their husband's place of settlement was dependent on them knowing that place, and relating it to the parish officer or

¹⁴⁴ Tanya Evans, *Unfortunate Objects*, 28.

magistrate. Threatening to desert one's children could gain mothers concessions, or at least get their children fed.

iii. Why men were more likely to be brought to the magistrate in cases involving offences against the person.

This chapter has already looked at how women most commonly complained about offences against the person in their appearances before the magistrate. They were more likely to engage with the summary process as complainants in such cases than as defendants, constituting, on average, 12 per cent of defendants. This figure is less than the percentage Beattie has found in the Surrey courts of the eighteenth century.¹⁴⁵ The lack of female defendants is both due to how assault cases were seen in the long eighteenth century, as well as the how people in rural communities perceived the role of the summary process and who was using that process. As assault was seen as a civil rather than a criminal matter, magistrates were encouraged to mediate or negotiate between complainants and defendants, settling cases informally.¹⁴⁶ At summary level, with its lower cost in terms of time and money for the complainant, it was a means for them to get financial compensation or an apology without having to go to court. The relative absence of female defendants in assault cases was due, in part, to that desire for financial recompense. Bringing a case against a man who

¹⁴⁵ Beattie calculated that 20 per cent of assault defendants (including those charged with wounding, beating and verbal threats) in Surrey were women (Beattie, 'The Criminality of Women', 85).

¹⁴⁶ Hurl-Eamon, *Gender and Petty Violence*, 132; Gray, 'The Regulation of Violence in the Metropolis', 75, 77. Although both Hurl-Eamon and Gray discuss assault in the context of London courts, magistrates' notebooks show that assault was perceived, and dealt with, in a similar way in rural areas.

was earning and, if married, would be the main income earner, meant that compensation was a likely result. However, bringing a case against a woman on a more limited income, if she was working, could result in a smaller amount of damages being ordered, or the risk of her having to be committed for failing to pay. King noted, in his analysis of Cornish records, that women may have been more likely than men to be imprisoned for assault, because they were perceived to be unable to pay fines.¹⁴⁷ This assumption may have also affected the decision to bring complaints against women to the magistrate, with complainants believing that they would be less likely to get financial recompense from a female.

This is especially true given that the majority of female complainants in assault cases were complaining of assaults by other women. In the majority of the magistrate notebooks, women were most frequently accused of verbal or physical assaults on other women in their community. Although magistrates rarely recorded the gender of both complainant and defendant in assault cases, where they were recorded, an average of 77 per cent of cases brought against women were assaults where they were accused of attacking other women.¹⁴⁸

¹⁴⁷ King, *Crime and the Law in England*, 263.

¹⁴⁸ The gender of defendants in assault cases brought against women were listed in just 78 cases across the magistrates' notebooks. Out of these, 60 were alleged attacks on women (77%), 14 were on men (18%) and four were attacks against mixed gender defendants (5%). Richard Colt Hoare, George Spencer and Thomas Lee Thornton did not record any assault cases brought against female defendants; Thomas Thornton recorded a single case brought against a woman, but did not record the victim's gender (WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4-5, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192).

This suggests that, as Emsley has argued, 'women fought each other; less commonly they fought with men'.¹⁴⁹ Beattie has asserted that women were more likely to assault or threaten those within their own household or community, rather than a stranger, and this seems probable, but larger statistics would help provide a more definitive picture of such assaults.¹⁵⁰

The cost and time involved in bringing complaints was influenced by the gender of the defendant and the likely outcome of bringing a case against a woman. Morgan and Rushton have noted the deterrent to female victims of assault in taking their cases to court, such as the cost of indictments and actually attending court.¹⁵¹ Those deterrents also applied, to a lesser degree, to taking a case to the magistrate, as there was still a time and cost consideration in bringing a case. Although summary proceedings were open to all, in theory, this thesis has already established that defendants were mainly drawn from the artisan and labouring classes, with labourers and servants particularly well represented. The ability of such defendants to pay damages would clearly be limited and would affect the number of complaints taken to the magistrate. In addition, assaults committed by women were also perceived as less serious than those committed by men, and were more likely to be settled between parties, outside of the justicing room.¹⁵² Hunt, in particular, recorded several cases being resolved 'without hearing', with the initial approach to the magistrate being enough to

¹⁴⁹ Emsley, *Crime and Society in England*, 155.

¹⁵⁰ Beattie, 'The Criminality of Women', 85-86.

¹⁵¹ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 68.

¹⁵² Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 70.

make the accused agree matters with the complainant. It is probable that many more cases were settled after a mere threat to take matters to the magistrate, or settled quickly after tempers had abated.¹⁵³

So what cases did result in a visit to the magistrate, and why were the actions of some women perceived to be worthy of such a visit? Women were brought before the magistrate when the assault they had carried out was seen in law as more serious. One example of the former is a case brought to William Hunt by labourer's wife Jane Merrit in May 1748. She accused Susannah Bundy, Susannah's daughter Jane, and a third woman, Sarah Glass, of assaulting both Merrit and her own daughter Sarah in the local churchyard the previous Sunday.¹⁵⁴ The inclusion of detail about the location is significant, as assaults that took place in a churchyard were subject to more severe punishment by statute.¹⁵⁵

Cases involving physical abuse were also more commonly brought to the magistrate than those involving only verbal assaults, despite petty violence, the

¹⁵³ This helps explain why women are present less often as assault defendants in rural notebooks than in the City of Westminster, for example. Hurl-Eamon found that one-third of all those bound over for assault in Westminster in the late seventeenth and early eighteenth centuries were women - a far higher percentage than in the rural notebooks (Hurl-Eamon, *Gender and Petty Violence*, 68). Rural assaults were more likely to have been resolved within their smaller, closer communities than cases in urban areas, with defendants and complainants more willing to agree matters without the need for formal action and recognizances (Hurl-Eamon, *Gender and Petty Violence*, 8; Shoemaker, *Prosecution and Punishment*, 284-288).

¹⁵⁴ Crittall (ed), *The Justicing Notebook of William Hunt*, 72-73.

¹⁵⁵ Hurl-Eamon, *Gender and Petty Violence*, 133.

offence type that was heard most often by the magistrate at summary level, including both physical and verbal acts of aggression.¹⁵⁶ The notebooks studied here suggest that throughout the period, the summary process was used to complain about physical assaults, with victims emphasising the violent nature of such attacks, rather than complaints about threats alone. It is likely that complainants avoided taking more trivial cases to the magistrate because they knew they would not be treated seriously. Therefore, although summary proceedings dealt primarily with petty violence, when it came to offences against the person, victims went through a process of determining how severe the case was before deciding to approach the magistrate.

This thesis has explored how some spheres of life in the long eighteenth century were gendered, and the impact this had on some of the offences dealt with by magistrates. Assault cases, however, show that there were shared spaces where both men and women committed offences. Both men and women assaulted people in the local inn, reflecting Amussen's observation that 'the alehouse was a central gathering place, so at times new people were absorbed into an alehouse conflict'.¹⁵⁷ Whitbread and Horner also recorded local statute fairs as being the

¹⁵⁶ Drew Gray, 'The City Summary Courts in the Late 18th Century: Courts for the People?' (presentation, Guildhall Library Events, Guildhall Library, London, 3 July 2013), 5. <http://nectar.northampton.ac.uk>. 15 November 2014; Hurl-Eamon, *Gender and Petty Violence*, 2.

¹⁵⁷ Susan Dwyer Amussen, 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England', *Journal of British Studies*, 34.1 (1995), 25. Stileman recorded three cases of men carrying out assaults either in or outside taverns. Parker recorded pubs in two out of the three cases against men, where he noted a location, in hearing a case of assault brought against Robert Lloyd, noted that the defendant had 'got in liquor at the Dogs public house in Ruyton on a Sunday the day of the assault'. Elizabeth Jones

location for assaults, with both men and women present.¹⁵⁸ Where detail was recorded, men and women were recorded as using similar methods of assault, most commonly being recorded striking their victims with their fists or hands.¹⁵⁹ These cases of assault show that although women were far less likely than men to appear before the magistrate accused of carrying out such offences, their gender had less impact in terms of how and where they carried out acts of violence than it did in areas such as property offending.

In terms of change over time, there is some continuity over the course of the long eighteenth century. Although assaults became increasingly heard at summary level, as property offending became the focus of the courts, there was little change in terms of who was brought to the magistrate accused of assault. An average of 13 per cent of both men and women were accused of committing assaults with others of the same gender, but it was far less likely that men and women would be accused of carrying out an offence together as part of a mixed gender group.¹⁶⁰ All the magistrates dealt with a low number of female

was accused of assaulting another woman 'after both getting [sic] drunk at the Britannia Public House' (ESRO AMS 6192/1, 30 September 1822, 5 October 1824, 5 October 1824; SA 1060/168-70, 16 June 1806, 9 March 1808, 17 October 1808).

¹⁵⁸ Cirket (ed), *Samuel Whitbread's Notebooks*, 89, 91; McGarvie (ed), *The King's Peace*, 28.

¹⁵⁹ Using fists or hands to strike people is recorded in Stileman's notebook in 26 out of 56 cases brought against men and three out of six cases brought against women (ESRO AMS 6192/1).

¹⁶⁰ An average of seven per cent of assault defendants were mixed gender groups, but five magistrates (William Bromley, Roger Hill, Edmund Waller, Richard Colt Hoare and Thomas Lee Thornton) heard no assault accusations against mixed gender defendants, and four more magistrates - William Brockman, Thomas Thornton, George Spencer and Richard Stileman - only heard a single case each.

defendants, whether accused on their own or with other women. Thomas Netherton Parker heard the most cases brought against women, with female defendants constituting 22 per cent, or 26 out of 116 cases involving a single sex defendant. He also heard the second highest percentage of assault cases (121 cases, including ones where the gender of the defendant is not specified, out of a total of 315 cases, or 38 per cent), but this percentage is also a reflection of the greater participation of women in his summary proceedings generally, as well as the higher number of assaults he dealt with. Over the long eighteenth century, though, assault cases continued to be brought primarily against men, and assaults were primarily brought against individuals acting on their own. So although the nature of the assault was not often explicitly gendered, the accusations brought to the magistrate in terms of who had been the attacker were more gendered.

iv. The gendered division of roles evident in employment cases.

This chapter now looks at defendants in employment related cases, where, as in offences against the person, cases were brought primarily against men. In this area, however, the gendered nature of employment, both in terms of employers and workers, can be seen to impact on the ratios of men and women who appeared before the rural magistrate. As table 4.12 on page 209 showed, women made up an average of 11 per cent of defendants in employment related cases, being less represented both as employers and as workers than men were.

As table 4.18, on the next page, illustrates, women were most commonly found as defendants in allegations of cruel or bad usage made by servants towards their employers. This suggests both that where women were present as employers in rural England over the long eighteenth century, their treatment of servants gave rise to a disproportionate number of complaints compared to other types of employment case.

Table 4.18 The gender of defendants in each type of employment case before the rural magistrate.

	Male defendant		Female defendant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
Wage dispute	303	94%	20	6%	323	100%
Misdemeanour by servant/worker	180	86%	31	15%	211	100%
Bad or cruel usage by master/mistress	44	81%	10	19%	54	100%
Apprenticeship indentures	23	96%	1	4%	24	100%
Discharges of contracts	15	65%	8	35%	23	100%
Other ¹	1	100%	0	0%	1	100%

¹ This refers to a case in William Brockman's notebook where parish officers asked a man to justify why he had employed a servant (BL Add MS 42600, 4 November 1700). **Sources:** WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, NRO Th1681, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, WSHC 229/1, ESRO AMS 6192/1.

As table 4.18 demonstrates, wage disputes formed over half of all employment cases heard by the rural magistrates, where a male or female defendant was specified, but female employers only formed a small percentage (eight per cent) of such cases. Women were certainly present as employers, forming 17 per cent of defendants, on average, in allegations of bad or cruel usage, so does this lower percentage in wage cases mean that female employers were less likely to withhold wages, or argue over the wages due to a servant? I would argue that the lower percentage of female employers is more due to the division of a husband and wife's roles in the long eighteenth century. In many cases, a wife would have taken on the day-to-day management of domestic servants, even though the husband would have been considered as the primary employer.¹⁶¹ She would be the person more likely to treat a servant badly during his or her daily work, therefore, whereas the husband would be responsible for paying wages - so some wage disputes would have been specified a male employer, even if a female had other responsibilities for that servant. Where there was a case of cruel usage, however, a complainant would bring that accusation against the individual who had behaved badly, regardless of who the head of household was.¹⁶² In addition, these were rural areas that were dependent, to differing

¹⁶¹ Both Vickery and Day have suggested this in relation to the role of elite women in supervising servants. Although the female employers in the magisterial households were probably from more humble backgrounds, for example, being farmers' wives, they were still likely to have this role over domestic servants (Amanda Vickery, *The Gentleman's Daughter: Women's Lives in Georgian England* (New Haven, 1998), 138-147; Julie Day, *Elite Women's Household Management: Yorkshire, 1680-1810* (PhD thesis, University of Leeds, 2007), 134).

¹⁶² In Thomas Netherton Parker's notebook, where women had a more prominent role both as complainants and defendants, suggesting that women in proto-industrial Shropshire were more independent and involved in the summary process than women in some more rural areas, nine cases involving

extents, on agricultural labour, which was dominated by male workers. Annual hirings, most commonly starting at Michaelmas, were usual, but there could be disputes where a servant left earlier than intended, or took leave within his period of service. Some disputes brought to magistrates appear to be a conflict over complex calculations of wages, with the magistrate consulted to give a final figure regarding the amount owed. In this sense, the magistrate was used to provide financial advice and arbitration, as Parker, for example, also did in the settling of business accounts.

Table 4.19, on page 255, shows the gender split in terms of defendants in employment cases by magistrate. It can be seen that there is little overall increase or decrease in the involvement of women as defendants in such cases over time. The two magistrates with the largest number of women, William Brockman in the late seventeenth and early eighteenth century, and Thomas Netherton Parker in the early nineteenth century, have only one percent difference in female defendants. Apart from these two magistrates, female defendants in employment cases before all the other magistrates studied here never get beyond single figures.

owed wages were brought against female employers, five of whom were listed as 'Mrs'. Although this suggests that in early nineteenth Shropshire, women took on the responsibility for some servants, including both the day-to-day management of their work, and the payment of their wages, it cannot be assumed that they were married. As Erickson has argued, 'Mrs' was often used in the eighteenth century to denote a business proprietor or employer, although its usage was changing by Parker's time (Amy Louise Erickson, 'Mistresses and Marriage: or, a Short History of the Mrs', *History Workshop Journal*, 78.1 (2014), 44-45, 48; SA 1060/168-70).

Table 4.19 The gender of defendants in employment cases before the individual magistrate.

	Male defendant		Female defendant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	4	80%	1	20%	5	100%
Roger Hill (1689-1705)	23	88%	3	12%	26	100%
William Brockman (1689-1721)	157	85%	28	15%	185	100%
Thomas Thornton (1700-1718)	1	50%	1	50%	2	100%
William Hunt (1744-1749)	18	82%	4	18%	22	100%
Thomas Horner (1770-1777)	107	99%	1	1%	108	100%
Edmund Waller (1773-1788)	14	87.5%	2	12.5%	16	100%
Richard C. Hoare (1785-1834)	22	100%	0	0%	22	100%
Thomas L. Thornton (1789)	5	100%	0	0%	5	100%
George Spencer (1787-1794)	12	100%	0	0%	12	100%
Thomas N. Parker (1805-1813)	84	84%	16	16%	100	100%
Samuel Whitbread (1810-1814)	83	98%	2	2%	85	100%
Richard Stileman (1819-1836)	39	81%	9	19%	48	100%

Sources: WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Cases comprise misdemeanour allegations made against servants or other workers, bad or cruel usage accusations made against employers, and wage disputes made against employers. Cases exclude work-related thefts, which are included in property offence statistics.

The nature of employment in a particular geographic locale affected not only what cases were brought, but also who they were brought against. Horner, for example, dealt with the apprenticeship into trades of several poor children from local parishes. These show that farmers and agricultural servants were less evident in his notebook than in other areas, with more artisans and tradesmen, including shoemakers, blacksmiths, wheelwrights and tinmen all being recorded. This spread of occupations is clear not just in apprenticeship entries, but also in terms of wage disputes. In addition, some of those asking for wages were labourers on the highways, not an occupation where women would be represented.¹⁶³

The varying engagement of women in the summary process as employers and as disgruntled servants varied, then, according to the nature of work available in each area, and the extent to which women in that area took on responsibility for servants and other workers. The nature of work is the primary factor in explaining the differing involvement of women as defendants, and there is little evidence therefore of an increase in the engagement of women as defendants in such cases over the course of the eighteenth century.

v. The impact of gender on social, economic and moral regulation.

¹⁶³ McGarvie (ed), *The King's Peace*, 78.

Women's presence as defendants in employment cases was limited by the nature of employment and the status of men in rural society. It is not surprising, therefore, that women's presence as defendants in regulatory offences was also limited, to a certain extent, by the dominance of men in rural society both as officials and as business owners. On average, across the justicing notebooks studied in this thesis, only nine per cent of defendants in regulatory cases were female. To dismiss women's presence in such cases as negligible or small, because of this figure, though, further marginalises them and their place within eighteenth century life, and ignores the offences that they did appear before the magistrate accused of.

The range of offences that magistrates dealt with under the loose category of economic and social regulation were both broad and diverse. Landlords were brought before the magistrate accused of keeping disorderly alehouses, or for continuing to sell beer or other alcohol without a licence. Although the majority of defendants were male, it is clear that some rural women operated inns in partnership, whether formal or informal, with their husbands.¹⁶⁴ William Brockman's notebooks detailed two women who ran local taverns with their husbands, both of whom displayed agency in their refusals to accept the decisions of the justice. In 1715, after Brockman issued a warrant to suppress

¹⁶⁴ In some other cases, it is likely that a business was run by a husband and wife together, but that only the husband was recorded as a defendant, or that a husband was recorded where it was, in fact, the wife who had committed the offence. This appears to be the situation in one of William Bromley's entries, where he recorded two men of selling ale without a licence, but after a warrant was issued, the wives of the two men appeared and confessed to selling the ale (WRO CR0103, 3 June 1691).

Jonathan and Jane Heywood's pub, Jane 'declared they would continue selling drink regardless of what the justices did'.¹⁶⁵ Simon and Rebecca Crump were defendants before Brockman several times, Simon six times, with Rebecca mentioned twice, on allegations of selling beer without licence. On the last occasion, Simon Crump was sent to gaol for want of sureties, but Brockman noted, 'his wife continues to sell, and says she will still continue on so to do'.¹⁶⁶ These two women refused to acknowledge the authority of the local magistrate or his intervention in their working lives, and showed how they both saw themselves as equal partners to their husbands in the operation of their business, and were similarly regarded as such by the magistrate.

In terms of the enforcing of weights and measures, Laurence has asserted that women's retailing tended to be on too small a scale for them to be prosecuted under weights and measures regulations, but it is evident that women did carry out business activities, and were brought before the magistrates charged under weights and measures regulations.¹⁶⁷ Horner's notebook shows, for example, that women constituted the majority of individuals charged with baking and selling loaves that were deficient in weight.¹⁶⁸ Women also formed 40 per cent (two out of five) of defendants selling tea or cider without paying excise duties, and 27 per cent (four out of 11) defendants accused of selling alcohol without a

¹⁶⁵ BL Add MS 42598, 16 August 1715, 23 August 1715.

¹⁶⁶ BL Add MS 42598, 2 September 1715.

¹⁶⁷ Laurence, *Women in England 1500-1760*, 259-260.

¹⁶⁸ Women formed five out of eight (62.5 per cent) of defendants in such cases. (McGarvie (ed), *The King's Peace*, 57, 58, (two cases), 72, 114).

licence. In the latter category, women were selling beer from their houses, although some rural shops were operated from individuals' front rooms.

As table 4.20, on page 260, shows, there was no gradual rise or fall in the involvement of women as defendants in regulatory cases over time. Instead, the percentage of female defendants fluctuated both according to the type of cases focused on by individual magistrates, and according to geographic factors.

Table 4.20 The gender of defendants in regulatory cases before the individual magistrate.

	Men		Women		Total	
	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1705)	9	82%	2	18%	11	100%
Roger Hill (1689-1706)	26	90%	3	10%	29	100%
William Brockman (1689-1721)	80	94%	5	6%	85	100%
Thomas Thornton (1700-1718)	14	93%	1	7%	15	100%
William Hunt (1744-1749)	27	96%	1	4%	28	100%
Thomas Horner (1770-1777)	81	86%	13	14%	94	100%
Edmund Waller (1773-1788)	16	100%	0	0%	16	100%
Richard C. Hoare (1785-1834)	6	100%	0	0%	6	100%
Thomas L. Thornton (1789)	8	100%	0	0%	8	100%
George Spencer (1789-1794)	20	87%	3	13%	23	100%
Thomas N. Parker (1805-1813)	20	83%	4	17%	24	100%
Samuel Whitbread (1810-1814)	79	94%	5	6%	84	100%
Richard Stileman (1819-1836)	4	100%	0	0%	4	100%

Sources: WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1.

The focus by Hoare on poaching and theft, and Stileman on assaults, explains the lack of regulatory cases they recorded. Horner, working in an area with a larger number and wider variety of businesses, heard more regulatory cases, and more cases brought against women. The nature of offences brought against men was also different - in Somerset, where army soldiers were billeted in the 1770s, Horner also dealt with deserters and soldiers being accused of anti-social behaviour.¹⁶⁹ William Brockman, near the Kent coast, dealt with three smuggling cases, and six more excise cases that were likely to have been related to smuggling, all cases brought against men. Like poaching, smuggling was a largely male activity, and so the nature of illicit activities in Kent had an impact on the gender of defendants recorded in Brockman's notebooks.

Women's involvement as defendants in regulatory cases was also, in part, a reflection of the changing role of the rural magistrate over the course of the long eighteenth century. Although the paying of parish poor rates was a concern throughout the century, with individuals either querying the amount they had been levied, or being accused of refusing to pay it, some other cases were less consistent. Whereas in the late seventeenth and early eighteenth centuries, the focus was on the paying of burial levies, and the execution of office, for example, from the 1770s, the magistrate became more of an advisor.¹⁷⁰ Both Parker and

¹⁶⁹ As soldiers were drafted to the Frome area in the 1790s to deal with unrest over the mechanisation of the local woollen industry, this earlier presence may also reflect some local industrial or social unrest. (von Behr, 'The Cloth Industry of Twerton', 93).

¹⁷⁰ The Burial in Woollen Acts (18 and 19 Charles 2, c.4, 30 Charles 2, c.3 and 32 Charles 2 c.1) had required an affidavit to be sworn in front of a magistrate that an individual had been buried in a woollen shroud, or face a £5 fine. The

Whitbread, for example, dealt with many cases involving the settling of accounts or queries regarding rents, business, or other financial enquiries. These were not criminal offences, but more administrative, with individuals seeking the adjudicating or signing off of accounts. This is significant in that it affected the gender of defendants before the magistrate. Parker recorded one female defendant where the complainant disputed a bill she had presented him with.¹⁷¹ However, most disputes over bills and settling of accounts were between male business owners, with women rarely present.¹⁷²

Within the relatively limited number of social regulation cases, there is little evidence that women were the specific object of ‘moral policing’ within their local communities.¹⁷³ There is only one mention across all the notebooks studied here of women being accused of operating a bawdy house, and one case involving the prosecution of two women for ‘lewd and disorderly’ behaviour, which might have involved prostitution.¹⁷⁴ Although there are cases of women being punished for using bad language, such as when Hannah Beard was convicted for swearing in front of a clerk in Wiltshire, men were similarly

legislation applied until 1814, but as Snell has observed, ‘the implementation of these acts was increasingly discarded in the 1730s and 1740s, to become very uncommon after the 1760s’ (K.D.M. Snell, ‘Parish registration and the study of labour mobility’, *Local Population Studies*, 33 (1984), 37).

¹⁷¹ SA 1060/168-70, 28 April 1808.

¹⁷² Out of nine such cases, only one involved a female (SA 1060/168-70).

¹⁷³ Although the phrase ‘moral policing’ is sometimes used to refer to streetwalking offences, it is used here to denote any attempt at monitoring or punishing unfeminine or immoral behaviour (Faramerz Dabhoiwala, *The Origins of Sex: A History of the First Sexual Revolution* (Oxford, 2012), 72).

¹⁷⁴ SA 1060/168-70, 9 December 1807; McGarvie (ed), *The King’s Peace*, 22. Gray has noted that ‘prostitutes were commonly labelled “lewd and disorderly” women’ (Gray, *Crime, Prosecution and Social Relations*, 118).

accused.¹⁷⁵ But these cases were rarely reported in the magistrates' notebooks, and there is no sign that women were singled out for such behaviour. There was no increase or decrease in the number of women being accused of disorderly behaviour or of bad language, with the numbers being consistently small.¹⁷⁶ In terms of social regulation, then, there is little evidence in rural societies that either gender was the focus of attention for their behaviour, or that such cases represented a problem for the community or a large workload for the magistrate.

vi. How the fathers and mothers of illegitimate children were viewed different in law and practice.

However, one area of women's behaviour that was the focus of both magisterial and parish officer attention was that of bastardy. This chapter earlier looked at how women were the complainants in most bastardy cases, having a clear reason for coming to the magistrate for a voluntary examination that would gain her relief and set out the paternity of her unborn child. This section looks at those individuals who can be seen as defendants in such cases - the fathers of illegitimate children, but also the women who had not undertaken a voluntary examination, had refused, or were being brought to the magistrate after a month had elapsed since the birth of their child, to be examined. Firstly, table 4.21,

¹⁷⁵ Crittall (ed), *The Justicing Notebook of William Hunt*, 85. Hannah had previously been before Hunt accused of assault a year earlier and thus may have been singled out as a troublemaker within her community (Crittall (ed), *The Justicing Notebook of William Hunt*, 63).

¹⁷⁶ Only Brockman, Hunt and Whitbread heard allegations of bad language used by women (five cases in Brockman's notebooks, and one in each of the other notebooks). Hill, Brockman, Horner, Waller and Whitbread all heard a single case each of women being accused of disorderly behaviour, with Parker hearing two such cases.

below, shows the reasons provided as to why the fathers of illegitimate children were brought before the rural magistrate.

Table 4.21 The reasons given for men’s appearances in bastardy cases.

	Number	Percentage
To be named as a father	275	80%
Request to contribute or request for an order of maintenance to be made	39	11%
Refusal to maintain or refusal to abide by an order of maintenance	31	9%
Total	345	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MSS 42598 and 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King’s Peace*, CBS DC18/339/4-5, WSHC 383/955, BL Add MSS 76337 and 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread’s Notebooks*. There are no bastardy entries in Richard Stileman’s notebook (ESRO AMS 6192/1).

Table 4.21 shows that, across the notebooks studied here, 80 per cent of men listed in bastardy cases were being formally named as the fathers of illegitimate children, during the examinations of the mothers. The smallest percentage of men, nine per cent, had refused to maintain their children following an order of maintenance. This shows that the primary role of the magistrate at summary level was to examine the mothers, and find out who should be financially responsible for their children. This echoes Connors’ assertion that ‘the deterrent force’ behind bastardy legislation was aimed at the putative father of a child, aiming to identify him and either get him to enter into a recognizance to indemnify the parish from the costs of maintaining the child, or to have an order

of maintenance made by the magistrate.¹⁷⁷ The notebooks show that it was far more unusual for the magistrate to have to intervene at this level with fathers who had already been deemed responsible but who were not meeting their financial obligations towards their children. However, some magistrates dealt with higher percentages of fathers failing to maintain their children than others. 31 per cent of Thomas Parker's cases brought against men, for example, were to issue orders of maintenance, and 17 per cent of Thomas Horner's cases were the same. Shropshire had a higher percentage both of orders of maintenance being issued, and of orders being ignored, at 15 per cent of Parker's bastardy cases involving male defendants.¹⁷⁸

Despite legislation that clearly stated that both the father and the mother could and should be punished, in practice, the magistrates' notebooks only record mothers being charged with lewd behaviour, reflecting the fact that 'perceptions of women's behaviour were...important'.¹⁷⁹ Palk argued that there were notions

¹⁷⁷ Richard Connors, 'Poor women, the parish and the politics of poverty', in Hannah Barker and Elaine Chalus (eds), *Gender in Eighteenth Century England: Roles, Representations and Responsibilities* (Harlow, 1997), 131. Burn recommended that magistrates make orders rather than use recognizances, as the former cost less and was a quicker process (Burn, *The Justice of the Peace, Volume 1*, 179).

¹⁷⁸ This, combined with the relatively high number of separation and desertion cases Parker dealt with, suggest that the wars overseas between 1793 and 1815, with associated 'domestic demand for food and raised prices, rents and land values' in Shropshire, led to a harsher approach by parish officers and therefore more cases being brought to Parker (C.D. Cox *et al*, 'Domesday Book: 1750-1875', 168-231).

¹⁷⁹ Evans cited 18 Eliz. c.3 in stating that 'Justices of the peace shall order the punishment of the mother and reputed father of a bastard' (William David Evans, *A Collection of Statutes connected with the General Administration of the Law; arranged according to the order of subjects. Volume 7* (3rd edition, London, 1836), 80); Beattie, *Policing and Punishment*, 65.

of 'appropriate' male and female behaviour that would have affected the views of magistrates when dealing with cases.¹⁸⁰ Yet in terms of bastardy, it was women in particular who had their behaviour judged. Although 18 Eliz. c.3 had stated that both the mother and father of an illegitimate child should be punished, in law, it was only the woman who was deemed to be 'lewd' for having an illegitimate child which might become chargeable to the parish, and 7 James c.4 stated that she should be committed to the house of correction for a year.¹⁸¹ Therefore, it was Hannah Spencer and Charity Wilcox, who after giving birth to illegitimate children, were committed to Shepton Mallet as 'lewd' women by Thomas Horner - not the men who had fathered their children.¹⁸²

One way that women displayed agency was when it came to illegitimate pregnancies, by refusing to swear the father of their child before the magistrate. Women could not be impelled to swear the father prior to the birth of their child, so were perfectly within their rights to refuse to do so, although under a 1732 act, they could be sent to the house of correction if they continued to refuse to swear after the birth of their child.¹⁸³ Henry Norris's notebook contains a couple of cases of women refusing to swear, but Paley has argued that these Middlesex

¹⁸⁰ Palk, *Gender, Crime and Judicial Discretion*, 12.

¹⁸¹ Burn, *The Justice of the Peace, Volume 1*, 198.

¹⁸² McGarvie (ed), *The King's Peace*, 146. Some men were also given the choice to marry the mother of their child rather than face other action - a (limited) choice that was not allowed to women (Crittall (ed), *The Justicing Notebook of William Hunt*, 28, 44, 49, 51).

¹⁸³ 6 George 2 c.31 (1732). A woman could not be 'compulsively questioned' about the father of her illegitimate child until one month after its birth. Blackstone saw this as an 'indulgent' law that caused hardship to parishes, as parents of illegitimate children might 'escape' in the meantime (Blackstone, *Commentaries, Book 1*, 446).

women as being 'unusually independent', suggesting that more rural women might have been less likely to refuse to swear.¹⁸⁴ However, Edmund Tew's notebook, covering the coastal communities of north-east England, also contains two cases of women refusing to tell him the name of their unborn child's father.¹⁸⁵ Both Horner and Spencer similarly dealt with such cases, so this was clearly not just an urban phenomenon.¹⁸⁶ Although it appears that women rarely refused to swear the father of their child, as there was a clear financial motivation to name him, the fact that some did refuse to swear indicates an element of agency in appearances before the magistrate, echoing Capp's assertion that in the naming of fathers, or the refusal to name, 'even single mothers might be able to play an active if limited role in shaping their own fate'.¹⁸⁷

¹⁸⁴ Paley (ed), *Justice in Eighteenth-Century Hackney*, xxv.

¹⁸⁵ Morgan and Rushton (eds), *The Justicing Notebook of Edmund Tew*, 98, 184.

¹⁸⁶ Horner listed three cases where a woman refused to swear the father of her child, Spencer two. In addition, Thornton heard one case from a woman who named one man she had slept with, but '[she] doth not say she never had to doe with any other person before nor since' (NRO Th1679, 24 May 1701). As this woman said that she had slept with the named man on land owned by him, she might have been keen to lay responsibility for her child on him, believing him better able to maintain the child, rather than identifying another, possibly worse off, man. Alternatively, she may simply have wanted to maintain some agency by refusing to say that she had only slept with one man.

¹⁸⁷ Bernard Capp, 'The Double Standard Revisited: Plebeian Women and Male Sexual Reputation in Early Modern England', *Past & Present*, 162 (1999), 76.

Concluding remarks.

This chapter found that men dominated the summary process, both as complainants and defendants, but that the involvement of women in proceedings was affected by both societal and geographical factors. Geography had a clear impact on the engagement of women in the summary process. The prevalence of poaching in Wiltshire, a primarily male pursuit, resulted in many male defendants in game cases before Richard Colt Hoare. The higher percentage of poor relief complaints, and female complainants in such cases before Thomas Horner and George Spencer reflected difficulties facing those working in the worsted industry in the latter part of the eighteenth century, with higher unemployment meaning that men would be prioritized for relief, and women would face a higher chance of having their application refused, and needing to seek the involvement of a magistrate in getting that rejection overturned.

In some respects, women were at a disadvantage, such as in bastardy examinations, where women were punished for lewd behaviour and men not, despite legislation that stated that both men and women should be punished. Yet they also demonstrated agency in refusing to name the fathers of their children, refuting Paley's suggestion that this agency was largely an urban phenomenon. Women were also able to avoid being removed to a male relative's settlement by denying knowledge of where he was settled, and could negotiate for better relief by threatening to desert their children. They exerted their authority by refusing to run their businesses according to the magistrate's orders. Their use of such tactics suggests an awareness of the summary process and how to best use it. But

both genders similarly showed a discrimination about what cases to take to the magistrate, with assault cases, for example, only being brought if they were perceived to be serious enough, or involve defendants who would have the resources to resolve matters to the victim's satisfaction.

There were, in summary, both differences and similarities in how men and women used the summary process. Men were dominant as complainants and defendants in property offence cases, and women appeared more commonly as complainants in offences against the person. But both men and women had an interest in, and were involved in cases relating to, the poor law, employment, regulation and bastardy, with their participation depending on local conditions, economic factors, and the changing nature of summary proceedings over time.

Chapter five: Magistrates' decision-making and judicial discretion over the long eighteenth century.

This chapter establishes the extent to which rural magistrates at summary level could use discretion in their decision-making, looking both at the factors that influenced a magistrate's decisions, and the limitations that were placed on his ability to use his discretion. It is divided into two parts. The first part looks at the discretion the magistrate was allowed within the law, which enabled him to use discretion in most types of case that came before him in summary hearings, in terms of setting fines or making the decision as to whether to fine or send an individual to gaol. This section builds on the work that has been carried out into the magistrate and summary proceedings, to show that discretion was not universal, but depended on the type of case being dealt with, the views of the individual magistrate, and the increasing use of statutes to create a more uniform system of summary justice.¹ It builds on the work of King to find that despite the 'very restricted terms of reference' employed by Burn, the rural magistrates were able to use a limited form of discretion in larceny cases to dismiss cases.² However, it finds that magistrates were better able, and thus more likely, to use their discretion in other types of property offence such as wood theft and embezzlement. Unlike urban justices, rural magistrates rarely used alternative legislation, such as the vagrancy laws,

¹ King, *Crime, Justice, and Discretion*; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', Palk, *Gender, Crime and Judicial Discretion*; Gray, 'Making Law in Mid-Eighteenth Century England'; Simon Devereaux, 'The Promulgation of the Statutes in late Hanoverian Britain' in David Lemmings (ed), *The British and their Laws in the Eighteenth Century* (Woodbridge, 2005), 80.

² King, *Crime, Justice and Discretion*, 87-88.

to punish those suspected of theft, but did use recognizances to restrict the ability of prosecutors to change their minds about prosecuting certain cases.

The second part of this chapter will use the work of Palk and Walker as a starting point in analysing the evidence for gender-based judicial leniency, looking at a wider range of sources and complaints to argue gender-based leniency was not a significant feature of rural justicing at summary level, but that other factors, such as age, economic background and personal reputation were more important for the rural magistrate.³ By studying gender and discretion in relation to rural summary proceedings, it will rectify the gap that King has identified in the study of eighteenth century criminal justice, when he notes that 'we know very little about the policies pursued towards men and women' at summary level.⁴ However, it also reflects on the work carried out into gender-based discretion, arguing that gender cannot be seen as the primary factor in judicial leniency in rural communities, where knowledge of individuals and families, and the precariousness of many families' financial situation were important considerations for magistrates in deciding what action to take.⁵ It will show that rural summary proceedings were different to urban proceedings and trials at the higher courts, with both complainants and defendants being less anonymous and their personal situations clearly being

³ Palk, *Gender, Crime and Judicial Discretion*; Walker, *Crime, Gender and Social Order*.

⁴ King, *Crime and Law in England*, 181.

⁵ Palk, *Gender, Crime and Judicial Discretion*; Markless, *Gender, Crime and Discretion in Yorkshire*; King, 'Gender, Crime and Justice', Howard, 'Investigating Responses to Theft'; also Gray, *Crime, Prosecution and Social Relations*, 108-109; King, *Crime, Justice and Discretion*, 200, 279; Shoemaker, *Prosecution and Punishment*, 212-213.

considered when making decisions. The stability of rural magistrates compared to, from the mid-eighteenth century, the changing rota of magistrates in the City of London summary proceedings, enabled personal knowledge of the individual to be considered in a way that was less possible in London or a busier urban environment.⁶

This chapter will argue that judicial discretion increased over the century as the rural magistrate's role became more about the mediation of community disputes and took on an increasingly advisory position. This is despite the increasing regularisation and professionalisation of summary proceedings.⁷ It finds that the change in the focus of summary proceedings, with property offences becoming a decreasing part of rural magistrates' workload, permitted an increasing amount of discretion as interpersonal disputes, which were less likely to result in an indictment, formed an increasing part of the rural justice's work.

⁶ Gray, *Crime, Prosecution and Social Relations*, 18; Ward, *Print Culture, Crime and Justice*, 126.

⁷ King stated that the eighteenth century was the 'golden age' of judicial discretion, but Lemmings and Devereaux have argued that although the 'scope' of discretion was extended in some ways after 1700, there was also an increasing 'control by authorities and professionals' (King, *Crime, Justice, and Discretion*, 355; Lemmings, *Law and Government in England*, 82; Simon Devereaux, 'In Place of Death: Transportation, Penal Practices, and the English State, 1770-1830' in Carolyn Strange (ed), *Qualities of Mercy: Justice, Punishment and Discretion* (Vancouver, 1996), 69-70).

a. How discretionary were rural summary proceedings?

The eighteenth century criminal justice system was both 'highly discretionary and decentralised'.⁸ It was also 'characterised by localism, discretion and magisterial initiative'.⁹ Yet in terms of summary convictions, Davey has argued that the ability of magistrates to try cases summarily was 'strictly defined by the relevant statutes and punishments were exactly limited'.¹⁰ This section will query Davey's statement, building on King's work to establish the extent of discretion in rural summary proceedings, and to show how considerable discretion was built into statutes.

i. The limitations of discretion in property offence decisions.

From the late seventeenth century, English law was increasingly, and overwhelmingly, concerned with property and the defence of that property – a reaction to an increase in commerce and a realisation that there was no 'settled pattern of judicial decisions' in this area.¹¹ Various types of property offence were subject to statute law, and the Bloody Code extended the number of capital property offences, although Langbein has noted that these were not all

⁸ Nicola Lacey, 'From Moll Flanders to Tess of the D'Urbervilles', 5-6. www.lse.ac.uk. 12 January 2014. See also Brewer and Styles, *An Ungovernable People*, 18; J.M. Beattie, 'Scales of Justice: Defense Counsel and the English Criminal Trial in the Eighteenth and Nineteenth Centuries', *Law and History Review*, 9.2 (1991), 221; King, *Crime, Justice and Discretion*, 355-358; Gray, *Crime, Prosecution and Social Relations*, 8; Gray, 'Making Law in Mid-Eighteenth-Century England', 212.

⁹ King, *Crime and Law in England*, 60.

¹⁰ Davey, 'Introduction', 22

¹¹ Lieberman, *The province of legislation determined*, 45-46.

new offences, but a consolidation of various earlier statutes.¹² These statutes relating to property offences have been described by Sharpe as a form of class struggle, with the rich passing laws to suppress the poor.¹³ The acts certainly meant that the theft of relatively small items, more likely to occur when the poor stole out of desperation, could result in the offender being sentenced to death, regardless of motivation or circumstances.

Property offences made up a substantial number of formal prosecutions in the courts and at summary level, property offences heard by magistrates comprised a large and diverse group of cases, including both the direct and indirect appropriation of goods. As such, it covered the theft of money and goods.¹⁴ However, it also included fraud, embezzlement, and receiving stolen goods.¹⁵ Many of the offences complained about to the rural magistrate were larcenies, and here, Dalton had been clear that the magistrate's powers at summary level were limited, even with regard to minor thefts:

Yet may not the Justice of the Peace, before whom such an offender shall be brought (out of the Sessions) punish by his discretion the said offender for petty Larceny, and so let him go, but must commit him to prison, or bail him, to the intent he may come to his Trial, as in case of other felonies...¹⁶

¹² John Langbein, 'Albion's Fatal Flaws', *Past & Present*, 98.1 (1983), 118.

¹³ Sharpe, 'Crime, order and historical change', 123.

¹⁴ Shoemaker, *Prosecution and Punishment*, 55.

¹⁵ King, *Crime, Justice and Discretion in England*, 6.

¹⁶ Dalton, *The Country Justice*, 323.

Dalton had stated that ‘although petty Larceny be not Felony of death, nor punishable by death, yet it is a felonious act’.¹⁷ Burn, in citing Dalton, commented that ‘it seemeth that all petit larceny is felony’ despite the fact that it was not a capital offence but only punishable by the forfeiture of goods, whipping, another type of corporal punishment, or transportation.¹⁸ Burn’s phrasing here suggests that he was confused by Dalton’s assessment of petty larceny as felonious, and it is evident that magistrates similarly were confused as to whether to treat some larcenies as felonies or misdemeanours. Emsley et al have noted this, but have added that in practice, most cases were dealt with by JPs using their powers of summary jurisdiction.¹⁹ This grey area in terms of defining larceny is crucial to an understanding of how the rural magistracy operated. London and other urban magistrates saw a great deal of larceny cases, as the records of the Old Bailey show, and used their discretion to filter cases, thus ensuring that petty thieves did not ‘clog up’ the system.²⁰ Did rural magistrates, who heard fewer cases, including petty larceny cases, act differently in applying the letter of the law to offenders, or conversely, did they use their discretion more because they had closer links to their local community?

Firstly, although it is clear that rural magistrates used their discretion with some property offences, it is not evident that they dealt with ‘most’ larceny

¹⁷ Dalton, *The Country Justice*, 323.

¹⁸ Burn, *The Justice of the Peace, Volume 3*, 64.

¹⁹ Emsley, Hitchcock and Shoemaker, ‘Crime and Justice - Crimes Tried at the Old Bailey’. www.oldbaileyonline.org. 23 October 2013.

²⁰ Gray, *The City Summary Courts in the late 18th century: courts for the people?*, 6. <http://nectar.northampton.ac.uk>. 15 November 2014.

cases within summary proceedings. Despite Gray's assertion that 'eighteenth-century JPs regularly ignored or evaded statute law when it suited the situation before them (for example in the prosecution of petty larceny)', the rural magistrates studied here did not regularly do so.²¹ Their use of discretion tended to be limited to cases that were not larcenies, but that were property offences considered under different statutes. William Brockman sentenced one woman to be whipped after breaking hedges, and when one woman was accused of embezzling parish goods, ordered her 'by word of mouth' to return the goods, taking no further action.²² ²³ Another woman was 'sent to the compter house' for killing someone else's sheep, with no mention of an indictment.²⁴ These were cases all involving women, and were minor offences that might be difficult to prove in a court of law. However, they were also cases that did not involve larceny as defined by Burn, and thus magistrates were better able to use their discretion in such cases. Richard Colt Hoare did use his discretion to deal with two larcenies, committing a woman charged with stealing a shift to the Devizes Bridewell, and committing a man charged with stealing hay to the Fisherton Gaol, again summarily punishing two thefts that

²¹ Gray, 'Making Law in Mid-Eighteenth-Century England', 213.

²² BL Add MS 42598, 16 May 1719. Breaking hedges came under 15 Charles 2, c.2, and was punishable by the setting of damages not exceeding 10s. Whipping was only supposed to be given as a punishment if the damages were not paid, but Brockman did not record the failure to pay, only the whipping (Burn, *The Justice of the Peace, Volume 4*, 381).

²³ BL Add MS 42598, 7 April 1699. Burn noted that 'if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away', and this case appears to have been one when the parish goods were being used by the defendant in her own house, and therefore she had not trespassed in selling them on (Burn, *The Justice of the Peace, Volume 3*, 58).

²⁴ BL Add MS 42598, 30 May 1701.

he saw as minor offences.²⁵ These were the only two cases he recorded, however. Although such cases reiterate King's assertion that 'when accused of theft...it was often in the interests of the poor to be dealt with summarily rather than to be held in gaol for a considerable period awaiting trial', the low number of such cases does not suggest that magistrates regularly used their discretion in this way.²⁶

Where magistrates were able to use their discretion was in dismissing cases. As King has argued, Burn's guidance still enabled discretion by stating that a magistrate could discharge a case if the defendant was only suspected of a felony, and magistrates could therefore 'find a number of ways to justify dismissing potential felony indictments'.²⁷ The rural magistrates studied in this clearly used their discretion in property offence cases by dismissing them, calculating the chances such cases had of a successful outcome at trial and primarily using a lack of evidence as the justification for discharging the case. For example, Thomas Lee Thornton heard a case alleging housebreaking – a felonious offence. However, he decided there was a lack of evidence and discharged the accused man.²⁸ Samuel Whitbread dismissed 23 of the property offence cases brought before him, citing insufficient evidence as the reason in two cases, and dismissing three more after hearing from witnesses. In one case of housebreaking, he took witness depositions, but then decided that the case

²⁵ WSHC 229/1, 18 July 1815 and 13 January 1819.

²⁶ King, *Crime and Law in England*, 56.

²⁷ King, *Crime, Justice and Discretion*, 87.

²⁸ NRO Th1681, 29 October 1789.

'did not justify the commitment' of the accused.²⁹ In other cases, magistrates determined that the complainant was not 'sufficiently certain about the man accused', or advised the complainant not to proceed.³⁰ The relative absence of such cases is a reflection of the lack of systematic recording of outcomes by magistrates, and it is likely that more cases were dismissed in similar ways by magistrates after assessing the evidence and the likelihood of a bill being found on such cases reaching trial.

At summary level, there is little evidence of pious perjury - the undervaluing of stolen goods in order to make a charge one of petty larceny rather than grand, for example.³¹ Although rural magistrates rarely recorded the value of goods stolen in larceny cases, only doing so in cases where money had been stolen, this does not mean that they were trying to be vague about the charge in order to deal with it summarily. Where money was specified, it was usually of a fairly substantial amount, and it is likely that the absence of small monetary thefts is due to victims not reporting such cases to the magistrate because of the cost of bringing the case, compared to the value of the money taken. Where items other than money had been stolen, most magistrates were diligent in recording the goods stolen in order to set out when an offence was one that needed to be indicted rather than dealt with summarily. For example, when William

²⁹ Cirket (ed), *Samuel Whitbread's Notebooks*, 34.

³⁰ BL Add MS 76337, n.d., circa 1789; BL Add MS 76337, 12 January 1788.

³¹ Blackstone termed this undervaluing 'pious perjury' (Blackstone, *Commentaries, Book 4*, 239) and its use by juries in trials has been discussed by Langbein ('*Albion's Fatal Flaws*', 104) and Durston, the latter describing the use of it by jurors as sometimes 'blatant' (Gregory J. Durston, *Whores and Highwaymen: Crime and Justice in the Eighteenth-Century Metropolis* (Hook, 2012), 531).

Brockman recorded the theft of 'a pair of black silk gloves', he was denoting that the gloves were expensive.³² Likewise, Hill, in detailing goods stolen in a highway robbery as including '20s in silver, a pair of lead coloured stokin[sic], a sad coloured cloth riding coate, severall neck cloths and handkerchifes [sic] and his silver sleeve buttons', was also setting out the seriousness of the offence, not only in terms of it being a robbery, but also that the items stolen were valuable.³³

However, it is true that even where an amount was specified, or it is evident that the theft was fairly substantial, no further action might be taken. This is due to the onus being on the complainant to pursue a case.³⁴ William Hunt recorded one theft, where the complainant stated that the goods taken were 'three gold rings, one silver watch, and two silver spoons'.³⁵ These goods would have been worth over a shilling, and Hunt would not have been able to convict the defendant summarily, yet the case was not indicted. Hunt had to dismiss the case after the complainant failed to appear before him to 'make good his complaint'.³⁶ In this way, some indictable offences were never heard in court, because of prosecutors failing to appear before the magistrate to pursue their case any further. This echoes Langbein's argument that 'since prosecution was

³² BL Add MS 42598, 15 July 1698. Styles, writing about how the fabric of handkerchiefs stolen in the eighteenth century were described, notes that 'handkerchiefs made from silk were given the highest valuations, followed by muslin, then cottons and, by far the least valuable, linens'. Silk gloves, similarly, would have been regarded as more valuable than those made of other fabrics (Styles, *The Dress of the People*, 44).

³³ CBS D-W/97/8, 6 July 1692.

³⁴ Shoemaker, *Prosecution and Punishment*, 43.

³⁵ Crittall (ed), *The Justicing Notebook of William Hunt*, 63.

³⁶ *Ibid.*

private, a potential prosecutor had the discretion to threaten it in self-serving ways'.³⁷ It is important to remember, then, that magistrates were not the only people within the eighteenth century criminal justice system who could use discretion - so too could the complainant. Magistrates attempted to restrict this discretion by binding the complainant over to prosecute individuals at Quarter Sessions, with over half of the recognizances issued by William Brockman, for example, binding over individuals to prosecute cases, rather than just binding over defendants to good behaviour or to keep the peace.³⁸ This binding over of prosecutors is what Langbein meant when he referred to the 'forces at work that limited prosecutorial discretion'.³⁹ These statutory forces enabled the magistrate to maintain their use of discretion whilst limiting the discretion open to others within the criminal justice system.

Rural magistrates occasionally exercised their discretion by convicting suspected thieves as vagrants, with vagrancy legislation enabling them to send individuals to gaol, thus working round the limitations that larceny statutes put on their powers. Here, though, there is a difference between how urban and rural justices acted. Smith has noted that by the early eighteenth century, London magistrates 'exercised broad summary jurisdiction over petty pilferers - routinely sentencing them to short stints in Bridewell or in local houses of

³⁷ Langbein, '*Albion's Fatal Flaws*', 102

³⁸ In BL Add MS 42598, Brockman recorded 25 recognizances issued to complainants to prosecute, out of a total of 49 recognizances recorded, equating to 51 per cent of recognizances issued.

³⁹ John Langbein, '*Albion's Fatal Flaws*', 103.

correction', and treating them as idle and disorderly persons.⁴⁰ In this sense, vagrancy laws could be used by magistrates both to punish people when they could not be convicted of another offence, or to enable those unable to pay fines or enter into sureties to still be punished, but as stated, there is little evidence that rural magistrates did this very often, and that when they did, it was for the justice's 'administrative convenience'.^{41 42} Both Richard Colt Hoare and Roger Hill recorded convicted individuals under vagrancy legislation where they had been accused of different offences.⁴³ In Hoare's cases, the accused men were under suspicion of gaming, but by using the vagrancy act, the men's actions, being out at night and looking suspicious, could be equated to being idle and disorderly, and the men could immediately be locked up. So although Beattie has argued that such judicial decisions represented a 'grey area' between larceny and the 'vagueness' of the vagrancy laws, enabling a committal rather than an indictment to the higher courts, here, the use of the

⁴⁰ Smith, 'The Presumption of Guilt', 156; Beattie, *Policing and Punishment*, 26-27; Beattie, *Crime and the Courts*, 269-270; Joanna Innes, 'Prisons for the Poor: English Bridewells 1555-1800' in Francis G. Snyder and Douglas Hay (eds), *Labour, Law, and Crime: an Historical Perspective* (London, 1987), 42; Paul Griffiths, 'Contesting London Bridewell, 1576-1580', *Journal of British Studies*, 42.3 (2003), 314.

⁴¹ Eccles, *Vagrancy in Law and Practice*, 65. It is possible that magistrates did not routinely record when they were sentencing an individual who was suspected of a different offence under vagrancy legislation, but there is no evidence that they were doing so regularly.

⁴² Eccles, *Vagrancy in Law and Practice*, 66.

⁴³ Richard Colt Hoare convicted men in two separate game offences. One, John Love, had been found carrying a gun in a 'field adjoining Deverill Long Wood at 5am', and was convicted, Hoare wrote, under the 'Game Vagrant Act [sic] and committed...as a vagrant.' In the second case, two months later, Edward Bird was 'detected out at night shooting at pheasants' in Hoare's own garden, and was again committed as a vagrant (WSHC 229/1, 26 October 1819, n.d. (c.5 December 1819)).

vagrancy act was to create an immediate punishment, and in a sense, a harsher one than a fine.⁴⁴

Hill convicted one man suspected of wood theft as a vagrant, again substituting what might have been a small fine for this offence for a period of incarceration. This decision has to be seen within the context of growing intolerance, from the sixteenth century onwards, towards the customary right of the poor to take wood.⁴⁵ However, magisterial perceptions about wood theft as an offence differed, and reflected the individuality of the rural magistrate as well as the desires of complainants to see defendants punished. Justices were given discretion in the law to levy what fine they thought suitable to offenders, with the primary act relating to wood theft, 43 Eliz. 1 c.7, allowing the justice complete discretion in setting the amounts an individual should pay in fines and damages.⁴⁶ Hunt's use of different levels of fine for similar offences, recording fines of amounts from one shilling to ten, with two shillings and

⁴⁴ Beattie, *Crime and the Courts*, 269.

⁴⁵ CBS D-W/97/8, 12 December 1704; Spencer Dimmock, *The Origin of Capitalism in England, 1400-1600* (Leiden, 2014), 326. Hill's decision here is likely to have been influenced by the desire of the complainant to punish the offender.

⁴⁶ This act relating to breaking hedges and spoiling wood, as well as to robbing orchards, and individuals could be brought before the magistrate simply suspected of theft, where they were seen carrying or having any wood in their possession. Burn stated that anyone convicted should give to the victim 'such recompence and satisfaction for damages, and within such time, as the said justice shall appoint'. Both 43 Eliz. 1 c.7 and 15 Charles 2 c.2 stated that individuals convicted of other forms of wood theft, should be similarly punished (Burn, *The Justice of the Peace, Volume 4*, 379, 381).

sixpence, and five shillings, being the most commonly recorded amounts, reflects this discretion.⁴⁷

As King has noted, although in theory the criminal law was a Bloody Code that lay down the death penalty for a range of property crimes, 'in practice it was a flexible and highly selective system' with a 'highly discretionary nature'.⁴⁸ Gray has also noted that eighteenth century law was 'multifaceted and allowed justices some room to manoeuvre within the boundaries of statute law'.⁴⁹ This is evident from the cases detailed above. Rural magistrates were, on the whole, scrupulous in their recording of property offences, but used their discretion in deciding whether a case should proceed or be dismissed at an early stage. They made decisions based on the goods stolen, and the reputation of prosecutors and witnesses as well as the defendants, to make an decision based on the chances of a bill being found at trial, weighed up against the expense of bringing that case.

This discretion was allowed to both rural and urban magistrates, but in regard to property offences, the cases before a rural magistrate were different to those of the city magistrate. Rural justices heard more offences relating to game, wood theft and the stealing of fruit and vegetables, and legislation enabled

⁴⁷Hunt recorded fines in 26 wood theft cases. Nine cases involved fines of five shillings, and three of two shillings and sixpence (Crittall (ed), *The Justicing Notebook of William Hunt*).

⁴⁸ King, 'Decision-makers and decision-making', 25.

⁴⁹ Gray, 'Making Law in Mid-Eighteenth-Century England', 213.

them to deal with these offences summarily, using discretion in determining the amount of damages, and whether to send an individual to gaol. They should therefore have been able to use their powers of summary conviction to a greater extent than urban magistrates, who heard a greater number of larceny cases.⁵⁰ This is particularly evident in William Hunt's notebook, where wood theft was the prevalent form of property offence, and which is reflected in the very low percentage of property offence cases that Hunt indicted.⁵¹ Ward has stated that up to the mid eighteenth century, in the metropolis, 'it seems that most petty larcenies were punished by summary justice outside of the courts'.⁵² Therefore, there was a difference in how urban and rural magistrates dealt with larcenies, with rural magistrates hearing fewer of these cases, being stricter in indicting them to the Quarter Sessions or Assizes.

This section has found that rural magistrates used discretion at an early stage of property offence cases, choosing to dismiss cases for lack of evidence rather than engaging in pious perjury. Differences in decision making between the rural magistrates studied here and London magistrates is a reflection of the

⁵⁰ King has stated that at the Old Bailey, 'larceny formed a steady proportion of cases throughout the period 1735-1835 (50-59 per cent [of cases])' (King, *Crime and Law in England*, 210, also Feeley and Little, 'The Vanishing Female', 756). Beattie argued that servants' theft, a 'common' crime, was 'overwhelmingly urban phenomenon', which would affect the numbers of thefts being reported in urban areas compared to rural ones (Beattie, 'The Criminality of Women', 93).

⁵¹ Hunt recorded 164 property offence hearings in his notebook, but only took further action (either issuing a recognizance or indicting an individual) in five of those cases (three per cent of such hearings), all of which were larcenies. Over half of his property offence hearings (87 out of 164) involved stealing wood, fruit or vegetables (Crittall (ed), *The Justicing Notebook of William Hunt*).

⁵² Ward, *Print Culture, Crime and Justice*, 102.

different nature of thefts reported in urban and rural locations. The nature of the property offences some rural magistrates dealt with, such as poaching and wood theft, meant that they dealt with a higher percentage of thefts punishable by summary conviction than London magistrates, for example - thefts where the magistrate was allowed discretion in law in fining individuals. What this analysis of property offences shows is that magisterial discretion in larceny cases was limited by the law, and that the complainant in property cases had considerable authority, both in deciding whether to proceed with a case, and requesting a particular punishment. Therefore, a balance had to be found between magisterial authority and prosecutorial authority.

ii. The individual approach to discretion in vagrancy cases.

This chapter has looked at how vagrancy legislation could be used by magistrates to deal with property offences, but in terms of the punishment of vagrancy itself, the laws could again be used with discretion by the individual magistrate. For example, whipping was a punishment for vagrancy until 1792.⁵³ However, rural magistrates only recorded ordering this, or the committal of an individual, in a very small number of cases.⁵⁴ The only vagrancy case where a magistrate sent an individual to the House of Correction

⁵³ Eccles, *Vagrancy in law and practice*, 31, 66. This is echoed in Morgan and Rushton's analysis of Tew's notebook, where again, a female vagrant being whipped is a 'singular, isolated action' (Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 67)

⁵⁴ Hill recorded a single female beggar who came before him and ordered her to be whipped before being passed back to her settlement in Hampshire, and Bromley recorded one male vagrant being whipped, but the other entries for vagrancy related to passes being issued (CBS D-W/97/8, 10 September 1689; WRO CR0103, 19 May 1693).

instead of passing him was done by Hill, and only because the man in question had refused to say where his settlement was, giving the magistrate little option but to commit him, as he would be unable to pass him without that knowledge.⁵⁵ The lack of committals and whippings in the long eighteenth century shows that magistrates did not stick to the letter of the law when it came to punishing vagrancy, but used their discretion by simply passing on some vagrants instead of creating work for the constables and gaols.

However, vagrancy legislation also enabled the prosecution of individuals for a wide variety of behaviour, the definition of what constituted 'idle and disorderly' behaviour covering a broad range of actions.⁵⁶ When William Bromley heard a complaint from a man about his daughter's behaviour, which involved drinking, swearing and stealing his goods, he sent her to the House of Correction under the vagrancy laws.⁵⁷ Failing to deal with her for theft or trespass, despite the clear accusation of stealing, shows that Bromley was using his discretion to punish her general behaviour rather than a specific offence, and also reflects the father's desire for a certain course of action to be taken to 'teach her a lesson'.

⁵⁵ CBS D-W/97/8, 2 March 1704.

⁵⁶ Tim Hitchcock, Sharon Howard and Robert Shoemaker, 'Policing', *London Lives, 1690-1800*. www.londonlives.org, 9 August 2014

⁵⁷ WRO CR0103, 7 February 1690.

Desertion was considered under vagrancy legislation, and here the magistrate took a practical, and individual approach to cases.⁵⁸ Different magistrates and counties had different practices. In Buckinghamshire, as Bailey has noted, the practice was to 'indict deserting husbands for misdemeanour or, if repeated offenders, for felony'.⁵⁹ In Somerset, 28 out of the 42 vagrancy cases before Thomas Horner involved desertion. Horner recorded a range of actions taken, including committal to gaol, the dismissal of one case as being 'frivolous' and in another, recommending (but not ordering) the deserting parent make satisfaction to the parish.⁶⁰ Again, here the magistrate had to decide on the appropriate course of action after looking at the individual circumstances of each case, suggesting that magisterial discretion was based on careful consideration of the individual case.

Most vagrancy related cases before the rural magistrate involved the continuance of passes, but where committals or fines were recorded, these tended to focus on cases that had a wider impact on the local community. As with desertion, this shows how the magistrate used his discretion in order to ensure social cohesion, taking more punitive action to send a message to the community regarding appropriate forms of behaviour. One example of this type of action is in Hunt's notebook, where he recorded fining a woman the fairly substantial sum of 30 shillings (around £127 today) for entertaining 'ten

⁵⁸ Desertion came under the 1714 and 1744 Vagrant Acts (Tim Hitchcock, Sharon Howard and Robert Shoemaker, 'Vagrancy', *London Lives, 1690-1800*. www.londonlives.org. 17 June 2014).

⁵⁹ Bailey, *Unquiet Lives*, 176.

⁶⁰ McGarvie (ed), *The King's Peace*, 19 March 1772, 29 July 1773, 24 November 1775.

rogues or vagabonds', on the evidence of 'two credible witnesses'.⁶¹ For comparison, in 1756, a man in Stourbridge was fined one shilling for entertaining an unspecified number of rogues and vagabonds.⁶²

Rural magistrates did not use vagrancy legislation as a 'catch-all', then, to punish individuals for behaviour that could not be convicted for otherwise. There is evidence that magistrates were reluctant to punish individuals in this way, with Thomas Horner, for example, discharging a case involving several individuals 'apprehended in houses of ill fame, in consequence of general privy search for rogues and vagabonds' because he could not find specific evidence 'of their having committed some act of vagrancy'.⁶³ In this way, magistrates used their discretion in cases, acting as a check on the behaviour of over-zealous parish officers and preventing minor cases, or ones based on spurious evidence, from proceeding.

This section has shown that although there was discretion and flexibility allowed to the magistrate to deal with the wide range of action and behaviour that came under the remit of vagrancy legislation, this discretion was used selectively, and magistrates differed in how they applied it. Discretion was

⁶¹ Crittall (ed), *The Justicing Notebook of William Hunt*, 55.

⁶² Linda Moffatt, *Skidmore Families of the Black Country and Birmingham 1600-1900* (Linda Moffatt, 2004). <http://skidmorefamilyhistory.webplus.net>. 10 December 2014.

⁶³ McGarvie (ed), *The King's Peace*, 145-146. Horner referred to the case being brought before 'us', suggesting it was brought before two justices who reached a joint decision on the merits of the case.

based on careful consideration of a specific case, and there was no 'one size fits all' approach in magisterial decision-making with regard to vagrancy cases.

iii. How discretion was used extensively in offences against the person.

Offences against the person were an area where magistrates could use considerable discretion. This was permitted in law, with options such as recognizances being most commonly used for such cases, binding individuals over to good behaviour without the need for more costly action.⁶⁴ Table 5.1, on the next page, shows that there were a variety of options open to the magistrate in such cases, from agreeing matters between parties at one end of the scale, to indicting more serious assaults for trial.

⁶⁴ Across the notebooks studied in this thesis, recognizances were used primarily in assault and bastardy cases, the former representing 40 per cent (75 out of 189) recognizances recorded, and bastardy representing 34 per cent (64 out of 189) recognizances recorded. In the context of London and Middlesex, Shoemaker has noted that 'by far the most common type of offence prosecuted by recognizance was offences against the peace' (Shoemaker, *Prosecution and Punishment*, 55).

Table 5.1 The action taken in assault cases, where specified.

	Number	Percentage
Agreed	177	44%
Further action	110	28%
Dismissed	51	13%
Order	31	8%
Summary punishment	27	7%
Total	396	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, NRO Th1681, BL Add 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. There is no action recorded for any of the assault cases in either WSHC 229/1 or WSHC 383/955. Further action denotes a recognizance or indictment being recorded. Orders are where magistrates ordered damages to be paid to the victim. Summary punishment comprises the levying of a fine or a committal to the House of Correction (not including committals in lieu of bail, pending a trial).

It can be seen that the rural magistrate had a key role in filtering out cases at a pre-trial stage. In 72 per cent of cases where an outcome was recorded, the case did not proceed beyond the summary level, with almost half of the cases (44 per cent) resulting in an agreement being reached between the parties, mediated by the magistrate. In choosing what form of action to take, the rural magistrate clearly used his discretion in ensuring that where possible, the cases could be resolved without the need for further action.

However, the magistrate did have to adjudicate on what was considered a trivial assault, and what was more serious. Where an allegation of assault was made together with another allegation, such as the swearing of oaths, the magistrate might choose to punish the latter offence but not the former. In this way, the 'cumbersome recognizance procedure' for assaults could be replaced

by a straightforward fine of one shilling for every oath uttered.⁶⁵ ⁶⁶ Bromley heard what appeared to have been a fairly serious assault involving a man beating and kicking a blacksmith's wife, in front of witnesses, but it was the 20 oaths he swore during the attack that saw him sentenced to a fine of 20 shillings or two hours in the stocks.⁶⁷ It is likely that the complainant stressed the swearing of oaths during an attack to maximise the chances of the accused being convicted of an offence, even if it was not for the assault.

The conviction of individuals for swearing in assault cases is only found in magistrates' notebooks of the late seventeenth and early eighteenth centuries. After this time, magistrates appear to have relied on dismissing or agreeing cases rather than convicting of a different offence. Thomas Horner, for example, dismissed complaints 'as appearing very frivolous', after attributing blame and casting doubt on the complainant's deposition, or on defendants promising to behave well in the future, without need of recognizances.⁶⁸ Although he did not convict anyone accused of assault of swearing, he did convict one individual accused of assault under the Vagrancy Act, using the fact that the accused man was known to work as a puppet show operator and juggler around the country, and this emphasises how discretion could work in

⁶⁵ Durston, *Whores and Highwaymen*, 375.

⁶⁶ This action is shown in Brockman's notebook, where in two cases, complainants stated that they had been beaten or struck, but the defendants were only convicted and fined for swearing (BL Add MS 42598, 5 March 1698, 29 December 1716). However, in one other case, Brockman did bind over the complainant to make a formal prosecution, in addition to fining the defendant for swearing (BL Add MS 42598, 24 January 1715).

⁶⁷ WRO CR0103, 20 September 1705.

⁶⁸ McGarvie (ed), *The King's Peace*, 151, 157.

using different offences and legislation to punish individuals initially accused of the same offence.⁶⁹

In Horner making judgements on whether a complaint of assault was trivial or 'frivolous', and whether a complainant had instigated or been to blame for an assault, he was acting similarly to other magistrates throughout the period, both in rural and urban contexts.⁷⁰ Thus, magistrates from across the long eighteenth century used their discretion in determining how serious an offence was, and assessing the involvement of the complainant in the offence. In such cases, the magistrates sought to agree matters by making the complainant and the defendant pay the costs of bringing the case, with no further action being recorded.

⁶⁹ McGarvie (ed), *The King's Peace*, 105-106.

⁷⁰ Gray notes the dismissal of assault cases in London and states that 'these may have simply been trivial (or 'frivolous') disputes'. Durston has similarly stated that in London, 'most allegations of assault would be dealt with by a magistrate dismissing the matter as unfounded or frivolous' or settling the matter at summary level (Gray, *Crime, Prosecution and Social Relations*, 107; Gregory Durston, *Whores and Highwaymen*, 400). William Hunt recorded assaults which proved 'so very slight' that further action was not required, and complainants being 'the aggressor' and Thomas Netherton Parker also recorded one assault that was 'very slight if any'. In another case, although the assault was proven, Parker decided that the "provocation" from the victim was so great, that he should pay most of the expenses of bringing the case (Crittall (ed), *The Justicing Notebook of William Hunt*, 32, 33; SA 1060/168-70, 18 December 1805; SA 1060/168-70, 14 February 1806).

As in other offence types, it is clear that the complainant was also allowed a considerable amount of power and discretion.⁷¹ The complainant had clear motivations in mind when he or she approached the justice, desiring either the better behaviour of a spouse or neighbour, for example, or financial restitution. Although part of the role of the magistrate was to recognise the complainant's goal, and to negotiate accordingly, it was not always the magistrate's decision. Victims of assault might not want a formal prosecution or indictment but simply an apology or financial compensation. In the cases of marital violence that came before the magistrate, a wife might desire the magistrate to act as mediator and resolve marital difficulties, or for him to negotiate her readmittance to the family home if her husband had shut her out. Therefore, a magistrate's decision, as recorded in a summary notebook, might reflect more what the complainant desired than the magistrate's independent decision making.

In nearly one-third of assault cases where Hunt recorded an agreement had been reached, the parties had agreed without needing to come before the magistrate.⁷² This shows that individuals in Hunt's area used the threat of summary proceedings to negotiate their own peace with their neighbours,

⁷¹ Others have recognised this both at summary level and in jury trials (for example, Douglas Hay, 'The Criminal Prosecution in England and Its Historians', *Modern Law Review*, 47.1 (1984), 4; King, *Crime, Justice and Discretion*, 82; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 58; Bruce P. Smith, 'The Emergence of Public Prosecution in London, 1790-1850', *Yale Journal of Law and the Humanities*, 18.1 (2006), 29; Lemmings, *Law and Government in England*, 145).

⁷² 19 out of 63 agreed assault cases were agreed 'without hearing', representing 30 per cent of such cases (Crittall (ed), *The Justicing Notebook of William Hunt*).

rather than having to come before Hunt at a summary hearing and require him to act as mediator of this peace. In this sense, the assumption that Hunt desired agreements in assault cases is misleading. It was the community that wanted to agree matters, and the initial complaint to the magistrate was a tactic used to instigate an informal agreement outside of the justicing room. Although Hunt undoubtedly used his discretion in seeking agreements when parties did come before him at a hearing, the complainants paid their part as well.

There is evidence of a change over time in the use of discretion by magistrates, with the four earliest magistrates, Bromley, Hill, Brockman and Thornton, having recorded the highest percentage of further action (recognizances or indictments) in assault cases.⁷³ This suggests that magistrates were increasingly likely to use their discretion as the long eighteenth century progressed, but also that the number of assault cases that were heard by the magistrate affected the decisions they took in such cases. Hunt and Parker, who heard a high percentage of assault cases at summary level, agreed a high proportion of these cases.⁷⁴ In this way, magistrates sought to deal with a high

⁷³ Where action was recorded, Bromley recorded further action in five out of six cases (83 per cent), Hill in 14 out of 16 cases (87.5 per cent), Brockman in 16 out of 19 cases (84 per cent) and Thornton in all three cases he recorded (CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679). A full breakdown of the action recorded by magistrates in cases involving offences against the person is provided at Appendix 5 (page 410).

⁷⁴ This excludes Richard Stileman. Although he recorded agreeing 100 per cent of the assault cases where he recorded the action taken, this only equates to two of the assault cases he heard and noted in his notebook. He failed to state the action he took in 61 other assault cases. Hunt agreed or discharged 80 per cent of his assault cases (71 out of 89), and Parker 65 per cent (75 out of 115). Waller was an exception, discharging 78 per cent (14 out of 18) of his smaller number of assault cases, showing that the views of the individual magistrate,

number of cases as quickly and effectively as possible by agreeing matters within their justicing room. The increase in assault cases heard before the magistrate, and corresponding decrease in property offences, made the chances of an assault case being resolved summarily rather than being indicted to the courts correspondingly increase.

This section found that discretion was widely applied to assault cases, reflecting the tendency of magistrates to mediate such cases, and the perception of assault as an essentially civil issue. This chapter now considers whether discretion could be employed to the same extent with regulatory infringements or offences, where offences were primarily punished through the levying of fines.

iv. Discretion in the levying of fines for regulatory offences.

The primary way in which magistrates could use discretion, in many cases, was in the levying of fines for various offences, and fines were often the primary way of punishing offences relating to either social or economic regulation. Such offences had originally not been covered by criminal law, but had gradually become classified as misdemeanours by statute over several centuries, as Shoemaker has noted, with moral offences being particularly focused on in the

and the nature of the offences he heard, also played a part in his decision making (ESRO AMS 6192/1; Crittall (ed), *The Justicing Notebook of William Hunt*; SA 1060/168-70; CBS DC18/39/4).

seventeenth and eighteenth centuries.⁷⁵ Although for some offences, such as swearing, the fine was a set amount of one shilling per oath, discretion might be shown in calculating the number of oaths that an individual had uttered. This enabled some discretion, but the magistrates' decisions were also dependent on how trustworthy they thought the complainant was. When Brockman fined a man 14 shillings for swearing oaths, it is hard to believe that the complainant had counted the man swearing 14 individual oaths, but this is evidently what was complained about, and Brockman fined the defendant on that basis. In another case, the complainant said that a man had sworn 'at least three times', suggesting that there was doubt in some cases as to how many oaths had been uttered, and therefore how much to fine a defendant.⁷⁶

Gray has described those who appeared before the London magistrate for drunken behaviour as the 'flotsam and jetsam' of the streets, with the aim of the magistrate being to reprimand them rather than prosecute them.⁷⁷ It was rare for individuals to be brought before the rural magistrate charged with drunken behaviour, suggesting that such cases tended to be dealt with by the parish constable or within the local community, without the intervention of the justice.⁷⁸ However, where such cases were heard by the rural magistrate,

⁷⁵ Shoemaker, *Prosecution and Punishment*, 19.

⁷⁶ He dismissed one case involving drunken men, but issued a recognizance to another individual, after he was found to have 'been again drunk', to 'be of good behaviour and demean himself soberly till next Michaelmas' (BL Add MS 42598, 3 October 1700 and 20 May 1698).

⁷⁷ Gray, *Crime, Prosecution and Social Relations*, 123.

⁷⁸ Samuel Whitbread noted in one case that the parish constable had put a drunken man in the stocks overnight. He ordered the constable to bring the

practices varied. Those found to have been drunk in a public place were supposed to either pay a fine of five shillings or to sit in the stocks for six hours. Although the primary aim of the stocks was to humiliate or shame the individual, choosing to undertake this punishment did give poorer individuals a means of being punished without facing committal or financial hardship.⁷⁹ Roger Hill noted that in three cases before him, one man chose the fine while another chose to sit in the stocks. The third man had to be set in the stocks after he failed to pay the fine and had no goods that could be distrained.⁸⁰ This suggests that magistrates used the ambiguity of the law to interpret it in different ways. Shoemaker has stated that regulatory offences were punishable by fine, and that 'those who were unable to pay their fines were set in the stocks', but Hill's notebook makes a clear distinction between the man unable to pay the fine, and the men who 'chose' the fine or the stocks, implying that Hill gave his defendants the option of which punishment they preferred.⁸¹ Whitbread recorded in one case that he had had to fine a man for drunkenness simply because the local parish did not have its own stocks, removing the choice of punishment from him.⁸²

In other regulatory cases, particularly relating to economic regulation, magistrates were also allowed to use their discretion in setting the amount of a

man to him, and fined him five shillings for his drunkenness (Cirket (ed), *Samuel Whitbread's Notebooks*, 74, 76).

⁷⁹ J.A. Sharpe, *Judicial Punishment in England* (London, 1990), 152.

⁸⁰ These cases state that the choice was the convicted men's, and was not the result of being unable to pay the fine (CBS D-W/97/8, 15 March 1703, 26 March 1703, 30 December 1689).

⁸¹ Shoemaker, *Prosecution and Punishment*, 37.

⁸² Cirket (ed), *Samuel Whitbread's Notebooks*, 50.

fine, within specified minima and maxima, and the magistrates use of this discretion reflected their views and sympathies towards those who appeared before them. The levels of fines imposed depended on prior convictions and the individual's ability to pay. In 1786, *The London Adviser and Guide* was first published, and it stated that those who sold loaves of bread that were deficient in weight would be taken to the magistrate, where the bread would be weighed and a fine of between one and five shillings for every ounce the bread was deficient would be levied 'at the discretion of the magistrate'. If the bread was deficient by under an ounce, the fine would be reduced to between sixpence and two shillings and sixpence.⁸³ Bakers of unmarked loaves could be fined between five and 20 shillings. In two cases of unmarked loaves before Richard Colt Hoare, for example, he fined the individuals the minimum amount of five shillings per loaf.⁸⁴ Conversely, Thomas Horner levied the maximum fine possible on one woman whose loaves were deficient by 16 ounces, fining her '£4, being the full penalty of 5s an ounce'. This severity was due both to the comparatively large deficiency, with Horner sending a clear message that such carelessness, or intentional fraud was unacceptable, and the woman's relative wealth, for she was able to 'pay down' the fine immediately.⁸⁵

Some discretion was also given to the local magistrate in relation to the regulation of alehouses, in terms of restricting the number of licences that were

⁸³ John Trusler, *The London Adviser and Guide* (London, 1790), 25-26. Each peck of bread was supposed to weight 17 lb 6 oz, and a quartern loaf 4 lb 5.5 oz. The legislation that still applied to bread weight at the time of *The London Adviser's* publication was the 1757 Making of Bread Act (31 Geo 2 c.29) and the Bread Act of 1762 (3 Geo 3 c.11).

⁸⁴ WSHC 229/1 n.d. c. June 1821.

⁸⁵ McGarvie (ed), *The King's Peace*, 74.

granted. Dalton provided guidance to them based on a 1616 speech by James I that encouraged justices to ban alehouses on the periphery of villages as they would be less likely to serve the 'needs' of villagers.⁸⁶ It was recognised that licenses should be forbidden in more out of the way or notorious places, in order to discourage lewd behaviour, vagrants or thieves - reflecting concerns that 'alehouse sociability... [might] undermine local law and order'.⁸⁷ The cases of innkeepers selling ale without a licence recorded in notebooks suggest that rural magistrates were working to limit the number of licences they granted, and to restrict the inns that operated in their communities.

However, the fines for selling ale without a licence were set out by various statutes, and did not permit the magistrate discretion in varying the amount.⁸⁸ For a first offence, Burn stated that the defendant should be fined 40 shillings and costs, and if they did not pay within a week, they could be committed for up to one month. A second offence saw the fine rise to £4 and costs, or two months in prison. A third offence had the punishment of a £6 fine.⁸⁹ Thomas Horner's notebook shows that he levied the fines as dictated by law, usually charging additional costs of between three and five shillings. However, he recorded fines of between £4 and £10, the latter suggesting that some of those who came before him had continued to sell beer after previous offences, and that previous fines had had little impact on stopping regulatory infringements.

⁸⁶ Mark Hailwood, *Alehouses and Good Fellowship in Early Modern England* (Woodbridge, 2014), 33.

⁸⁷ Hailwood, *Alehouses and Good Fellowship*, 38.

⁸⁸ 5 and 6 Edward 6 c.25; 3 Charles, c.3; 26 Geo 2, c.31.

⁸⁹ Burn, *The Justice of the Peace, Volume 1*, 22-23.

However, although both Horner and Spencer levied fines according to the law, others appear to have used their discretion despite the clear guidance as to what fines were appropriate. Hunt issued fines of 20 shillings for a first offence, half the amount that the law dictated. Hill, at the end of the seventeenth century, fined ten or 20 shillings for the same offence.⁹⁰ Threats were also used to try and prevent repeat behaviour, with Brockman recording that he had threatened one woman with prison if she continued to sell without a licence, after her husband had already been committed.⁹¹ More discretion was permitted in other offences, such as with the selling of drink in unmarked vessels, where the magistrate was allowed to levy a fine of between ten and 40 shillings for every offence.⁹² These offences show that the magistrates were allowed to use their discretion in the levying of fines for some offences, but in others, where the law set out a clear schedule of fines, some magistrates continued to use discretion in mitigating fines or in levying smaller amounts than the law stated. This varied according to the individual magistrate, though, and reflected the individuality of the rural magistracy.

⁹⁰ Crittall (ed), *The Justicing Notebook of William Hunt*; CBS D-W/97/8.

⁹¹ BL Add MS 42598, 2 September 1715.

⁹² Where Spencer convicted one woman of this offence, he did not record the amount of the original fine, but noted that he had mitigated it to ten shillings. This suggests that there was more than one offence, but that Spencer had mitigated the fine down to the minimum amount (BL Add MS 76337, 1 November 1788).

v. The extent of magisterial discretion in decisions relating to employment cases.

The law gave magistrates discretion in terms of levying fines in particular regulatory cases, and considerable discretion was also allowed in terms of hearing employment disputes. Prior to 1747, the main act covering employment was the 1562 Statute of Artificers (5 Eliz 1 c.4) which enabled magistrates to 'oversee the performance of the service relationship'.⁹³ However, this act was somewhat vague in terms of the occupations it covered, and so the law was considerably strengthened in the mid-eighteenth century disciplinary aspects of master and servant law were significantly strengthened in the mid eighteenth century, beginning with the Regulation of Servants and Apprentices Act.⁹⁴ This act set out a range of options for the magistrate when dealing with misbehaving servants, including the power to commit a servant to the House of Correction for up to a month, to withhold wages, or to discharge a servant from his employment. It also allowed workers to apply directly to the magistrate for the payment of unpaid wages of below either £5 or £10, depending on their trade.⁹⁵ The law, then, both allowed the magistrate discretion in punishing errant workers, but also, from 1747, made the magistrate's role in helping to obtain owed wages clear.

⁹³ Simon Deakin, 'The Contract of Employment: A Study in Legal Evolution', *Historical Studies in Industrial Relations*. 11 (2001), 19.

⁹⁴ *ibid.*, 19; 20 Geo 2 c.19.

⁹⁵ Christopher Frank, *Master and Servant Law: Chartists, Trade Unions, Radical Lawyers and the Magistracy in England, 1840-1865* (Farnham, 2010), 32.

Wage disputes tended to be fairly straightforward, although some did involve the magistrate to have some ability with mathematics - Thomas Netherton Parker, for example, recorded several cases where he had to deduct a fine for leaving work early from the amount of wages being claimed.⁹⁶ However, on the whole, wage disputes could be resolved relatively easily, and table 5.2, below, shows that with wage cases brought before the rural magistrates studied in this thesis, complainants were likely to get a successful outcome when they approached the magistrate to request wages owed to them by their employers.

Table 5.2 The outcome of wage-related complaints, where recorded in justicing notebooks.

	Number	Percentage
In favour of complainant	95	59%
Partial/compromise verdict	43	27%
In favour of defendant	22	14%
Total	160	100%

Sources: CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, NRO Th1681, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 619/1. There were no wage cases in NRO Th1679 and no recorded outcomes in wage cases in WRO CR0103.

Table 5.2 shows that where magistrates recorded the outcomes of wage disputes, they found in favour of the complainant in nearly 60 per cent of cases. In a further 27 per cent of cases, they reached a partial or compromise verdict. These latter cases involved the calculation of wages after deductions due to a

⁹⁶ An undated case involved Elizabeth Hughes, who asked for £5 wages owed by her employer, Mrs Ward Blodwell. Parker said a month's wages should be deducted from that sum as Hughes had left her employment without leave (SA 1060/168-70, n.d., c. 12 January 1811).

servant going absent from their service without leave, or for misconduct, or the agreement of wages on condition of a servant either returning to service or being discharged from their contract. They also included cases where the two parties agreed matters between themselves after the initial contact with a magistrate. In such cases, the magistrate was able to show some discretion by negotiating between parties to reach a mutually acceptable resolution.

However, some magistrates were still more likely to negotiate with some parties than others. Parker dealt with a high proportion of employment cases, of which, 57 per cent (57 out of 100 employment cases) involved wage disputes. Steedman has noted how 'many categories of worker, often new to Morda Valley, turned to the local magistrate in pursuit of their wages', although she does not analyse why Parker was approached rather than other magistrates, or why this part of Shropshire saw such a high proportion of both wage and other employment complaints.⁹⁷ However, it is possible that these complainants approached Parker because they believed they had a good chance of a successful outcome if they saw him, and that he had a reputation for mediation. Parker did attempt arbitration in many of his employment cases, and this is evident in the wage cases before him, where he made a compromise verdict in nearly half of such cases.⁹⁸ Hunt, although dealing with a far smaller

⁹⁷ Steedman, *Labours Lost*, 192.

⁹⁸ Steedman believes that both Gervase Clifton in Nottinghamshire and Thomas Netherton Parker in Shropshire 'read the wishes and desires of those disputing before them, looked to the law - perhaps - as well, and made a decision that attempted to satisfy both parties' (Steedman, *Labours Lost*, 185); Parker recorded a partial or compromise decision in 26 out of 57 wage cases, or 46 per cent of such cases (SA 1060/168-70).

number of wage cases, reached a compromise verdict in just under a third of such cases. Conversely, though, George Spencer's notebook suggests that he was unwilling to reach compromises and more likely to simply decide in favour of one party or the other without negotiating.⁹⁹ This shows how decision-making could vary between magistrates, with some seeking to get a speedy resolution to cases rather than a nuanced, slower negotiation between parties.

Where notebooks failed to record any wage disputes, or only recorded a couple, it is likely that individuals had chosen not to take their complaint to that specific justice, in an example of complainants' discretion in where to take their complaints. Looking at the notebook of Thomas Dixon in Lincolnshire, the absence of wage disputes in his diary reflects his reputation as the friend of employers rather than workers. The misdemeanour cases he dealt with show that he found in favour of employers in the vast majority of cases, and if he was seen by local workers as having such a clear bias, it would prevent workers from feeling that they could approach him about wages.¹⁰⁰ In the area of employment, it is likely that some triangulation took place with workers attempting to take their complaints to a magistrate who was more likely to be

⁹⁹ In the seven wage cases heard by Spencer, he did not record any negotiations. Instead, in one case he ordered an employer to attend him unless he paid his worker, in another, he dismissed the case, and in the other five, recorded orders for payments to be made (BL Add MS 76337, 15 November 1788, 27 June 1789, 27 June 1789, 11 July 1789; BL Add MS 76340, 22 June 1793, 4 August 1793, 14 December 1793).

¹⁰⁰ As Davey notes, in such cases, Dixon usually issued a warrant for the servant's arrest, resulting in the employer being 'armed with a powerful document' (Davey, 'Introduction', 29).

sympathetic towards them, if one was available.¹⁰¹ In this sense, discretion was used both by the magistrate and by the complainant.

In terms of absconding servants, it was rare for a magistrate to find in favour of a worker accused of misbehaviour by his employer, as table 5.3, below, shows. In over 70 per cent of cases where action was recorded, the magistrate ordered the defendant to return to work or ordered the discharge of his contract, and the deduction of wages.

Table 5.3 The outcomes of misbehaviour cases brought against workers, where recorded

	Number	Percentage
In favour of complainant (master)	88	73%
In favour of defendant (worker)	17	14%
Partial/compromise verdict	16	13%
Total	121	100%

Sources: WRO CR0103, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*. There are either no misbehaviour cases or no action recorded in such cases in CBS D-W/97/8, NRO Th1681 and ESRO AMS 6192/1.

Although there were cases where the magistrate used his discretion in determining that a master had given the servant reason to abscond, such as by treating him or her badly or giving his servants inadequate food, these were

¹⁰¹ King, *Crime and Law in England*, 162; Davey, 'Introduction', 31.

rarely recorded.¹⁰² But magistrates such as Whitbread used their discretion in dealing with such cases, seeking to reach a fairly amicable agreement between masters and servants where possible, rather than committing servants to gaol.

The 1747 Regulation of Servants and Apprentices Act had given magistrates discretion in punishing those workers found to have misbehaved, enabling them to imprison the individual for up to a month, withhold part of their wages, or to discharge them from their employment.¹⁰³ The rural notebooks written after the enactment of this act show that magistrates did punish individuals in different ways, showing both the discretion allowed to them in law, and the individuality of their decision-making.¹⁰⁴ Pressure from the complainant, wishing to see individuals punished rather than having to take them back into service, may have been behind two cases heard by Horner, where defendants were sent to the House of Correction.¹⁰⁵ Although magistrates were allowed the discretion to send workers to gaol, under the 1747 act, such action was very rarely recorded in the magistrates' notebooks, and these two cases do not suggest any extreme behaviour that would warrant more severe action. In such cases, it is also clear that the magistrate's discretion was used in individual cases in order to facilitate a practical solution

¹⁰² McGarvie (ed), *The King's Peace*, 64.

¹⁰³ Frank, *Master and Servant Law*, 32.

¹⁰⁴ Whitbread encouraged servants to apologise to their masters and thus be forgiven on the promise of future good behaviour, thereby avoiding the need for further action or the master having to find a new servant (Cirket (ed), *Samuel Whitbread's Notebooks*, 33, 46).

¹⁰⁵ Thomas Horner committed one servant to the House of Correction for running away from service and another was committed for being a disorderly apprentice (McGarvie (ed), *The King's Peace*, 97, 124).

to accusations of misbehaviour. The key aim of the magistrate was to encourage the return of the servant to his service, or the forgiveness of the employer, and deal with such cases quickly. There was also a reluctance to use summary punishments such as the house of correction, unless the complainant pushed for this, even after the passing of the 1766 act (6 Geo 3 c.25), which Frank has noted was 'harsh even by the standards of master and servant law' because of its focus on the punishing of servants and apprentices.¹⁰⁶

It is not surprising that the smallest number of employment cases that magistrates dealt with at summary level involved accusations of bad or cruel usage brought by servants, apprentices and other workers against their employers. As Frank's comment above implies, master-servant legislation did not focus on protecting workers, such as those who were the victims of cruel treatment by their employers. Although, again, the seven magistrates who recorded such cases and their outcomes were more likely to find in favour of the complainant than the defendant, the outcomes were less certain than in cases alleging misbehaviour by servants, as table 5.4, on the next page, shows.

¹⁰⁶ Frank, *Master and Servant Law*, 32.

Table 5.4 The outcomes recorded in cases alleging bad or cruel usage on the part of employers.

	Number	Percentage
In favour of complainant (servant/worker)	16	59%
In favour of defendant (master)	6	22%
Partial/compromise verdict	5	19%
Total	27	100%

Sources: WRO CR0103, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*. There are either no misbehaviour cases or no action recorded in such cases in CBS D-W/97/8, NRO Th1679, WSHC 229/1, WSHC 383/955, NRO Th1681 and ESRO AMS 6192/1.

Just under 60 per cent of cases where action was recorded resulted in the allegation of bad treatment being proved, with the remaining 41 per cent of cases resulting in either a compromise or a result favouring the employer. This reflects the difficulty in proving what constituted chastisement by an employer that went beyond the contemporary description of 'reasonable', and also differing perceptions of what constituted decent working conditions for servants and apprentices in terms of food, drink and workload.

In some cases, it was easier to simply discharge a servant from his contract than prove that allegations were serious enough to merit further action. This is clear in cases across the long eighteenth century, with Bromley, Brockman, Whitbread all recording the discharge of contracts after a servant complained about their treatment. In addition, Horner ordered the discharge of a girl from her apprenticeship after finding that her master hadn't allowed her enough

food and had cruelly treated her.¹⁰⁷ These cases can be read in two ways. The justice was expressing sympathy towards the worker by recognising that he or she could no longer continue in his or her employment or apprenticeship due to the behaviour of the employer. However, this action meant that the individual would now be out of work and might struggle to find an alternative employment due to the time of year, or fears by other employers that the individual might be a troublemaker in terms of reporting them for faults.¹⁰⁸ This was recognised by Dalton, who, when noting the responsibility of the magistrate, stated:

The causes of putting away and departing servants are referred to the consideration and allowance of the Justices of Peace: It behoveth them to have good care, left by their giving too much way therein, either to the master or servant, many, which might by due ordering, have proved good servants, turn Rogues and Vagabonds.¹⁰⁹

This responsibility of the justice to avoid servants becoming out of work and requiring poor relief or being vulnerable to apprehension under vagrancy legislation helps to explain why only a few cases in the notebooks refer to the discharge of contracts in cases brought by servants. In this way, magistrates

¹⁰⁷ McGarvie (ed), *The King's Peace*, 112, 113. Withholding wages, meat or drink from a servant or apprentice was 'a good cause of departure' from service, according to Dalton, but this cause had to be 'allowed of by the Justices of Peace, before the Servant may lawfully or falsely depart' (Dalton, *The Country Justice*, 187).

¹⁰⁸ Wrightson notes that 'for some, periods of fairly regular employment were punctuated by lengthy bouts of idleness'. Discharging others from their contracts would add to the number of those perceived to be 'idle'. (Wrightson, *Earthy Necessities*, 313).

¹⁰⁹ Dalton, *The Country Justice*, 187.

used their discretion in determining what merited further action, and what cases could be resolved without the need to end the employment contract.

Looking across the range of employment cases brought before the magistrate, it is evident that the magistrate was more likely to find in favour of the complainant rather than the defendant, regardless of what the case was.¹¹⁰ However, given the greater number of misdemeanour cases against workers decided by magistrates compared to allegations of bad usage brought by workers, the rural notebooks also show that the system benefited the employer more than the servant.¹¹¹ Rural magistrates were more likely to find in favour of the servant or other worker, when he or she brought cases involving owed wages or cruel usage on the part of their employer, but he was more likely to find in favour of the employer when he or she brought cases involving the misbehaviour of a servant. However, the magistrate still had to negotiate between the two parties who appeared before him, weighing up the evidence of both and coming to a decision based not only on the case itself, but considering the wider social and economic implications of any punishment or decision made by him. In mediating employment cases and attempting to find other solutions than the discharging of contracts, both rural magistrates and the law recognised those whose 'domestic economies were ones of constant makeshifts and expedients, fraught with the perennial risk of tumbling into

¹¹⁰ This reflects Steedman's conclusion about the cases heard by Gervase Clifton when she states that 'whoever brought the case, employer or worker, was more likely to have a decision in his or her favour' (Steedman, *Labours Lost*, 185).

¹¹¹ Steedman, *Labours Lost*, 185; Emsley, *Crime and Society in England*, 210.

severe poverty in the event of any misfortune', thus seeking to mediate wage disputes and resolve issues without having to take further action outside of the justicing room.¹¹²

b. What factors did magistrates consider in employing leniency or discretion?

This chapter has looked at how statute law enabled the magistrate to use discretion, to varying extents, across the main types of case he dealt with. It found that statute law granted magistrates considerable discretion in terms of petty theft, assault, employment, and poor law cases. Even in regulatory cases, where some offences were subject to statutory fines, magistrates still employed an element of discretion in deciding how to penalise an individual, using their discretion to levy a minimum or maximum fine. It found that employment cases were weighted towards whoever brought a complaint to the magistrate, but that in practice, it was employers who benefited, with a strengthening of master/servant legislation in the mid-eighteenth century resulting in the magistrate being able to show less discretion, and less willingness to negotiate between the parties before him.

This chapter will now move on to look at what influenced a magistrate when they used their discretion, moving on from the types of case and the discretion allowed to magistrates in law, to the other factors that influenced the decisions

¹¹² Wrightson, *Earthly Necessities*, 148.

a magistrate took. This section will use a more qualitative approach, looking for evidence of different types of discretion and leniency and comparing situations where leniency is evident to areas where it is not found, or not to the same extent. This section focuses particularly on areas such as property offences and offences against the person, where historians have particularly focused on the evidence for gender-based leniency, to argue that gender-based leniency was not prevalent in the records of rural summary proceedings, and that other factors such as age and economic background were more important to the rural magistrate when it came to decision-making.¹¹³

i. The evidence for gender-based discretion in rural summary proceedings.

Women were in a minority in terms of both complainants and accused at summary level, which reflects the conclusions of other historians who have studied the higher courts during the long eighteenth century, but where they were evident, is there evidence for them being treated more leniently because of their gender, or were they punished for transgressions in a way that men were not?¹¹⁴ For example, King has noted how summary proceedings dealt with a ‘variety of ill-defined but important categories of lawbreaking which were used to discipline women’, such as bastardy, the punishing of women for

¹¹³ For example, Durston, writing primarily about property offences, has stated that women were both less likely to commit such crimes, and that ‘they were more leniently treated by the criminal justice system’ (Gregory Durston, *Crime and Justice in Early Modern England: 1500-1750* (Chichester, 2004), 45).

¹¹⁴ D’Cruze and Jackson, *Women, Crime and Justice*, 17; Lacey, ‘From Moll Flanders to Tess of the D’Urbervilles’, 6-7.

lewd behaviour, or for being idle and disorderly.¹¹⁵ Yet this study has already established that it was rare for women to be punished for their sexual behaviour, the focus of magistrates in bastardy cases being on establishing financial responsibility for a child. There is also little sign that women were singled out for punishment under vagrancy legislation, although they were more vulnerable to poverty as the result of the death or desertion of a partner. This analysis of summary proceedings enables a study of how magistrates disciplined those women who did appear before them, and whether they were treated more or less leniently because of their gender. It looks at offences and cases where both men and women appeared before the magistrate, to find whether gender was a factor in how the magistrate made his decisions, and whether the impact of gender was considered more in certain offences than in others.

This section looks first at property offences. King found that at the Old Bailey during the late eighteenth century, some leniency was shown towards female property offenders, with fewer women being convicted of petty larceny than men, and more female shoplifters and pickpockets being discharged prior to public trial in London than men.¹¹⁶ A key question is not only whether female property offenders were treated leniently in terms of the decisions made at summary level, but also whether gender-based leniency is also found in other types of offence - in other words, whether the nature of the offence affected both the scope for judicial discretion, and its application in practice.

¹¹⁵ King, *Crime and Law in England*, 181.

¹¹⁶ King, *Crime and Law in England*, 171-172.

Firstly, women were certainly less well represented as defendants in property offences at summary level than men, and their treatment by the rural magistrate reflected the perception of them as 'less of a threat' to public order because they constituted a minority of offenders, and tended to commit less serious crimes.¹¹⁷ Chapter four showed that women formed a minority in terms of property offence defendants, but as table 5.5, below, shows, women were also far less likely to be punished than men when they did appear before the magistrate in relation to property offences.

Table 5.5 The outcomes of property offences heard by magistrates at summary level, by gender of defendant.

	Male defendant		Female defendant	
	Number	Percentage	Number	Percentage
Summary	215	55%	30	42%
Discharged	111	29%	35	49%
Indicted	48	12%	3	4%
Recognizance	15	4%	4	5%
Total	389	100%	72	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, NRO Th1681, BL Add MS 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. The summary category includes fines and imprisonment. The discharged category includes cases that were discharged, dismissed, agreed or settled.

Table 5.5 shows that over half of the men who appeared before the rural magistrate accused of a property offence were convicted and given a summary punishment, whereas just under half of female defendants in this category

¹¹⁷ King, 'Gender, crime and justice', 65, Beattie, *Crime and the Courts*, 240, 439.

were dismissed with no further action taken. Men were three times as likely as women to be prosecuted at trial, although women were slightly more likely to be bound over. This difference in action taken partly reflects the fact that women tended to steal items of less value than men, and that men were more likely to commit larcenies that would be indicted at Assizes, and that therefore had less scope for magisterial discretion. Men were also more likely to commit the more serious property offences such as animal theft and robbery than women, as chapter four found. These figures therefore echo King and Beattie's arguments, stated above, about the level and nature of female property offending, and how it was therefore punished in different ways to male offending. However, the slightly higher figure for female recognizances suggests that women's offending was seen more as transgressive behaviour than criminal, and binding women over considered sufficient action in cases involving women committing property offences.

Certain property offences were gendered, but does this mean that the action taken by magistrates in such cases was similarly gendered? One of the primary types of property offences that women were accused of in the rural summary notebooks was yarn embezzlement, and the related offences of short-reeling or false-reeling. This section now looks at the punishments given to women convicted of such offences, to show that poverty, rather than gender, was the main influence on a magistrates' decision-making, but that gender impacted on this by the nature of women's work and lives in the long eighteenth century. In Northamptonshire, the Worsted Act was introduced in 1785, and its

introduction is reflected in George Spencer's notebooks, where he recorded 12 cases between 1788 and 1793.¹¹⁸ The fine for false reeling offences allowed some discretion to magistrates, as it was set within a minimum of 5s and a maximum of 20s - with a fine of between 40s and £5 for a second offence, and one month in gaol for a third offence.¹¹⁹ But Spencer clearly used his discretion in deciding what action to take, as table 5.6, below, shows.

Table 5.6 Action taken in yarn embezzlement and short- or false-reeling cases before George Spencer.

	Number	Percentage
Mitigated fine	6	50%
Matter made up after yarn produced	2	17%
House of Correction for 14 days	2	17%
Fine	1	8%
No action recorded beyond summons	1	8%
Total	12	100%

Sources: BL Add 76337, BL Add 76340.

In half of the cases Spencer heard, he mitigated the fine levied to the minimum of five shillings, which in two cases was paid by the parish overseer, reflecting the fact that some of these spinners were subsisting only with the help of the parish. Only two women were sent to the House of Correction, but these were

¹¹⁸ This was 25 Geo 3, c.40, which enabled manufacturers to set up committees and yarn inspectors in their area. It applied to Bedfordshire, Huntingdonshire, Northamptonshire, Leicestershire, Rutland and Lincolnshire (Styles, 'Spinners and the Law', 147; Lemmings, *Law and Government in England*, 237; Ephraim Lipson, *The History of the Woollen and Worsted Industries* (London, 1921), 69).

¹¹⁹ Styles has stated that the 1774 act (14 Geo 3 c.44) reduced the penalty for false reeling to 'a relatively small (5s) financial forfeiture for the first offence' (Styles, 'Spinners and the Law', 159-160), but other sources make it clear that this act actually specified that the fine for a first offence could be between 5s and 20s, even if larger amounts were not often levied (Joseph Chitty, *Treatise on the Laws of Commerce and Manufactures, etc, Volume 2* (London, 1824), 411; Alfred P. Wadsworth, *The Cotton Trade and Industrial Lancashire, 1600-1780* (Manchester, 1965), 396).

because they had failed to return the goods supplied to them to spin, and were therefore committed for embezzlement.¹²⁰

Were Spencer's decisions influenced by the gender of the accused spinners? All 12 of the cases before Spencer were brought against women, reflecting the fact that the spinning of yarn and worsted as outwork was done primarily by women.¹²¹ The mitigating of fines for embezzling yarn does not necessarily mean that magistrates such as Spencer were sympathetic with the women's plight, but there was a recognition that poorly paid female outworkers would be unable to pay the full fine and in failing to do so, would likely end up in gaol instead.¹²² This was especially true given that many female outworkers were married and were combining working from home with childcare responsibilities.¹²³ Recognising these pressures, the fine was mitigated to a level that either the woman would be able to pay, or that her employer might be willing to pay, thus both punishing her but enabling her to maintain her other household commitments, continue working, and avoid seeking parish

¹²⁰ Under the 1749 act (22 Geo 2 c.27), failure to return goods within 21 days was subject to 14 days in the House of Correction. The 1774 act reduced this to failure to return goods within eight days (Wadsworth, *The Cotton Trade and Industrial Lancashire*, 397).

¹²¹ Styles, 'Spinners and the Law', 149.

¹²² Crouzet refers to these women as 'a low-paid labour force of female outworkers' (François Crouzet, *A History of the European Economy, 1000-2000* (Charlottesville, 2001), 103).

¹²³ Pinchbeck, *Women Workers*, 149. Four out of 12 spinners before Spencer (33 per cent) were explicitly recorded as being married (BL Add MS 76337, all cases heard on 5 December 1789), and three cases (25 per cent) refer to the spinner's children being present when she carried out her spinning (BL Add MS 76337, 2 February 1788, 22 March 1788, 4 July 1789).

relief.¹²⁴ The payment of fines by the woman's employer also suggests that scaring the miscreant worker, not punishment, was the main purpose of bringing the case, that the employer was regarded as having some culpability for his workers' failures, or equally that the employer had sympathy with the spinner when the inspector brought the case.¹²⁵ The involvement of the employer in Spencer's cases suggests that he simply wanted his goods returned rather than the punishment of a female worker.

The magistrate's role balanced the need for punishment with the need to be practical. As stated, two women, including one who was stated to have young children, were committed to the House of Correction for failing to return goods, and for the duration set out by the 1749 act (22 Geo 2 c.27). However, the act also stated that those convicted of embezzlement should also be publicly whipped in the local market place, and Spencer did not state that this was done in either of the women's cases.¹²⁶ So although Spencer committed to the House of Correction the two women who had committed the most serious offences, he did not appear to have ordered them to be whipped, contrary to statute, suggesting that he saw imprisonment as sufficient punishment.¹²⁷ The

¹²⁴ In two cases before Spencer, the women's employer, John Marriott, paid the mitigated fines of five shillings each (BL Add MS 76337, 26 June 1789 and 4 July 1789).

¹²⁵ Barry Godfrey and David J. Cox, *Policing the Factory: Theft, Private Policing and the Law in Modern England* (London, 2013), 80-81.

¹²⁶ Burn, *The Justice of the Peace, Volume 4*, 135.

¹²⁷ These two women had embezzled yarn that had been given to them, as opposed to other women before Spencer who were accused of short- or false-reeling. Styles notes that these two latter offences were separate frauds (false reeling involving yarn that was deficient in threads, and short reeling involving reeling on a reel of less than the standard circumference), but that most people

mitigation of fines and use of discretion in spinning offences was due to a combination of gender and economic background. The women's gender meant that after marriage, they took on low paid work within the home, and that this meant they would be unable to pay an unmitigated or larger fine. Their childcare and other domestic responsibilities meant that imprisonment would have an impact on their family and possibly then on parish resources. Therefore gender and economic background were interlinked, and Spencer took both factors into account in his decision-making.

A study of another magistrate who dealt with yarn or worsted offences suggests that gender was not considered as a mitigating factor by all rural magistrates, and that discretion depended on the individual magistrate. Horner, whose notebook covered a period where the 1777 Worsted Act was being introduced, only recorded the action he took in a minority of embezzlement cases before him.¹²⁸ However, the scale of embezzlement in the Frome area is evident from the seven cases he recorded as being brought against 'several persons' each. In none of the cases involving these groups of individuals did Horner record outcomes. However, as with Spencer, it is clear that women formed the majority of defendants. Out of the 29 cases involving a named defendant, only one involved a man. There is little evidence in the cases

were accused of both jointly (Styles, 'Spinners and the Law', 150). Spencer did record them as separate offences, though - five of his cases involved false reeling, one was short reeling, and five were yarn embezzlement (BL Add MS 76337; BL Add MS 76340).

¹²⁸ 17 Geo 3, c.11 (Lemmings, *Law and Government in England*, 237).

where outcomes are recorded that men were treated differently from women.¹²⁹

The evidence of decisions made by Spencer and Horner in yarn embezzlement cases is that magistrates were permitted discretion in law in terms of setting fines, and that Spencer usually levied the smallest amount of fine possible with women accused of short or false reeling.¹³⁰ Horner did not specify the original fine with the women before him, but it is unlikely to have been mitigated, or at least not to the amount that Spencer did, as neither woman fined was able, or willing, to pay. Therefore, magistrates varied in their approaches to women accused of yarn offences, and gender-based leniency does not appear to have been universal but rather, was due to the magistrate's individual attitude and willingness to consider gender in their decision making.

In an offence such as yarn embezzlement, then, which was committed primarily by women, gender-based discretion was not consistent across magistrates. Was there more consistency in approach by magistrates in relation to property offences committed by both men and women? This

¹²⁹ Although only the male defendant, Abraham James, was sent directly to prison, and ordered to be publicly whipped, this was because he was a repeat offender, his punishment being that set out in 14 Geo 3, c.44 for those convicted of a third yarn offence. Of the three women ordered to go to gaol, two were only sent after failing to make financial satisfaction or pay a fine, the amount not specified by Horner. The third had her sentence respited, but this was to give her time to find the 'stranger' she had sold her embezzled wool to, rather than being an example of gender-based discretion (McGarvie (ed), *The King's Peace*, 77, 59-60).

¹³⁰ 14 Geo 3, c.44 stated that the magistrate could levy a fine of between five and twenty shillings for a first offence, and Spencer noted that he 'mitigated' fines to this minimum amount (John James, *History of the Worsted Manufacture in England, From the Earliest Times* (London, 1857), 293).

section will now consider a common rural offence, that of wood theft, which was less gendered than yarn offences. Until 1766, this was primarily a summary offence, punishable under 15 Charles 2, c.2 (1663).¹³¹

As table 5.7, on page 322, shows, the action taken by magistrates across the long eighteenth century reflected the summary nature of wood theft, with only William Brockman recording any cases that resulted in recognizances or indictments. The table suggests that men were more likely to receive harsher punishments in terms of being whipped, committed or subject to further action, whereas women were more likely to be fined, or have their cases dismissed or discharged.

¹³¹ Although the Black Act of 1722 (9 Geo I c.22) set out that certain types of wood theft, such as the 'malicious' cutting down of trees in an avenue, garden or orchard - were a felony without benefit of clergy, in the majority of cases, a single justice could deal with, and punish with a fine, hedge breaking and wood theft where a person was seen carrying away the goods, even if they had not been seen physically cutting them down. 43 Eliz c.7 and 15 Charles 2, c.2 specified damages as specified by the JP and a fine not exceeding 10s. Failure to pay would result in up to a month in the house of correction or a whipping by the parish constable. For a second offence, the individual would be sent to the house of correction for a month with hard labour, and for a third offence, the convicted person would be "deemed an incorrigible rogue" (Burn, *The Justice of the Peace, Volume 4*, 381, 386).

Table 5.7 The action recorded in cases of wood theft heard by rural magistrates.

	Male defendants		Female defendants	
	Number	Percentage	Number	Percentage
Fined	67	60%	18	69%
Discharged	22	20%	6	23%
Committed	9	8%	1	4%
Whipped	8	7%	1	4%
Further action	6	5%	0	0%
Total	112	100%	26	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 763340, SA 1060/168-70, Cirket (ed) *Samuel Whitbread's Notebooks*. There is no action recorded in any of the wood theft cases in either NRO Th1681 or ESRO AMS 6192/1. The discharged category includes cases that were dismissed, discharged, or agreed. Further action comprises recognizances or indictments.

William Hunt's notebook contained the largest number of wood theft cases, and he recorded the action he took in all but two such cases, therefore an analysis of the wood theft cases he heard enables a deeper exploration of how gender-based discretion might be used in such cases. Hunt's notebook shows that he tended to base fines on the individual case, with the amount generally varying between 2s 6d and 5s, although if an individual was unable, or unwilling, to pay, Hunt would order them to be whipped, in accordance with the law. However, Hunt treated women stealing wood on their own more leniently than male wood thieves.¹³² Table 5.8, on the next page, shows that although the majority of people before him on wood theft charges were convicted and fined, there is a clear gender difference in terms of whether Hunt discharged an individual or not.

¹³² Griffin has also recognised this leniency in Hunt's wood theft cases (Griffin, 'Wood-taking and customary practice', 22).

Table 5.8 The action taken in wood theft cases heard by William Hunt.

	Male defendant		Female defendant	
	Number	Percentage	Number	Percentage
Discharged	13	31%	5	42%
Summary conviction	29	69%	7	58%
Total	42	100%	12	100%

Source: Crittall (ed), *The Justicing Notebook of William Hunt*. The discharged category includes cases that were discharged, dismissed, agreed or settled. Summary convictions include fines and imprisonment.

Hunt was more likely to discharge a female defendant, doing so in over 40 per cent of cases, whereas less than a third of male defendants (31 per cent) were discharged with no further action being taken. Women were therefore less likely to receive a fine or other summary punishment than men. There were other ways in which Hunt could employ discretion in wood theft cases, and they show firstly, that both genders could benefit from this discretion, and secondly, that the attitude of the complainant also impacted on the action taken in such cases. Hunt's notebook shows that women were likely to receive no punishment either if they promised not to commit an offence again, or if the complainant forgave them, suggesting that they were brought before the magistrate as a warning, or a means of 'scaring' them into behaving rather than to punish them financially. Cases brought against men were more likely to be dismissed due to lack of evidence, rather than because the individual had promised to amend his ways, or been forgiven, although one man was recorded as being forgiven by the complainant.¹³³ A wider range of fines were levied on

¹³³ Crittall (ed), *The Justicing Notebook of William Hunt*, 57.

men, of between one shilling and 15 shillings, although the lowest fine was issued by a colleague of Hunt's, Thomas Beach, who levied a smaller amount for a first offence.¹³⁴

As Griffin has noted, Hunt used his discretion to find most of those accused of wood theft guilty, but then to levy generally small fines or excuse them, so that although justice was seen to have been done, the defendant did not suffer a penalty that he or she could not afford.¹³⁵ Women were still more likely to be excused than men in such cases, and there was a lack of differentiation between offences that does not suggest a difference in severity of offences carried out by men and women. However, Hunt's notebook again shows that women benefited from the magistrate's consideration of economic poverty in the setting of fines.

It has been established that Hunt treated female wood thieves more leniently than male defendants, but that economic background was a factor in this leniency. Although Hunt is considered to be a magistrate who tried to mediate and agree cases where possible, this gender-based leniency for wood theft was

¹³⁴ The lowest fine was issued by a colleague of Hunt's, Thomas Beach, who levied a smaller amount because it was 'the first offence'. This might have been at the desire of Hunt, as the case before Beach had been brought by Hunt himself, with the wood theft being from his own lands in Marston. In another case, Hunt recorded that the complaint 'proved so frivolous that I excused the defendant' (Crittall (ed), *The Justicing Notebook of William Hunt*, 84, 44).

¹³⁵ Griffin, 'Wood-taking and customary practice', 23.

not unique.¹³⁶ All the magistrates who recorded outcomes in wood theft cases brought against women tended to fine them, rather than punish them in any other way, and fines tended to be smaller than those levied on men. Richard Colt Hoare, for example, fined women around half the amount of men. The fines levied to men neither equated to a strict reading of the law, nor to how women were fined, suggesting judicial discretion by Hoare both in levying fines and his treatment of women as more deserving of leniency. Waller similarly treated women more leniently. Although he committed one woman, Mary Clark, to the House of Correction, this was the statutory punishment for a second offence, and three months later, Mary was convicted of a third wood stealing offence and again committed to the House of Correction.¹³⁷ However, men tend to be fined by Waller more than the statute specified, and in some cases, substantially more. The most common fine levied to men was 40 shillings, a fine which was levied in eight cases.¹³⁸

¹³⁶ Shoemaker, *Prosecution and Punishment*, 43, 81; Crittall (ed), *The Justicing Notebook of William Hunt*, 12; David Lemmings, *Law and Government in England*, 32; Sharpe, *Crime in Early Modern England*, 66.

¹³⁷ CBS DC18/39/4, 22 January 1787, 30 April 1787

¹³⁸ This variety in the amount of fines is also present in other magistrates' notebooks, such as that of William Hunt, who fined wood theft convicts of amounts between 1s and 15s. In one case, he ordered a male defendant to pay damages to the Earl of Abingdon, the landowner, or 'be whipped until his back was bloody' (Crittall (ed), *The Justicing Notebook of William Hunt*, 60). This is the only case where he specified a whipping, and might indicate, similarly to Waller, the influence of the landowning prosecutor. The fines levied to both men and women may, of course, have been due to pressure from the complainant, and this is particularly so with cases before Waller – whereas some men, as shown above, were told to pay substantial fines, in another case, two men were simply asked to pay the costs of being brought before Waller, after the prosecutor asked for them to be excused (CBS DC18/39/4, 20 March 1786).

Two pieces of legislation relating to wood theft were passed in 1766, but these permitted magistrates more discretion than the 1663 act allowed, by not specifying the amount a convicted wood thief should be fined.¹³⁹ The notebooks of magistrates such as Horner and Waller, working after the introduction of the 1766 legislation, shows that magistrates continued to treat women more leniently in terms of the amounts they were fined, recognising the nature of the offence and the ability of women to pay. Women benefited from these considerations more than men, in that they tended to commit more minor offences, and the marginalisation of women in the workplace meant that their 'pleas of poverty, unemployment and economic vulnerability' were heard more sympathetically by magistrates than if men made those pleas.¹⁴⁰

This gendered leniency was possible both because of the discretion that legislation allowed the magistrate, and also because of the minor nature of wood theft as an offence. As Kilday has argued, this gendered leniency was possible because women were regarded as committing 'less daring', 'smaller scale' thefts.¹⁴¹ Chapter three found that assaults committed by women, particularly against other women, were perceived as more trivial than those committed by men.¹⁴² In this light, it would be expected that gender based leniency for offences against the person would be evident in rural magistrates'

¹³⁹ 6 Geo 3 c.36 and 6 Geo 3 c.48.

¹⁴⁰ King, 'Gender, crime and justice', 64-65.

¹⁴¹ Kilday, 'Women and Crime', 176.

¹⁴² Beattie, 'The Criminality of Women', 82, Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 70.

notebooks. However, the evidence for gendered leniency in such cases is less obvious than with property offences, as table 5.9, below, shows.

Table 5.9 The outcomes recorded in offences against the person cases before the rural magistrate.

	Male defendant		Female defendant	
	Number	Percentage	Number	Percentage
Summary punishment	42	14%	6	12%
Discharged	178	60%	33	66%
Further action	78	26%	11	22%
Total	298	100%	50	100%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, BL Add MS 76337, BL Add MS 763340, NRO Th1681, SA 1060/168-70, Cirket (ed) *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. There is no action recorded for assault cases in WSHC 383/955, and there are no assault cases listed in WSHC 229/1. The discharged category includes cases that were dismissed, discharged, or agreed. The further action category comprises recognizances or indictments.

Table 5.9 shows that although women were more likely to have their cases dismissed, discharged or agreed with no further action being taken, and less likely to receive a summary punishment, recognizance or indictment than men, the percentages were not as divergent as they were for property offences. This reflects the seriousness with which property offences were viewed, with more of those offences being indicted. Most of the complaints of offences against the person that were brought to the magistrate at summary level were misdemeanour assaults.¹⁴³ The evidence here is that magistrates tried to resolve many of these cases, both involving male and female defendants, by mediation or negotiation, rather than through more formal punishment. This

¹⁴³ Hurl-Eamon, *Gender and Petty Violence*, 2.

reflected the perception of assault as a private or trivial matter.¹⁴⁴ This desire to resolve interpersonal disputes was, to some extent, non-gendered, with both men and women being more likely to have their cases settled and discharged than receive a formal punishment or further action.

Was there any difference in the types of assault for which men and women were subject to further action, such as recognizances or indictments? Table 5.9, on page 327, found that 22 per cent of female defendants, for whom action was recorded, were subject to further action, compared to 26 per cent of men. Firstly, some magistrates were more likely to indict women than others. Thomas Netherton Parker took further action with seven women accused of assault. This higher figure reflects the high percentage of assault cases he heard in summary proceedings. No other magistrate recorded more than a single case where a woman was bound over or indicted for assault. Where women were subject to either of these options, the assault tended to be particularly violent, unprovoked, and in a public space.¹⁴⁵ However, out of the seven cases that Parker issued recognizances for, only one appeared to be as serious. Of the

¹⁴⁴ J.M. Beattie, 'Violence and Society in Early Modern England' in Anthony L. Doob and Edward L. Greenspan (eds), *Perspectives in Criminal Law: Essays in Honour of John L. J. Edwards* (Aurora, 1985), 42; Morgan and Rushton, 'The magistrate, his community and the maintenance of an orderly society', 71.

¹⁴⁵ Hurl-Eamon has noted that by law, recognizances for assault could only be issued if the victim swore that their attacker had 'inflicted lasting emotional, if not physical, damage', but the rural notebooks suggest that magistrates usually only bound over an assailant if there was violence that caused physical injury. Where recognizances William Bromley bound over a labourer's wife for violently beating another married woman in a common field, wounding her, and William Brockman bound over a widow for beating a smith's wife with a piece of wood (Hurl-Eamon, *Gender and Petty Violence*, 69; WRO CR0103, 29 July 1694; BL Add MS 42598, 20 August 1715).

others, one was a family dispute, and another involving two women getting drunk before one assaulted the other.¹⁴⁶ So although Morgan and Rushton, looking at the north-east, argued that it appeared that the gender of the defendant determined where a case was handled, rather than the degree of violence, the situation in rural central and southern England is that both gender and the degree of violence were considered.¹⁴⁷

Historians have debated whether female aggressors were seen as exhibiting transgressive, masculine behaviour, with contemporary ideals of honour placing 'severe limits upon the possibilities of female aggression', or whether violence was ungendered, with assaults being 'perceived as a tool for women as well as men'.¹⁴⁸ Although female violence as recorded in the magistrates' notebooks did tend to be perceived as more trivial than male acts, when more severe acts of violence were committed by women, these were treated in the same way as violence by men. This section has found that cases involving assaults committed by women were more likely to be dismissed by the rural magistrate than those committed by men. This apparent gendered leniency reflected the nature of such offences, with those committed by women being

¹⁴⁶ SA 1060/168-70, 20 February 1805, 17 October 1808.

¹⁴⁷ Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 70. As with property offences, it is also possible that with assault cases, the prosecutor played a part in the action taken by the magistrate, with further action being instigated by the complainant - although not explicitly stated in the notebooks. Hurl-Eamon has found that in London, female complainants in assault cases 'interacted confidently with JPs and actively sought to bind over their attackers' (Hurl-Eamon, *Gender and Petty Violence*, 4).

¹⁴⁸ Joanna Bath, *Violence and Violent Crime in the North East, c.1650-1720* (PhD thesis, University of Newcastle), 2001, 330; Hurl-Eamon, *Gender and Petty Violence*, 66.

perceived as more trivial or minor. The individuality of the magistrate in his decision-making was clear, with some magistrates taking further action with female defendants than others. The percentage difference between male and female defendants in terms of action taken was smaller than that in property offences, though, and this suggests that the recognition of the vulnerable position of women economically was considered in relation to property offences, but was less of a consideration with offences against the person.

If gender-based discretion operated, to varying extents, in relation to property offences and assaults, resulting in more leniency being applied to women than to men, how did it operate in relation to social and economic regulation? It has been implied that women were at a disadvantage in summary proceedings because of the focus on regulating behaviour, with issues such as bastardy and fornication and, to a lesser extent in rural areas, prostitution and the keeping of bawdy houses, 'disproportionately' affecting women, who were more likely to be prosecuted for these offences.¹⁴⁹ Although 'deviant' behaviour was dealt with both within the community and in summary proceedings, the latter increasingly became a forum to deal with such behaviour from the late seventeenth century as the use of ecclesiastical courts decreased.¹⁵⁰ Do the justices' notebooks suggest that women were therefore increasingly brought before the magistrate accused of such offences or behaviour, and were men were not subject to the same treatment, or punished in the same way that women were?

¹⁴⁹ Gregory Durston, *Crime and Justice in Early Modern England*, 183.

¹⁵⁰ Sharpe, *Crime in Early Modern England*, 124-125.

Firstly, it is certainly true that only women were brought before the magistrate explicitly accused of lewd behaviour or of fornication. However, such cases were very few in number, suggesting that there was a more practical approach taken by magistrates towards women's sexual behaviour. Punishment for fornication, that not resulting in an illegitimate child, was only recorded by Roger Hill, and that only in a single case. Mary Lucy, brought before Hill accused of sleeping with a soldier, was also accused of aiding his escape together with that of two other soldiers. No evidence was supplied regarding this escape, but Lucy confessed to sleeping with the soldier and was thus committed to the House of Correction to 'receive moderate correction' for fornication. Here, Hill used his discretion in punishing Lucy for the one offence, because he could not convict her for aiding the escape, without evidence.¹⁵¹ The other few cases involving the lewd conduct of women was brought in relation to bastardy cases, and here, it is clear that women were punished for behaviour deemed lewd, whereas men, the fathers of illegitimate children, were not.¹⁵² In law, too, the birth of a single illegitimate child should have resulted in the punishment of the mother.¹⁵³ In practice, however, the practice of individual magistrates varied as to whether they committed a woman for having a single illegitimate child, with some only committing a woman if she had more than one. Horner, for example, committed three women to gaol for

¹⁵¹ CBS D-W/97/8, 17 June 1689.

¹⁵² Under 7 James c.4, Burn stated that 'every lewd woman which shall have any bastard which may be chargeable to the parish, the justices of the peace shall commit...to the house of correction' (Burn, *The Justice of the Peace, Volume 1*, 198).

¹⁵³ *Ibid.*

having one bastard child each, whereas Brockman committed two women to the House of Correction for 'having several bastard children'.¹⁵⁴ Given the very small number of such cases, they may have been a reflection of external concerns, such as the 'periodic repression of "lewd and disorderly women"' or have been influenced by the personal reputation of the women involved.¹⁵⁵ Generally, though, the emphasis on bringing of bastardy cases against women was largely a practical concern, rather than a desire to punish women for their sexual behaviour. Parishes sought, above all, to get fathers to agree to pay maintenance for their children. In some cases, women who were living with men outside of wedlock would not be subject to committal to the House of Correction, if the father found sureties to indemnify his illegitimate child.¹⁵⁶

However, it is evident that magistrates and the fathers of illegitimate children had an authority in decision making that was not afforded to women. In several cases before William Hunt, he recorded that the father was 'obliged to marry' the woman, or 'consented' to marry, and in one case, 'he chose rather to marry the woman than to be sent to the bridewell for want of sureties'.¹⁵⁷ In none of these cases was the woman given a choice as to whether she wanted to marry;

¹⁵⁴ McGarvie (ed), *The King's Peace*, 146, 160; BL Add MS 42598, 4 February 1717 and 4 March 1717.

¹⁵⁵ Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 35. Sharpe has also noted that 'growing dismay with the conduct of the delinquent' in question may have led to individuals being brought to the magistrates' attention by other individuals (Sharpe, *Crime in Early Modern England*, 126).

¹⁵⁶ As was the case with Anne Taylor and Richard Kingsland, who, William Brockman recorded, 'continue[d] to cohabit' after Anne named Richard as the father of her child, and he provided sureties. No further action was recorded against Anne (BL Add MS 42598, 22 May 1712).

¹⁵⁷ Crittall (ed), *The Justicing Notebook of William Hunt*, 28, 44, 51

the practicality involved in ensuring that the child was financially maintained outweighed the views of the parents. The woman was more discriminated against, as the man was given a choice in two out of these three cases, whereas the woman was not.

The magistrates' notebooks show that cases involving other forms of female sexual misbehaviour rarely came before them, which is a reflection of the rural nature of the communities they dealt with. Sharpe has suggested that rural prostitution was 'very rare on any more than the most casual basis in the countryside'.¹⁵⁸ There was only one case brought against women accused of operating a bawdy house, but otherwise, the sexual behaviour noted by magistrates against rural women was usually mentioned only in relation to bastardy.¹⁵⁹ There is no evidence of systematic or periodical attempts at the 'moral policing' of women, or that prostitution was a significant issue for rural communities or the rural magistrate.¹⁶⁰

¹⁵⁸ Sharpe, *Crime in Early Modern England*, 158. It is possible, as Sharpe hypothesises, that rural prostitutes tended to be vagrants supplementing their income, and that some women brought before the magistrate and charged under vagrancy legislation may have been carrying out such activities, but the notebooks do not record this.

¹⁵⁹ SA 1060/168-70, 9 December 1807. Parker did not record the action taken in this case.

¹⁶⁰ David Nash, 'Moral Crimes and the Law in Britain since 1700', in Anne-Marie Kilday and David Nash (eds), *Histories of Crime: Britain 1600-2000* (Basingstoke, 2010), 35.

The magistrates' notebooks show that women were punished for their sexual behaviour in a way that men were not.¹⁶¹ This suggests that men and women may both have been disadvantaged in terms of judicial decision making, with women punished for having a sexual reputation, and men for a reputation based on other factors. This, then, points to the fact that gender was not, on its own, a key factor in how the magistrate made his decisions, but was combined with other factors, such as prior knowledge about an individual's reputation, as this chapter will now go on to explore.

ii. The impact of reputation on magisterial decision-making.

King has described the country justices as 'disinterested enforcers of the social peace', but D'Cruze and Jackson have argued that 'local reputations, evaluated in terms of gender, class and age, affected decisions to prosecute'.¹⁶² To what extent were the magistrates 'disinterested', and to what extent were they influenced by other factors such as an individual's reputation outside of the justicing room? The relatively informal nature of both proceedings and of how the magistrate recorded cases in his notebook means that occasionally, records went beyond the disinterested to register personal comments, or facts about an

¹⁶¹ Morgan and Rushton have noted the marginalia recorded by Edmund Tew in County Durham, which referred to women as whores, bad girls and common strumpets. He also recorded men in pejorative terms, but their names were not related to sexual activity - instead, men were of bad character, noted for a reputation for fighting. Although the notes in the notebooks studied here were not as explicit, it does suggest that some magistrates, at least, made decisions influenced by, or in the knowledge of, the sexual reputation of the female who appeared before them (Morgan and Rushton, *Rogues, Thieves and the Rule of Law*, 35).

¹⁶² King, *Crime, Justice and Discretion in England*, 362; D'Cruze and Jackson, *Women, Crime and Justice*, 147.

individual. These comments show how an individual's prior reputation, or his demeanour before the magistrate, had an impact in how he was perceived. This section will show, through qualitative analysis, that the comments recorded raise questions about the magistrate's impartiality and the social distance between the justice and the majority of the people he saw in summary proceedings. However, the influence of a person's reputation on a magistrate's decision-making was limited, and depended on what was known about the individual, and whether the type and severity of case being dealt with.

Even at the initial stages of the criminal justice system, magistrates displayed their own social distance from the majority of people who appeared before them, through their use of pejorative terms to describe and record them. Edmund Tew, in the north of England, recorded of one assault between two women, 'both are very bad women' and in another assault case, where two women assaulted a man, 'they are all bad people'.¹⁶³ Davey has noted that in Lincolnshire, magistrate Thomas Dixon was 'exceptionally harsh' in his judgements in master and servant cases, and suggests that this was because complainants in such cases were often yeomen like Dixon himself, and so Dixon could sympathise with their suspicion of their servants.¹⁶⁴ It is clear that Dixon could be critical of servants, describing them variously as 'dirty', 'debauched', 'drunken' and 'saucy' in his notebook.¹⁶⁵ Rural communities were small, and even when covering a fairly large geographic area, the magistrate might know

¹⁶³ Morgan and Rushton, *The Justicing Notebook of Edmund Tew*, 105, 128.

¹⁶⁴ Davey, 'Introduction', 23.

¹⁶⁵ Davey, 'Introduction', 25.

of the prior reputation of an individual. In such cases, did their knowledge of individuals affect the decisions they made about them? The example of Dixon illustrates how a magistrate might fail to be impartial in such cases, and he was not unique in recording disparaging comments about individuals, making explicit his views on those he was being asked to make a judgement about.¹⁶⁶

However, it should be noted that none of the magistrates studied in this thesis, were as explicit the likes of Edmund Tew or Thomas Dixon. However, where such cases are found, they illustrate the distance between the magistrate and some of the people he dealt with at summary level, as well as the paradox of the magistrate's position - he was both paternalist and patrician, sometimes displaying sympathy towards those who came before him, but in other cases, making judgements about the personal behaviour of those within his community.¹⁶⁷ Klein has noted that 'the language of politeness sought to impose general order over large tracts of human experience', and here the magistrate's recording of behaviour that was considered impolite was similarly an attempt to impose order and also authority over summary proceedings,

¹⁶⁶ Whitbread's notebooks further show the weight that magistrates placed on the character of defendants, recording how witnesses were asked their opinions about defendants. One witness called a man accused of poaching 'an errant bad fellow', and after another boy was brought before him on a charge of snaring, Whitbread recorded that he would call on someone 'to enquire [into] his character' (Cirket (ed), *Samuel Whitbread's Notebooks*, 31, 105).

¹⁶⁷ E.P. Thompson, 'Patrician Society, Plebeian Culture', *Journal of Social History*, 7.4 (1974), 388.

with the justice making a distinction between polite behaviour and the 'impolite' behaviour of those accused of offences.¹⁶⁸

The magistrate's ability to base decisions, in whole or in part, on an individual's reputation was dependent on the type of case itself. When Horner heard the case of a married woman who accused a man of raping her when she was drunk, he still had to commit the defendant to trial at the Assizes, despite knowing that the case's chances of success in the patriarchal set-up of the Assizes, with male judge and jury, was small. Burn, though, had made clear that the 'credibility' of a rape victim's testimony was a matter for the jury at trial to decide.¹⁶⁹ In a theft case before him, though, he dismissed the female complainant's allegations because she 'bore an infamous character', with even her husband telling Horner that 'he did not believe a word the old bitch said'.¹⁷⁰ Brockman also dismissed a case after the complainant was 'said to be an idle wench'.¹⁷¹ The magistrate would only have dismissed these cases because they were relatively trivial. In Horner's rape case, it could not be dismissed by him, despite the victim's drunkenness, because of the serious nature of the offence. Therefore, the consideration of a woman's behaviour was one factor that a magistrate could take into account, both in terms of complainants and defendants, but it depended on the nature of the offence.

¹⁶⁸ Lawrence E. Klein, 'Liberty, Manners, and Politeness in Early Eighteenth-Century England', *The Historical Journal*, 32.3 (1989), 587.

¹⁶⁹ Burn, *The Justice of the Peace, Volume 4*, 57. When this particular case was heard the Assizes, the jury, 'apprehending the woman to have been drunk, found no bill' (McGarvie (ed), *The King's Peace*, 28-29).

¹⁷⁰ McGarvie (ed), *The King's Peace*, 59.

¹⁷¹ BL Add MS 42598, 12 April 1697.

There was also a power play at work in all levels of the criminal justice system, and the bringing of cases by one person against another was an expression of this power, as was the decision-making of the magistrate.¹⁷² At summary level, although magistrates may have been willing to mediate and arbitrate between parties, they expected a level of deference towards their authority. Therefore, the behaviour of a defendant was considered more when the individual did not show the magistrate an appropriate level of subordination or respect. Such cases show that the perception of the magistrate as a patriarchal figure within the local community was not a perception shared by all members of that community. They also reflect responses to the increase in summary powers over the long eighteenth century that 'represented a considerable accession of authority to individual magistrates', an authority that some members of the community appear to have resented.¹⁷³

William Brockman, Thomas Horner and Samuel Whitbread all recorded cases where complainants or defendants had acted 'insolently' or 'obstinately' towards them.¹⁷⁴ In two particular cases, the individual's behaviour and attitude towards the magistrate explicitly affected the justice's decision-making. When Horner found a man guilty of an assault, but he refused 'very obstinately' to agree to pay the complainant compensation, Horner sent him to

¹⁷² Douglas Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts 1750-1850' in Douglas Hay and Francis Snyder (eds), *Policing and Prosecution in Britain 1750-1850* (Oxford, 1989), 344.

¹⁷³ Lemmings, *Law and Government in England*, 34.

¹⁷⁴ BL Add MS 42598, 15 July 1695, 22 January 1719; McGarvie (ed), *The King's Peace*, 34; Cirket (ed), *Samuel Whitbread's Notebooks*, 130.

trial at the Quarter Sessions instead.¹⁷⁵ Whitbread, hearing a case involving a man who had deserted his service, made him promise to finish his week's work after summoning him before him at Southill and finding him to be 'ill behaved and brutal'.¹⁷⁶ In other cases, Whitbread had discharged the servant's contract immediately, so this individual's reputation and behaviour towards the magistrate encouraged Whitbread to make him finish his outstanding work first. Dabhoiwala has argued that 'notions of honour and reputation were ubiquitous and important in early modern England', but although this stress on personal reputation is evident in the magistrates' notebooks throughout the eighteenth century and into the early nineteenth as well, there are only a few cases where individuals' reputations appear to have influenced the decision-making of magistrates at summary level, and that the behaviour of individuals towards the magistrate himself had a greater impact on decision-making than personal habits such as drinking.¹⁷⁷

In using their discretion, magistrates were able to filter out cases that might otherwise have been heard at Quarter Sessions. Part of their role was to determine what were genuine grievances and complaints, and what were motivated by personal enmity or malice. Paley has argued that vexatious or malicious prosecutions were 'endemic to the eighteenth-century legal system' and that 'many' minor cases at summary level appear to have been

¹⁷⁵ McGarvie (ed), *The King's Peace*, 140-141.

¹⁷⁶ Cirket (ed), *Samuel Whitbread's Notebooks*, 26 October 1814.

¹⁷⁷ Faramerz Dabhoiwala, 'The Construction of Honour, Reputation and Status in Late Seventeenth- and Early Eighteenth-Century England', *Transactions of the Royal Historical Society*, 6.6 (1996), 201.

malicious.¹⁷⁸ Hay, too, has recognised that malicious prosecutions were not limited to serious charges brought on indictment, 'but also in proceedings before magistrates'.¹⁷⁹ The nature of the summary process might be expected to encourage such complaints, with individuals seeking the resolution of community disputes by the magistrate. Personal relationships were negotiated through the forum of summary proceedings, and these cases might be deemed malicious or vexatious by the magistrate. However, a study of rural summary proceedings does not suggest that 'many' cases were malicious or vexatious.¹⁸⁰ There were only three explicitly malicious cases recorded across the notebooks studied here - two in Thomas Horner's notebook, and one in William Hunt's.¹⁸¹ Both cases before Horner were brought against Somerset innkeepers by their customers. In one, the complainant had made allegations of ill orders and gaming at an inn, which, it emerged, was a charge brought in order to stop the innkeeper's prosecution of him for an unpaid debt.¹⁸² In the other, a smuggler and drinker had made a more serious allegation, stating that the innkeeper, his wife and servant had murdered a man whose body had been found in a river in Frome.¹⁸³ In both cases, Horner was aware, or made aware, of the complainant's criminal and personal history. In the first case, he learned that

¹⁷⁸ Paley, *Justice in Eighteenth-Century Hackney*, xxvii.

¹⁷⁹ Hay, 'Prosecution and Power', 354.

¹⁸⁰ Hay has warned, however, that some apparently 'straightforward' cases may have been more problematic than they appear, and that a lack of direct evidence should not be assumed as meaning there was not a malicious intent behind some other cases (Hay, 'Prosecution and Power', 347).

¹⁸¹ Crittall (ed), *The Justicing Notebook of William Hunt*, 28. Hunt's case involved a false charge of theft brought against a woman. Hunt persuaded the defendants to admit that they had lied, and to pay the complainant 2s 6d to agree the case.

¹⁸² McGarvie (ed), *The King's Peace*, 81.

¹⁸³ McGarvie (ed), *The King's Peace*, 122-124.

the complainant had previously made the same allegation against an innkeeper in Mells, again because of a debt. In the other, he noted that the complainant had a 'grudge' against the innkeeper. Both cases were dismissed.¹⁸⁴

These cases, together with the other cases recorded by magistrates where the complainant was found to be the aggressor or otherwise at fault, show that the magistrate had to use his discretion and knowledge of the community to determine what were genuine cases, which ones required the mediating of interpersonal relationships, and which were motivated by grudges.¹⁸⁵ In this context, it is also worth bearing in mind Hay's belief that historians should recognise that 'the law is used for the furtherance of disputes as much as for their resolution'.¹⁸⁶ Not all parties before the magistrate may have desired the resolution of conflict - the summary process could be used to further antagonise an individual by laying a vexatious or malicious charge against them. It was the magistrate's role in these cases to determine the motivation for the charge, whether there was any truth to it, and to make a decision based on these facts. In such cases, the complainant's prior reputation and relationship with the defendant was key to the magistrate's decision-making.

¹⁸⁴ As Hay has noted, it was unlikely that the innkeepers would take action against the complainant for the malicious accusation. 'Few victims of malicious prosecutions began actions' against their attackers as it was an expensive process that was unlikely to achieve compensation. Therefore, in cases brought by those with malicious intent, 'most of their victims were unable to get, or even to seek, satisfaction at law' (Hay, 'Prosecution and Power', 353-354).

¹⁸⁵ For example, Crittall (ed), *The Justicing Notebook of William Hunt*, 32, 33

¹⁸⁶ Hay, 'Prosecution and Power', 347-348.

iii. How class and economic background influenced how magistrates made their decisions.

It has been shown that on occasion, an individual's personal reputation was noted and recorded by the magistrate, and that it could be a factor in magisterial decision making in the more minor offences, and in determining a vexatious or malicious complaint. Another factor that was recorded by magistrates was an individual's economic background, or their level of poverty. Were the magistrates biased against the poor, or, conversely, was poverty a cause of judicial leniency? The link between poverty and crime had long been the subject of debate. In the seventeenth century, Dalton had argued that if a person was 'reduced to extreme necessity' and had to steal someone else's food, that this could not be prosecuted as a felony. A century later, however, Burn cited Lord Hale as saying that this rule was false, and that even the starving could be convicted of felony for stealing food to feed themselves.¹⁸⁷ This shows that there was debate over whether it was excusable for a man to steal if reduced to poverty, and that by the late eighteenth century, there had been a hardening of views.¹⁸⁸

¹⁸⁷ Burn, *The Justice of the Peace, Volume 3*, 59. I cannot locate Dalton's statement within *The Country Justice*, and Burn does not give the exact reference.

¹⁸⁸ Attitudes were also affected by periods of war and dearth, and the aftermath of wars such as the American war in the 1780s, which, as King has concluded, made the poor more vulnerable to indictments for theft, and changed the reactions of victims and magistrates towards poor male offenders, in particular (King, *Crime, Justice, and Discretion*, 217).

Was this changing perception of poverty as an excuse for crime evident in rural summary proceedings? The notebooks studied here show that poverty was given as a reason for judicial leniency or discretion throughout the long eighteenth century. This is, as I argued earlier in this chapter, linked to gender in so far as women's marginalisation in the workplace, and in terms of income, may have provided them with a more sympathetic hearing, as King has argued.¹⁸⁹ Women's economic vulnerability may have been more of a mitigating factor than men's lesser weakness in the eyes of the magistrate.¹⁹⁰ Women were also less likely to be sentenced to a term of imprisonment at the House of Correction because of a fear of removing them from their children, and similarly, there may have been a reluctance to send some men to the House of Correction for minor offences. This would leave their wives and children vulnerable to seeking parish relief, costing the parish money, whereas in agreeing matters or levying a small fine, the male breadwinner could remain working and supporting his family.

Poverty was a reason for leniency in specific types of cases, primarily in minor forms of rural theft. This is not unexpected, as wood theft was a rural crime particularly associated with the poorer members of a community.¹⁹¹ Hunt's wood theft cases, in particular, illustrate this, with one group of labouring women pardoned 'out of regard to their great poverty'.¹⁹² Similarly, in William

¹⁸⁹ King, *Crime and Law in England*, 192.

¹⁹⁰ As Kilday has noted, it is difficult to ascertain the level of poverty of women accused of theft, as their employment status is rarely given in criminal records (Kilday, "Criminally Poor?", 513).

¹⁹¹ Kilday, "Criminally Poor?", 509; Robert Jütte, *Poverty and Deviance in Early Modern Europe* (Cambridge, 1994), 70.

¹⁹² Crittall (ed), *The Justicing Notebook of William Hunt*, 50.

Brockman's notebooks, poverty may have affected the decisions made by the magistrate, with accusations of stealing from the parish levied against poorer members of the community being viewed with some sympathy. This is evident in one particular case involving a widow accused to embezzling parish goods. No formal action was taken by Brockman, and instead he simply requested her 'by word of mouth' to return the goods.¹⁹³ And in Horner's notebook, when a woman was convicted of selling cider without making entry at the excise office, Horner recorded:

The penalty for this offence is £50, but the defendant being very poor, and many favourable circumstances appearing for her, we thought fit to mitigate the penalty to 2s 6d.¹⁹⁴

This lenience, then, was made on a practical level rather than an emotional one. The magistrates felt able to mitigate fines to a level that punished the convicted person without resulting in a committal to gaol for an inability to pay. Hunt noted in eight of his wood theft cases that the defendant was given the option of paying a fine or being whipped, and ordered a whipping in four further cases.¹⁹⁵ Ten of the cases were brought against labourers, the other two cases being brought against women whose status was not recorded. These offences were committed by labourers who would not have had a lot of money. Where Hunt ordered a whipping rather than letting the defendant pay a fine, it is likely to have been where he regarded the chances of a fine being paid as being

¹⁹³ BL Add MS 42598, 15 September 1699.

¹⁹⁴ McGarvie (ed), *The King's Peace*, 74.

¹⁹⁵ Crittall (ed), *The Justicing Notebook of William Hunt*, 58, 70.

negligible. Although such a punishment seems harsh, it avoided financial distress or the possibility of being committed for defaulting on payment, which would have reduced these labourers' ability to earn and maintain their households.

Both men and women received lenient treatment due to poverty. When Thomas Horner heard complaints that several local people had been selling tea without making entry at the excise office, he set small fines for them to pay, due to 'being poor'.¹⁹⁶ Here, it is evident that gender was not the determining factor in mitigating fines, with both poorer men and women being the recipients of smaller fines in recognition of their economic background. Hoare heard eight cases involving the theft of turnips, a common form of minor rural theft, of which, seven were committed by men and one by two men and a woman. He recorded the action taken in six cases. Five resulted in a fine of five shillings, a relatively small amount that was paid by all defendants.¹⁹⁷ A further case resulted in the 'mitigated fine of 10s each' levied on the two male defendants.¹⁹⁸ Although the amount was higher, the defendants were allowed at least a month to pay the fine. This suggests that as the theft of turnips was often committed by poorer members of a community, the magistrate set a fine

¹⁹⁶ McGarvie (ed), *The King's Peace*, 94-95.

¹⁹⁷ WSHC 383/955, 16 November 1792, 18 November 1793, 2 December 1794, 15 December 1794, 4 April 1800.

¹⁹⁸ WSHC 229/1, n.d., c. November 1817.

that was low enough to be paid by the defendants, thus punishing them, but not so high that they would be unable to pay and thus have to be committed.¹⁹⁹

If poverty was considered as a basis for leniency with minor property offences, did magistrates similarly show leniency towards those accused of vagrancy and poor law offences? Rawlings has argued that the poor laws 'gave the justices another powerful weapon for the punishment of a broad range of loosely-defined deviants', and King has also noted that although the mediating role of magistrates was seen to benefit the poor, the legal structures they were founded on focused on 'the protection of property and the disciplining of the "disorderly" poor', with the most severe punishments given to workers and paupers, rather than employers and parish officers.²⁰⁰ Yet at the same time, magistrates recognised the needs of the poor and as has been discussed, often overruled parish officers when it came to complaints about poor relief. However, rural magistrates did distinguish between the disorderly poor, or those demanding too much, and the deserving poor.²⁰¹ The poor had to justify their needs for relief and could have their complaints dismissed on the grounds

¹⁹⁹ Shakesheff, *Rural Conflict, Crime and Protest*, 50.

²⁰⁰ Philip Rawlings, *Crime and Power: A History of Criminal Justice 1688-1988* (London, 1999), 16; King, 'The Summary Courts and Social Relations', 156; Sharpe, *Crime in Early Modern England*, 128-129.

²⁰¹ For example, Whitbread dismissed one man's complaint about inadequate relief after he stated that he received nine shillings a week as a roundsman and further relief for an infirm daughter. Similarly, Spencer refused relief for a family after finding that the father earned four shillings a week, and his daughter worked at spinning. A woman asking for the parish's help in paying a doctor's bill for her son was 'positively refused' by Whitbread, and man who appeared before Waller asking for relief was dismissed after Waller decided his complaint was 'untrue' (Cirket (ed), *Samuel Whitbread's Notebooks*, 35, 58; BL Add MS 76337, 12 January 1788; CBS DC18/39/4, 27 February 1786).

that they were not poor enough - in this way, discretion worked against the poor as well as for.

The numbers of rural poor approaching the justice shows that there was a belief that the magistrate would help them, and as Morgan and Rushton state, it was 'clearly an important action available to the poor'.²⁰² Perhaps the most accurate description of the magistrate's work in summary proceedings is Eastwood's, when he states that:

Magistrates generally attempted to maintain a clear distinction between those honestly seeking work and a means of supporting themselves independently, and vagrants or idle paupers... The independent labourer might expect to be watched but not harassed; the feckless, because they were thought to deserve punishment, could expect to experience the full rigour of the settlement and vagrancy laws.²⁰³

Therefore, being poor was not an excuse for any kind of behaviour. Instead, it was used as a reason for leniency in certain types of case. The poor were examined in relief cases to determine how genuine their need was, and therefore, although most cases resulted in the magistrate finding in favour of the complainant, it was not always the case. Discretion allowed magistrates to indulge their 'own unauthorised ideas of equity', which could work against the poor.²⁰⁴ However, in cases involving petty thefts, economic need was

²⁰² Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 67; King, 'The Summary Courts and Social Relations', 145.

²⁰³ Eastwood, *Governing Rural England*, 26.

²⁰⁴ King, *Crime, Justice and Discretion*, 85.

considered as a valid reason and a reason for judicial leniency. Just as with gender-based discretion, however, it was not universally applied and depended on the individual case.

If the labouring poor were the beneficiaries of judicial discretion in certain types of offence heard by the magistrate, was class, too, a factor in the discretion showed by the rural justice? Paley has commented that eighteenth-century summary justice had a decided 'class bias', with there being 'one law for the rich and another for the poor'.²⁰⁵ Lemmings has discussed popular depictions of the magistrate as behaving imperiously, behaviour that was a response to the increasing number of penal statutes they were able to use, and their neglect of common law.²⁰⁶ This chapter has already looked at how magistrates treated the people before them who they perceived to be acting without due respect, suggesting that there was a class gulf between the magistrate and many of the rural community who came to his justicing room, but did the magistrate treat the poorer members of a community differently to those of higher social status?

The evidence from rural magistrates' notebook is limited, although a few cases show that those of higher social status were sometimes treated in a politer

²⁰⁵ Paley (ed), *Justice in Eighteenth-Century Hackney*, xxxii.

²⁰⁶ Lemmings, *Law and Government in England*, 34. Smollett's Justice Gobble had 'in the execution of his authority...had committed a thousand acts of cruelty and injustice against the poorer sort of people' (Smollett, 'The Life and Adventures of Launcelot Greaves', 251).

manner.²⁰⁷ Paley notes of Henry Norris in Hackney that 'ordinary people were summoned to appear, whilst those of higher social status were treated rather more politely'.²⁰⁸ The rural magistrates studied here similarly treated those of higher status in a different way, with Samuel Whitbread and William Brockman, for example, writing to them rather than ordering them to appear before him in person.²⁰⁹ Magistrates differed, though, in the discretion and leniency they allowed those from the higher ranks of society. Roger Hill used his discretion to find a 'gentleman' guilty of a lesser offence, thus removing the need for him to face the embarrassment of a public trial.²¹⁰ When Dr Edward Drax Free, a local rector, was accused of assault in 1813, Whitbread wrote to him, advising him to 'compromise the matter'.²¹¹ Although this was initially a polite approach reflecting Free's status, when Free then sent others to give statements on his behalf, refusing to come to Whitbread himself due to his 'state of health', Whitbread saw him as acting disrespectfully, and issued a warrant against him.²¹²

²⁰⁷ Langbein reached a similar conclusion, noting that although the 'evidence for it is thin', 'elite victims must have been treated with greater courtesy, and allowed greater prosecutorial discretion, the victims...who came from lower social orders' (Langbein, *Albion's Fatal Flaws*, 105).

²⁰⁸ Ruth Paley (ed), *Justice in Eighteenth-Century Hackney*, xxxii.

²⁰⁹ For example, BL Add MS 42598, 24 December 1720

²¹⁰ Richard Gilby had been accused of housebreaking, a charge brought by John Gurney. He was clearly recorded by Hill as being a 'gentleman' from London. Hill decided he had committed a trespass rather than the felony offence of housebreaking, and gave him a summary punishment, committing him to Aylesbury Gaol (CBS D-W/97/8, 10 February 1691).

²¹¹ Cirket (ed), *Samuel Whitbread's Notebooks*, 30.

²¹² Cirket (ed), *Samuel Whitbread's Notebooks*, 31.

Such cases were rare, and this was because of the nature of summary proceedings, where both complainants and defendants tended to be drawn from the middling and lower orders, rather than from the elite. However, the gentry could work with the magistrate to help the poorer defendants in poaching cases, for example. In cases in Bedfordshire involving the estates of the gentry, the intervention of either Whitbread or the landowner clearly benefited the defendant. In one case, the Duke of Bedford wrote to Whitbread to intervene in the case of his servant who had been caught hunting with dogs. The Duke recognised that Whitbread would have to act 'as the law directs' in fining the man, but stated that the defendant was a good servant, simply asking Whitbread to give him some 'wholesome admonition'.²¹³ Whitbread may have done so, but he also mitigated the fine he levied on the man, suggesting that the Duke's intervention resulted in a more lenient punishment. In a second case, Whitbread wrote to the landowner, Lord Ongley, to 'beg' him to forgive a man who had been caught catching rabbits on his estate, with Ongley responding that he would be 'perfectly satisfied with what you may think best to do with him, whether to let him off or not'.²¹⁴ These cases stress again the fact that the complainant had an important say in how they were decided, but also show how the rural magistrate engaged with the elite as an equal, with both sides participating in a discussion as to how to proceed with individuals.

Paley has noted that Henry Norris's class bias led to the poorer members of society being committed 'on the flimsiest of evidence' and being discouraged

²¹³ Cirket (ed), *Samuel Whitbread's Notebooks*, 79.

²¹⁴ Cirket (ed), *Samuel Whitbread's Notebooks*, 79-80.

from taking cases further by being offered 'dispute arbitration' instead.²¹⁵ This assumes that the poor wanted to prosecute cases rather than resolve them, and offers a cynical view of the magistrate's attitude. The summary process offered a way for all sectors of society to gain redress in a cheap and accessible way. Prosecution was not necessarily the goal of bringing a case; as has been discussed in this thesis, mediation and arbitration were goals in themselves, and may have been sought by the complainant as much as by the magistrate. In addition, it is clear that the rural magistrates studied here sought evidence, and when faced with 'the flimsiest of evidence' were more likely to dismiss a case rather than commit individuals on the basis of it.²¹⁶ Paley's argument also ignores the ability of the rural magistrate, as demonstrated with Whitbread, above, to negotiate with those of his own background to gain a more lenient punishment for the poorer members of society accused of poaching or wood theft on their property.

It should also be remembered that a rural magistrate's ability to use discretion when dealing with members of his own class or occupational status was limited by the fact that the majority of cases before him involved those from a lower status, both at complainant and defendant level. Langbein has commented that one of the themes of criminal law administration in the second half of the eighteenth century was 'the effort to encourage prosecutorial

²¹⁵ Paley, *Justice in Eighteenth-Century Hackney*, xxxii.

²¹⁶ Hunt dismissed seven cases for want of evidence, and convicted in five cases after there being 'proper evidence' presented, showing the stress that this magistrate placed upon proof of guilt (Crittall (ed), *The Justicing Notebook of William Hunt*, 32, 33, 35, 42, 43, 44, 45, 65, 67-68).

activity by the lower orders', although he recognised that this development started in the 1690s.²¹⁷ Therefore, during the long eighteenth century, summary proceedings in particular were a forum for those restricted from using the higher courts, due to the cost, to air their grievances and complaints. The majority of defendants, as chapter three found, were from the labouring or artisan classes, and complainants were drawn from across the social classes, with paupers being the best represented group of individuals.²¹⁸ Eastwood has stated that although examples exist of the 'persistent stereotype of a system of personal justice infused with class prejudice...such crude prejudice was untypical'.²¹⁹ This is true, but it is equally true that rural magistrates were unable to use much class-based discretion in their dealings with the gentry, because the gentry were rarely represented in the summary proceedings beyond usually minor poaching cases.

iv. Other factors in magisterial decision-making: youth and group offending.

This section has so far looked at gender, reputation, economic background and class as factors in judicial discretion. Although not consistently recorded, age also appears to have been a mitigating factor for magistrates punishing minor property offences, and this echoes the findings of Beattie, for example, looking

²¹⁷ Langbein, *'Albion's Fatal Flaws'*, 102.

²¹⁸ Table 3.8 on page 134 showed that 45 per cent of defendants, on average, were from the labouring class, and 36 per cent from the artisan class. Table 3.2, on page 89, showed that 41 per cent of complainants, on average, were paupers, with the labouring class being the second highest group in percentage.

²¹⁹ Eastwood, *Governing Rural England*, 82-83.

at the higher courts.²²⁰ Again, discretion was more likely to be shown if the offence was minor, so with the theft of fruit, vegetables, or wood, Horner and Hunt both recorded individuals being forgiven due to their age.²²¹ Such minor thefts were fairly common among women and children, and minor offences had more scope for judicial discretion. Hence Thomas Horner, on hearing that a boy named George Golledge had been stealing apples, dismissed him with a sharp reprimand because 'the offence was trivial'. The combination of George's age and the nature of the offence allowed Horner to simply tell George off and send him away.²²²

King has found that in the higher courts, 16 and 17 year olds were less likely to face the 'threat of the gallows' than those who were older.²²³ Although the magistrate notebooks do not record the ages of offenders, Horner's notebook does suggest that young men may have been treated with some lenience, with there being an acknowledgement of the differences between high spirits and a more serious offence such as rioting. However, this may also have been influenced by who brought the complaint. In 1772, Horner heard a complaint brought by two women in Wanstrow against five men, aged around 17,

²²⁰ Beattie, *Crime and the Courts in England*, 246.

²²¹ One example being when Horner heard an accusation of shrouding trees and stealing hedgewood levied against John Izant and his seven year old daughter. Izant was convicted and fined five shillings, but his daughter was discharged with a reprimand 'because of her age'. Hunt recorded Rachel Capell being forgiven for stealing wood both because 'her fault was slight' and 'herself [was] but young' (McGarvie (ed), *The King's Peace*, 63; Crittall (ed), *The Justicing Notebook of William Hunt*, 82).

²²² McGarvie (ed), *The King's Peace*, 76-77.

²²³ King, *Crime and Law in England*, 122. Fletcher and Stevenson also noted that those aged between 18 and 30 were more likely to get death sentences for property offences (Fletcher and Stevenson (eds), *Order and Disorder in Early Modern England*, 19).

accusing them of riotous assembly near the women's house.²²⁴ Horner dismissed the complaint, 'having first sharply reprimanded the offenders'.²²⁵ Whether Horner was influenced by the men's ages, or the fact that women had brought the offence and therefore it might be regarded as being more trivial, is not recorded, but it is likely that a combination of the two facts persuaded him not to take the matter further.

This case involved a group of men who were treated leniently, and this is both significant and unusual. Offending by groups of individuals was more usually seen as more serious by magistrates, suggesting that Horner regarded age in the Wanstrow case as being more important than the number of offenders.²²⁶ Where groups of individuals carried out offences together, they were not the gangs identified as operating in eighteenth-century London.²²⁷ The nature of rural summary proceedings meant that gangs carrying out serious offences, such as sheep-stealing, were rarely recorded, and many of the more minor offences heard by the magistrate were carried out by individuals.²²⁸

²²⁴ One of the named men, Philip Yeoman, was recorded as having been baptised in Wanstrow on 19 September 1754, and another, Daniel Aish, was baptised there on 11 May 1755 (FamilySearch, 'England Births and Christenings, 1538-1975', *FamilySearch*. www.familysearch.org. 7 October 2014).

²²⁵ McGarvie (ed), *The King's Peace*, 79-80.

²²⁶ This is related to fears of 'the mob' in the eighteenth century, with such gangs 'giving rise to exaggerated fears of social upheaval' and disorder (Shoemaker, *The London Mob*, xiii).

²²⁷ McLynn, *Crime and Punishment in Eighteenth Century England*, 10.

²²⁸ Rule has noted the existence of such gangs in rural England in the eighteenth and early nineteenth century (John Rule, 'The Manifold Causes of Rural Crime: Sheep-Stealing in England, c.1740-1840' in John Rule and Roger

It was especially rare for men and women to be accused of committing thefts together. This reflected the gendered nature of society, as Sharon Howard has commented in relation to crime in the English and Welsh courts:

Studies of theft have indicated that theft was quite strongly gendered: male and female thieves did not tend to work together, with both men and women choosing targets, and markets for the sale of stolen goods, with which they were likely to be familiar in their everyday lives.²²⁹

This was particularly true with poaching, where groups of individuals recorded as offenders by rural magistrates were all-male groups.²³⁰ Even with wood theft, a less gendered type of theft committed by both men and women, on average, only eight per cent (17 out of 219 cases) were brought against men and women stealing wood together. However, this also emphasises the gendered nature of prosecution. Men and women both clearly committed wood thefts, but men were more likely to be prosecuted for the offence rather than with women, or than women on their own.²³¹ When groups did appear before the magistrate charged with either a property offence or an offence against the

Wells, *Crime, Protest and Popular Politics in Southern England 1740-1850* (London, 1997), 243).

²²⁹ Howard, *Law and Disorder in Early Modern Wales*, 7.

²³⁰ Across the magistrates' notebooks studied in this thesis, 37 male groups were recorded as defendants in poaching cases. There were no mixed gender or female groups carrying out poaching or game offences.

²³¹ Beattie, 'The Criminality of Women', 96.

person, were they treated more severely than individuals? Table 5.10, on page 357, shows the action taken in hearings involving offences against the person.

Table 5.10 The action taken in offences against the person, committed by individuals and groups.

	Sole male		Male group		Sole individual		Female group		Mixed gender group	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Discharged	115	56	24	59	24	56	7	78	10	59
Summary	33	16	7	17	8	19	1	11	1	6
Further action	56	28	10	24	11	25	1	11	6	35
Total	204	100	41	100	43	100	9	100	17	100

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 763340, NRO Th1681, SA 1060/168-70, Cirket (ed) *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. The discharged category includes cases being dismissed, discharged, agreed or settled. Summary denotes summary punishments such as whipping, fines or imprisonment. Further action comprises recognizances and indictments.

In relation to assault, table 5.10 suggests that male groups were treated in the same way as male individuals, with roughly the same percentages being discharged, subject to summary action, or to further action. Women on their own were subject to the same action as male individuals. The percentages for female groups are different, but this is because of the low number of such groups skews the figures slightly. Mixed gender groups, whilst again in a minority, had a higher percentage of cases being subject to recognizances or indictments. This suggests that such groups were seen as more of a threat to the social order, or may have involved, or been perceived to have involved, a greater amount of violence with men taking part.²³²

With property offences, mixed gender groups were found most commonly with particular types of rural theft, such as wood theft and the theft of fruit and vegetables, although William Brockman did record five thefts of household goods or clothing carried out by mixed gender groups. Because of the nature of these thefts, the individuals were either fined or dismissed, with only Brockman recording a case where further action was required. Table 5.11, on the next page, shows the action taken in property offences, according to the type of defendant.

²³² Walker has noted, though, that ideas of masculine violence are 'not as clear-cut as has assumed' with men being more likely to be 'accused of armed assault when they had acted in mixed-sex groups' and women being most often armed when part of an all-female group (Walker, *Crime, Gender and Social Order*, 78).

Table 5.11 The action taken in property offences, by type of defendant.

	Sole male		Male group		Sole female		Female group		Mixed gender group	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
Discharged	90	30	31	29	27	47	4	25	14	45
Summary	158	52	65	60	25	44	8	75	15	48
Further action	54	18	12	11	5	9	0	0	2	7
Total	302	100	108	100	57	100	12	100	31	100

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 763340, NRO Th1681, SA 1060/168-70, Cirket (ed) *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. Discharged category includes cases being dismissed, discharged, agreed or settled. Summary denotes summary punishments such as whipping, fines or imprisonment. Further action comprises recognizances and indictments.

Table 5.11 shows that whereas there was little differentiation between males acting on their own and those acting as part of an all-male group, there were larger differences when it came to women. Although the overall numbers are smaller, women acting in a group were more likely to be summarily punished, whereas women on their own were more likely to be dismissed – the magistrates perceiving groups of women as carrying out more serious offences than those on their own. Mixed gender groups were similarly more likely to be summarily punished than discharged, suggesting that women who took part in property offences in groups, whether mixed gender or female-only, were more likely to be punished than those who committed offences on their own. This is because poverty was a more accepted excuse where an individual had carried out an unplanned offence on her own, than if she had taken part in a theft as part of a group, which might be seen as a more organised offence.²³³

Rural magistrates also considered other factors in the punishment of groups, as Whitbread made clear. When he heard an accusation of nutting made against three sisters, together with the husband of one of them, Whitbread noted that they had been ‘forgiven’ as it was their first offence.²³⁴ The fact that nutting was a minor offence would also have been a consideration. In this case, the fact that a group of adult individuals, both male and female, were involved did not lead to a

²³³ Beattie has recorded women’s participation in mixed gender ‘gangs’ committing property offences such as robbery, but notes that it is not possible to analyse such cases in detail as ‘a large number of women’ implicated in such offences may never have been prosecuted, the gendered nature of prosecution meaning that women’s involvement in group-committed offences has probably been under-estimated (Beattie, ‘The Criminality of Women’, 90).

²³⁴ Cirket (ed), *Samuel Whitbread’s Notebooks*, 124-125.

harsher punishment. The relatively trivial nature of the offence, and the fact that the individuals had not committed any previous offences either separately or together, made it an offence that could be forgiven by the complainant on hearing. This consideration of various facts fits in with Hay's and King's analysis of the grounds for mercy for those convicted of capital offences. They found that the key factors were whether the offence was relatively minor, together with the youth, poverty, character and respectability of the offender.²³⁵ These factors have all been shown in this chapter to be considered by the rural magistrate, to varying extents, in his decision-making at summary level.

Concluding remarks.

This chapter found that judicial discretion was evident, to varying degrees, across the range of issues and offences that justices dealt with at summary level in rural England. In terms of property offences, greater discretion was available in terms of non-larceny offences. However, instead of using the 'grey area' of what constituted larceny to summarily convict individuals, rural magistrates were more likely to dismiss offences, arguing, for example, that there was not sufficient evidence. This was still a form of discretion, where the magistrate calculated the chances of a successful outcome at trial in deciding whether or not to indict a case. There is little evidence of rural magistrates using vagrancy legislation to punish those suspected of property offences, with it occurring in only a handful of cases, illustrating a difference between the rural and urban

²³⁵ Hay, 'Property, authority and the criminal law', 43; King, 'Decision-Makers and Decision-Making', 22-28.

justice. Rural justices also dealt with a lower percentage of larcenies compared to the urban justice, but a larger percentage of wood thefts and game offences. Therefore, rural justices had summary jurisdiction over a larger percentage of the property offences they heard, and thus a greater extent of discretion.

Discretion was allowed in the law for both employment cases and regulatory infringements, with the magistrate able to employ this discretion in dealing with misbehaving servants, and setting variable fines for other offences. The magistrates studied here varied in their approaches to such fines, with some clearly being more flexible, and discretionary in their approach, than others. This differing approach is not necessarily a sign of change over time – it is likely that it simply varied according to the individual magistrate. In terms of assault, where the law provided a range of options to the magistrate, justices used their discretion in filtering out the more minor cases from higher courts, and increasingly mediated cases as the long eighteenth century progressed. This change was linked to the decrease in use of recognizances for breaches of the peace and an increase in assault cases brought to summary proceedings as property offences were increasingly heard in the higher courts. This chapter has also found a link between the number of assault cases heard by an individual magistrate, and the likelihood of him discharging or dismissing a case.

This chapter then studied the factors that influenced a magistrate's decision making outside of the discretion permitted in law. It found that although gender

was a factor in judicial leniency, it was neither the sole factor, nor the deciding one. Other factors came into play, including age, poverty, class and reputation. Gender and economic background was linked to the extent that women's vulnerable position in the workplace, and their childcare responsibilities, were considered by the magistrate in determining what action to take in particular cases. Leniency also depended on the offence being heard by the magistrate, with minor rural thefts being more likely to receive a lenient hearing or to have economic background taken into account.

What is clear throughout this chapter is the influence of the complainant or victim. In some cases, where no further action was taken, it was due to the complainant not turning up to put his case formally to the magistrate, perhaps believing that bringing the complaint was sufficient to 'scare' an individual into behaving better. This is particularly evident in cases involving yarn offences. In the earlier part of this period, magistrates tried to work around the prosecutor changing his or her mind about proceeding with a complaint by binding them over to ensure their appearance at trial, enabling the justice to maintain his own discretion whilst limiting that of others. Therefore, although this chapter has established that the magistrate had a considerable amount of discretion in dealing with those members of the community who came before him as defendants at summary level, so too did the community members who appeared as complainants. Discretion, then, was available to both the magistrate and the community in rural summary proceedings.

Conclusions.

Although it has been argued that the summary process was a 'multi-use right', within which various eighteenth-century groups 'conflicted with, co-operated with, and gained concessions from each other', relatively few studies have been carried out to ascertain the extent to which this occurred, and how.¹ Although Gray has redressed the balance with his study of the London summary courts, there has been relatively little attempt to look at how the summary process operated within a wider context, and the focus of many historians' work has continued to be on the higher courts. This study of the rural summary process therefore offers a new contribution to our understanding of how the process worked over the course of the long eighteenth century, and how various groups within rural society used it. It has considered the extent to which women were able to use the process, and were visible within it, and studied the nature of judicial discretion when applied in the context of rural communities. It has also identified a number of issues for further debate, including the change in the participation of the elite members of rural society, and the impact of local economic conditions on the role and function of rural summary proceedings.

It has been noted how the background of the magistrate changed over the course of the long eighteenth century, with landowning magistrates being supplemented, or replaced, by clerical justices, and those from business

¹ Brewer and Styles (eds), *An Ungovernable People*, 20; King, 'Decision-makers and decision-making', 51-58; Fletcher and Stevenson, *Order and Disorder in Early Modern England*, 20-1.

backgrounds.² Chapter two showed that the notebooks studied here do not show a sea-change in the backgrounds of rural justices over this time. Although Hoare and Whitbread had business interests, overall, rural magistrates continued to be drawn from landowning backgrounds, being ‘members of local elites’, which ultimately made them somewhat distanced from many of those in the community who approached them.³ Throughout the long eighteenth century, the magistrate continued to be gentlemen who ‘were made justices because they had property and influence in their own neighbourhoods’, even though their administrative skills became increasingly more important than their political influence or views.⁴

The involvement of a magistrate’s family members shows that rural summary proceedings were a personal form of justice. This study has shown that magistrates on occasion heard cases that involved themselves or their own property, when Burn had warned against doing so.⁵ Lack of magisterial accountability enabled the rural justice to work on his own authority.⁶ This emphasises the contemporary portrayals of the magistrate as either a corrupt individual or an uneducated man chasing status rather than justice. Although some satirical representations of the justice were a response to the introduction

² Morgan and Rushton, ‘The magistrate, the community and the maintenance of an orderly society’, 59; King, *Crime, Justice and Discretion*, 117; Gray, *Crime, Prosecution and Social Relations*, 6; David Eastwood, ‘Local Government and Local Society’, 41, 47.

³ Landau, *The Justices of the Peace*, 70.

⁴ Landau, *The Justices of the Peace*, 356; Landau and Glassey, ‘The Commission of the peace’, 260.

⁵ Burn, *The Justice of the Peace, Volume 3*, 27.

⁶ Douglas Hay, ‘Dread of the Crown Office’, 44; Paley (ed), *Justice in Eighteenth-Century Hackney*, xxxii.

of the trading justice in metropolitan areas, the rural magistrate was also mocked. Since then, the rural magistrate has been termed an inactive 'unpaid amateur', with attention being drawn to those who rarely committed to their summary work, or who spent long periods away from their community.⁷ Yet this thesis has shown that rural magistrates did not fit a 'type'. They varied both in the amount of time they devoted to their summary work, the type of case they were known to have expertise in, and how they made their decisions. The references to statute law and to legal manuals shows that the rural magistrate made attempts to gain legal knowledge where he did not have it, and developed a network of other local magistrates who could offer advice. Where he made decisions in cases involving himself or his family, there is little evidence that this was a conscious, corrupt, decision, but rather, that it was quicker and easier to settle these minor cases himself rather than to refer it to another magistrate. Shoemaker's attempts to define the primary types of magistrate is useful as it recognises the problems of assuming that all magistrates acted in the same way and for the same reasons.⁸ This thesis has taken his work further. Whereas Shoemaker argued that 'differences in judicial styles' were 'inevitable' with Middlesex and Westminster justices because they acted as individuals rather than as a single body, this thesis has argued that rural justices similarly acted individually, both in terms of what they specialised in hearing, and in how they dispensed justice.⁹ Studies of William Hunt's notebook have tended to assume that he was typical of the rural justice, whereas this thesis has shown that he

⁷ King, *Crime and Law in England*, 26; Paley (ed), *Justice in Eighteenth-Century Hackney*, xxx.

⁸ Shoemaker, *Prosecution and Punishment*, 226-233.

⁹ Shoemaker, *Prosecution and Punishment*, 233.

was not, just as the Lincolnshire justice Thomas Dixon, with his antipathy towards servants, was similarly individual. Shoemaker has argued, in terms of the Westminster and Middlesex magistrates, that:

Justices must have acquired reputations, based in part on their own status and background, concerning the types of cases they normally mediated...¹⁰

Shoemaker made this an issue about social background, arguing that complainants sought out justices who were used to 'dealing with people like themselves'.¹¹ However, what this study has shown is that magistrates had their own interests and developed an expertise, specialism, focus or reputation for particular areas that encourage people to complain to them. This was not about class but about the area of complaint. Hoare's status as the victim of poachers led to a particular interest in that rural offence that may have encouraged the gentry to take poaching complaints to him, but in other cases, it is clear that the middling and lower orders took particular complaints to a specific magistrate. A magistrate's tendency to take a particular form of action similarly influenced what complaints came before him. Hunt's mediating reputation encouraged those wishing to resolve assault complaints rather than prosecute them to come to him. Similarly, those taking wood theft allegations to Hunt may not have wanted punitive punishments for the offenders, but to warn them not to undertake such activities in the future. King's theory regarding triangulation, where some members of the community may have chosen to visit a magistrate

¹⁰ Shoemaker, *Prosecution and Punishment*, 230.

¹¹ Shoemaker, *Prosecution and Punishment*, 230.

who would be more sympathetic towards them, needs further investigation.¹² This thesis has shown that some magistrates were viewed as more sympathetic with regard to particular issues than others, and that people travelled up to ten miles to visit a magistrate - but whether this was because they were still the nearest magistrate, or people were deliberately choosing one magistrate over another, needs more research.

This study has emphasised the fact that summary proceedings were where most people experienced the law, and built on the studies of individual counties that have shown that 'local populations were used to appearing before the magistracy'.¹³ Summary proceedings were an informal process compared to the higher courts, and far more accessible.¹⁴ This thesis has shown that they were an arena that communities were indeed aware of, and used extensively. Chapter three showed that the poorer members of rural societies may not have had a detailed knowledge of the law and legislation that some other members of society demonstrated, but that their involvement in the summary process shows a good awareness of the function of the magistrate and of their usefulness in mediating and negotiating the lives and relationships of individuals.

¹² King, *Crime and Law in England*, 162.

¹³ King, *Crime, law and society in Essex, 1740-1820* (PhD thesis, University of Cambridge, 1984), 278; Shoemaker, *Prosecution and Punishment*, 49; Gray, *Crime, Prosecution and Social Relations*, 4; Gray, *Summary Proceedings and Social Relations in the City of London*, 263.

¹⁴ King, 'The Summary Courts and Social Relations', 126-127.

Chapter three showed that complainants before the rural magistrate were drawn from across a broad social range, and that their background influenced the complaints they brought to summary proceedings. There has been an attempt recently to minimise the importance of poaching within this process, with King arguing that concentrating on this offence risks distorting the nature of summary hearings.¹⁵ This thesis has shown, however, that specifically rural offences such as poaching and wood theft highlight the different uses of the summary process by those from different backgrounds, largely being the only offences where the elite were involved in the summary process. Chapter three showed that even when they were involved in cases, the landowning gentry were distanced from the summary process to a large extent, using their representatives to report poaching cases, or corresponding with the magistrate by letter rather than in person. Their use of the summary process to bring complaints of poaching and wood theft highlight the continuing friction over the criminalisation of customary rights in rural societies over the course of the long eighteenth century, and distinguish rural summary proceedings from their London counterparts.

The tension between the landowning elite and the rural labouring class was being played out in summary proceedings during the eighteenth century, and this study found that this impacted on the impartiality of the rural magistrate. The gentry communicated with the magistrate, and he communicated with them, in a different way to how communication with other classes was carried

¹⁵ King, 'The Summary Courts and Social Relations', 154.

out. The elite were not summonsed to the magistrate's justicing room or ordered to justify themselves; instead, the letters that were written between magistrates and elite individuals shows how literacy, education and a common background created a difference in how the magistrate dealt with individuals. On the basis of the notebooks studied in this thesis, it appears that the rural magistrate, although appearing to become increasingly paternalistic over the course of the long eighteenth century, maintained an element of the patrician, as can be seen in his interaction with other members of the gentry.

Magistrates may have tended to overrule parish officers in complaints over poor relief that came before them, but this should not be read as a sign of empathy towards the poorer members of their community. Whitbread, for example, may have believed he was acting paternally in seeking to arbitrate and negotiate between poachers and landowners, but his polite letters to the landowners were at odds with the way the poorer members of society were summonsed to him.¹⁶ The bias of magistrates is also evident, although to a fairly limited extent, in their hearing of cases brought by them or their family members, or involving their property. Magistrates were permitted to hear such cases as long as a second magistrate was present, but given that both magistrates were from the same background, and knew each other, it is not evident that the hearing of such cases would be impartial. As Landau summarises, 'in governing his neighbourhood, it was not unlikely that a justice would make judgements and orders affecting his

¹⁶ Cirket (ed), *Samuel Whitbread's Notebooks*, 30; Paley, *Justice in Eighteenth-Century Hackney*, xxxii.

interest, that he would be a judge in his own cause'.¹⁷ Therefore, class impacted on how rural summary proceedings operated.

However, chapter three established that rural summary proceedings were used extensively by the non-elite, showing that despite any class bias, all sectors of rural society saw the summary process as a useful tool for them. There is no evidence that plebeian members of rural societies saw the magistrate as a 'local despot' controlling the local area, but as a means of obtaining justice or of mediating their work and personal relationships within the rural community.¹⁸ Chapter three found that both middling and lower orders of rural society used the summary process extensively, but in different ways. Therefore, the middling orders, farmers and artisans, were found more as complainants in property offences and the lower orders as complainants in assault cases. This reflects the situation in the London summary courts, suggesting that in some ways, there was little difference in how urban and rural proceedings functioned, despite the differences in how they were organised.¹⁹ However, in other ways, there were some differences, and these differences applied not only in a rural/urban context, but also within different types of rural society. Rural offences such as poaching and wood theft did not constitute a consistent amount of the magistrate's time at summary level, but varied according to the specific type of community and the resources that were open to the lower orders in that community. Therefore, although rural summary proceedings dealt with the

¹⁷ Landau, *The Justices of the Peace*, 356.

¹⁸ Eastwood, 'Local Government and Local Society', 40.

¹⁹ Gray, *Summary Proceedings and Social Relations*, 264.

same primary types of offences and issues, there were differences in terms of the domination of particular issues, and these were a result primarily of the specific economic conditions of particular rural communities.

Chapter four confirmed that men dominated summary proceedings both as complainants and defendants, although women were better represented as complainants than at higher court level.²⁰ Chapter four showed that women's representation as complainants and defendants in summary proceedings depended on the type of case being heard, and this, in turn, reflected their legal and social status during the long eighteenth century. They were better represented as complainants in cases involving assault, and less represented as complainants in property offence cases. This was due to the nature of property ownership, which also gendered the nature of goods that people complained had been stolen, with women tending to complain about more domestic items than men, and similarly stealing items that they could access within their work and domestic spheres. However, although Blackstone stated that married women should only bring cases where they had their husbands' approval, and that the husband should be named as a joint complainant, married women increasingly brought cases on their own to the magistrate as the long eighteenth century progressed. This reflects both an increased independence on the part of rural women, and the type of goods reported as stolen to the magistrate. The summary process most commonly involved smaller value goods, and women were more likely to complain if the theft was minor, with their husbands taking

²⁰ D'Cruze and Jackson, *Women, Crime and Justice*, 27.

complaints to the higher courts if more expensive goods were involved. The nature of the case dealt with by the magistrate at summary level therefore impacted on the gender of those who appeared before him as complainants.

This thesis has found that although there was some commonality in how men and women used the summary process, women were able to use it for specific purposes, in negotiating their relationships with their husbands, other family members and members of the community. In reporting assaults to the magistrate, this thesis found that prosecution was not the primary aim. Victims of domestic violence used the summary process to publicise their husbands' acts in the hope that this humiliation would encourage men to act better in future, or to shame them into providing financial support. In these areas, the magistrate was a conduit and an arbitrator, and the summary process used for mediation rather than prosecution. This thesis found that the magistrate may have been increasingly used by women in particular as a source of advice and information, serving as a central figure within the community whom women could ask for help.

This study also found that the summary process was a means whereby the more disenfranchised members of rural societies, the poor and women, were able to employ agency and negotiate matters to their advantage. They were a means of holding parish officers to account in poor relief cases, of obtaining wages from employers and of complaining about their conditions of employment. Even in

areas where women are traditionally thought to have lacked agency, in bastardy and settlement examinations, there is some evidence of agency in refusing to provide the magistrate with details of their lives. The summary process enabled marginalised members of society to air grievances and exhibit agency in their dealings with the magistrate, and their participation shows an awareness of the law in general, if not the specifics, and of the role of the magistrate that they were both willing and able to utilise.

This study of rural summary proceedings has shown some key differences to those in urban settings, particularly London. The monitoring of immoral behaviour is largely absent from the rural notebooks. Rural areas lacked bawdy houses and systematic prostitution, and sexual behaviour, as taken from bastardy examinations, was focused on ensuring that the father of illegitimate children took financial responsibility for them.²¹ The punishment of women for lewd behaviour was fairly rare and confined to the earlier part of the long eighteenth century. The regulation of behaviour was reported to the magistrate, but such cases focused on minor offences such as swearing or drinking, and such offences formed a minority of the rural magistrate's caseload, suggesting that such behaviour was largely tolerated. In rural communities where the middling and lower orders formed the majority of both complainants and defendants, the

²¹ Conversely, Gray has noted, in relation to the London summary courts, the 'high incidence of prosecutions for disorderly behaviour', which included prostitutes brought before the courts for 'strolling' and 'picking up men' (Gray, *Crime, Prosecution and Social Relations*, 118, 127).

monitoring of plebeian behaviour did not constitute part of rural life or the magistrate's work to the extent that it did in London.²²

In the London summary courts, the constable played a vital part in the bringing of cases to the magistrates. He was far less visible in the records of rural summary proceedings. This does not mean that he did not have a role, or was not mentioned, but in rural societies, the magistrate was often brought complaints by members of the community who noted offences or regulatory infringements and reported them to the magistrate in order to maintain social cohesion or an orderly society. Members of the magistrate's family, as well as his clerk, reported cases, showing that the nature of rural summary justice was different to that of London. The nature of rural communities, being smaller communities where a stranger was easily spotted and where certain individuals might be watched more closely or viewed with suspicion because of a prior personal or family reputation, meant that members of the community acted as *de facto* constables, being a source of information, and bringing cases to the magistrate themselves.

This thesis has shown that the rural magistrate served a valuable purpose in filtering cases away from the higher courts, and resolving minor squabbles and issues quickly. A primary aspect of their role was to act as a community mediator, resolving disputes within that community, and that this is how the

²² Gray, *Summary Proceedings and Social Relations*, 269.

community saw the function of summary proceedings, as much as it having a criminal justice role. Although Landau has argued that there was a 'subtle change in the paternal intervention of rural justices' with the magistrate decreasingly acting as a mediator over the period up to 1775, chapter four showed how the magistrate's mediating role depended to an extent on how the individual justice was perceived within the community, with individuals bringing cases to him where he was regarded as being sympathetic to that type of case, but also, how the advisory role of the magistrate increased over time and was particularly employed in times of war, when women's male relatives might be absent due to fighting, or when women had no male relative at home to advise her.²³ In such cases, the rural magistrate became *in loco parentis*, acting as the woman's male advisor. The notebooks studied here show that mediation remained a significant part of the rural magistrate's role throughout the long eighteenth century, and this reflected the type of offence or issue that was brought to him in summary proceedings.

However, this thesis has also suggested that over the course of the long eighteenth century, there was a change in the nature of summary hearings.²⁴ As explored in this study, the rural magistrate's workload had always comprised both criminal and civil offences, a mix of property offences, offences against the person, employment issues, poor law cases, and regulatory offences. However, these surviving notebooks suggest that there may have been an increasing number of assaults heard by the magistrate over the long eighteenth century as

²³ Landau, *The Justices of the Peace*, 191.

²⁴ Palk, *Gender, Crime and Judicial Discretion*, 159.

property offences were increasingly heard at Quarter Sessions and Assizes, squeezing out assaults from the higher courts, and leading to a focus on interpersonal disputes at summary level. At the same time, the number of recognizances issued by magistrates decreased, with other forms of action, such as mediation, summary punishment or, to a lesser extent, indictments, being increasingly used as the century progressed.²⁵

The mediation and arbitration evident in William Hunt's notebook can be read not simply as a result of Hunt's character and approach to justicing, but a sign of how the magistrate's summary role was changing. Looking at the notebooks of Parker and Whitbread in the early nineteenth century, they show similarities to Hunt despite the differences in issues being brought to the magistrate. All show a desire to mediate between parties and avoid taking further action where possible. This ability to settle many cases informally is also something that was possible due to the magistrate's rural location. The Hackney magistrate Henry Norris settled fewer cases informally than the likes of William Hunt, and as Shoemaker has pointed out, this is probably because the former was in a more urban locale, with far more inhabitants - both Shoemaker and Landau have noted that the accessibility of the Middlesex and Westminster courts meant that

²⁵ Shoemaker has noted the decline in recognizances in Westminster and Middlesex from 1715 onwards, and the justices' notebooks suggest that there was a similar decline in rural England (Shoemaker, *Prosecution and Punishment*, 62).

recognizances were a more sensible option than in rural areas, where sessions were less accessible to many people.²⁶

Rural life was both distinct from metropolitan life, but also different according to the specific locale, and this affected the cases that came before the rural magistrate and how he was able to make decisions. The community around Frome, being centred around a busy market town, was distinct from the more isolated rural life around Mere, in Wiltshire. The nature of work opportunities in different areas, the opportunity for theft, and the decision making of individual parish officers, all affected the cases heard before the magistrate. The yarn offences heard by Northamptonshire and Somerset justices affected a disproportionate number of women, who formed the majority of outworking spinners, and were subject to specific statutes passed over the late eighteenth century. These distinct offences show how individual summary proceedings were affected by the nature of their locality, and how class and gender participation was not the same across rural England.

Taking these geographical changes into account, this thesis found that there was a change in who used the summary process over the course of the later eighteenth and early nineteenth century, with the lower sections of rural society, the labouring class and paupers, becoming more evident as complainants, and the artisan and tradesman class decreasing in their participation. This is partly

²⁶ Shoemaker, *Prosecution and Punishment*, 43; Landau, *The Justices of the Peace*, 192-193.

due to the nature of the summary process changing, with the higher courts increasingly dealing with property offending. Offences against the person, which had a higher number of complainants from the lower orders, were increasingly being heard at summary level. In the earlier part of the long eighteenth century, parish officers formed a larger percentage of complainants at summary level, bringing settlement cases for example, whereas by the end of the long eighteenth century, the poor were bringing more cases against the parish officer than the parish officer was doing against the poor. This suggests that as the century progressed, those from more humble backgrounds were becoming increasingly aware of the function of summary proceedings and how it could benefit them, and thus were increasingly using it to bring others to account. This increasing use of the process by the lower orders of rural society shows that it was becoming increasingly egalitarian and was perceived by plebeian members of society as an accessible, more affordable, means whereby they could gain justice or resolve disputes.

Chapter five found that gender was not the primary influence in determining judicial leniency at summary proceedings. Other factors, such as poverty and age, were also considered. In rural communities, an individual's personal reputation was also noted by the magistrate, even if it did not explicitly affect the action taken in individual cases. This demonstrates that the summary process in rural communities was a more individual experience than in London, for example, with the magistrate's or clerk's knowledge of the local community being recognised and acknowledged in his record keeping. The extent to which

he was able to employ this knowledge in his decision making was limited, however. The complainant in a case was involved in this decision making, being able to forgive or pardon an offender, or stop the case proceeding any further by failing to appear before the magistrate to prosecute the case after an initial complaint.²⁷ Therefore, as has been explored in the context of London courts, discretion was a combination of the attitudes of both prosecutor and magistrate.²⁸ Chapter five also found that although magistrates were increasingly bound by statute law over the course of the long eighteenth century, the rural magistrate continued to demonstrate discretion in how he dealt with cases. Many statutes allowed him to both employ discretion, but also to respond to the individual needs of his community.²⁹ ³⁰ Therefore, individuality persisted in rural summary proceedings despite attempts in the law to create uniformity.

This study of rural summary proceedings has added to our knowledge of how this level of the criminal justice system operated outside of the capital, and the role of the magistrate within the rural community. It has increased understanding of how communities perceived and used the summary process and their knowledge of the law, and has shown the individuality of magisterial decision-making. It has increased our understanding of the resources magistrates had in making their decisions, and how they employed knowledge of

²⁷ King, *Crime, Justice and Discretion*, 18.

²⁸ King, 'Female offenders, work and life-cycle change', 70.

²⁹ Steedman, 'At Every Bloody Level', 391; Devereaux, 'The Promulgation of the Statutes in late Hanoverian Britain', 80; Morgan and Rushton, 'The magistrate, the community and the maintenance of an orderly society', 75-76.

³⁰ Hay has noted this 'very wide discretion' allowed under statutes relating to the poor law, petty theft, poaching and employment (Hay, 'Legislation, magistrates, and judges', 63).

the local community in a way that the greater number of cases and individuals heard in London summary proceedings restricted metropolitan magistrates from doing.

Rural society was class-based, but summary proceedings transcended this, being an arena where all classes were able to participate but where, in reality, the middling and lower orders were able to both complain and be complained about. The summary process gave a voice to the poorest members of rural communities, and enabled them a certain amount of agency and authority, although this was dependent on the nature of the individual, the case they were involved in, and the discretion of the individual magistrate. Their chances of success were dependent on the specific type of case being heard, with complainants more likely to win a case than defendants, particularly when employment was involved. But the emphasis of rural summary proceedings was on settling both civil and community disputes, and of ensuring financial resolution rather than imprisonment. Increasingly, throughout the long eighteenth century, the summary process provided a means to both bring criminal cases cheaper and more easily than making recourse to the formal courts, but also to resolve interpersonal and financial problems, using the magistrate not as a law-enforcer but as an advisor. This study has shown that summary proceedings in rural England served a valuable purpose both as an arena for complaints and allegations of criminal and civil offences to be heard, and as a forum for arguments and disputes to be resolved, and for financial advice to be sought and given. It was not only multi-use in terms of the people

who used it, but also in terms of how it operated and what its function was. Summary proceedings served a valuable purpose in mediating the relationships between members of rural communities, of all classes and both genders.

Appendix 1: The magistrates, their background and the geographic area they operated in.¹

1. Roger Hill (c.1642-1729)

Notebook spans the years 1689 to 1705

Sir Roger Hill was born around 1642, the second son (but first surviving son) of the judge and Bridport MP Roger Hill, and the descendant of Somerset merchants.² He attended Cambridge University and then Inner Temple, but never practised as a lawyer. He was twice an MP – for Amersham and then Wendover; however, he was only an MP for a year of the surviving notebooks' duration (1702). Although Hill's family had long owned Poundisford Park in Somerset, and he inherited the estate, he sold it and then purchased the Denham estate in Buckinghamshire himself, in around 1670³. Originally, the manor of Denham had been held by Westminster Abbey, and after the Dissolution, was granted to JP Sir

¹ This appendix has used the following sources to ascertain the education and legal training of magistrates analysed in this thesis: Joseph Foster (ed), *Alumni Oxonienses: The Members of the University of Oxford, 1500-1714* (Oxford, 1888-1892); Joseph Foster (ed), *Alumni Oxonienses: The Members of the University of Oxford, 1715-1886* (Oxford, 1888-1892); J.A. Venn (ed), *Alumni Cantabrigienses*, (Cambridge, 1922-1954); D. Hayton, E. Cruickshanks and S. Handley (eds), *The History of Parliament: the House of Commons 1690-1715* (Woodbridge, 2002). www.historyofparliamentonline.org. 6 May 2014. Romney R. Sedgwick, *The History of Parliament: the House of Commons 1715-1754* (Woodbridge, 1970); L. Namier and J. Brooke (eds), *The History of Parliament: the House of Commons 1754-1790* (Woodbridge, 1964). www.historyofparliamentonline.org. 6 May 2014; Inner Temple Archives, *The Inner Temple Admissions Database*. www.innertemple.org.uk. 12 February 2014.

² Leonard Naylor and Geoffrey Jaggard, 'Hill, Roger (1642-1729), of Denham, Bucks', B.D. Henning (ed), *The History of Parliament: the House of Commons 1660-1690* (Woodbridge, 1983).

³ Centre for Buckinghamshire Studies, *Financial calculations relating to Temple Bulstrode, Denham, Hedgerley, Stoke Poges, Farnham Royal and Upton*. Centre for Buckinghamshire Studies, D192/1/1); Eveline Cruickshanks and Stuart Handley, 'Hill, Sir Roger (1642-1729), of Denham Place, Bucks', Hayton et al (eds), *The History of Parliament: the House of Commons 1690-1715* (Woodbridge, 2002).

Edmund Peckham; Hill purchased both the manor and its 'chief messuage', Denham Place.⁴

The local area was farmed for cereal crops, and farming formed a significant part of the local economy, but it also contained several gravel pits, enabling some industrial activity. There were also fish ponds and certainly a large fishery based at the river Colne by the nineteenth century, so fishing may have been an economic activity for some residents, although it is uncertain how large an activity this was outside of domestic usage at the end of the seventeenth century and beginning of the eighteenth. There were two water-mills in the area from the eleventh century, known later as Town Mill and Denham Mill, and these were still active during Hill's time.⁵ At the time Roger Hill was living in the area, there were several woods locally, including Juniper Wood, Great Haling's Wood and Broadspring Wood – the area appears to have become less wooded by the late eighteenth century, but the thirteenth century weekly market in Denham still continued throughout Hill's time⁶.

⁴ William Page (ed), 'Parishes: Denham', *The Victoria County History of Buckingham, Volume 3* (London, 1925), 255-261.

⁵ Page (ed), 'Parishes: Denham', *The Victoria County History of Buckingham, Volume 3*, 255-261.

⁶ *ibid.*

2. Thomas Thornton (1654-1719)

Notebook spans the years 1700 to 1718

Thornton was from a 'gentry family' and was lord of the manor of Brockhall.⁷ There are no records of Thornton attending Oxbridge, or being admitted to an Inns of Court; he was high-sheriff of Northamptonshire in 1699. His grandfather, Thomas (1554-1632), was a barrister who had purchased the Brockhall estate in 1625, and so Thornton was the third generation of his family to own the property, after his grandfather, and his uncle John (1615-1692). The family had originally had property at Newnham, also in Northamptonshire, which had come to the Thorntons through an earlier John Thornton's marriage to heiress Lettice Newnham in the mid-sixteenth century.⁸ Thomas Thornton married an heiress, Elizabeth Ward of Brayfield, in 1692.⁹ Although Burke's Peerage stated that on buying Brockhall, the family 'availed themselves of its superior situation, and deserted their former residence', Thornton was buried at Newnham rather than Brockhall in 1719.¹⁰

Brockhall was, accordingly, an estate village, centred around Brockhall Hall. Thornton dealt with cases from communities in surrounding parts of north-west Northamptonshire, however, in an area that was primarily pastureland, and many

⁷ Northamptonshire Record Office, *A guide to family and estate archives held at the Northamptonshire Record Office: Taylor to Tryon*. www.northamptonshire.gov.uk. 12 February 2014.

⁸ John Burke and John Bernard Burke, *Burke's Genealogical and Heraldic History of the Landed Gentry, Volume 2* (London, 1847), 1392.

⁹ Burke and Burke, *Burke's Genealogical and Heraldic History*, 1393.

¹⁰ *ibid.*, 1392.

of the local population would have been working in agricultural occupations.¹¹ Farming, particularly dairy farming, was prevalent in the locality.¹² However, the nearest town to Brockhall was Daventry, a market town and coaching stop, where a wider range of occupations was found. The Daventry area was also home to political activity and dissenters in the seventeenth to eighteenth centuries; as well as being involved in the English Civil War (Royalists and Parliamentarians fighting near the town), there was a dissenting chapel in Daventry by 1722 and a Dissenters' academy established there in the mid-eighteenth century.¹³

3. William Brockman (1658-1741)

Notebooks covered in this thesis span the years 1689 to 1721

William Brockman was born in 1658 to a well-established gentry family – Burke's Peerage described the Brockmans as an 'old Kentish family'.¹⁴ He inherited the 'the mansion of Beachborough...[and was] heir to the family which had dominated Newington since the sixteenth century'.¹⁵ Brockman married Anne Glydd, the elder daughter and 'co-heir' (with her younger sister Martha) of Richard Glydd of

¹¹ Anon (RCHME), 'Brockhall', *An Inventory of the Historic Monuments in the County of Northamptonshire, volume 3, Archaeological Sites in North-West Northamptonshire* (London, 1981), 31-33.

¹² *ibid.*

¹³ Jane Laughton, Sean Steadman, Glenn Foard and Jenny Ballinger, *Northamptonshire Extensive Urban Survey: Daventry* (Northampton, 2002), 30; David Bogue and James Bennett, *History of dissenters, from the Revolution in 1688, to the year 1808, Volume 3* (London, 1810), 297.

¹⁴ J. Bernard Burke, *A Genealogical and Heraldic Dictionary of the Landed Gentry of Great Britain & Ireland for 1852, Volume 1* (London, 1852), 144.

¹⁵ Landau, *The Justices of the Peace*, 26.

Pendhill in Surrey.¹⁶ He was educated at Cambridge, and admitted to Middle Temple, although he did not work as a barrister. He was MP for Hythe between 1690 and 1695. He was a prodigious recorder of the cases he heard at summary level, and the volumes of his notebooks continue up to his death in February 1741.¹⁷

The great hall of Beachborough was located in Newington, described in 1799 as a parish that comprised farmland, chalk downs and woodlands – and near Beachborough, there was ‘much coppice wood’ and two streams.¹⁸ As a JP, Brockman dealt with an area that comprised several farming villages as well as settlements close to, or by, the sea. He dealt with many cases from Elham, which contained a substantial amount of largely arable farmland.¹⁹ Other communities mentioned in his notebook were larger, and had more varied occupations available for their residents. Hythe, for example, was a small coastal market town with a silted up harbour.²⁰ Brockman also referred to the larger towns of Folkestone and Canterbury, in relation to sending people to gaol there, or in relation to Quarter Sessions or markets there.

¹⁶ Martha Glydd married Ralph Drake; their son Ralph inherited the Brockman estates in 1767 (Burke, *A Genealogical and Heraldic Dictionary, Volume 1*, 144). The Glydds had, in 1636, built a ‘handsome red brick house’ in Pendhill, which became the family home (G.L. Gower, ‘Manorial and Parliamentary History of Bletchingley’, *Surrey Archaeological Collections, relating to the history and antiquities of the county, Volume 5* (London, 1871), 219.

¹⁷ Anon, *William Brockman*, Ancestry.com, n.d. www.ancestry.com. 1 February 2014.

¹⁸ Edward Hasted, *The History and Topographical Survey of the County of Kent: Volume 8* (Canterbury, 1799), 197-210.

¹⁹ Samuel Lewis (ed), *A Topographical Dictionary of England* (London, 1848), 394-398

²⁰ Hasted, *Topographical Survey of Kent*, 231-253.

4. William Bromley (1663-1732)

Notebook spans the years 1685 to 1706

William Bromley was the son and heir of Sir William Bromley of Baginton, by his wife Ursula, the daughter of Thomas Leigh, 1st Baron Leigh of Stoneleigh.²¹ He was educated at Oxford University, having been admitted as a gentleman commoner in 1681, before going on to Middle Temple and qualifying as a barrister.²² He married four times, two wives being the daughters of baronets.²³ He was twice an MP – initially for Warwickshire in the 1690s and then for Oxford University from 1701 to 1732. He was a member of an old Staffordshire family and was a member of the county elite.²⁴ He was described as ‘a Tory, of grave deportment and good morals’ who showed a ‘general prudence in domestic concerns’.²⁵ His family was one of three who had held the manor for long periods of time, and therefore also owned the estate village of Baginton.²⁶ The Bromleys owned the manor from 1618 (when another William Bromley bought it from Sir Henry Rainsford) to 1822, when it was then left to a cousin who adopted the family name - the manor was still in the Bromley name in 1948.²⁷ The hall was fairly new when the

²¹ Andrew A. Hanham, ‘Bromley, William II (1663-1732), of Baginton, Warws. and St James’s, Westminster’, in Hayton et al, *The History of Parliament: the House of Commons 1690-1715* (Woodbridge, 2002).

²² ‘Sylvanus Urban’, *The Gentleman’s Magazine, Volume 31* (London, 1849), 26

²³ Hanham, ‘Bromley, William II (1663-1732)’.

²⁴ *ibid.*

²⁵ ‘Sylvanus Urban’, *The Gentleman’s Magazine, Volume 31*, 26

²⁶ Baginton Village. *The History of Baginton*. Baginton Village, n.d. www.baginton-village.org.uk. 12 February 2014.

²⁷ ‘Sylvanus Urban’, *The Gentleman’s Magazine, Volume 31*, 25; L.F. Salzman (ed), *A History of the County of Warwick, volume 6: Knightlow Hundred* (London, 1951), 22-26.

Bromleys bought it, as it is said to have been a 'new' brick house in the seventeenth century.²⁸

Baginton was on high ground, looking towards the town of Coventry. It expanded around Baginton Hall, and contained a village green and a pond.²⁹ The village had 27 acres of meadow recorded in the Domesday Book – due to the parish being bounded by the River Avon and River Sowe on the east and west. The village is on a plateau 70 foot above the Sowe. It was on well-drained soil with plentiful water. There was a watermill there from at least 1086 until 1656. The parish contained substantial woodland and coppices, and in the sixteenth century, it was a primary source of timber for St Mary's College in Warwick.³⁰ However, it was also a rural area with farms and associated barns, and large areas of agricultural land around the outside of the village – today, it is still surrounded by open fields.³¹ Its nearest substantial centre, Coventry, underwent an economic depression between the late medieval period and the late eighteenth century. The local wool and cloth industry was in a long decline, creating a 'fossilised' town; the industries that became successful there in the late Georgian period, such as ribbon weaving and watchmaking, post-date Bromley.³² Therefore, the area that William Bromley was primarily agricultural, but with the nearest urban centre undergoing an economic

²⁸ Warwick District Council, *Baginton Conservation Area: Areas of Special Architectural or Historic Interest* (Royal Leamington Spa, n.d.), 3.

²⁹ *ibid.*, 4.

³⁰ Salzman, *A History of the County of Warwick, Volume 6*, 22-26.

³¹ Warwick District Council, *Baginton Conservation Area*, 2, 5.

³² Anna Wilson and Chris Patrick, *Coventry Historic Landscape Characterisation Final Report: English Heritage Project Number 5927* (Coventry, 2013), 8.

downturn that would have restricted both urban migration and the occupations available for those migrants.

5. William Hunt (1696-1753)

Notebook spans the years 1744 to 1749

William Hunt was a 'middling' member of the gentry, a landowner with various estates in Wiltshire.³³ These included properties at Bishop's Lavington and Eastwell, in Potterne.³⁴ His son, Thomas, took on the surname Hunt-Grubbe after inheriting William's mother's estate.³⁵ William was educated at Oxford before being admitted to Middle Temple and working as a lawyer.

Hunt covered, primarily, the hundred of Potterne and Cannings, which in 1801 had a population of 6846. However, he also dealt with the Rowde area (AP and CP had a population in 1801 of 796), and All Cannings (AP had a population of 705 in 1801).³⁶ Potterne was 'on the extreme edge of the industrial area of Wiltshire' and several textile workers were based there in the sixteenth and seventeenth centuries, although it is not clear whether that was still the case in the eighteenth

³³ Crittall (ed), *The Justicing Notebook of William Hunt*, 3.

³⁴ L.G. Pine (ed), *Burke's Genealogical and Heraldic History of the Landed Gentry*, 17th edition (London, 1952), 1090.

³⁵ William Hunt's mother, Mary Grubbe, was the heiress to her brother Walter's estate. Walter Grubbe, William's uncle, was MP for Devizes (Thomas Phillipps (ed), *Visitatio heraldica comitatus Wiltoniae, AD 1623* (Broadway, 1828), 18.

³⁶ Elizabeth Crittall, 'Table of Population, 1801-1951', in Elizabeth Crittall (ed), *A History of the County of Wiltshire, Volume 4* (London, 1959), 315-361.

century.³⁷ At various times, a brewery, bakehouse and inn (the White Horse) were located in the village, but all housed in the same building, so this was not a significantly commercial centre.³⁸ Many residents worked in agricultural occupations; there was much farmland locally, and gleaning was carried out by the poor locally during harvest time – in the seventeenth century, it was noted that the poor’s gleaning ‘yielded them much comfort’.³⁹ The eighteenth century saw flint digging take place locally to repair the turnpike roads; sheep farming continued to be a primary occupation in the area, together with arable farming. Wheat and barley were the most common items grown, but there was also some oats, peas, rape, turnips, beans and rye.⁴⁰ Others worked in bonnet-making and smocking, or in a local brickyard.⁴¹ Lime burning and chalk quarrying were also carried out in the West Lavington parish in the early eighteenth century.⁴²

6. Edmund Waller (c.1725-1788)

Notebooks span the years 1773 to 1788

Edmund Waller’s father had estates in Great Marlow and Chipping Wycombe and inherited further Gloucestershire estates – he left the bulk of his estates to his

³⁷ H.F. Chettle, W.R. Powell and P.M. Tillott, ‘Parishes: Potterne’, in R.B. Pugh and Elizabeth Crittall (eds), *A History of the County of Wiltshire, Volume 7* (London, 1953), 207-217.

³⁸ *ibid.*

³⁹ *ibid.*

⁴⁰ West Lavington Parish Council, *Heritage: Local History*, West Lavington Parish Council, n.d.). www.westlavington.info. 12 February 2014.

⁴¹ Chettle et al, ‘Parishes: Potterne’, 207-217.

⁴² West Lavington Parish Council, *Heritage: Local History*.

son.⁴³ Waller attended Oxford University and was then admitted to Lincoln's Inn. He did not work as a lawyer, but was twice MP for Chipping Wycombe (1747-1754 and 1757-1761). Hall Barn, Waller's estate in Beaconsfield, was an area that was primarily agricultural and woodland, with the old town itself to its north.⁴⁴ It was on the southern edge of the Chiltern Hills, and the area consisted of ancient and pre-eighteenth century woodland, and common-edge settlements of hamlets and villages around Beaconsfield.⁴⁵

Beaconsfield itself, which had a population of 1149 in 1801, had developed from several small farmsteads, and had a thriving market, but otherwise it had 'acquired few other urban attributes'.⁴⁶ By the seventeenth century, the market was in decline. It therefore remained a largely agricultural place, with 'few significant cottage industries'.⁴⁷ It had some lace making and straw plaiting in the seventeenth and eighteenth centuries, but these were 'marginal cottage industries' and were in decline by the late eighteenth century.⁴⁸ It was also an overnight stopping point for London and Oxford coaches in the late seventeenth century, but this stopped in the early eighteenth century when the stopping point

⁴³ Romney R. Sedgwick, 'Waller, Edmund (c1699-1771), of Hall Barn, Beaconsfield, Bucks', in Romney R. Sedgwick (ed), *The History of Parliament: the House of Commons 1715-1754* (Woodbridge, 1970).

www.historyofparliamentonline.org. 6 May 2014.

⁴⁴ 'SR', *Hall Barn*, Historic England, 1997. <https://historicengland.org.uk>. 19 August 2014.

⁴⁵ Ruth Beckley and David Green, *Beaconsfield: Buckinghamshire Historic Towns Assessment Report* (Aylesbury, 2008), 9.

⁴⁶ *ibid.*, 10.

⁴⁷ *ibid.*, 31.

⁴⁸ *ibid.*, 30.

changed to High Wycombe. This led to the closure of several pubs or inns and further decline.⁴⁹

7. Thomas Lee Thornton (1726-1790)

Notebook covers 1789 only

Thomas Lee Thornton was a member of a gentry family, and lord of the manor of Brockhall. Thornton, grandson of the Thomas Thornton also studied in this thesis, was the heir of Thomas Thornton (1698-1783); Thomas Lee's mother was an heiress, Frances Lee of Canons Ashby, Northamptonshire.⁵⁰ He was educated at Oxford, but did not receive legal training through the Inns of Court.

Brockhall was an estate village, centred around Brockhall Hall, Thomas Lee Thornton's main residence, and where he died in 1790.⁵¹ Ten years later, the population of the village was just 70. Daventry was the nearest town; this was a market town and coaching stop, and also centre of a whip-making industry in the eighteenth and early nineteenth centuries. In 1801, the population of the Daventry area was just over 31,000.⁵² The area around Brockhall was primarily pastureland that was farmed, and in 1831, the majority of adult males were still employed as farmers or agricultural labourers. There were no artisans in the local

⁴⁹ *ibid.*, 30.

⁵⁰ Burke and Burke, *Burke's Genealogical and Heraldic History*, 1393.

⁵¹ *ibid.*, 1393.

⁵² A Vision of Britain through Time. *Daventry Northamptonshire* [sic]. A Vision of Britain through Time. n.d. www.visionofbritain.org.uk. 19 August 2014.

area, although there would have been many in Daventry.⁵³ Daventry in the later eighteenth century was primarily a coaching town, employing men as wheelwrights, ostlers and grooms, for example, but other industries in the town were boot and shoe-making, a small woollen industry, and whip-making. It has been noted, however, that there were a 'disproportionately large number of labourers and servants' in the town in the late eighteenth century.⁵⁴

8. Thomas Horner (1737-1804)

Notebook spans 1770 to 1777

Horner was from a gentry family, being lord of the manor of Mells. His uncle, Thomas Strangways Horner, had been a Tory MP, for Wells, and his aunt was an heiress, inheriting Melbury and the Strangways estate.⁵⁵ His uncle was 'a Somerset squire, whose family had acquired Mells at the dissolution of the monasteries' and on his uncle's death, the Mells estate passed to Thomas's father, John.⁵⁶ Mells Manor House was 'abandoned' by Thomas Strangways Horner in 1724, when he built a new house, Mells Park, in the grounds.⁵⁷ Thomas Horner continued to live at Mells Park, rather than at the manor, and turned one of its

⁵³ Anon (RCHME), *An Inventory of the Historic Monuments in the County of Northamptonshire, volume 3, Archaeological Sites in North-West Northamptonshire* (London, 1981), 31-33; A Vision of Britain through Time. *Daventry Northamptonshire* [sic].

⁵⁴ Laughton et al, *Northamptonshire Extensive Urban Survey*, 55.

⁵⁵ Shirley Matthews, 'Horner, Thomas (1688-1741), of Mells, Som. And Melbury, Dorset', in Romney R. Sedgwick (ed), *The History of Parliament: the House of Commons 1715-1754* (Woodbridge, 1970)

⁵⁶ *ibid.*

⁵⁷ 'SH', *Mells Park*, Historic England, 2002. <https://historicengland.org.uk>. 1 February 2015.

rooms – which had formerly been a village pub - into his justicing room.^{58 59} Horner was educated at Oxford, but received no formal legal training and never became an MP. Horner lived at Mells Park, and on his death it was noted that ‘to the poorer classes of his neighbourhood, especially, he constituted the source of extended employmnet and oportune relief, few gentlement living so much on their estates as Mr Horner did’.⁶⁰

With others, Horner had jurisdiction over the Frome division, incorporating the hundreds of Frome and Kilmersdon.⁶¹ In the late eighteenth century, Mells was home to a successful family-run iron works, producing agricultural implements. Fussell’s iron works had been established by 1744, and the 1760s heralded a period of expansion for the company, creating new works in the local area. Over 250 people were employed at the Lower Iron Works in Mells by the turn of the century⁶². Frome was the main town within Horner’s jurisdiction. This was a market town, and the market features within Horner’s notebook as a lively place where yarn was sold onto others in a thriving black market. There were several watermills in the town for producing flour, and farms to produce crops to grind for that flour. From the late seventeenth century, bell founding became a subsidiary industry of the area, but the main industry of the town throughout the

⁵⁸ Somerset County Council, ‘Park, Mells’, *Somerset Historic Environment Record*. Somerset County Council. www.somerset.gov.uk. 12 February 2014.

⁵⁹ ‘RO’, ‘The History of Mells’, Mells Village, 2012. www.mellsvillage.co.uk. 1 February 2015.

⁶⁰ Anon, ‘Provincial Occurrences: Somersetshire’, *The Universal Magazine, Volume 1, Number 2, February 1804* (London, 1804).

⁶¹ McGarvie (ed), *The King’s Peace*, 16.

⁶² Andy Farrant, Mark Woods and Elaine Burt, ‘Industrial archaeology – Fussell’s iron works’, *Foundations of the Mendips* (Basingstoke, 2015).

eighteenth century was wool, and this produced work in producing dyes, dying wool, producing the wool and weaving it. The town was said to be 'very famous for the manufacture of broad and woollen cloths'⁶³.

9. George Spencer (1758-1834)

Notebooks span the years 1787 to 1794

Spencer was an aristocrat and landowner, who became 2nd Earl Spencer in 1783. He owned 'vast estates' including Althorp, the stately home and associated estate village, some six miles north-west of Northampton.⁶⁴ The Spencers had owned Althorp House since the early sixteenth century.⁶⁵ George Spencer spent 35 years at Althorp accumulating a vast private library, using agents and booksellers from across Europe to help him in his hobby.⁶⁶ Although this meant he was largely resident in Northamptonshire, it also shows, perhaps, that his interests were more artistic than political.

The primary occupation within the wider area around Althorp would have been agriculture, and today the area remains a predominantly rural one, in a mixed

⁶³ Tim Lambert, *A Brief History of Frome, Somerset*, Local Histories, n.d. www.localhistories.org. 1 February 2015.

⁶⁴ Malcolm Lester, 'Spencer, George John, second Earl Spencer (1758-1834)', *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 12 February 2014.

⁶⁵ Anon (RCHME), *An Inventory of the Historical Monuments in the County of Northamptonshire, Volume 3*, 1-3.

⁶⁶ The University of Manchester University Library, *First Impressions: Pioneers of Print: George John, 2nd Earl Spencer*, University of Manchester, 2011. www.manchester.ac.uk. 1 February 2015.

agricultural landscape.⁶⁷ In 1835, the new 3rd Earl Spencer spoke of his desire that the local farmers, who met together as part of the Market Club of Northampton, would 'steer clear of politics'.⁶⁸ The estate itself had a substantial amount of woodland, which was carefully stewarded.⁶⁹ Near Althorp Park was an area of woodland and a quarry.⁷⁰ The nearby market town of Daventry, along with Northampton, provided local populations with work in industries such as boot and shoemaking, whip-making, and coaching related industries such as wheel-making and blacksmithing.⁷¹

10. Richard Colt Hoare (1758-1838)

Notebooks span the years 1785 to 1834

Richard Colt Hoare became 2nd Baronet Hoare of Barn Elms, but although a member of the gentry, he was a member of the 'new elite' - he was the son of a banker, his family owning the firm of C. Hoare & Co.⁷² He was brought up in Surrey, and trained for a role in the banking business, although his grandfather gave him a house in London while he was training. When his grandfather died in 1785, Richard inherited the Stourhead estate from him, on the condition that he

⁶⁷ Daventry District Council, *Daventry District Local Plan*, Daventry District Council, 1997. www.daventrydc.gov.uk. 1 February 2015.

⁶⁸ Anon, *The Farmer's Magazine*, Volume the Second: January to June 1835 (London, 1835), 3.

⁶⁹ Spencer of Althorp, *Landscape and Environment*, Spencer of Althorp, n.d. www.spencerofalthorp.com. 1 February 2015.

⁷⁰ *ibid.*

⁷¹ Laughton et al, 'Northamptonshire Extensive Urban Survey', 55.

⁷² Victoria Hutchings, 'Hoare, Sir (Richard) Colt, second baronet (1758-1838)', *Oxford Dictionary of National Biography* (Oxford, 2004). www.oxforddnb.com. 12 February 2014.

left the bank and concentrated on ensuring that the estate survived.^{73 74} He did not receive an Oxbridge education or formal legal training, preferring to concentrate on collecting books and indulging his interest in local history and archaeology.⁷⁵

Stourhead, Hoare's home and residence, was situated in greensand hills, with a 'large proportion of woodland', both deciduous and coniferous.⁷⁶ It was, and is, west of Mere, the nearest town, which had a population of 2,091 in 1801.⁷⁷ It was on the border of three counties – Wiltshire, Dorset and Somerset – and was at the 'confluence of several varied landscapes - clay vale, greensand hills, chalk downland and escarpment.'⁷⁸ Mere town was at the centre of local industry, being an established centre of cloth-making, linen and flax. It was also a coaching stop on the route from London to Exeter, creating jobs in inns and as ostlers.⁷⁹ It was therefore 'the commercial centre of a rural area' with jobs in trade and manufacturing as well as in agriculture.⁸⁰ However, the wider area around Mere, from which Hoare drew many of his visitors, constituted hamlets and settlements which had developed from farms – 'farms and farm cottages' as well as

⁷³ Rachel Knowles, *Sir Richard Colt Hoare, 2nd Baronet (1758-1838)*, Regency History, 2014. www.regencyhistory.net. 19 August 2014.

⁷⁴ Hutchings, 'Hoare, Sir (Richard) Colt, second baronet (1758-1838)'.

⁷⁵ Knowles, 'Sir Richard Colt Hoare, 2nd Baronet (1758-1838)'.

⁷⁶ Chris Blandford Associates, *Salisbury District Character Assessment: Settlement Setting Assessments* (Salisbury, 2008), 81.

⁷⁷ Table of Population, 1801-1951', *A History of the County of Wiltshire, Volume 4* (London, 1959), pp315-361

⁷⁸ Anon (Chris Blandford Associates), *Salisbury District Character Assessment*, 79.

⁷⁹ *ibid.*

⁸⁰ *ibid.*, 80

‘farmsteads and manor houses’. Therefore, Mere also ‘developed with an industry focused on agriculture’.⁸¹

11. Samuel Whitbread (1764-1815)

Notebooks span the years 1810 to 1814

The Whitbread family had been landowners in Bedfordshire since at least the early seventeenth century, although Whitbread’s father had only bought Southill Park, which Samuel inherited, the year before his death.⁸² Whitbread was educated at both Oxford and Cambridge, but was never admitted to an Inns of Temple. He entered his father’s brewing business initially, but was fundamentally a political man, rather than a businessman, being an active MP for Bedford from 1790 until his suicide in 1815.⁸³

Samuel Whitbread covered the Southill area, although people did come from Biggleswade and other areas near Bedford to see him. In 1801, the population of Southill was 985; in 1811, it was 1024, and in 1821, 1165, so during Whitbread’s life, the local population was gradually, but slowly, rising.⁸⁴ The Southill area was

⁸¹ *ibid.*, 83

⁸² Bedford Borough Council, *The Whitbread Family*, n.d. www.bedfordshire.gov.uk. 12 February 2014.

⁸³ David R. Fisher, ‘Whitbread, Samuel II (1764-1815), of Southill, Beds’, in R. Thorne (ed), *The History of Parliament: the House of Commons 1790-1820* (Woodbridge, 1986). www.historyofparliamentonline.org. 6 May 2014.

⁸⁴ Bedfordshire and Luton Archives and Record Service, *The Parish of Southill in General*, Bedford Borough Council/Central Bedfordshire Council. nd. www.bedfordshire.gov.uk. 1 February 2015.

rural and combined arable, grassland and woodland.⁸⁵ It was known for its market gardens, with wheat, barley, beans and turnips also being grown.⁸⁶ At the beginning of the twentieth century, it was noted that ‘many’ of the cottages in the village bore ‘the initials of Samuel Whitbread who purchased property here more than a hundred years ago’, and stood in ‘pleasant gardens or orchards’.⁸⁷

12. Thomas Netherton Parker (1772-1848)

Notebooks span the years 1805 to 1813

Parker was a landowner, but through his wife’s family rather than his own (his wife inherited the Sweeney Hall estate in Shropshire).⁸⁸ His own family appears to have been well to do, but not landowners – Parker was the son and heir of John Parker of Whitehouse, Longdon, in Worcestershire.⁸⁹ He was educated at Oxford, but did not receive formal legal training. His career prior to moving to Shropshire was army-based, although he was also a keen writer of poetry.⁹⁰

He lived in the Morda area, Morda being two miles away from Oswestry. Those who visited him came from both sides of the English-Welsh border, and Oswestry

⁸⁵ *ibid.*

⁸⁶ William Page (ed), ‘Parishes: Southill with Rowney’, *A History of the County of Bedford: Volume 3* (London, 1912), 256-261.

⁸⁷ *ibid.*

⁸⁸ Shropshire Council, *Sweeney Hall Miscellany*, Discovering Shropshire’s History. 2011. www.shropshirehistory.com. 22 January 2015.

⁸⁹ *ibid.*

⁹⁰ *ibid.*

was seen as a 'frontier town' between England and Wales.⁹¹ In the nineteenth century, trade in Oswestry town was focused on malt production and the export of agricultural produce.⁹² The area largely consisted of small settlements and fields, with grasslands, marsh and fens (since largely lost due to agricultural intensification), and woodland areas – primarily deciduous woods.⁹³ However, the area around Morda and Oswestry was also the location for more industrial pursuits, such as coal-mining, in the late eighteenth and early nineteenth centuries.⁹⁴ The area was also home to limestone quarries, lime kilns, brickworks, mills and boneyards.⁹⁵ Brickworks were particularly significant, as the area was largely clay, and so works proliferated to make not just domestic bricks, but also clay pipes, pottery, tiles and drainage pipes. As these were all made by hand until the late nineteenth century, the works would have been a key place of employment for local residents.⁹⁶

⁹¹ Croeso Net. *Welcome to Oswestry*. Oswestry in Shropshire England [sic]. n.d. www.croeso.net. 1 February 2015.

⁹² Shropshire Council, *Discover Oswestry: A short history*, Discovering Shropshire's History. 2011. www.shropshirehistory.com. 22 January 2015.

⁹³ Anon, *Oswestry Uplands (NA41)* (Reading, 1997), 7, 9.

⁹⁴ Shropshire History, *Mining*, Shropshire History. n.d. www.shropshirehistory.com. 1 February 2015.

⁹⁵ Oswestry Borderland Heritage, *Old Trefonen Colliery*, Oswestry Borderland Heritage. n.d. www.oswestry-borderland-heritage.co.uk. 1 February 2015; Anon, *Oswestry Uplands (NA41)* (Reading, 1997), 7.

⁹⁶ Shropshire History, *Brickworks*, Shropshire History, n.d. www.shropshirehistory.com. 1 February 2015.

13. Richard Stileman (1787-1844)

Notebooks span the years 1819 to 1836

Stileman was known as 'the Squire of Winchelsea', owning The Friars, a mansion and park in Winchelsea.⁹⁷ He was educated at Oxford and then admitted to Lincoln's Inn. Although he had legal training, he never worked in law. In 1826, he was listed as a member of the United Company of Merchants of England trading to the East Indies, and had voting rights, although this presumably just meant that he had financial shares in the company.⁹⁸ He was also a Deputy Lieutenant of Sussex.⁹⁹ However, The Friars was not a family estate, passed down through the generations; Stileman had commissioned its building, in the fashionable Gothic style, only in 1819, the year his surviving notebooks start.¹⁰⁰

Winchelsea was one of the Cinque Ports, a 'port upon a hill', although it had silted up by the nineteenth century.¹⁰¹ By the time Stileman was writing his notebook, the area was in a period of economic decline. Although the harbour had become

⁹⁷ Winchelsea.net, *The Ancient Town of Winchelsea*, Winchelsea.net, n.d. www.winchelsea.net. 12 June 2013. Richard Stileman JP's memorial tablet described him as 'Esquire, late of the Friars'. (William Durrant Cooper, *The History of Winchelsea, one of the Ancient Towns added to The Cinque Ports* (London, 1850), 139).

⁹⁸ Anon, *A List of the Members of the United Company of Merchants of England trading to the East Indies, who appear, by the Company's Books, qualified to vote at the General Election, 12th April 1826* (London, 1825), 93

⁹⁹ Ye Olde Sussex Pages, *Deputy Lieutenants*, Ye Olde Sussex Pages, n.d. www.yeoldesussexpages.com. 6 May 2014.

¹⁰⁰ Anon, *Grey Friars, Winchelsea*, Historic England, n.d. <https://historicengland.org.uk>. 1 February 2015.

¹⁰¹ Cooper, *The History of Winchelsea*, 35.

silted up by the early seventeenth century¹⁰², Winchelsea had still been home to a number of industries – salt, charcoal, cambric, crepe and tanning. These, however, had largely discontinued by the mid nineteenth century (the tanning industry ended around 1825, and crepe in 1810). In the 1840s, it was noted that although Winchelsea had a market, or fair, it had ‘dwindled to a small pedlarly and gingerbread affair. The market day is Saturday: it is almost disused.’¹⁰³ This economic decline also led to a decrease in population between 1821 and 1841.¹⁰⁴ Farming was still an occupation in the early nineteenth century, particularly sheep farming; one of the main farms in the Winchelsea area, Wickham Manor Farm, had been established in the sixteenth century and is now owned by the National Trust.¹⁰⁵ In 1831, the adult male population was either working as agricultural labourers or artisans, reflecting the nature of the area as comprising both town and rural outlying areas.¹⁰⁶

¹⁰² John Docwra Parry, *An Historical and Descriptive Account of the Coasts of Sussex, Brighton, Eastbourne, Hastings, St Leonards, Rye, &c &c* (London, 1833), 282.

¹⁰³ Cooper, *The History of Winchelsea*, 117.

¹⁰⁴ Cooper, *The History of Winchelsea*, 113.

¹⁰⁵ High Weald AONB Unit. *Winchelsea Countryside Circular Walk*, High Weald AONB, n.d. www.highweald.org. 6 May 2014.

¹⁰⁶ A Vision of Britain through Time, *Winchelsea Sussex [sic]*, A Vision of Britain through Time, n.d. www.visionofbritain.org.uk. 19 August 2014.

Appendix 2: Social status in rural England.

This thesis uses a simplified classification of social status, roughly based on Gregory King's 1688 and 1696 categorisations and Lindert and Williamson's subsequent revision of the former.¹⁰⁷ In some cases, the descriptions of individuals in magistrate notebooks are somewhat vague, meaning that it is difficult to ascertain what social class an individual might have been considered to be in during his lifetime. For example, where someone is simply described as the master of at least one servant, this could lend itself to a number of occupations, from a fairly humble tradesman to a member of the local elite. Even where a more specific trade is provided, this does not necessarily help classify them if you seek to do a very detailed classification; as Gray has noted, 'some trades are notably difficult...because they could represent small employers or journeymen'.¹⁰⁸ This difficulty applies both in urban and rural trades. Where people are described in such terms, they have not been included for the purpose of social classification. Members of the militia or regular soldiers have been given their own category, simply because they were from different social backgrounds; a commissioned soldier may have had the income to pay for his commission, whereas another may have agreed to go into the army in return for a criminal case against him being dropped, and may then be from a lower social background. This combines four of King's classifications - naval officers, military officers, common seamen and common soldiers - both because of the difficulty in ascertaining the class of all the men described as soldiers, or of a particular

¹⁰⁷ Barnett (ed), *Two Tracts by Gregory King, passim*; Lindert and Williamson, 'Revising England's Social Tables'.

¹⁰⁸ Gray, *Summary Proceedings and Social Relations in the City of London*, 274.

regiment, and because the complaints of those from the armed forces are distinct to their occupation.

For these reasons, the classification of social status below is kept both simple and necessarily simplistic. However, it enables a good estimate to be made of the status and occupational type of those who were involved in the summary process in rural England, as well as showing how rural areas, and those involved in summary proceedings, took on a wide variety of jobs - some particularly associated with rural areas, others, such as coal work, more industrial in nature - that might have impacted on how and why they were involved with the local magistrate.

Although simplistic, this classification is more detailed than the classification of status and class that was finding currency by the mid eighteenth century. As Corfield has noted, by the 1750s and 1760s, the concepts of 'higher', 'middling' and 'lower' classes were being used.¹⁰⁹ Under this categorisation, gentry would equate to 'higher', yeomen as 'middling', and artisans and labouring classes as 'lower', this category including the 'industrious' members of society.

¹⁰⁹ Penelope J. Corfield, 'Class by name and number in eighteenth-century Britain', in Penelope J. Corfield (ed), *Language, History and Class* (Oxford, 1991), 121. Defoe divided the social structure into the great, the rich, the middle sort, the working trades, the country people, the poor and the miserable - but it is hard to determine who would come under which category (Daniel Defoe, *The Review*, 25 June 1709, in Rudé, *Hanoverian London*, 37, and Roy Porter, *English Society in the 18th Century* (London, 1982), 53.

Appendix 3: Examples of occupation or status listed in justicing notebooks, and the groups ascribed to those occupations in this thesis:

1. Gentry and elite

Earls, Lords, Esquire, lawyers, magistrates or magistrates' family members, those representing landowners: agents, gamekeepers, stewards, bailiffs or park-keepers, those described as 'gentlemen'.¹¹⁰

2. Yeoman class

Yeomen, coal masters, woollen merchants and manufacturers, vicars, clerks, doctors, rectors, and those described as 'mister'.¹¹¹

3. Officials

Overseers, churchwardens, rate collectors, excise officers and supervisors, haywards, woodwards, turnpike keepers, gatekeepers, constables.

4. Artisan class

Artisans and tradesmen, including but not limited to: stockingmakers, clothworkers, cork cutters, broadweavers, painters, masons, tilers,

¹¹⁰ 'Gentleman' being assumed to be minor gentry, as described in Sharon Howard, 'Gentlemen and personal violence in seventeenth-century Britain', *British Academy Postdoctoral Fellowship Symposium 2006* (2006), 1. www.sharonhoward.org. Accessed 9 January 2015.

¹¹¹ As mentioned earlier (page 130), the use of the title 'mister' was class based; the labouring class were never described as 'mister' by the rural magistrates studied here. An analysis of its use shows that it was predominantly used for members of the yeoman class, and in particular farmers themselves, but also occasionally for parish overseers. In such cases, every attempt has been made to identify such overseers and categorise them under 'officials'.

innkeepers/victuallers, husbandmen (being usually described as of status less than a yeoman, not a freeholder), carpenters, butchers, maltsters, masons, scribbler (sic), schoolmaster, organist, tailor, pipemaker, grocer, blacksmith/smith, gunsmith, thatcher, plumber, hatter, cordwainer/shoemaker, organist, baker, apothecary, bricklayer, miller, cooper, muffin maker, wheelwright, gardener, collar maker, waggoner, stonebuilder, feltmonger, linen draper, glass polisher, goldsmith, clothworker, sawyer, butter-jobber, shearsmith, woolcomber.

5. Armed forces

Soldiers, sailors, marines, militia-men.

6. Labouring class

Servants, apprentices, labourers, shepherds, ploughmen and boys, roundsmen, linesmen, rockmen, colliers/coalminers, drovers, gravel pit workers, spinners (outworkers), tinkers, rag-gatherers, hawkers, higglers, those involved in haymaking during harvest time.

7. Paupers

Those explicitly described as poor or paupers, beggars and vagrants, and those complaining about poor relief, where no other occupation is given.

Appendix 4: Property offences as a proportion of total entries in rural magistrates' notebooks.

	Number of property offences	Total number of entries in notebook(s)	Property offences as percentage of entries
William Bromley (1685-1706)	21	134	16%
Roger Hill (1689-1705)	35	256	14%
William Brockman (1689-1721)	126	871	14%
Thomas Thornton (1700-1718)	18	88	20%
William Hunt (1744-1749)	164	375	44%
Thomas Horner (1770-1777)	199	1437	14%
Edmund Waller (1773-1788)	91	231	39%
Richard C. Hoare (1785-1834)	99	181	55%
George Spencer (1787-1794)	30	232	13%
Thomas L. Thornton (1789)	5	42	12%
Thomas N. Parker (1805-1813)	33	299	11%
Samuel Whitbread (1810-1814)	93	630	15%
Richard Stileman (1819-1836)	23	157	15%

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, WSHC 229/1, BL Add MS 76337, BL Add MS 76340, NRO Th1681, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6182/1. Numbers are for individual entries in each magistrate's notebooks, and only include entries where the type of offence can be ascertained.

Appendix 5: The gender of individuals examined as to their settlement.

	Male defendant		Female defendant		Mixed gender defendant		Total	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	4	50%	3	37.5%	1	12.5%	8	100%
Roger Hill (1689-1705)	29	63%	7	15%	10	22%	46	100%
William Brockman (1689-1721)	33	22%	47	31%	72	47%	152	100%
Thomas Thornton (1700-1718)	24	80%	6	20%	0	0%	30	100%
William Hunt (1744-1749)	5	28%	8	44%	5	28%	18	100%
Thomas Horner (1770-1777)	78	43%	71	39%	33	18%	182	100%
Edmund Waller (1773-1788)	6	60%	4	40%	0	0%	10	100%
Richard C. Hoare (1785-1834)	5	83%	1	17%	0	0%	6	100%
George Spencer (1789-1794)	27	75%	7	19%	2	6%	36	100%
Thomas L. Thornton (1789)	7	58%	3	25%	2	17%	12	100%
Samuel Whitbread (1810-1814)	23	74%	7	23%	1	3%	31	100%
Richard Stileman (1819-1836)	0	0%	1	100%	0	0%	1	100%

Sources: WRO CR0103, CBS, D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, WSHC 383/955, BL Add MS 76337, BL Add MS 76340, NRO Th1681, Cirket (ed), *Samuel Whitbread's Notebooks*, WSHC 229/1, ESRO AMS 6192/1. There are no settlement examinations in Thomas Netherton Parker's notebook (SA 1060/168-70).

Appendix 6: The action taken in cases involving offences against the person, where recorded, by individual magistrate.

	Discharged		Summary action		Further action		Total	
	Number	Percentage	Number	Percentage	Number	Percentage	Number	Percentage
William Bromley (1685-1706)	0	-	1	17	5	83	6	100
Roger Hill (1689-1705)	0	-	2	12.5	14	87.5	16	100
William Brockman (1689-1721)	1	5	2	11	16	84	19	100
Thomas Thornton (1700-1718)	0	-	0	-	3	100	3	100
William Hunt (1744-1749)	71	80	6	7	12	13	89	100
Thomas Horner (1770-1777)	38	54	10	14	22	32	70	100
Edmund Waller (1773-1788)	14	78	1	6	3	16	18	100
Thomas L. Thornton (1789)	1	25	2	50	1	25	4	100
George Spencer (1789-1794)	3	37.5	0	-	5	62.5	8	100
Thomas N. Parker (1805-1813)	75	65	19	17	21	18	115	100
Samuel Whitbread (1810-1814)	23	50	15	33	8	17	46	100
Richard Stileman (1819-1836)	2	100	0	-	0	-	2	100

Sources: WRO CR0103, CBS D-W/97/8, BL Add MS 42598, BL Add MS 42600, NRO Th1679, Crittall (ed), *The Justicing Notebook of William Hunt*, McGarvie (ed), *The King's Peace*, CBS DC18/39/4, NRO Th1681, BL Add 76337, BL Add MS 76340, SA 1060/168-70, Cirket (ed), *Samuel Whitbread's Notebooks*, ESRO AMS 6192/1. There is no action recorded for any of the assault cases in either WSHC 229/1 or WSHC 383/955. Discharged includes cases dismissed or agreed. Summary action includes fines, committals to House of Correction and orders. Further action includes recognizances and indictments.

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