Key Writings on Subcultures 1535–1727

Classics from the Underworld

Volume I

The Elizabethan Underworld:
A Collection of Tudor and Early
Stuart Tracts and Ballads

Edited by
A. V. Judges

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Volume II
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By Richard Head and Francis Kirkman

Volume III
A Complete History of the Lives and Robberies of the Most Notorious Highwaymen, Footpads, Shoplifts & Cheats of Both Sexes
By Captain Alexander Smith, Edited by Arthur L. Hayward

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A General History of the Robberies and Murders of the Most Notorious Pirates, From their First Rise and Settlement in the Island of Providence to the Present Year
By Captain Charles Johnson, Edited by Arthur L. Hayward

Volume V
Lives of the Most Remarkable Criminals, who have been Condemned and Executed for Murder, the Highway, Housebreaking, Street Robberies, Coining and Other Offences
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THE ELIZABETHAN UNDERWORLD

A collection of Tudor and early Stuart tracts and ballads telling of the lives and misdoings of vagabonds, thieves, rogues and cozeners, and giving some account of the operation of the criminal law

The Text prepared with Notes and an Introduction by

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Professor of the History of Education
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With 20 Illustrations

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(An asterisk denotes that portions of the original have been omitted.)

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But now I demanding alms from door to door for God's sake, I found little remedy, for charity had then ascended up to heaven.

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From hunger and cold who lives more free,
Or who more richly clad than we?
Our bellies are full, our flesh is warm,
And againſt pride our rags are a charm.
Enough is our feaſt, and for to-morrow
Let rich men care, we feel no sorrow.

RICHARD BROME, *A Jovial Crew,* Act. I.

Falstaff. Why, Hal, 'tis my vocation, Hal; 'tis no sin for a man to labour in his vocation. 1 *Henry IV,* Act I, sc. ii.

Clown. Nay, look you here. Here's one that for his bones is prettily ſtuffed. Here's fullams and gourds; here's tall men and low men; here trey-deuce-ace; passage comes apace.

Nobody and Somebody (c. 1592).

Spiegelberg. How you will ſtare! How you will open your eyes! to see signatures forged; dice loaded; locks picked, and ſtrong boxes gutted;—all that you shall learn of Spiegelberg! The rascal deserves to be hanged on the firſt gallows that would rather ſtarve than manipulate with his fingers.

SCHILLER, *The Robbers,* Act I, sc. ii (trans. Bohn.)

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PREFACE TO THE SECOND EDITION

AFTER going out of print in 1934, this collection of material, which deals with life on the criminal fringe of a society already famous for us in the inexhaustible gusto of its other literary manifestations, comes back into circulation. The first edition, as I must now gratefully acknowledge, was set elegantly in type by a printer who indulged my every whim. A few slips and misprints have now been dealt with ; otherwise the new edition has called for little change. Thus the dubious etymology of the thieves' vocabulary has been left alone. Precision in scholarship is by no means compatible with the modernization of spelling and punctuation ; and it was not surprising that I ran into difficulty with the need for uniformity in the handling of a large number of cant expressions which offered no pretence at regularity in the originals.

The apology previously made for the inclusion of portions only (in some cases) of scarce tracts has to be repeated. I have thought of them all as social documents and have treated them accordingly. The purpose is not to make available definitive texts of early English ephemeral prints, but to reproduce as broadly as a single volume will allow the literary texture—much of it a kind of journalistic *collage*—assumed by the discovery by the Elizabethan age of the manners and customs of the rascals and tricksters who profited from its weaknesses.

A. V. JUDGES.

April 1964.

GYPSIES ON THE MARCH (Fifteenth Century).

INTRODUCTION

§1

IT is not always the social historian's good fortune to discover among the principal sources for his subject a body of material in which are combined the qualities of romantic fiction and close observation. And when this occurs he hardly knows whether to congratulate himself after all. For while it is satisfactory to be able to gather together the sweeping generalizations of those contemporary writers who were conscious of the existence of a social problem, and to savour the atmosphere of their discussions, the topics may have become too exciting both to themselves and their public for them to be able to restrain their imaginative impulses.

In their studies of rogue life and behaviour, the pamphleteers of the Elizabethan period broke several of the rules which ought to govern scientific observation. And such has been the literary success of their achievement that we love them for it. Who, after all, will presume to quarrel with a man who turns a reforming tract into a novel, even when he so far forgets himself as to exalt the character of the intended villain?

The tendency in literary criticism has been, on the whole, to overlook the historical value of these descriptive writings. Historians themselves have hardly glanced at them; and this is all the more surprising when we look back at the efforts of the great literary editors of the last two generations, men with the zeal and ability of Halliwell-Phillips, Grosart and Furnivall, to kindle a general interest in the low-life literature of the Elizabethan and Jacobean ages, and in particular to call attention to the wealth of material throwing light on the manifestations of crime, poverty and vagrancy in those spacious times. The administrative aspects of the poor law have, indeed, been subjected to close study. But when the uninstructed student sets out to gather information on the conditions of slum life within the towns, the system of criminal justice and the whole field of penal administration, including police activity and prison management, it is only to discover that there are

large provinces of the social commonwealth of sixteenth and seventeenth century England that still await conscientious exploration.

This introductory essay makes no pretence to undertake so ambitious a project, and is offered merely to assist the reader to understand the background of the tracts and ballads in the light of our present knowledge of the times. Of the writers themselves, I have put what could conveniently be said within small compass into the notes at the end of the volume.[1]

The works here printed are those which I believe to be the most instructive among writings of their kind. In making the selection I was not unprepared to be influenced by considerations of readability and literary quality. Fortunately, no serious conflict as between the different criteria presented itself, and one can gain as genuine pleasure from the easy forthright styles of Harman and the author of the *Manifest Detection*, as from Greene's economically worded pen paintings and Dekker's golden sentences.

The authors of our tracts did not invent their subject, or even go out to seek it. It thrust itself upon them, as it did upon all intelligent and spirited observers. Moreover, most of them were men of experience. Copland had walked the streets as watchman within his London ward, and doubtless served his turn as constable; Harman had been on the commission of the peace in Kent, and his official dealings with his "rowsey rakehells" were many and varied; Greene, according to his own account, drifted into the society of London's underworld and learnt its tricks; Dekker found his natural playground as a youth in the streets and markets of the City; Fennor, though not himself a jail-bird, rubbed shoulders with the most unfortunate of his fellow-beings while waiting for release from a debtor's prison.

§2

Among the conclusions upon the matter of vagrancy and lawlessness made by sixteenth century writers, two seem to stand out as principal: first, that unemployment, extreme poverty, reckless, unsocial behaviour, organized robbery, are not phenomena common to all stages and periods of society, but have definite remediable causes here and now; secondly,

[1] Much useful comment and criticism will be found in F. W. Chandler, *Literature of Roguery*, vol. I, F. Aydelotte, *Elizabethan Rogues and Vagabonds*, *The Cambridge History of English Literature*, vol. iii, ch. 5, vol. iv, ch. 16.

that unless measures—the publicist usually has his own recipe—be promptly taken, anarchy and rebellion will destroy the commonwealth. There are times when we are almost persuaded that the valiant beggar is the uncrowned king. And when we turn from tracts and memorials to acts of government, the conviction is scarcely lessened. Vagrants and suspicious persons found idly amusing themselves in a place in which they had no home or stake, were treated as enemies of the community. They were of a class ; they were feared, detested, pounced upon, scourged and pilloried ; they were often ruthlessly destroyed. And still they came, tramping singly or in groups along the country highways, sneaking into barns and hovels on the fringes of the towns, adapting themselves to city life to swell the ranks of the criminal classes of London, Exeter, Bristol and Norwich, everywhere unsettling the common folk, and disturbing the conventions of an orderly régime.

Whatever exaggeration we may discover in panicky appeals for rigorous deeds, or read into official acts and regulations, it is clear that a problem of the first magnitude did exist, not only in the minds of justices and legislators, but also in actual fact. All accounts affirm that the number of beggars was prodigious ; thieves abounded everywhere ; and in the unruly north their bands were still a menace to the villages after the borderland ceased to be a frontier.[1] Figures giving the numbers of beggars and masterless men, and estimating the gallows' harvest of thieves are not lacking ; but few can be accepted without criticism,[2] so that quantitative judgment must be reserved until further work has been done upon the sessions rolls. The remarks of an Italian visiting England at the end of the fifteenth century are often quoted. In spite, he says, of the severe laws and the extensive powers of the magistracy, " there is no country in the world where there are so many thieves and robbers as in England ; insomuch that few venture to go alone in the country, excepting in the middle of the day, and fewer still in the towns at night, and least of all in London ".[3] Twenty years earlier Chief Justice Fortescue had a similar comparison to make. " There be . . . more men hanged in England in a year for robbery and manslaughter than be hanged in France for such manner of crime

[1] *Acts of Privy Council*, 1615-16, 235-6.

[2] 72,000 rogues, etc., during Henry VIII's reign (or the last two years of it), Harrison, *Description of England*, ed. Furnivall, *Elizabethan England*, 246. Three or four hundred hanged each year, Ibid. 13,000 masterless men apprehended in searches of 1569, Strype, *Annals* (1824) I, ii,346. 10,000 reported to be still at large, c. 1577, Harrison, *op. cit.*, 127. Beggars in London estimated at 1,000 or more in 1517, Aydelotte, *Eliz. Rogues*, app. A1 ; at 12,000 in 1594, *Ibid*, 4. (Author discusses value of the figures.)

[3] *Italian Relation of England*, Camden Soc. (1847), 34.

in seven years. There is no man hanged in Scotland in seven year together for robbery; and yet they be oftentimes hanged for larceny and stealing of goods in the absence of the owner thereof."[1] Robbers are recruited from the ranks of those who have fallen into poverty, he remarks; as much, or more, destitution can be seen in France, but the people of that country have not the heart for violence or sedition. Both these writers speak of a time when conditions in England were still unsettled in consequence of the civil wars, when forcible entries and the bribing of sheriffs and juries were so common as scarcely to excite remark. And it may be objected that a truer picture could be obtained some years later when the " Tudor despotism " had been accepted after trial. Now it is precisely at the moment when Tudor efficiency and strong government commenced to bestow their benefits on England in other departments of public life that the figures of Autolycus and his disreputable associates are said to have begun to stalk the land.[2] The larger towns energetically organized systems of poor relief, and were followed at a discreet interval by the state; new vagabond acts appeared on the statute book; composers of tracts, following More's example, sought for the roots of unemployment and destitution; commissions enquired into the depopulation of rural areas; country justices were ordered to look to the matter. When it is recalled that in other European countries during this period similar difficulties were faced by the authorities, and, insofar as poor law regulation was concerned, similar measures were adopted[3], we are forced to the conclusion that the improvements in the government of town and state in the early sixteenth century accentuated an existing problem by causing men to set up higher ideals of public order and security. It was then only necessary that local causes should produce obvious, if but momentary, dislocations of the economic structure of society, for observers to be spurred into noticing the wide interval between the reality and their ideal, and into taking action accordingly. This interpretation seems to fit most of the facts in England, even if it cannot be so closely applied elsewhere.[4]

[1] *Governance of England*, ch. xiii.

[2] e.g. Harrison (c. 1577): " It is not yet threescore years since this trade [vagabondage] began," *op. cit.*, 127. And see Ashley, *Economic History*, I, 351ff.

[3] For Germany, Flanders, Switzerland, see Ashley, *op. cit.*, I, 340ff., also F. R. Salter, *Early Tracts on Poor Relief*; for France, S. and B. Webb, *English Poor Law History*, I, 33ff., A. Chevalley, *Thomas Deloney, le Roman de Métiers*, 215, and the same author's edition of *La vie généreuse des Mercelots*.

[4] On the nature of the new social idealism of mid sixteenth-century England, in some sense a reaction to medieval ways of thought, see J. W. Allen, *Political Thought in the Sixteenth Century*, chap. 3, " The Very and True Commonweal."

We know, of course, that many exacerbating causes of dislocation were active; and they would have been prominent enough in the history of the period had there been no publicists to bring them to our notice. Discharged retainers and serving-men, flung off by their employers when convention, if not necessity, called for the partial disbandment of the military personnel of the great households, made effective additions to the ranks of roguery. Servants of all descriptions seem to have found the vagrant's life an attractive one.

> *Cook.* The truth is, except the coachman and the footman, all serving-men are out of request.
>
> *Gnotho.* Nay, say not so, for you were never in more request than now, for requesting is but a kind of begging; for when you say, "I beseech your worship's charity", 'tis all one as if you say, "I request it"; and in that kind of requesting I am sure serving-men were never in more request.[1]

The poorer servants of the state were also subject to vicissitudes of fortune. Inadequate provision for discharged soldiers left these turbulent and demoralized men to fend for themselves, and they frequently took the easy course. Such penniless vagrants were doubly dangerous; for unused, as many of them were, to the arts of peace, it was difficult to find means of assimilating them; and with their military training in mass discipline they responded readily to the invitation of any robber leader who could offer pillage. At the conclusion of each foreign campaign the troubles recurred. The homes for heroes were not in evidence[2]; the men were not apprenticed to any craft or skilled in husbandry; and so, set adrift at Plymouth or Southampton or some other port with a few shillings of discharge money, they either moved singly across the country with no definite objective, or proceeded in companies to one of the bigger towns, seeking to gather spoils by beggary or arms. On one occasion, at least, London was threatened with something like a siege. The expedition taken by Norris and Drake to Portugal in the summer of 1589, soon came back after having suffered great loss of life, and with no success to its credit. The returning soldiery was landed on the south coast. Each man kept his arms and uniform, and these he was expected to sell to make up the deficit in his pay. When large numbers of them drifted up to London, and a band

[1] Middleton and Rowley, *The Old Law* (1599), III, i.

[2] See quotation from *Grievous Groans for the Poor* (1622) in Eden, *State of the Poor* (1797), i, 154-5; S. and B. Webb, *English Poor Law History*, I, 80. It must not be thought that the returned soldier without means was a novel portent. He was a familiar problem to the authorities in the fourteenth century: Abram, *English Life and Manners in the Later Middle Ages*, 97.

of five hundred threatened to loot Bartholomew Fair, martial law was proclaimed. Two thousand City militiamen were called out on one occasion to scatter a horde which was menacing the capital. A proclamation of 24 August threatened all mariners, soldiers and masterless men who did not procure passports to their homes within two days with summary execution. It was at least six months before the panic abated.[1]

It seems probable that most of the beggars of the more redoubtable kind began their lives as soldiers, sailors or retainers. These, together with the " wild rogues ", or men born in the profession, and a sprinkling of " young shifting gentlemen, which oftentimes do bear more port than they are able to maintain ", formed the backbone of the ragged army, and insofar as it possessed any organization at all, they provided the nerves and sinews. They were feared by gentry and common people alike, because they had courage, resource and versatile talents, had often too a good address and plausible appearance, and knew how to stir up trouble in a district when it served their purpose. Joseph Hext, one of the Somerset justices, wrote a long account to a member of the Privy Council in 1596, describing the terrorism exercised by these people in his own county, where local juries, out of sympathy or fear, refused to bring indictments against them.

> I do not see how it is possible for the poor countryman to bear the burdens duly laid upon him, and the rapines of the infinite numbers of the wicked wandering idle people of the land ; so as men are driven to watch their sheep folds, their pastures, their woods, their cornfields, all things growing too too common. Others there be (and I fear me emboldened by the wandering people) that stick not to say boldly they must not starve, they will not starve. And this year there assembled eighty in a company, and took a cartload of cheese from one driving it to a fair, and dispersed it amongst them, for which some of them have endured long imprisonment and fine by the judgment of the good Lord Chief Justice[2] at our last Christmas sessions ; which may grow dangerous by the aid of such numbers as are abroad, especially in this time of dearth ; who no doubt animate them to all contempt both of noblemen and gentlemen, continually buzzing into their ears that the rich men have gotten all into their hands and will starve the poor. And I may justly say that the infinite numbers of the idle wandering poor and robbers of the land are the chiefest cause of the dearth, for, though they labour not, and yet they spend doubly as much as the labourer doth, for they lie idly in the ale-houses day and night, eating and drinking excessively. And within these three months I took a thief, that was executed this last assizes, that confessed unto me that he and two more lay in an ale-house three weeks in which time they ate twenty fat sheep, whereof they stole every night one, besides they break many a poor man's plough by stealing an ox or two from

[1] *Acts P.C.*, xvii, xviii, *passim* ; Cheyney, *Hist. of England from the Defeat of the Armada*, i, 183-5 ; Sharpe, *London and the Kingdom*, i, 547.

[2] Sir John Popham. See p. 507, note 1.

> him. . . . I may justly say that the able men that are abroad seeking the spoil and confusion of the land are able, if they were reduced to good subjection, to give the greatest enemy her Majesty hath a strong battle; and as they are now they are so much strength unto the enemy; besides, the generation that daily springeth from them is like to be most wicked.[1]

The "upright-men" and "valiant beggars" commanded the respect of the other vagrants, and sometimes also their womenfolk and chattels.[2] There were, of course, large numbers of wanderers who lacked their ability and hardihood, professional beggars in the sense that they had no other means of regular subsistence, but harmless creatures many of them, who had taken to the vagrant life through misfortune. They had been turned out of their small tenement, perhaps, or become unsettled during one of the industrial depressions which caused unemployment in the clothing areas in 1528 and at recurring intervals until the long industrial decline in the last years of James I. It is impossible to estimate what percentage of the whole these martyrs to progress comprised; but it seems not unlikely, judging from the efforts made by English statesmen to prevent too rapid a revolution in the technique of farming and the forms of textile production, that throughout the whole period covered by the writings in this book the ranks of the unemployed wanderers were reinforced by a steady trickle of men and women somehow or other "left out" of the economic system.

Much has been written about the enclosing of fields, of the changes in farming methods, and of the uncharitableness of landlords, in their reactions upon the fortunes of the common folk. And it is noteworthy that it is during the years which see the enclosure of common lands and the conversion of arable fields to sheep pasture[3] bringing about the depopulation of considerable areas, that the greatest outcry against innovation is heard[4]. Revolutions in method such as these might, and certainly did, proceed unheard of when circumstances were favourable to the noiseless adjustment of the social mechanism. At other times the outcry was so vigorous that the incautious might easily be persuaded that catastrophic changes were in progress. It cannot safely be said even approximately how many small farmers and cottagers were com-

[1] Tawney and Power, *Tudor Economic Documents*, ii, 341-4.

[2] See below pp. 71-2, 105, 107.

[3] "Etranges et pourtant éternelles interdépendances de la littérature avec la vie économique: le roman picaresque en Angleterre et l'élevage du mouton ne sont pas sans rapports!" A. Chevalley, *op. cit.*, 213.

[4] Enclosure commissions made enquiries into depopulation in 1517-19, 1548, 1566 and 1607. For a discussion of sixteenth century views upon agrarian change, and an account of its social effects, see R. H. Tawney, *The Agrarian Problem in the Sixteenth Century*.

pelled to leave their homes and start life afresh. One authority conjectures that the total number of displacements within the large area of central and southern England chiefly affected by the enclosure movement during our period was somewhere between thirty and fifty thousand souls.[1] This would give an average of two to three hundred a year. But we know that more than once within the space of a very few years the processes of eviction and displacement were accelerated, and that in certain cases whole villages were depopulated almost at a blow. It was not inevitable even then that the homeless peasantry should volunteer *en bloc* for the life of the roads. The industrial towns would absorb a small proportion, although the effort required to break down a local labour monopoly was always a considerable one; others might settle down as artisans in one of the loosely spread manufacturing communities of the country districts, which were encroaching on the exclusive rights of the town producers; a very few might acquire farmsteads elsewhere. The greater number in all likelihood simply squatted on a convenient stretch of waste, that is to say, they erected hovels or cottages on uncultivated land and resisted efforts at removal by the local authorities until they had established a sort of prescriptive right to be left alone.

Upon the less fortunate of these squatters and the homeless residue the diligent enquirer must fix his regard. It was a truism among composers of local government memorials that the chief nurseries of vagabondage, disorder and vice were to be found in the colonies of shacks and huts erected without licence on the commons, and in the isolated tippling houses, which occupied the same place as a social centre in the lives of the squatters as church and tavern did in the orthodox and respectable village community.

Before we turn to the administrative devices which a sorely troubled society erected or improved in the attempt to check the evils lightly touched upon above, reference must be made to two vagabond classes which have so far escaped mention. These are the decayed clerics, together with pseudo-clerics, and the gypsies. Neither group occupies a prominent position in the discussions of our pamphleteers, but it will not be out of place to bring together some of the fragmentary information which bears upon their doings.

In the first four decades of the sixteenth century the country roads were traversed and made picturesque by the figures of itinerant friars, pardoners and proctors. Upon the quality of the first of these it would

[1] Professor Gay's calculations. See discussions upon the value of the available statistics by A. H. Johnson, *Disappearance of the Small Landowner*, and R. H. Tawney, *op. cit.*

be rash to generalize. There were friars good and bad; men who earned the charity they begged, and worked hard to retain for their orders some of the popularity gained by the pious work of their predecessors; and men also against whom nothing too vile could be said. On the whole it may be affirmed that the friars were taking more out of the community than they were giving in return, and that the portraits painted a century before by Chaucer and Langland might be adapted with little modification to the majority of the friars with whom the public were now brought into contact. At length they passed out of sight—unpitied and unregretted, with the noble exception of those who elected to face the martyr's road to Tyburn gallows. When the suppression of the friaries was as yet unaccomplished, Clement VII sent a message to Wolsey urging moderation, but rather out of apprehension of tumult than from hope of reformation, for " they be as desperate beasts past shame that can lose nothing by clamors ".[1]

The pardoners too, a disreputable, shifty crew, received no mercy at the hands of the Reformation Parliament. Their livelihood ceased; their trade became an official category of vagrancy in England; and, as if in refutation of any suggestion that the severity of the English government towards them was a vulgar piece of Protestant display, the Council of Trent in 1562 banished the profession from Christendom for ever on the grounds that " no further hope can be entertained of amending " their ways. Pardoners, the English countertype of the indulgence-brokers who moved uneasily through the limelight of the first Reformation controversies in Germany, seem sometimes to have been confused here with proctors, i.e., collectors of charitable subscriptions. And not unnaturally; for promises were made by hospital collectors and others on similar missions which partook of the spiritual comforts offered by the Romish indulgence-sellers, and were exploited with more or less success according to the gullibility of the subscribers and the remoteness of the proctor from the controlling hand of his superiors. Although this kind of licensed begging was frowned upon by the authorities because of the abuses to which it gave rise,[2] the trade of the proctor and his impersonators did not cease to be profitable until long after the Henrician legislation. The king himself in 1544 gave instructions that collectors bearing his licence should seek alms of the charitable in churches, provided always that the said " collector nor his

[1] A. F. Pollard, *Wolsey*, 183, citing *L. P. Henry VIII*, 610. See too Abram, *Social Life in Fifteenth Century*, 114; Coulton, *Five Centuries of Religion*, Vol. II.

[2] See pp. 54, 81-2 below.

said deputy do not in any wise declare, show, or set forth any pardons or indulgences granted by the Bishop of Rome, or by colour or virtue of the same . . . take any money, alms ", etc.[1] And the practice was certainly allowed to continue until 1596 when we find Hext complaining bitterly of the " lewd proctors which carry the broad seal and the green seal in their bags " as a cover for their real trade of receiving stolen goods[2].

Proctors were not of necessity clerics. It would be safe to say that after the breach with Rome most of them were not. Whatever may have been the effect of the Reformation settlement on the general character of the parish clergy, it did unquestionably draw a harder line between ecclesiastical and lay vocations, and made a clean sweep of the borderland of minor orders which we are given to believe, had harboured many suspicious characters[3]. The precise effects upon beggary and thievery produced by the suppression of the monasteries have been a matter of argument ever since Cobbett advanced his thesis that the Reformation closed the door on a merry and contented England and forced the Tudor government to dragoon the poor. The question resolves itself into two parts. Did the cessation of monastic doles create a new vagrancy problem? Did the closing of the religious houses aggravate that problem by turning out numbers of the religious on to the roads to swell the ranks of those whom they had once comforted?

The answers which have been offered to the first part of the question have shown wide disagreement. It has been argued that the conventual foundations had checked destitution and crime by a humane and justly balanced system of poor relief. It has been claimed both by sixteenth century controversialists and by later writers that the alms giving of the monks, far from allaying mendicancy and its evils, positively created them by its indiscriminate nature. A third view, which is likely to hold the field for some time to come, is that the charity which was being dispensed as monastic alms on the eve of the dissolution was too small in amount to affect the situation one way or the other. According to the *Valor Ecclesiasticus*, the tenth-free alms (i.e., charities and doles given under the conditions of endowments) " constituted less than three per cent.[4] of the monastic budget, and most of these represented food for the poor on certain holidays and commemoration days ".

[1] Harl. MSS. 364, fo. 22, cited Aydelotte, 24-5; *A Supplication of the Poor Commons* (E.E.T.S, *Four Supplications*, 1871), 89.

[2] Tawney and Power, *Documents*, ii, 343.

[3] Benefit of clergy continued, but did not necessarily imply being in orders.

[4] Say £4,000 as an outside estimate.

" It is very difficult to believe ", continues Dr. Savine in his survey of the social activities of the monks[1], " that the taxed alms greatly exceeded the amount of the alms which were tenth-free." It has been calculated that the English monastic houses had an average distribution of one to every sixty square miles of the area of the country, " probably not as many as there were Hundreds, but slightly more than there now are of Petty Sessional Divisions "[2]; they were not distributed upon the map according to the material needs of the people, and while some could give assistance to the extent of 30*s.* to 40*s.* a week, there were many others whose own income from all sources did not exceed the former amount. It can only have been at the kitchen doors of a few of the larger houses that scenes of riot and waste occurred. In such cases the abrupt displacement of the easy-going, if not overwhelmingly generous, occupants of the monastic buildings by a lay owner of the speculative land-agent type must have come as a blow to the customary recipients of the crumbs of good cheer, and caused heightened activity upon the roads. As a general rule, however, the social consequences of the suppression were slight.

But what of the dispossessed? Did not the greedy monarch take their fat lands and pleasant cloisters unto himself, and reap a large fortune from their disposal? He did, it is true. That is to say, he took the whole, and returned a part, in the form of an extension of secular endowments and a scheme of pensions for those expelled religious who were put on the waiting list for livings. The proportion returned to the beneficiaries may not have been a generous one,[3] but it was sufficient to provide against the extreme poverty which would have driven men to beggary. Even the friars, whose lack of worldly endowments precluded the creation of a pension fund, were accommodated somehow.[4]

One class among those who suffered were the monastic servants, in whom none of the scholars investigating the circumstances of the dissolution have shown much interest. While the old employers were slipped into bishoprics, cathedral chapters and country livings, there is no record of anything that was done to secure livelihoods for the personal valets, bakers, brewers, butlers, laundry-workers, cellarers, gardeners,

[1] *English Monasteries on the Eve of the Dissolution*, 265.

[2] Webb, *English Poor Law History*, i, 16.

[3] Mr. G. Baskerville in a paper contributed to *Essays in History presented to R. L. Poole*, 436ff., argues from a close examination of the individual fortunes that the recipients did quite well under the circumstances.

[4] Baskerville, *loc. cit.* It can hardly be doubted that the monastic dissolution had an indirect effect on the vagrancy situation by the hastening of enclosures and of the processes of eviction in certain areas.

and the rest of the army of subordinates which had waited on the monks. It would be interesting to know what proportion of them turned from their respectable careers to lives of lawlessness and deceit. Dr. Aydelotte speaks of the homeless monks who " swelled still further, after the dissolution of the monasteries, the ranks which they had helped to maintain before ". It would be nearer to the truth to say that any augmentation was due to the presence of domestic and garden retainers whose services were no longer required by the grantees of surrendered lands.[1] None would be less unwilling than these to spread disaffection on their travels.[2]

Of a very different quality were " the wretched, wily, wandering vagabonds calling and naming themselves Egyptians "[3], the effect of whose example upon true-born Englishmen the Tudor government was so anxious to check. They puzzled contemporaries even more than their successors puzzle us to-day. The early history of the gypsy race after the migration from India a thousand years ago has largely been reconstructed by the investigations of philologists. The true European gypsy seems to share a common ancestry with the *dom* of modern India, a vagrant " of low caste who gains his livelihood by singing and dancing ". The tribes accepted loan-words on their travels, passing first into Persia, where the " European " bands (the *Phen*) parted company with the " Asiatic " (the *Ben*) in the tenth century. Then the northernmost group entered Armenia, and moved onward towards the centre of the Byzantine empire, picking up such Christian names as Plato and Theophilus for their offspring on the way. Gypsies are found in Greece by the end of the eleventh century, men of the family of Ham, fortune-tellers and ventriloquists, " wandering and fugitive as though accursed by God ". The whole of the Balkan peninsula became a field for the exercising of their peculiar talents. But the advancing power of the Osmanlis, which overcame Constantinople itself in 1453, forced them onward. The *avant-garde* moved westward in 1417, reaching Hamburg

[1] Cardinal Gasquet puts the total number of dispossessed religious at about 8,000, " besides probably more than ten times that number who were their dependents or otherwise obtained a living in their service " [apparently excludes all tenants and labourers on agricultural estates], *Henry VIII and the English Monasteries*, 7th edn., 190. Dr. Savine is more cautious, and estimates the number of " monastic laymen " as four to five times that of the monks, i.e., about 35,000. See too R. H. Snape, *English Monastic Finances*, 12-18. We must not suppose that more than a small percentage took to the vagrant life.

[2] Burnet argues that the convicted clerks specially mentioned in the vagabond act of 1547 (1 Edward VI, C. 3) were chiefly ex-monks, *Hist. of Reformation*, 1865 edn., ii, 100. But the clause seems only to provide special procedure in the case of a man who can plead his clergy : he may not be in orders at all.

[3] p. 64 below.

before the end of the year. In 1419 gypsies were in France, in 1422 in Rome. The main body followed, and by 1440 western continental Europe was overrun.[1] The turn of the century must have witnessed the first invasion of the British Isles,[2] and we find that as early as 1530[3] Parliament begins to legislate with exceptional severity against gypsy vagrants, as thieves and fortune-tellers. Those who remain in the country are to suffer imprisonment and forfeiture of goods. Twenty-four years later a felon's death is substituted for imprisonment for "Egyptians and other persons commonly called Egyptians".[4] But those who prefer the pursuit of an honest calling to banishment or death are free to abandon the wandering life without fear of injury from the state. The Tudor legislators appear to have been troubled by the existence of native-born men and women who pretended to be gypsies and assumed the name and costume of the tribe. That the bands of Egyptians attracted to their ranks men and women of English race in any considerable numbers is to be doubted, although cases are on record. There seems as yet to have been little of the pseudo-gypsydom which we know to-day. But was a gypsy of a new generation, born in England still an Egyptian? Technically, no. He was an Englishman. As such he may well have been able to avoid the penalties of the law. Troubled by this obstacle to the enforcement of the gypsy statutes, Parliament in 1562 tried to make the position clear by enacting that any man consorting with Egyptians and counterfeiting their speech and behaviour should be apprehended as a felon.[5]

The attractiveness of these people in the eyes of the wonder-loving countryfolk was enhanced by the "strangeness of their attire and garments". Dr. Andrew Borde, the first English man of letters to provide an informed discussion on their manners and language, wrote in 1547: "The people of the country [Egypt] be swart and doth go disguised in their apparel contrary to other nations. They be light-fingered and use picking; they have little manner and evil lodging, and

[1] An interesting account of the early wanderings of the gypsy tribes, based on linguistic study, was given in a paper by Dr. John Sampson at the 1923 meeting of the British Assn. It is reprinted in the *Journal of the Gypsy Lore Society*, 3rd ser., ii, 156ff.

[2] But there was a tradition that they were known still earlier in Scotland under the name of Saracens, *N. and Q.*, 5th ser., ix, 511.

[3] 22 Henry VIII, c. 6.

[4] 1 and 2 Philip and Mary, c. 4.

[5] 5 Eliz., c. 20. It is generally thought by philologists, following Borrow, that few of the cant words of the sixteenth century had any connection with Romany expressions. But on the words *ken, lour* and some others see J. Sampson in a letter dealing with Henry Bradley's *Collected Papers*, in *Times Literary Supplement*, 21 June, 1928.

yet they be pleasant dancers ".[1] They danced for the villagers in the clothes they habitually wore, dressed like princes of Egypt, with wonderful head-coverings embroidered in gold. Caps such as these were worn in 1510 by mummers at court. Skelton's Elynour Rummynge (1517) has " clothes upon her head that weigh a sow of lead . . . like an Egyptian capped about, when she goeth out ". Rich clothes and rags surmounted by a cloak worn toga-fashion, hung about them in a fantastic medley, astonishing beholders of the big parties of men and women, many of them mounted on one beast, which moved along the country tracks.[2] Dekker, always equipped with curious information, describes the women as wearing " rags and patched filthy mantles uppermost, when the under-garments are handsome and in fashion ".[3] Trustworthy evidence as to their habits is hard to obtain. Neither Dekker nor Rid[4] appears to have first-hand knowledge of the people he describes. That they were feared by the authorities there is ample evidence to show. Parliament passed savage acts with the object of annihilating their bands, country justices sent in anxious letters to the Council, and all over the country village constables and churchwardens gave sixpences and shillings to gypsy leaders with Romany names such as Hearn and Gray and Jackson[5], as bribes to " avoid the parish ". Can it be that these groups of vagrants were able to resist attempts to break them up because the common people had accepted them, fowl-stealing and all, for the sake of their head-dresses and their dancing and their strange knowledge of good and evil ?

§3

It is not proposed to consider in detail the numerous exotic types of the urban underworld. The elaborate classifications presented by Dekker and other writers in the tracts included in this volume give a far more vivid picture of the life of the City's shady characters in street and ordinary and brothel than can be expected from any modern pen. It would not be correct, moreover, to think of the lower ranks of these City specialists as in any wide degree distinct in origin from the common

[1] *First Book of the Introduction of Knowledge*, of which chapter 38 is reproduced in *J.G.L.S.*, N.S , i, 163ff.

[2] See H. T. Crofton in *ibid*, ii, 207ff.

[3] p. 345 below.

[4] *Art of Juggling* (1612): see note by H. T. Crofton in *N. and Q.*, 5th ser., ix, 511.

[5] J. C. Cox in *Derbyshire Archaeological Soc. Trans.*, i, 36, 39; T. W. Thompson in *Journal of Gypsy Lore Society*, 3rd ser., vii, 30. A considerable amount of scattered material in the pages of this journal now awaits the attention of the social historian.

vagrant. Many may have been London born; but their parents must often have been migrants. For it is a curious paradox of sixteenth century social development that the towns, although the home of the more revolutionary changes of the age—in commerce, industry and political thought—yet preserved in their organization a truer perception than did the countryside of the medieval ideal: a place for Everyman, and Everyman in his place. London, a law unto itself, may have possessed less than the normal endowment of the peculiar social consciousness of the corporate town, which was aware of each citizen's existence, his pedigree, his capabilities and his relations with his fellows. But even London's own children were labelled and ticketed from birth; they were known to their wards, and transgressed the laws of the community at their peril. Their birthplace had not yet reached proportions so vast that a Cockney might pass a day in the streets without meeting men and women who knew his name and circumstances. Immigrants were in a different case. They could lurk in the liberties without their existence being known, or camp out in a suburban slum, and no one the wiser. Need we be surprised that the authorities of both City and State firmly decided that London, like Alice, must be dissuaded by energetic measures from growing larger? And every child knows that Alice went on growing.

The civic counterpart of the sturdy beggar was but a species—with an infinite number of varieties—of the genus *rogue*. We may remark that men like Harman and his imitators, to say nothing of Acts of Parliament, found it natural to analyse their human material under division headings which declared the present activities of the specimens noted, whether wild rogue, hooker or angler, hedge thief or foist[1], and not according to the walk in life which had, or should have been, followed. This, perhaps, indicates the accomplishment of the most important change in the history of the status of English roguery. At some point since the beginning of vagrancy legislation in the fourteenth century (in pursuance of which local justices had held their courts and recorded the names of their victims against their forsaken occupations)[2], the picaro became a professional, a professor of one of the crafts or mysteries[3] odious to all right thinkers of the commonwealth. "We get the impression", say Mr. and Mrs. Webb, "as regards the hundred years that

[1] See the lengthy official catalogue in the vagabond act of 1572, 14 Eliz., c. 5, s. 5.

[2] B. H. Putnam, *The Enforcement of the Statutes of Labourers*.

[3] Notice the temptation, to which Greene and Rid succumbed, to equip the loose rogues' organisations with sets of rules, articles of indenture, etc.

succeeded the Black Death (1348-9), of a widespread dislocation of social relationships which amounted to an economic war."[1] Out of that struggle emerged the free companies of the English beggars. Boys and girls were born into roguery, and youths and young women drifted into it without ever learning the elements of husbandry or handicraft.

The significance of the change never seems to have occurred to those responsible for suggesting reforms. It was always tacitly assumed that reformation to a tidy, laborious, and maybe even virtuous, life could be accomplished by simple, if somewhat radical measures. Desperate individual cases were, of course, freely admitted to exist, and, it may be added, short work was needed to put an end to that existence. Where felony could not be proved, rescue work might partake of such variant devices as licensing to beg so that lost fortunes could be rehabilitated; savage whippings and mutilations to teach the virtues of the honest life; and the setting up of penitentiaries where the wild blood might be sobered quickly.

In this last order of treatment, which marks the first step in the development of the workhouse system of later days, there was at length manifested the genuine desire to reclaim by educating, reinforced by an equally strong belief that public services should where possible pay for themselves; and with the first recognition by the legislature of the need for houses of correction in 1575[2], the time has already come for the abandonment of faith in the mid-century penal provisions, which could be efficacious only insofar as they inspired terror in a notoriously hard-bitten section of the community.

It would be out of place here to trace with any closeness the development of poor law policy in its faltering progress from the acts of the Reformation Parliament to the administrative decrees of the early Stuarts.[3] It is sufficient to say that the lead was taken by those who came in closest contact with destitution, the corporations of the larger industrial towns. These experimented with various methods of indoor and outdoor relief and came to two general conclusions. The first practically forced itself into their decisions. Properly organized relief

[1] *English Poor Law History*, i, 26. The Webbs contrast the savagery of the fourteenth and fifteenth century governmental enactments designed to frighten the idle and vicious into taking work with the promiscuous almsgiving of private institutions, which was nothing but unmerited indulgence—the whole constituting "a monstrous policy".

[2] 18 Eliz., c. 3. It became obligatory in all counties in 1610: 7 James I, c. 4.

[3] See the illuminating summary in Tawney, *Agrarian Problem in the Sixteenth Century*, 266ff., and the results of Miss E. Leonard's close investigations in her *Early History of Poor Relief*.

methods in a congested area could not be conducted out of voluntary subscriptions; compulsory rating must be imposed. And so a new chapter in administrative history opened with the decision of the Common Council of London that from Michaelmas 1547, " citizens and inhabitants of the said City shall forthwith contribute and pay towards the sustentation, maintaining and finding of the said poor personages by the space of one whole year next ensuing the moiety . . . of one whole fifteen[th] ", and that weekly church collections should be discontinued.[1] The second conclusion touched the accommodation of the homeless poor. The ancient hospitals were usually inadequate even for the cherishing of the special cases they were designed to deal with, and the dissolution of collegiate foundations spelt disaster for many of them. What the more zealous of the municipal reformers now persuaded the authorities to accept was the principle that the town must assume complete responsibility for its own poor, feed them, house and discipline them (where necessary in a building provided for the purpose) and make plans for the education of the younger members of mendicant families. All beggars but those native to the town must be excluded from the system. The rules evolved by this process of reasoning in some cases went so far as to declare that no begging at all should be tolerated.[2]

Where local governments successfully found a way, the state laboriously followed. Groping after a form of compulsory assessment which might still preserve the colour of exhortation to voluntary works of pity, Parliament in 1563 enacted[3] that when a parishioner stubbornly refused to give the sum suggested by the collectors of a poor rate, and the bishop's remonstrances with him proved unavailing, he should be put under bond to meet the magistrates, who in their turn should charitably and gently persuade him. If this failed, he might go to prison. Two statutes[4] of the third decade of Elizabeth's reign made sundry changes, strengthening the compulsory character of assessment, defining the word " vagabond ", revising the penalties for those who merited this title, and for their reformation prescribing the adoption by towns and counties

[1] Guildhall Journal, xv, fo. 325b., printed Tawney and Power, *Documents*, ii, 305-6. Isolated instances of municipal rating occur, of course, earlier than this, but the amounts levied were trifling and the ends usually of a non-recurring nature. See E. Cannan, *History of Local Rates in England*, chaps. i and ii.

[2] See e.g. the case of Norwich, where there were said to have been more than two thousand beggars in 1570 on the eve of the inauguration of a new set of orders. Leonard, *op. cit.*, 101ff.

[3] 5 Eliz., c. 3.

[4] 14 Eliz., c. 5; 18 Eliz., c. 6.

of stocks of working materials and houses of correction respectively, "to the intent that such as be already grown up in idleness, and so rogues at this present, may not have any just excuse in saying they cannot get any service or work". In these enactments we have in all its important essentials the famous Elizabethan poor law which ruled the destinies of hundreds of thousands of poor people until the passing of the amending act of 1834. It assumed a somewhat gentler form in the legislation of 1597[1], which was in part reenacted with little change in 1601.[2]

In considering the growth of a national policy specially directed to the suppression of the more troublesome kinds of vagrants the investigator is apt to find his material intricately entangled with that relating to measures which concern a much larger body of men and women. The truth is that until the middle of the sixteenth century, about the time in fact when Harman was writing his *Caveat for Common Cursitors*, no very clear distinction was in practice drawn between different classes of persons seeking relief. One of the chief interest-bearing legacies of the policy enshrined in the early statutes of labourers was the assumption that unemployment itself was a kind of vice, practised only by those who challenged the prevailing order of society. Some men and women were obviously unfit for work. The rest must be driven back to it with the whip and the fear of the gallows, whether they were wandering workmen seeking to improve their condition or incorrigible rogues with no condition to improve. London, which led the way in the elaboration of municipal relief works, knew only two kinds of destitution as late as 1557 : "There is as great a difference between a poor man and a beggar as is between a true man and a thief"[3]—although five years previously beggary had been examined in its nature and manifestations and found to be practised by *three* distinguishable sorts, the "succourless poor child", the "sick and impotent" and the "sturdy vagabond".[4]

By degrees the principal corporate towns came to realize during the reign of Elizabeth that even if the erection of houses of correction for the last class was beyond their capacity, special provisions ought to be made for the relief and oversight of their own deserving cases ; and so we see the institution of industrial schools and apprenticeship schemes

[1] 39 Eliz., c. 3 and 4.

[2] 43 Eliz., c. 2.

[3] The Order of the Hospitals, qu. Leonard, *op. cit.*, 36.

[4] Petition to Privy Council, 1552, qu. Leonard, *op. cit.*, 32. The recognition of the hopelessness of mere beating had then forced the City to undertake the equipment of Bridewell as a "model" house of correction.

for the homeless child, new almshouses for the impotent, an organized out-relief for the harmless poor abiding in their own homes. For the most part the aldermen of England were content that the homeless able-bodied vagrant should continue to wander, so long as his itinerary excluded their own province of local government.

It may readily be imagined that the State, while approving and encouraging by special legislation the charitable works of towns and parishes, looked upon the problem of mendicancy from a somewhat different angle. Persuaded in the end to recognize the threefold classification of sturdy, impotent, and immature, it was naturally more concerned with a class of vagrants which menaced the public safety than with harmless folk who merely threatened the ratepayers' pockets. Charity for the deserving was a secondary consideration when compared with the need for spirited action against the impudent and seditious. How then were the sturdy vagrants to be disposed of? Even more important, how prevent their spontaneous generation in the uneasy foam of economic discontent?

The answer to the second question is to be found in the great body of social enactments within the appropriate volumes of the Statutes of the Realm, where may be discovered what is perhaps the most impressive documentation of any era of economic change in the source-books of history. " Throughout almost all the social legislation of the Tudor period we may see the England of the past erecting vain barriers against the England of the future ", remarks George Unwin in his admirable survey of economic conditions in Shakespeare's England.[1] To state the matter shortly, all that which was new and disturbing in agriculture and industry was discouraged, unless maybe it could pass through a net so designed that any innovation tending to greater differentiation between capital and labour, or likely to escape the paternal control of some superior authority, became entangled in the meshes. The governments of Elizabeth and James I, true to ancestral type, discouraged the extension of pasture-farming and the creation of large non-co-operative estates, because experience showed that such procedure uprooted men from their holdings.[2] They tried to strengthen burghal supervision over the textile industry, and looked askance at the growing prosperity of extra-mural enterprize for the same reason. And if grown men and women could not always be checked in their exploitation of the

[1] *Studies in Economic History*, 315.

[2] Thus an act of 1589 (31 Eliz., c. 7) forbade the letting of cottages to labourers with less than four acres of land attached.

new possibilities of an age of expansion, at least their children might be preserved from the virus of competitive enterprize. The means adopted were a strict enforcement of the apprenticeship laws, and a veto upon the employment of the children of peasants in the towns.[1] The act of Elizabeth which tightened the regulation of town apprenticeship declared also that countrymen without industrial qualifications and without lands of the yearly value of £10 should and must be retained to serve in husbandry by the year. Persons of any age within this category who had the temerity to leave their parishes without a testimonial from a police officer or two householders ran the risk of being whipped as vagabonds. Even labour-saving inventions in the cloth industry were open to suspicion as solvents of a regimented harmony among the producers, and were suppressed by the same authority which could approve the use of innovations in the rising glass and hardware trades.

§4

Turning from prophylactic medicine to the surgery of cure it is tempting to seek for the key principle of the Tudor vagrancy legislation in its whipping clauses. But this would be a mistake. Consideration shows that physical punishment, although popular with arm-chair enthusiasts, was after all a mere device employed in shepherding an unruly flock. The essential idea is embodied in the magic word " settlement ". Now settlement has a special technical meaning among local government officers. In the first place, it can be used only with reference to people who live below an arbitrarily fixed level of subsistence. In the second place, it conveys the idea that a poor person can only " belong " to one or perhaps two of a limited number of localities. In the third place, it is endowed with a selective power in determining which of those localities shall for poor law purposes be considered the right one. Most authorities are agreed that the English law of settlement did not attain its full vigour and flavour until the passage of " An Act for the better relief of the poor of this Kingdom " in 1662,[2] and some are of the opinion that that year saw its birth. What the act really did was to make it possible that any person who received relief or seemed likely

[1] The Statute of Artificers (1563, 5 Eliz., c. 4) declared for a uniform apprenticeship of seven years for all the higher mysteries, barred the entrance to them to all but the sons of burgesses and owners of freehold, and closed the occupation of weaver to " fully three-quarters of the rural population ".

[2] 13 and 14 Charles II, c. 12.

to be a burden on the rates in the future should be summarily removed from a parish in which he had not yet sojourned forty days, to the last place in which he and his family were deemed to have lived for a period of that length. And, indeed, as the Webbs point out, it affected the ability of every person in the country, other than those who were property owners of a certain estate ("numbering fewer than one-tenth of the population"), to seek work in a new place or even to pay visits to friends. This was certainly something new; but it was novel only inasmuch as it extended the principle of the sixteenth century vagrancy acts, and it may even be argued that already between 1572 and 1597 a strict reading of statute law would have sanctioned the extrusion from a parish of any unemployed person who had not established a three-years settlement there. As early as 1388, when the first passport regulations were laid down in Parliament, the principle of settlement received statutory recognition, and we need not look only at the national poor law to see it observed. The Statute of Artificers (1563) has already been mentioned as a codification of the previous provisions made against the movement of labourers and artisans without credentials, and as an attempt to check the movement of dissatisfied countryfolk into the slums of the towns. A similar tendency can be discerned in much of the other Tudor legislation.[1]

In pre-Reformation times, for reasons perhaps connected with the existence of monastic charity, the mere act of begging was not regarded as the serious crime against society which it grew to become in the eyes of a later generation. It was a bad business, but within reason it must be tolerated. Nearly two hundred years before the suppression of the religious houses it was made a misdemeanour to give alms to an able-bodied vagrant,[2] and at the same time it was ordered that a wandering man or woman refusing work should be put in jail until he or she thought better of it. The stocks were substituted in 1388,[3] and after a series of vagabond acts, which were seemingly neglected by the responsible officials, had failed to improve matters, a statute[4] of 1495 specified a detention of three days and three nights in the stocks. The City of London had for some time previously had its own special treatment for

[1] A bill was introduced into the House of Commons (but failed to pass) in 1621 to prevent any person with less property than would produce forty shillings a year from *coming to dwell* in a corporate town. *Hist. MSS. Comm.*, Rep. iii, 22; *Commons Journals*, I, 596.

[2] Ordinance of Labourers, 1349.

[3] 12 Richard II, c. 3.

[4] 11 Henry VII, c. 2.

beggars. The privileged few[1] pursued their calling under supervision, wearing official badges; the undesirables were expelled. Early in the sixteenth century the latter had the letter V (for *vagabond*) fastened on their breasts and were "driven throughout all Chepe with a basin ringing before them"; they were also beaten at the cart's tail and flung out of the gates.[2] This last barbarous punishment, already by ancient custom inflicted by the virtuous London aldermen upon bawds and other female undesirables, commended itself to the legislature when in 1531 it looked for a stronger deterrent for the valiant rogue. The ensuing act[3], which confirmed the common practice of licensing beggars within specified limits, was passed at the time when it is generally agreed that beggars became a public menace. We may here take the opportunity of printing a quotation from this characteristic Tudor beggars' act.

> . . . and be it further enacted . . . that if any man or woman being whole and mighty in body and able to labour having no land, master, nor using any lawful merchandize, craft, or mystery, whereby he might get his living . . . be vagrant and can give none reckoning how he doth lawfully get his living, that then it shall be lawful to the constables and all other the King's officers, ministers, and subjects of every town, parish, and hamlet, to arrest the said vagabonds and idle persons and to bring them to any of the Justices of Peace of the same shire or liberty . . . and that every such Justice of Peace . . shall cause every such idle person so to him brought to be had to the next market town or other place where the said Justices of Peace . . . shall think most convenient, . . . and there to be tied to the end of a cart naked and be beaten with whips throughout the same market town or other place till his body be bloody by reason of such whipping; and after such punishment and whipping had, the person so punished . . . shall be enjoined upon his oath to return forthwith without delay in the next and straight way to the place where he was born, or where he last dwelled before the same punishment by the space of three years, and there put himself to labour like as a true man oweth to do.

A second offence entailed the loss of one ear, a third offence the loss of that which remained.[4] It will be seen that the conventional three-years' settlement period is already established, but that no machinery yet exists for keeping track of the vagrants' movements while on the journey to the place to which he belongs. An act of 1536[5] gave more detailed instructions concerning the reception of the wanderer when he made his reappearance in his own parish, and offered a general indication of the classes of beggars, which might be deemed worthy of casual

[1] Perhaps *few* hardly gives the right impression. There were 1,000 badged beggars in London in 1517. Aydelotte, 61.

[2] Leonard, 25.

[3] 22 Henry VIII, c. 12.

[4] Section 4 of above act; applies to certain types of vagrant only.

[5] 27 Henry VIII, c. 25. All vagrants punished with the whip were to be given a certificate exempting them from further torment on the homeward march.

relief. At the same time no mitigation was made in the treatment of the able-bodied, whose third offence now became a felony to be visited with death. It would be interesting to discover how many beggars actually suffered as felons under this act; for the question immediately presents itself: How could past convictions, say in Suffolk and Essex, become known to the justices in Staffordshire? No clearing-house of criminal information existed, and an arrested person was unlikely to give damning evidence against himself.

The next statute concerning vagrants became law in 1547[1], and made a clean sweep of all preceding legislation. A new experiment was to be tried, since presumably the gallows had not been hung with their proper victims, and since there was nothing to prevent a man or woman, once having been returned to the place of birth or last residence, from setting off on a fresh pilgrimage. It was now declared that any vagrant could be offered work. Refusal, sustained before two magistrates, would enable the latter to "immediately cause the said loiterer to be marked with an hot iron in the breast the mark of a V, and adjudge the said person . . . to such presentor to be his slave . . . for the space of two years"; bread and butter eked out with "refuse of meat" to be his portion; "beating, chaining, or otherwise" the suggested means that might be adopted to coerce him to work. A second offence—if the servant were reclaimed—extended the period of slavery to life and authorized further branding; a third, as previously, would entail conviction as a felon. Children, youths, and girls, in like case, were to be forcibly apprenticed, and enslaved if they were caught after flight; they then ranked as personal property and could be devised by will.

It would seem that the brutality of this enslaving statute was dictated by panic, for there was then much unsettlement in the land. Two years later a reversion was made[2] to the whipping enactment of 1531, while the apprenticeship of beggars' children, though still obligatory, was freed from the taint of slavery. Any labourers refusing to work for a "reasonable wage" became automatically vagabonds and could be punished at the cart's tail. This remained the position until 1572, when heavier punishments were again decreed.[3] It is sometimes thought that the enslaving act of 1547 reached the high-water mark in a repressive series. But it did at least give a man two chances before

[1] 1 Edward VI, c. 3.

[2] 3 and 4 Edward, VI, c. 16.

[3] 14 Eliz., c. 5. For the enforcement of this act in Middlesex see Leonard, 70-1.

being ſtrung up as a malefactor. He was now to have one clear chance only. Offence the firſt: whipping and the burning of a hole in the ear, *unless* some compassionate employer would take him into service. Offence the second: death as a felon, *unless* again an employer for the next two years could be found. Offence the third: death in any case, and no nonsense about benefit of clergy. The provisions of the act were condemned at the time as too severe, and were probably laxly enforced. It was no doubt extremely difficult to find willing employers for hardened vagabonds, and though such an obſtacle to the performance of the spirit of the act was made theoretically less troublesome by a general provision in 1576 for the creation of public places of work, the law was now in danger of ſtultifying itself by its own rigidity. So in 1593 we observe a second return to ancient paths.[1] Vagabonds were now to be whipped again, as they were in 1531. But by this time the passport ſyſtem had reached a fair ſtate of organization, bridewells were raising their menacing silhouettes upon the sky-line, and the shepherding of the tramp population had ceased to be the concern only of county and parish officers. "An Act for the punishment of Rogues, Vagabonds and Sturdy Beggars"[2] in 1597 was again launched back on the returning pendulum, but the old exaggerated sweep had been diminished. Banishment or perpetual service in the galleys might now be reserved for dangerous rogues, and imposed at the discretion of quarter sessions. Those returning from banishment were to be hanged. All other vagrants muſt be whipped and despatched with papers to their place of settlement, that is, either of birth or laſt residence of twelve months.

We have reached the laſt of the important pre-Reſtoration acts defining the "passing on" ſyſtem; but one more muſt be mentioned in connection with roguery. That of 1597, although seemingly harsh, did not achieve its object. Rogues were duly banished to foreign lands. Preferring the land of their birth, they came back to create more mischief. The penalty for unauthorized return was death without benefit of clergy; but who was to know that they were convicted incorrigibles if they chose to re-enter the kingdom by a port in another county? Although not in principle abandoned, the punishment of transportation was given up in 1603-4 by an act[3] which brought back once again the devices of branding and setting rogues to labour. The second offence remained a felony matter, and in order that henceforward there should

[1] 35 Eliz., c. 7, ss. 6 and 7.

[2] 39 Eliz., c. 4.

[3] 1 James I, c. 7. It must be admitted that apart from this statute there is little evidence that the banishing clause of 39 Eliz. c. 4 was put into operation.

be no escape, the courts at the first conviction were to see that on the left shoulder " a great Roman R " was branded.

The natural inclination of justices was to class all but the most evilly disposed of their vagrants in the category deserving whipping. The branded class remained a select body ; and it is not known to what extent the revised penalty succeeded in intention. As the century progressed the general tendency appears to have worked in mitigation of the branding and hanging clauses ; but, as if to compensate for mercy shown in individual cases, the law was casting a wider net. We have noticed already that the Settlement Act of the Restoration made it a precarious thing for any but well-to-do people to pay visits away from home. In the same way the application of the term *vagrant* was stretched to cover practically all unauthorized travellers. The climax is said to have been reached during the Interregnum, in 1656, when it was decreed that all persons found wandering from their place of abode without business reasons or good and sufficient cause should be deemed vagrants under the act of 1597, and no mention is made of begging or soliciting.[1]

One of the more interesting achievements of recent historical enquiry has been the rediscovery of the elaborate system of central control built up by Elizabeth and her two successors for the supervision of local authorities in their work of relief and deterrence.[2] The Privy Council, which by the end of James I's reign was already being departmentalized in standing committees, acted as the supervising authority. The justices of the peace received administrative orders, took action as prescribed or as they thought fit, and sent in reports from time to time upon the success of their efforts. Admonition followed if their work fell below what was expected of them. We are only concerned with the doings of this " administrative hierarchy " insofar as they relate to disorderly persons. Action was of two kinds : the appointment of special *ad hoc* officers, and the round-up.

From time to time the Council, becoming convinced that desperate remedies were required for unusual situations, decided to reinforce the inadequate police system in selected parts of the kingdom with special officers ; and in accordance with administrative orders, provost-marshals would be appointed as officers with extraordinary powers in dealing with vagrants. They exercised a martial law against the non-respectable, with authority to hang vagabonds without proper common

[1] Firth and Rait, *Acts and Ordinances*, ii, 1098.

[2] See especially Leonard, *op. cit.*, chaps. 6, 8, 9, 10, 11.

law process.[1] More than once these officers were appointed in times of turbulence in London and the home counties. Soldiers might be called in in emergencies, as in 1615, when a squad of twelve infantrymen was drafted into Northumberland because several notorious malefactors had escaped from Newcastle jail and there was a band of sixteen or more thieves and outlaws at large, roaming the county and pillaging by night.[2]

The second method consisted less in helping than in co-ordinating the efforts of the civil magistrates[3]. Here the device employed was the organization of simultaneous searches. A small "privy search", very thorough but local in extent, would round up unsuspecting criminals, vagrants and wanted men, for trial by special sessions of the peace. The law declared[4] that the round-up should be made four times a year; but it was often found necessary to apply stimulants to the local magistrates in order to secure that searches should be made even at much longer intervals. In London and Middlesex the justices realized the value of concerted efforts, and we read of periods of intense activity in the arrangement of night searches in the slums and tenement warrens, and in the suburban bungalow towns beyond the City boundaries. For twenty years (1571-91) London enjoyed the services of a Recorder, William Fleetwood, who took an almost malicious delight in disturbing the quiet lives of the criminal orders, and in hounding them off in great batches to Tyburn. Several letters sent by him to Burghley relating his adventures are extant[5] and provide amusing if grim reading. When official business was slack he would make plans for a round-up, without requiring even a hint from the Council. On the day following the search the arrested persons would be summarily dealt with by Recorder and aldermen.

> . . . Upon Thursday at even her Majesty in her coach near Islington taking of the air, her Highness was environed with a number of rogues. One Mr. Stone, a footman, came in all haste to my Lord Mayor and after to me and told us of the same. I did the same night send warrants out into the said quarters and into Westminster and the Duchy[6]; and in the morning I went abroad myself, and I took that day seventy-four rogues, whereof some were blind and yet great usurers and very rich; and the same day towards night I sent for Mr. Harris and Mr. Smith and the governors of Bridewell and took all the names of the rogues and sent them from the Sessions Hall unto Bridewell, where they remained that night. Upon

[1] e.g., Proclamations 5 Nov., 1591, 9 Sept., 1598, 24 July, 1616.
[2] *Acts P. C.*, 1615-6, 235-6.
[3] Or the two methods might be combined: *ibid*, 693-6.
[4] 19 Henry VIII, c. 12.
[5] T. Wright, *Elizabeth and her Times, passim.*
[6] The precinct of the Savoy.

twelfth day in the forenoon the Master of the Rolls, myself and others received a charge before my Lords of the Council as touching rogues and masterless men and to have a privy search. The same day . . . I met the governors of Bridewell and so that afternoon we examined all the said rogues and gave them substantial payment. And the strongest we bestowed in the mill and the lighters. The rest we dismissed with a promise of double pay if we met with them again. Upon Sunday . . . I conferred with [the Dean of Westminster] touching Westminster and the Duchy, and then I took order for Southwark, Lambeth and Newington, from whence I received a shoal of forty rogues, men and women, and above. I bestowed them in Bridewell. I did the same afternoon peruse Paul's, where I took about twenty cloaked rogues that there use to keep standing. I placed them also in Bridewell. . . . Upon Friday morning at the Justice Hall there were brought in above a hundred lewd people taken in the privy search. The Masters of the Bridewell received them and immediately gave them punishment. This Saturday, after causes of conscience heard by my Lord Mayor and me, I dined and went to Paul's and in other places as well within the liberties as elsewhere, and I found not one rogue stirring. Amongst all these things I did note that we had not of London, Westminster, nor Southwark, nor yet Middlesex, nor Surrey, above twelve, and those we have taken order for. The residue for the most were of Wales, Salop, Chester, Somerset, Berks, Oxford and Essex; and that few or none of them had been about London three or four months. . . . The chief nursery of all these evil people is the Savoy and the brick kilns near Islington.[1]

Upon Friday last we sat at the Justice Hall at Newgate from 7 in the morning until 7 at night, where were condemned certain horse-stealers, cutpurses and suchlike to the number of ten, whereof nine were executed, and the tenth stayed by a means from the Court. These were executed upon Saturday in the morning. . . . The same day, my Lord Mayor being absent about the goods of the Spaniards, and also all my Lords the Justices of the Benches being also away, we few that were there did spend the same day about the searching out of sundry that were receptors of felons, where we found a great many as well in London, Westminster, Southwark, as in all other places about the same. Amongst our travels this one matter tumbled out of the way, that one Wotton, a gentleman-born and sometime a merchantman of good credit, who falling by time into decay kept an ale-house at Smart's Quay near Billingsgate, and after that, for some misdemeanour being put down, he reared up a new kind of life, and in the same house he procured all the cutpurses about this City to repair to his said house. There was a school-house set up to learn young boys to cut purses. There were hung up two devices; the one was a pocket, the other a purse. The pocket had in it certain counters and was hung about with hawks' bells and over the top did hang a little sacring-bell; and he that could take out a counter without any noise was allowed to be a *public foister*; and he that could take a piece of silver out of the purse without the noise of any of the bells, he was adjudged a *judicial nipper*. . . . Memorandum: that in Wotton's house at Smart's Quay are written in a table various poesies, and among the rest one is this:

Si spie sporte, si non spie, tunc steale.

Another is thus:

Si spie, si non spie, Foyste, nyppe, lyfte, shave and spare not.[2]

[1] Fleetwood to Burghley, 14 Jan., 1582, Tawney and Power, *Documents*, ii, 335-6.

[2] The same to the same, *ibid*, ii, 337-9.

So much for the privy search. There are times when we hear of something much more ambitious. One of the defects of the privy search from the point of view of the justices was that the news of their progress got about too quickly. The alarm would be given, and over the borders of their jurisdiction would go the rag-tag and bob-tail of the population until the danger was passed. The notion suggested itself that a really widespread, synchronized search would produce good results, especially if the constables and watchmen could be reinforced by volunteers and banded together under captains. A whole county or group of counties could thus be beaten up systematically.[1] In times of general unrest circular letters to the shire towns would issue from the Privy Council. The searches ordered in 1571 affected eighteen counties at the least, and took place on agreed days at monthly intervals throughout the whole area concerned.[2] Those ordered during the years 1569-72 appear to be the most elaborately organized on record; but the practice continued to be revived spasmodically until the time of the Civil War. The numbers of victims captured in a single haul is sometimes surprising. The authorities of the North Riding, for example, secured a great rounding-up of 196 vagrants in the spring of 1596. In the quarter sessions of May there were brought to trial all those who were of full age to the number of 106, some of them being apparently gypsies and "feigning themselves to have knowledge in palmistry, physiognomy and other abused sciences, using certain disguised apparel and foreign speech". All were condemned to death, and nine valiant men and aliens suffered execution forthwith; "the terror whereof so much appalled the residue of the condemned prisoners; and their children, which stood to behold the miserable end of their parents, did then cry out so piteously as had seldom been seen or heard, to the great sorrow and grief of all beholders". The justices, moved with compassion, decided that bloodshed must go no further: the rest should be sent to their homes. A remarkable course was then decided upon. A royal pardon was obtained, and the whole band was entrusted to the care of one William Portington, who received instructions to set out on a tour of England, estimated to last over seven months, with the object of seeing the individuals under his charge to their respective homes. The party crossed the borders of Lancashire, and then we lose sight of

[1] Shropshire in 1571 employed 125 persons in a man-hunt of this kind.

[2] Strype gives a good account of the searches in the north in 1569, a year of insurrection. He understands the total number taken up throughout the nation to have been 13,000, although this is almost incredible he says. *Annals*, edn. 1824, I (ii), 295ff., 554ff.

it. Unless Portington excelled as a disciplinarian it is unlikely that he kept his crew together for many days.[1]

§5

We need not stay to consider the further development of the vagrancy laws nor dwell upon the tragi-comedy of their failure to accomplish the purposes for which they were originally designed. Whipping continued as a popular form of deterrence until well into the second half of the eighteenth century; and then it suddenly declined, together with imprisonment, in the warm shadow of a new humanitarian sentiment. The system of "passing-on", which of course failed in its real object, became more and more highly organized; and, indeed, it may be said without exaggeration to have been during two centuries the most heavily thumbed chapter studied by public officers under the prevailing canon of the social sciences. No large class of the population seems to have benefited by this system unless perhaps it was the order of professional vagrants themselves, who we are not surprised to learn in 1781 will "rob their way from some distant province, and then be conveyed, together with their spoils, rich and jovial, at the expense of the country they have infested, and to any other place they may prefer occasionally, and to which perjury is the easy passport".[2]

Without attempting to answer the question as to whether a more successful code might not have been devised, one may well stop to enquire whether a better job of the existing system could not conceivably have been made, had the personnel of restraint been efficiently organized. The most severe critic of Tudor statesmanship would hesitate to blame Burghley and his colleagues for failing to accomplish a root-and-branch reform of a scheme of local justice which was shirked by five or six later generations equipped with more experience, more science, and more leisure for such things. But a few trifling improvements in a police organization on whose shoulders stacks of statutes were piled at every fresh parliament of the sixteenth century, would have saved public authorities a vast deal of trouble in the years to come. New wine was poured too lavishly into old bottles, and it is to their credit that they bore so much of the strain. The three orders of officials designated

[1] *Archaelogia Cambrensis*, 4th ser., xi, 226ff. Portington, the conductor, is open to the suspicion of being a gypsy himself. *Journal of Gypsy Lore Soc.*, 3rd ser., vii, 36.

[2] Sir W. Young, *Observations*, p. 61, qu. Webb, *English Poor Law History*, i, 381.

by the circumstances of past history to deal administratively with the criminal classes were unpaid amateurs.[1]

First of these in dignity, if not in importance, must be placed the sheriffs of the counties, successors to an office which had in earlier times represented in all important matters the full majesty of the royal authority within the area of the shire. This omnicompetence had disappeared long before the sixteenth century. By the end of it the sheriff, who was now always appointed for one year only, had lost not only his chief financial functions—these were among the first to go—but his military leadership as well. He remained a collector of the prince's debts, and with the assistance of his paid under-sheriff, who did most of the office work, the chief police officer of his area. In this latter province lay the more considerable of his duties, and it is in his rôle of executioner of the sentences of the royal justices that we meet him most frequently in contemporary records.

It must not be imagined that this dignified personage was himself in the habit of arresting and hanging malefactors, or of knocking up reluctant householders with summonses for debt. Each sheriff employed a corps of bailiffs and petty officials to establish personal contact with the individuals whose names appear on the writs and assize rolls, and the principal remuneration of these underlings seems to have been derived from the exactions, both warranted and illicit, which they levied on their victims. It is vain to search for a complimentary picture of these ingenious ruffians. Blackstone, writing in the eighteenth century, uses studied moderation. They are " employed by the sheriffs on account of their adroitness and dexterity in hunting and seizing their prey. The sheriff being answerable for the misdemeanours of these bailiffs, they are therefore usually bound in an obligation with sureties for the due execution of their office, and thence are called *bound-bailiffs*, which the common people have corrupted into a much more homely appellation ".[2]

The two high sheriffs who acted jointly for London and Middlesex had a larger and more complicated machinery for the enforcement of their orders than had most of their colleagues. The London prisons, including the two Counters, required a considerable staff of keepers, out-door officers and catchpoles, and there were sundry other paid

[1] No authoritative history of English police administration exists, but much may be gleaned from the works on local government by Mr. and Mrs. Webb, and from C. A. Beard, *The Office of the Justice of the Peace*. See too F. W. Maitland, *Justice and Police*.

[2] I *Commentaries*, chap. ix.

subordinates with special duties, of whom it is sometimes difficult to say whether they were employed by the sheriffs or by the Lord Mayor and aldermen. From time to time we meet with officers called marshal-men attempting to keep order or making arrests. Sometimes they are clearly servants of the Marshalsea, a royal prison which, like most of the other London jails, seems to welcome all and sundry within its grim jaws. More often they are officers of the City or County, and on occasion they may even be the bandogs of the extraordinarily appointed provost-marshals. They acted as a kind of military police at times when the normal machinery proved too weak for an emergency, as when in 1592 there occurred one of those unsettling street riots in which incorrigible rogues, "artfully drawing in City apprentices to join them"[1], defied the constables and beadles and began to damage property. The affair began in Bermondsey Street and Blackfriars in an attempt to rescue a feltmonger's servant who had been arrested by a marshal-man of the Marshalsea prison. Retaliation followed in a manner which excited adverse comment.

> The said apprentices and masterless men (stated the official investigator) assembled themselves by occasion and pretence of their meeting at a play which besides the breach of the sabbath day giveth opportunity of committing these and suchlike disorders. The principal doers in this rude tumult I mean to punish to the example of others, wherein also it may please your Lordship to give me your direction if you shall advise upon anything meet to be done for the farther punishment of the said offenders. Hereof I thought meet to advertise your Lordship, which I am informed by the inhabitants of Southwark, men of best reputation among them, that the Knight Marshal's men in their serving of their warrants do not use themselves in that good discretion and moderate usage as were meet to be done in like cases, but after a most rough and violent manner provoking them by such hard dealing to contend with them, which otherwise would obey in all dutiful sort; as I understand they did in this case, where they entered the house where the warrant was to be served with a dagger drawn, affrighting the good wife who sat by the fire with a young infant in her arms, and afterwards, having taken the party and certain others and committed them to prison where they lay five days without making their answer; these mutinous apprentices assembled themselves in their disordered manner; the said Marshal's men, being within the Marshalsea, issued forth with their daggers drawn and with bastinadoes in their hands beating the people, whereof some came that way by chance but to gaze as the manner is, and afterwards drew their swords, whereby the tumult was rather incensed, and themselves endangered but that help came to prevent farther mischiefs.[2]

Like the sheriffs, the justices of the peace, who constitute the second of our three arms of the law, were chosen among the knights, esquires

[1] Compare the affrays of 1595 which occasioned the proclamation of martial law in London. Maitland, *History of London*, i, 278-9.

[2] Remembrancia, i, 662; Malone Soc., *Collections*, I (i), 70-3.

and gentlemen of the county in which they were required to serve. The number on the commission would vary from twenty to eighty according to the populousness of the county; but the effective number fell short of the total by a good deal. Perhaps a quarter could be depended on for attendance at quarter sessions. Of the remainder some were old, or too occupied with national affairs; others belonged to the order of "those that be drones and not bees", as the Lord Keeper indignantly remarked in 1599; while there were some, "pocket-justices", who were in office "by countenance, and are idle and will not do anything, and as they do no ill so they do no good; but others are evil and use their office to show their malice and revenge".[1]

"It is such a form of subordinate government", says Coke in his *Institutes*, "for the tranquillity and quiet of the realm, as no part of the Christian world hath the like." A remarkable system certainly, and a singularly happy expression of the English genius for getting important public services performed for nothing. Mr. Justice Shallow took his place on a bench composed of gentlemen possessing every kind of ability but that of the trained official. Enthusiasm was supposed to make up for lack of skill, and when all was said there were always competent lawyers in the service of the county from whom advice could be obtained.

In all the social experiments of the Tudors and early Stuarts it was the justice who bore the burden and heat of the day. Two hundred and ninety-three statutes were passed previous to 1603 bearing upon the duties of these humble magistrates, and the parliaments of Elizabeth had contributed a total of seventy-eight, "ranging in subject", as Professor Cheyney drily observes, "from a law for the preservation of the spawn and fry of fish to one against fond and fantastical prophecies".[2] In some localities the practising justices in the later years of Elizabeth had their hands full with the acts against recusants. Normally their two most exacting tasks were the enforcement of the poor law and the exercise of criminal jurisdiction. The civil justice they dispensed was inconsiderable, but on the criminal side their responsibilities were enormous. Acting as single units their powers were less extensive than those of a stipendiary magistrate to-day. They embraced a number of petty offences which could be tried summarily in the informal milieu of the dining-room or the market place. Drunkenness, petty theft, vagrancy and non-attendance at church were cases which could be dealt with in this manner, and the penalties included whipping and the

[1] J. Hawarde, *Les Reportes del Cases in Camera Stellata*, 106, 109, 160.
[2] *History of England*, ii, 321.

ſtocks. More serious matters would often come before the neareſt magiſtrate for a preliminary hearing. If he were satisfied after examining the chief witnesses and cross-examining the accused that a case for a higher court exiſted, he would order the matter to ſtand over till quarter sessions. In the meantime the ſuſpected person would either be bailed or remain a prisoner in the county jail. In his individual capacity the juſtice can be described more accurately as a policeman or detective than a magiſtrate. The preliminary hearing on an accusation of felony was not so much a trial as an interrogation designed to reveal the facts upon which a quarter session or assize case could be built up.[1] Sufficient evidence failing, the policeman transformed himself into a judge and gave a moderate sentence for the lesser crime, or, alternatively, dismissed the case. Thomas Harman without awareness of any unusual procedure tells us[2] that he hung up a " dumb " beggar by the wriſts until he confeſſed his fraud. Readers who care to turn to the incident will see that there was little of court-room decorum in the conduct of the enquiry.[3]

The officially conducted trial came later when those who were alleged to have committed serious offences were brought before the grand jury at quarter sessions. If an indictment were then presented the accused came immediately for trial before the bench of county juſtices, and the sentence generally followed swiftly. The early seventeenth century muſt have seen the quarter sessions magiſtrates at the zenith of their power in criminal causes. Only in accusations of treason does it seem to have been obligatory to defer the trial for the royal juſtices of oyer and terminer and jail delivery at the next assizes.[4] Capital punishments might be, and frequently were inflicted by the County bench. " In Devonshire in the midwinter sessions of 1598 out of sixty-five culprits who were tried eighteen were hung, thirteen flogged, seven acquitted, and seven on account of their claim to benefit of clergy branded and released."[5] Adding thirty-five who were condemned at the assizes, seventy-four men and women met their death in this county in this one year. This apportionment of trials for capital

[1] The written evidence and depositions were put in by the prosecution when the real trial came on. See p. 503, note 6.

[2] pp. 91-2.

[3] Two or more juſtices acting in place of one had greater powers, but these extended into the adminiſtrative rather than the judicial field.

[4] " Subject to the proviso that cases of difficulty muſt be sent to the assizes. During the eighteenth century the cuſtom sprang up of always sending to the assizes cases which might be capitally punished." Holdsworth, *Hiſtory of English Law*, i, 293. See too J. Liſter, *Weſt Riding Sessions Rolls*, xii-xiv.

[5] E. P. Cheyney, *Hiſtory of England*, ii, 333, drawing upon sessions rolls.

offences between professional and amateur judges probably represents a common average.

In the text of the present collection the justice of the peace makes frequent appearances. It will be observed that it is the single justice that we meet most often. Working in close association with him in the detection of crime and the arrest of offenders, the constable enters even more frequently into the discussion. He is a worthy fellow, and merits our regard as the third arm of the police organization.

Of the constable there are two orders, the high and the petty. The former is the more exalted, but in practical affairs he is less important than his junior without whom local government must have fallen to pieces. The high constable acts, either singly or with a partner, as the senior officer of the hundred, an administrative unit which has by our time lost a great part of its original autonomy. Ideally he is an educated gentleman[1] with a local reputation, capable of keeping accounts —for the responsibility of raising county rates falls upon him—and of inspiring respect. He acts as the channel through which the orders of the magistrates pass to the village officers, over whom he is expected to have a general supervision. Infractions of the labour laws are reported to him, and he holds " sessions " with his colleagues of other hundreds to see that they are observed. He does much miscellaneous work at quarter sessions time. But apart from the occasional management of special searches for vagabonds he seems to be able to avoid dirtying his hands with criminal matters. And this is where the petty constable comes in.

> There dwells, and within call, if it please your worship,
> A potent monarch called the constable,
> That does command a citadel called the stocks;
> Whose guards are certain files of rusty billmen.[2]

The nature of the authority of this official is shortly described in two of the notes to the text[3], and this is certainly not the place in which to enquire into his interesting historical antecedents. However democratic his origin in the remote past, by the end of the sixteenth century he has become the servant of the justices and the master of his parish or ward or leet division. He serves for a year, or until he can persuade the appointing authority to find a successor, and while in office he must keep order within his domain. It is impossible to withhold one's

[1] Bacon, *The Office of Constables, Works*, edn. 1854, i, 648ff.

[2] Massinger, *A New Way to Pay Old Debts*, I, i.

[3] p. 520, note 28; p. 521, note 1.

sympathy from this unfortunate person. All the unpleasant duties come his way, while churchwardens and overseers get the credit. Like the infantry lance-corporal he must earn unpopularity among those who perform " fatigues ", and he must go out in all weathers to see that the jobs are done. He is generally without social distinction, and is therefore despised by the officers above him. James Gyffon of Albury, evidently a superior specimen of his order, breaks into plaintive verses[1] on the hardships of his lot; but he makes less than might be expected of the onerous task of the man who must come into personal contact with the rough people of the highways and ditches. Every stranger entering the village or ward is suspect, and will almost certainly commit some technical offence. If the new arrival is in any way disreputable and is allowed to stay, there will be complaints of begging or pilfering, or that a householder out of pity has taken an " unlawful inmate ", who, if a woman, must be chased away at once, or she is sure to be in labour before many days are out, and what an outcry will be heard in an indignant purse-tight parish then! Licences to travel must be examined and countersigned; tramps failing to account for themselves must be put in the stocks—and a watch set over them pending a magistrate's enquiry, or they will find a means to escape with the wicked subtlety of their kind. And now and again there will be violent and humiliating encounters with the professional bullies of the road. " Whipping till the back be bloody "—to be performed personally by the constable—may even at times be a welcome task. And, finally, when a serious crime has been committed, there will be the need to raise the hue and cry.

> For the better apprehension of thieves and man-killers, there is an old law in England very well provided whereby it is ordered that, if he that is robbed, or any man complain and give warning of slaughter or murder committed, the constable of the village whereunto he cometh and crieth for succour is to raise the parish about him, and to search woods, groves, and all suspected houses and places, where the trespasser may be, or is supposed to lurk; and not finding him there, he is to give warning unto the next constable, and so one constable, after search made, to advertise another from parish to parish, till they come to the same where the offender is harboured and found. It is also provided that, if any parish in this business do not her duty, but suffereth the thief (for the avoiding of trouble sake) in carrying him to the jail, if he should be apprehended, or other letting of their work to escape, the same parish is not only to make fine to the king, but also the same, with the whole hundred wherein it standeth, to repay the party robbed his damages, and leave his estate harmless. Certainly this is a good law: howbeit I have known of my own experience felons being taken to have escaped out of the stocks, being rescued by other

[1] pp. 488-90.

> for want of watch and guard, that thieves have been let pass, because the covetous and greedy parishioners would neither take the pains nor be at the charge to carry them to prison, if it be far off; that when hue and cry have been made even to the faces of some constables, they have said: "God restore your loss! I have other business at this time". And by such means the meaning of many a good law is left unexecuted, malefactors emboldened, and many a poor man turned out of that which he hath sweat and taken pains toward the maintenance of himself and his poor children and family.[1]

In the boroughs no essential variation from the country parish constable's duties was to be found. Local needs and traditional methods would be responsible for the development of peculiar functions, but there was a natural tendency to preserve supplementary officers for special tasks. In the towns, also, one is more conscious of the leet court as the creator of the constabular area.

London had its own organization and a highly differentiated police personnel, in which the unpaid constabulary played a smaller part than elsewhere. But it cannot be conceded that the City was any more fortunate than the provincial boroughs in its attempt to suppress the underworld. Much of the matter printed in this volume goes to show that criminal life in the metropolis offered opportunities for activities varied and interesting enough for a whole school of literature to be sustained upon it. The area covered by the City, by the suburbs in Surrey and Middlesex, and by the City of Westminster, was admittedly too vast for men even to formulate plans for the creation of a common authority which might grapple with the questions of law and order. The only body which pretended to exercise a general supervision was the Privy Council, and mighty as its influence undoubtedly was, it was powerless to shake the City of London's pride in its somewhat dubious privileges. Westminster was persuaded into reorganization by Lord Burghley, the High Steward of that city, in 1585, when an act[2] (subsequently renewed at intervals) was passed constituting a special court of burgesses whose duty it became to supervise all that pertained to the suppression of disorderly elements within its area. The spreading suburbs of the two cities continued to be ruled by the magistrates of the home counties under whose jurisdiction they fell. Within the municipal nucleus itself there was trouble and confusion, for even here no body of citizens was equipped with powers sufficiently extensive to bring all the streets under a common supervision.

[1] Wm. Harrison, *Description of England* (ed. Furnivall, *Elizabethan England*), p. 247. See below, p. 501, note 10.

[2] 27 Eliz., c. 17. The constitution is described by S. and B. Webb in *Manor and Borough*, ch. iv.

One of the graveſt of police problems arose out of the exiſtence within the City's limits of liberties or " baſtard ſanctuaries ". These areas had in pre-Tudor times been small exemplars of the class of ecclesiaſtical and lay franchises which by charter or prescription claimed independence of royal juſtice. They were once enclaves of a jurisdiction where the king's writ did not run, and as such afforded shelter for fugitive criminals and debtors. The Reformation ſtatutes of Henry VIII, following upon a long ſuſtained battle between an aggressive royal power and firmly entrenched privilege, had marked the collapse of ecclesiaſtical ſanctuary and the triumph of the crown. Extra-regal privileges disappeared by degrees, but ſanctuaries of a sort remained. Firſt the old practice of compelling a ſanctuary-man to abjure the realm was abolished on the curious grounds that the country thereby loſt good men apt for the navy and the wars, and others who might diſcloſe the knowledge of the commodities and ſecrets of the realm[1]. Sanctuary of the old type was already doomed, but some provision obviously had to be made for criminals and others who were now denied escape to the Continent or Ireland. An act of 1540[2] set up seven cities of refuge, among which Weſtminſter, York and Manchester were numbered, for their reception. There were naturally proteſts from the cities of refuge againſt the dubious conceſſion; but the threat to their peace of mind was less perilous than would have been the case in earlier years, for the same act declared that ſanctuary would no longer protect offenders who were accuſed of murder, robbery and certain other heinous felonies. Meanwhile ecclesiaſtical jurisdiction in general had been taken from the Bishop of Rome; but this did not extinguiſh the immunities of all the old religious houſes. The franchiſes in queſtion were now veſted in the crown, and the inmates continued, where they dared, to defy the local magiſtracy. London, as has been ſaid, was peculiarly burdened. And Weſtminſter ſuffered too. The Abbey was of course a special case, having traditional rights in ſanctuary matters of the moſt considerable kind. As a " city of refuge " the Abbey precincts loſt their ſtatutory position with the reſt in the firſt parliament of Edward VI, but this seems to have made no practical difference for a while.[3] Indeed, in

[1] 22 Henry VIII, c. 14. For Wolsey's earlier intereſt in the abuſe see A. F. Pollard, *Wolsey*, p. 53 n.

[2] 32 Henry VIII, c. 12. Churches and churchyards were ſtill left available for temporary refuge, but their hospitality was not of a generous nature; and apparently a man could be ſtarved out by his adverſaries. In any case only forty days were allowed for church-ſanctuary.

[3] See paper by Miss I. D. Thornley in *Tudor Studies*, ed. Seton-Watson, p. 204.

Mary's reign the sanctuary limits still harboured within themselves people guilty of the worst offences. Henry Machyn gives us a slight glimpse of the refugees in his diary[1] :

> The 6 day of December [1556] the abbot of Westminster went a procession with his convent. Before him went all the sanctuary men with cross-keys upon their garments, and after went three for murder. One was Lord Dacre's son of the north, was whipped with a sheet about him for killing of Master West, esquire, dwelling beside, . . . and another thief that did long to one of Master Comptroller . . . did kill Richard Egglyston, the Comptroller's tailor, and killed him in the Long Acres, the back-side Charing Cross ; and a boy that killed a big boy that sold papers and printed books, with hurling of a stone, and hit him under the ear in Westminster Hall.

The area of the Abbey remained as a bolt-hole for debtors and other fugitives even after the failure of the Marian system, though acting in defiance of royal authority. Closely linked with the Westminster sanctuary was the ecclesiastical foundation of St. Martin-le-Grand, which had been brought under the general supervision of the Abbey, " the one at the elbow of the City, the other in the very bowels ", as More declared when mapping out the criminal topography of London. With a possible competitor in Whitefriars, St. Martin's precinct became the most troublesome thorn in the side of the City police, for its immunities, a constant source of dispute even in the fourteenth century, were by no means weakened by the association with the Abbey. In 1548 the ecclesiastical buildings on the site fell to the Crown's disposal ; they were destroyed, and the site itself used in building a new residential quarter ; and this, with the tenements in the surrounding alleys, became popular with the foreigners who came to reinforce the existing population of artizans, metal-workers, makers of artificial jewellery and other gauds. In 1593 the aliens in St. Martin's liberty were numbered at 193, French, Dutch and German, a suspect crew whom we notice successfully resisting the efforts of the City to search workshops and segregate plague victims.[2]

Farther west, adjoining the Temple on the site of the old conventual buildings of the White Friars, there existed a debtors' stronghold. Whitefriars owed its present immunity to the same sequence of events as did St. Martin's. At the Reformation its jurisdiction went, not to the City magistrates, but to the king's nominees, Henry arguing, so it is reported, that " he was as well able to keep the liberties as the friars

[1] Camden Soc., 1848, p. 121.

[2] A. J. Kempe, *Historical Notices of St. Martin-le-Grand*, 1825, pp. 167ff.

were ". The site became the property of private families, while jurisdiction of a petty nature was in the hands of justices of the peace who were exempt from civic control.[1] Any privileges of sanctuary which might still be held to remain were altogether abolished by statute[2] in 1623; but in practice the immunities of Whitefriars and other like areas continued. The refugee from justice was now no longer sheltering in that ghostly shadow of the Church's protection which had hovered long after the friars had gone. But he found sanctuary just the same. Lax justice allowed Whitefriars to keep its unofficial privileges and the inmate would have observed no difference after 1623. Respectability had departed some years before the end of Elizabeth's reign, but decent folk could still penetrate its recesses. The Whitefriars private theatre was drawing audiences to the old refectory hall in 1609, and remained in being for ten or twelve years. It is not improbable that at the time of Charles I's accession, the swarming undesirables of the tenement houses had made the neighbourhood unsafe. Throughout the seventeenth century the liberty is mentioned in contemporary references as the resort of debtors and " wanted " men and women. " Here they formed a community of their own, adopted the language of pickpockets, openly resisted the execution of every legal process, and extending their cant terms to the place they lived in, new-named their precinct by the well-known appellation of Alsatia, after the province which formed a debatable land between Germany and France "[3]. Macaulay's description of Alsatia in his remarks on the State of England in 1685 is nearly as famous as Scott's more imaginative chapters on the quarter in *The Fortunes of Nigel*[4].

> Insolvents . . . were to be found in every dwelling, from cellar to garret. Of these a large proportion were knaves and libertines, and were followed to their asylum by women more abandoned than themselves. The civil power was unable to keep order in a district swarming with such inhabitants. Though the immunities legally (*sic*) belonging to the place extended only to cases of debt, cheats, false witnesses, forgers and highwaymen found

[1] References indicating the debatable character of the government of the Blackfriars and Whitefriars liberties will be found in Chambers, *Elizabethan Stage*, ii, 477-8; further discussion of the liberties within the walls and on the fringes of London in Miss E. Jeffries Davis' article in *Tudor Studies*, 287-311.

[2] 21 James I, c. 28, s. 7. Already in 1608 a charter from James I gave the City jurisdiction in a modified form over Black- and Whitefriars; but this seems to have made little difference.

[3] Wheatley and Cunningham, *London Past and Present*, iii, 503; and see *Acts P. C.* 1615-6, p. 153 for the difficulty experienced by the City in getting the liberties to contribute their share in military charges, musters, etc.

[4] Chapters 16 and 17.

> refuge there. For amidſt a rabble so desperate no peace officer's life was in safety. At the cry of " Rescue ", bullies with swords and cudgels, and termagant hags with spits and broomſticks, poured forth by hundreds; and the intruder was fortunate if he escaped back into Fleet Street, huſtled, ſtripped and pumped upon. Even the warrant of the Chief Juſtice of England could not be executed without the help of a company of musketeers. Such relics of the darkeſt ages were to be found within a short walk of the chambers where Somers was ſtudying hiſtory and law, of the chapel where Tillotson was preaching.[1]

In connection with the conſtable's duties, we muſt not forget that he had a responsibility for the good behaviour of parishioners. Suspicious behaviour and eccentric conduct generally, if not a technical offence at common law, was sufficiently serious to warrant detention and enquiry. One of the commoneſt causes of arreſt in London was the misdemeanour of being out in the ſtreets at night without legitimate business. One's very presence out of doors even on his own property after the conventional bed-time of the locality might get him into trouble, as we may discover from a case at Devizes.

> April 23 [1584]. This day Hugh Norryshe being taken in a search at midnight lying in his garden very suspiciously, and being commanded by the bailiffs and conſtables to go and lie in his house, refused so to do, but in very lewd and slanderous speeches abused the officers in calling of them knaves, with other opprobrious words, and not yielding himself to go with them, but as that they were forced to bear him, and the man being examined before Mr. Mayor and found culpable therein, was for his said contempt and abuses committed to the ward, and there to set by both the feet in the ſtocks.[2]

While the lay courts had considerable powers in the oversight of behaviour and morals, the chief supervision in this province was undertaken by the courts ecclesiaſtical, a ſyſtem of tribunals over which the bishops and their officials presided, and whence they ruled the dioceses with the rod of excommunication. The methods here employed were much the same as those which had been followed on the eve of the Reformation and earlier[3]. The national prince, it is true, had outlawed the juriſdiction of the foreigner in ecclesiaſtical matters; but he was wise enough to leave the judicial activity of the Church almoſt unhindered by the temporal authority.

An energetic bishop could make his will felt; he could, indeed, on his triennial visitations review personally the whole moral life of

[1] Macaulay, *Hiſtory*, edn. 1858, i, 364.

[2] *Annals of Devizes* (1555-1791), i, 87.

[3] The conſtitutional changes are discussed by Canon (later Bishop) Stubbs in his Hiſtorical Appendix (I) to the *Report of the Ecclesiaſtical Courts Commission*, 1883, C. 3760.

his charge, sitting in judgment in the court commonly presided over by the archdeacon, with his hand upon the throttle-valve of incipient crime. Presentations of misdoers could bring everything to light—from untidy surplices to incest and bigamy—in a list of offences ranging through ale-house-haunting, dicing and swearing by parsons and their flocks, being sick in church, failure to attend communion, tippling and the keeping of open shop at service-time on Sundays, malicious, contentious and uncharitable behaviour, usury, blasphemy, bawdry, parent-beating and notorious evil-living. A modern authority on the Church records of the Elizabethan age confesses to a kind of horror at the state of public and private life that they reveal. "When the criminal records of any defined area are consistently bad, and when no improvement is seen over a number of years, we can conclude that life in that area is stagnant and unwholesome." There is disclosed "a consistency of moral decay which can hardly be paralleled in English history—the general gloom is only lit up here and there by individual characters. . . . Praiseworthy injunction failed to produce reform . . . The bishops were avaricious, the parochial clergy fell far short of their calling, and the administration of local government was deplorably corrupt. Purity, honesty, fair dealing and justice do not flourish under such conditions".[1]

The grimness of the picture conflicts oddly with the generally accepted notion of the pleasant, comfortable life of the English village in the sunny days of the great queen. Lest we travel too far towards a new pessimism, let it be admitted that many of the cases in the archdeacons' courts were concerned with peccadillos of the lightest nature, and even with behaviour which nowadays would be regarded as reflecting a praiseworthy and independent spirit. That the innocent must sometimes have suffered cannot be doubted: for the procedure of the church courts was archaic and often dismally unjust to the accused. Shortly before the archdeacon's half-yearly visitation, the summoner would arrive in a parish. He would frequently be armed with articles of inquisition calculated to jog the minds of minister and churchwardens concerning the nature of the offences for which culprits might be forthcoming. The wardens, either from personal knowledge, or from information supplied by parishioners,[2] drew up bills of presentment against transgressors—they were themselves liable to punishment if

[1] W. P. M. Kennedy, *Parish Life under Elizabeth*, 149-51

[2] The presentment usually says "upon a fame". Compurgation sometimes had its practical value as the only way of clearing a name from this kind of slander.

they omitted a name—and offenders were summoned to the court to answer the *libellum*, or charge. If fortunate, the alleged evil-doer might compound with the summoner or the accuser before the date, but once the papers got into court he must attend and answer or be excommunicated. If he pleaded innocent he must answer the charge on oath, and perhaps be forced under examination to convict himself of a far more heinous crime. The old system of purgation, which had been abandoned by the common law courts for centuries, still persisted among the judicial methods of the canon law. It is to be presumed that if a man, even when innocent, failed to produce oath-helpers from among his neighbours, whether from lack of means to transport them or for other reasons, he would fail to ward off conviction[1], unless he could make an extraordinarily good case for himself under oath. Conviction was normally followed by the infliction of a penance, often of a public and humiliating nature. It could sometimes, though irregularly, be commuted for a money fine.[2] Failure to obey the court's instruction led to excommunication, either minor or major. The former debarred a man from attendance at church services—and therefore from marriage. His very entrance into a church caused the cessation of the service if one were in progress.[3] And somewhat unfairly the authorities could fine the excluded sinner for non-attendance. Thus even the lesser excommunication was a thing to be avoided.

The greater excommunicate was technically beyond the pale of society. Men were even presented at the archdeacon's court for conversing with him[4], for dealing with him at market. He could get no satisfaction in an action at law: his testimony was not admissable. When he died Christian burial was refused. There was therefore no conceivable inducement to remain in this position longer than could be helped. Yet absolution cost money in heavy fees; and there were some men, governed by principles, or by pride, or by pig-headedness, who delayed in the necessary steps to have the excommunication lifted. Then the Church would shoot its last bolt. " He was turned over to the High Commission, where temporal punishments—mulct or incarceration—followed ecclesiastical methods. Or if at the end of forty days, an excommunicate person showed no signs of practical repentance

[1] But not always. See the case of Andrew Robinson in 1624. C. W. Foster, *History of Aisthorpe and Thorpe-in-the-Fallows*, p. 140.

[2] W. P. M. Kennedy, *Elizabethan Episcopal Administration*, I, cxxviii.

[3] W. Hale Hale, *Series of Precedents and Proceedings*, 1847, p. 198.

[4] Excommunications in theory automatically followed the action.

the ecclesiastical judge might apply to the bishop and procure against him the writ *De excommunicatio capiendo*; but this was a dangerous and risky proceeding, as the temporal judges were contemptuous of, if not hostile to, the courts christian."[1]

The criminal procedure of the Church was effective in inducing fear, failing respect, among ordinary men; but the very efficiency of its inquisitorial methods led to the abuses which discredited it. We can go back to Chaucer for a portrait of the type of official produced by the archideaconal jurisdiction. "Proctors, apparitors, registrars, and other scribes whose fees depended on citations and the drawing up of court proceedings, documents, or certificates, had ever interest in haling persons before the official. . . . Hence the system tended to create spies, of whom the chief were the apparitors, or summoners, and their underlings."[2] Moreover, if Greene is to be credited, there existed a class of perjured villains who posed as officials of the courts, and forced blackmail from the transgressors they smelt out.[3]

§6

The whole history of English criminal law and procedure in relation to social development calls for revision and explanation. On this difficult ground, beset with pitfalls for the incautious, any but the legal historian will hesitate to tread. It will be sufficient here to note the *schema* of punishments employed by Elizabethan justice in its dealings with the convicted criminal and misdemeanant, while omitting discussion of the means used to obtain conviction in the courts.

Sir James Fitzjames Stephen in his great work upon the criminal law rightly places privilege of clergy at the beginning of his analysis in the famous chapter on legal penalties.[4] The privilege, or benefit, claimed by men[5] of education convicted of felony exempted them from punishment by the lay courts; that is to say, instead of having to face the inevitable penalty of death on the gallows they came under the jurisdiction of the bishops' courts and underwent a short term of

[1] Kennedy, *op. cit.*, I, cxxv, cxxvi.

[2] S. L. Ware, *The Elizabethan Parish*, 53, 54.

[3] See below pp. 139-40. For an able discussion of the whole question of criminal jurisdiction in the church courts, see S. A. Peyton, Introduction to *Churchwardens' Presentments in the Oxfordshire Peculiars* (Oxfordshire Record Society, 1928).

[4] *History of the Criminal Law of England*, i, ch. 13.

[5] Until the dissolution of the monasteries nuns were eligible. From that time until 1692 only men could claim the privilege. Pollock and Maitland, *History of Engl. Law*, I, 445.

imprisonment. Until the middle of the fourteenth century the privilege was restricted to clergymen in orders, and the trial normally took place in the ecclesiastical courts. Then by degrees, as the practice grew up of trying all accused persons (irrespective of the cloth of their coats) in the lay courts up to the stage of conviction or acquittal, the conventions governing admission of "clergy" were widened. "It seems", says Professor Holdsworth, "to have been in consequence of the statute (*pro clero*, 1350) that the privilege was later extended to all who could read. But this extension is connected with the greater control assumed by royal courts over the conditions under which the privilege could be claimed."[1]

High treason and highway robbery were already exempted. Under the Tudors the state proceeded to extend the list of non-clergyable felonies. Murder committed in churches and on highways was added in 1512; piracy[2] in 1536, burglary accompanied by threats of violence in 1547; stealing from the person privily in 1565; and in the latter part of Elizabeth's reign, rape and abduction with intent to marry. Moreover, the layman pleading benefit of clergy had since 1489 been allowed only one chance. On the second conviction[3] he merited death without respite, having forfeited his rights. The procedure in court is explained by Sir Thomas Smith:

> Of him whom the twelve men pronounce guilty, the judge asketh what he can say for himself. If he can read he demandeth his clergy. . . . For which purpose the bishop must send one with authority under his seal to be judge in that matter in every jail delivery. If the condemned (*sic*) man demandeth to be admitted to his book, the judge commonly giveth him a Psalter, and turneth to what place he will. The prisoner readeth as well as he can, God knoweth sometime very slenderly! Then he [the judge] asketh of the bishop's commissary: *Legit ut clericus?* The commissary must say *Legit* or *Non legit*[4], for these be words formal, and our men of law be very precise in their words formal. If he say *Legit*, the judge proceedeth no further to sentence of death; if he say *Non*, the judge forthwith or the next day proceedeth to sentence.[5]

Before we contemptuously dismiss the pleading of clergy as a confusing legal anachronism, it is well to remember that it served an important function in mitigating a criminal code of excessive severity.

[1] Holdsworth, *History of English Law*, iii, 297.

[2] See Stephen, *Hist. Criminal Law*, i, 465.

[3] Established as such by the branding of the thumb (M for murder, T for theft) on the first conviction. 4 Henry VII, c. 14.

[4] The court may apparently challenge the ordinary's ruling. Holdsworth (*ibid*, iii, 298) on Hale.

[5] *De Republica Anglorum*, ii, 23.

On this ground Blackstone defended its survival as late as 1769. In Blackstone's day the laws of felony were even harsher than when Smith was writing, and the definition of clerical immunity from the death penalty had been hard put to it to extend protection to an equivalent degree.

It is arguable, of course, that benefit of clergy persisted in favour with lawyers and legislators because it made a class distinction of a sort. And it is noteworthy that while the officially recognized right of sanctuary, the poor man's last resort, perished with the Tudors, clergyable offences were only restricted to exclude the worst offences,[1] while from 1547[2] every peer of the realm, " though he cannot read ", must be regarded as to all intents and purposes in connection with a criminal trial equivalent to a " clerk convict ". The distinction between lettered and unlettered, such as it was, may be considered to have borne less heavily on members of the criminal class, who would be educated up to the tricks, than on the obscure wrongdoers of the countryside, men who were driven to commit crime for once in their lives by hunger or passion, only to learn the short sharp lesson on the next sessions day. It was in cases of theft that the law showed least mercy. Broadly speaking, theft involved hanging. Only on one of two grounds could a thief escape the penalty. Provided he had not committed his robbery from the person, from the person's premises, or by menaces on the highway—and when you consider the matter, few alternatives were left—the felon might, if sufficiently educated, plead his clergy. In the second case, the value of the object stolen might be computed at less than twelve pence,[3] and the offence would then be petty larceny, a felony which was not quite a felony, and merited whipping or the pillory or the stocks, or all of these combined.

Can we discern any movement of protest against the severity of the law in this matter of theft? Granted the general contentment with the operation of the clergy test, I think there was little uneasiness among the propertied classes about the operation of the penal code which protected their possessions. It was admitted, of course, that severity towards robbers and housebreakers cut both ways, that a thief might be as willing to hang for a sheep as for a goat, for a slit windpipe as

[1] But there existed what we cannot but regard as curious anomalies. One might for instance be hanged for stealing two shillings from a man's pocket, merely fined for the misdemeanour of beating him within an inch of his life.

[2] 1 Edward VI, c. 12.

[3] One was privileged to embezzle or convert up to forty shillings without endangering the neck.

for a ſtolen purse. But few to my knowledge appear to have urged a mitigation of penalties on common-sense grounds, unless we except Cardinal Pole, to whom the following remarks in debate with Lupset are attributed by Thomas Starkey.

> Methink, to descend to this part, the order of our law also in the punishment of theft is over-ſtrait, and faileth much from good civility. For with us for every little theft a man is by and by hanged without mercy or pity; which meseemeth is again good nature and humanity, specially when they ſteal for necessity, without murder or manslaughter committed therein. . . . Better it were to find some way how the man might be brought to better order and frame.[1] . . . If the frailty of man fall thereunto, and specially to privy theft, as picking and ſtealing secretly, I would think it good that the felon should be take and put in some common work, as to labour in building the walls of cities and towns, or else in some magnifical work of the prince of the realm, which pain should be more grievous to them than death is reputed.[2]

Among the few who appealed publicly to humanitarian sentiment Thomas Dekker has an honourable place.

> Many lose their lives
> For scarce as much coin as will hide their palm:
> Which is moſt cruel. Those have vexed spirits
> Who pursue lives.[3]

and it is to be remarked that, although the work which has come down to us from this friendly critic of society is filled with references to scamps and ne'er-do-wells, he seldom takes satisfaction in the gallows' fate which the law reserves for them.

To the plain man of the jury-panel it was ridiculous to make the harsh diſtinction the law required between him who ſtole thirteen pence and his neighbour who ſtole eleven pence. The former might be a firſt offender, the latter a hardened criminal. Fortunately, however, for the cause of true juſtice, in cases of theft the jury appears generally to have been required to eſtimate the worth of the article ſtolen as well as to give its verdict as to guilt. Common sense often led to the giving of a true verdict on the queſtion of guilt and a false verdict on the queſtion of value. And there are cases on record of the moſt ridiculous undervaluation, as at the trial of a Halifax clothier[4] at the West Riding Sessions, where the indictment valued twenty-seven head of poultry at 18*s.* 11*d.*, and the verdict found the prisoner guilty to the extent of 10*d.* He escaped with a whipping (and the poultry?).

[1] *Starkey's Life and Letters* (ed. Herrtage) E.E.T.S, 1878, pp. 119-20.

[2] *Ibid*, p. 197. cf. More, *Utopia*, Everyman edn., p. 28.

[3] *The Honeſt Whore* (I), I, v.

[4] J. Liſter, *Weſt Riding Sessions Rolls*, p. 138; and see elsewhere in the same volume for similar inſtances.

The reference to Halifax should remind us that hanging by the neck, although the common penalty, was not the only method of ending the felon's life. Pirates caught in the Thames mouth, or tried in London, were tied up and left to drown in the high tides of Wapping. Halifax also retained an ancient local custom.

In the clothmaking district within its curious jurisdiction the thief caught in possession of stolen property—generally animals or rolls of cloth—suffered death in a unique manner and after an unusual process of trial. The gibbet-law of Halifax, which is supposed to have been a survival of the old custom of infangthef, was practised until 1650, when the last two victims of the ingenious guillotine which made such a remarkable impression on visitors to the town were beheaded. Sixteen jurors, selected by the four local constables, recorded in writing their verdict of the guilt of the accused; and further, without the intervention of a magistrate, they gave their "determinate sentence". "By the ancient custom and liberty of Halifax, whereof the memory of man is not to the contrary", the felons "are to suffer death by having their heads severed and cut off their bodies at Halifax gibbet". A victim of Halifax custom, we learn, is "forthwith beheaded on the next market day, . . . or else upon the same day that he is convicted, if market be then holden. The engine . . . is a square block of wood of the length of four foot and an half, which doth ride up and down in a slot, rabet or regalt, between two pieces of timber, that are framed and set upright, of five yards in height. In the nether end of the sliding block is an axe keyed or fastened with iron into the wood, which being drawn up to the top of the frame is there fastened with a wooden pin, . . . into the midst of which pin there is a long rope fastened that cometh down into the midst of the people, so that . . . every man there doth either take hold of the rope, or putteth his arm so near the same as he can get, in token that he is willing to see true justice executed; and pulling the pin out in this manner, the head-block wherein the axe is fastened doth fall down with such violence that, if the neck of the transgressor were so big is that of a bull, it should be cut in sunder at a stroke, and roll from the body by an huge distance". If a live beast had been stolen, it was tied to the pin and made to release the falling block.[1]

Special punishments intended to mark the public disapprobation of certain offences existed in but few instances. Harrison gives a list which

[1] Stephen, *Hist. Criminal Law*, i,265ff. a sixteenth century account in Harl. MSS. 785, 20, 10, qu. J. Lister, *Notes on Old Halifax*, 1906, p. 202; a similar account is given by Harrison.

includes the use of the pillory and the branding of a P on the forehead in cases of perjury. " Many trespasses also are punished by the cutting off of one or both ears from the head of the offender, as the utterance of seditious words against the magistrates, fraymakers, petty robberies, etc. Rogues are burned through the ears ; carriers of sheep out of the land by the loss of their hands ; such as kill by poison are either boiled or scalded to death in lead or seething water.[1] Heretics are burned quick.[2] Harlots and their mates by carting, ducking, and doing of open penance in sheets are often put to rebuke." Harrison would have some sharper law for adulterers. " For what great smart is it to be turned out of hot sheet into a cold, or after a little washing in the water to be let loose again into their former trades ? Howbeit the dragging of some of them over the Thames between Lambeth and Westminster at the tail of a boat is a punishment that most terrifyeth them that are condemned thereto ; but this is inflicted upon them by none other than the knight marshal and that within the compass of his jurisdiction and limits only."[3] He would even have made them serve as galley-slaves ; for it was at this time that this form of punishment was coming into discussion.

The life which the Rector of Radwinter would have reserved for those of his flock who were loose in their morals the government considered as a possible one for reprieved convicts. On occasion the cells of the jails were combed for the purposes of war recruitment.[4] Transportation and the galleys offered possible variations in cases where the prince's prerogative of mercy was to be shown. The history of transportation hardly begins within our period : all the projects failed. But for the lack of success of the experimental galley flotillas which were from time to time set upon the sea, it is probable that the living death of galley-slavery would have become a normal penalty enforced upon hardy criminals reprieved from execution. Such a punishment, indeed, found its way into a statute in 1598, when the quarter sessions justices were given the alternative of sending incorrigible vagabonds of dangerous character into perpetual banishment or to the queen's galleys.[5] Chattel-slavery was not known to the common law ; but there can be no doubt

[1] Boiling to death for poisoning was a legal penalty only between 1530 and 1547. Three or four persons were thus executed. Stephen, *op. cit.*, i, 476.

[2] *Description of England*, ed. Furnivall, 241.

[3] *Ibid*, p. 242

[4] As for the Cadiz expedition, 1596, Cheyney, *Hist. of England*, ii, 49-50 ; for Mansfeld's army in 1624 (imprisoned debtors), H. G. R. Reade, *Sidelights on the Thirty Years' War*, i, 547.

[5] 39 Eliz., c. 4, s. 4.