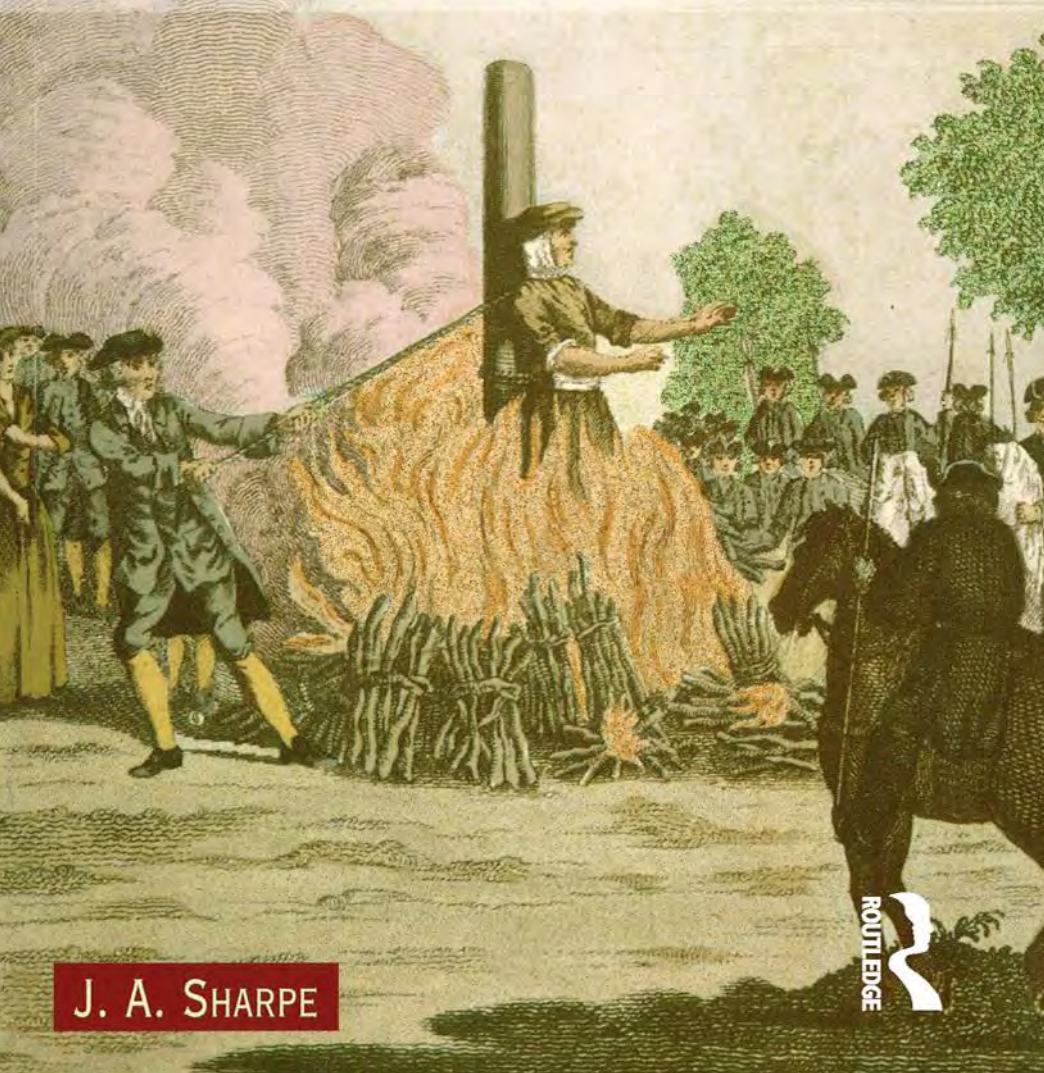


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second edition

CRIME IN EARLY MODERN ENGLAND 1550–1750



J. A. SHARPE

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Crime in Early Modern England 1550–1750

Second Edition

J. A. SHARPE

 **Routledge**
Taylor & Francis Group
LONDON AND NEW YORK

First published 1984 by Pearson Education Limited
Second edition 1999

Published 2013 by Routledge
2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN
711 Third Avenue, New York, NY 10017, USA

Routledge is an imprint of the Taylor & Francis Group, an informa business

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ISBN 13: 978-0-582-23889-3 (pbk)

British Library Cataloguing in Publication Data

A catalogue entry for this title is available from the British Library

Library of Congress Cataloging-in-Publication Data

Sharpe, J. A.

Crime in early modern England, 1550–1750 / J. A. Sharpe. — 2nd ed.

p. cm. — (Themes in British social history)

Includes bibliographical references and index.

ISBN 0-582-23889-7

1. Crime—England—History—16th century. 2. Crime—England—History—17th century. 3. Crime—England—History—18th century.

I. Title. II. Series.

HV6949.E5S53 1998

364.942—dc21

98-33539

CIP

Set by 35 in 10/12 pt Baskerville

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Preface to the First Edition and Acknowledgements

What might be termed the 'intellectual origins' of this book date back some fourteen years, to the period when I was beginning detailed work on my doctoral thesis on crime in seventeenth-century Essex. I was, and remain, convinced of the value of the detailed local study to the history of early modern crime. Similarly, I was, and remain, convinced of the excellence of the facilities of the Essex Record Office. Even at that early stage of my studies around the subject, however, it became obvious to me that it involved issues which stretched far beyond Essex, that much-studied corner of Elizabethan and Stuart England, and far beyond the sixty-year period covered by my doctorate. This book is the product of my desire to come to grips with some of those wider issues. Even so, the initial debt I must acknowledge is to two men whose influence on me while I was involved in the earlier exercise still affects my work: Mr Keith Thomas, under whose supervision I learnt how to conduct historical research; and Mr Arthur Searle, from whom I learnt a great deal about how to approach local archives.

In the process of researching this present book my intellectual indebtedness has increased enormously. I have consulted printed primary materials and secondary works in the Bodleian Library, the British Library, the Brotherton Library, Leeds, the Guildhall Library, the Institute of Historical Research and the J. B. Morrell Library, York. I am grateful to the staff of all these institutions for their assistance. I am also grateful for permission to consult and cite manuscript materials in the Borthwick Institute of Historical Research, York, the Corporation of London Record Office, the Doncaster Metropolitan Borough Archive Service, the Durham University Department of Palaeography and Diplomatic, the Essex Record Office, the Greater London Record Office, the North Humberside Record Office, Sheffield City Libraries and, above all, the Public Record Office in London. The Crown copyright records

in the Public Record Office and the Greater London Record Office are cited by kind permission of Her Majesty's Stationery Office.

The services of these institutions have been supplemented by assistance from a number of individuals. I should like to thank all those who have given me permission to cite their dissertations or other unpublished materials. More specifically, Dr Tim Curtis, Dr M. J. Ingram, Dr John Stevenson and Dr Keith Wrightson were all kind enough to read earlier drafts of sections of this book, and the final version has been considerably strengthened by their comments and criticisms. I have also been aided by conversations and correspondence with Ms Joanna Innes, Dr J. B. Post and Mr John Styles, while my awareness of the wider geographical and chronological issues involved in my chosen subject has been sharpened by debate with continental and transatlantic scholars at the colloquia organised in Paris by the International Association for the History of Crime and Criminal Justice. I am grateful to John Stevenson in his editorial capacity and to Mrs Julie Eastwood for preparing the final typescript with her accustomed speed and accuracy.

I also owe much to having worked for nearly a decade in what is probably one of the best and certainly one of the liveliest history departments in the country, during which time I have learnt much through having to refine my ideas in argument with my colleagues and students. Of the former, Dr Jonathan Powis and Dr Dwyrdd Jones have perhaps done most to deepen my understanding of the early modern period. Of the latter, my special subject group of the autumn of 1980 were especially noteworthy for taking nothing that I said on trust, and for voicing their criticism in forthright terms: I hope to see their like again.

Bishophill, York
August 1983

Preface to the Second Edition

In this second edition I have attempted to weave into what I still consider to have been the sound basic structure of the first edition some of the results of the new research into and the new thinking about the history of crime which have occurred over the last fifteen years or so, and I have incorporated updated references in the notes. Most of the debts incurred when putting the first edition together still stand, although I must add to them Roger Dickinson and Penny Wilson, who gave vital assistance by scanning the text of the first edition onto disc for me, and I must also thank my wife for her considerable forbearance when my work on the new edition involved working deep into a number of winter evenings.

The passing of the years has, alas, brought few groups of students onto my special subject to match the 1980 crop: those of 1993 did, however, just about manage it.

Stillingfleet, North Yorkshire
March 1998

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CHAPTER ONE

Definitions, Methods and Objectives

Crime is now accepted as a serious subject of historical study. That it has achieved this status owes much to the explosion of interest in social history which began in the 1960s, and which led historians to study not just crime but a number of other hitherto disregarded or little regarded topics: the family, popular culture, women's history, the history of childhood, the history of death. Certainly, although the existence of a number of important earlier studies should not be overlooked, it was the 1970s which were to see the publication of a cluster of significant scholarly studies of the history of crime, law and order, and related topics. These studies, and others which followed in the early 1980s, convinced many historians that the history of crime was a growth area, and led those of them working on more traditional themes to describe (or perhaps more accurately decry) the subject as 'fashionable'. Yet so far as the history of early modern England was concerned, the volume of this pioneering work was hardly overwhelming: a handful of monographs, a smaller number of collections of essays, a few articles in scholarly journals and less than ten doctoral theses. The bulk of publication subsequent to these pioneering days has not been massive, although the arrival in print of some excellent monographs and scholarly articles has ensured that the quality of work in this field has offset any deficiencies in quantity.¹ Historians of crime in early modern

1. Most of the relevant printed material will be introduced where appropriate in the course of this chapter. The progress of the history of crime in early modern England, especially in its early stages, can be charted in a number of review articles, among the most useful of which are: Victor Bailey, 'Bibliographical essay: crime, criminal justice and authority in England', *Bulletin of the Society for the Study of Labour History*, 40, Spring 1980, pp. 36–46; E. W. Ives, 'English law and English society', *History*, 61, 1981, pp. 50–60; J. A. Sharpe, 'The history of crime in late medieval and early modern England: a review of the field', *Social History*, 7, 1982, pp. 187–203 (I

England, once constantly reminded by their colleagues that their subject was expanding and fashionable, might justifiably think that, many years after the subject made its first claims for academic recognition, there is still considerable work to be done. Those based in British institutions might also ponder on why it is that so much work in this field has been carried out by transatlantic, or transatlantically based, scholars.

The scholarship devoted to the history of early modern crime since the 1970s has served as a corrective to the neglect with which it had previously been treated. To demonstrate this point, let us turn to how an earlier generation of history textbooks treated the subject, making at best only passing and impressionistic reference to it. J. B. Black's account of the reign of Elizabeth I in the 'Oxford History of England' series made a few generalized remarks on lawlessness, mentioned highwaymen briefly, and devoted the obligatory few paragraphs to vagabonds. Sir George Clark's account of the later Stuarts, in the same series, restricted its discussion of crime and lawlessness to a brief and not entirely accurate commentary on witchcraft and duelling. One of the best known general histories of the eighteenth century of its time, by J. H. Plumb, mentioned crime and the criminal law as one element in the supposed brutality of the age. A familiar picture was conjured up of gin-drinking, ineffective parish constables, the London slums, and Tyburn, while 'the brutality and ferocity of life . . . prevalence of dirt, disease and poverty' was commented upon. In such a world, it is little wonder that 'angry mobs, burning and looting' were 'as prevalent as disease'.² Even works of this vintage claiming to deal with economic and social history had little of any value to say about crime.

In large measure, this neglect of crime as a historical phenomenon is just one aspect of a much wider tendency, which has still not been fully dispelled, to treat social history as the Cinderella of the historical sciences. Since the late nineteenth century, the main thrust of English historical writing has been towards the study of

am grateful to the editors of *Social History* for permission to reproduce many of the arguments used in that article in this chapter); Joanna Innes and John Styles, 'The crime wave: writing on crime and criminal justice in England', *Journal of British Studies*, 25, 1988, pp. 380–435; and J. A. Sharpe, 'The history of crime in England, c. 1300–1914: an overview of recent publications', *British Journal of Criminology*, 28, 1988, pp. 124–37. To these articles might be added a recent short synthesis, John Briggs, Christopher Harrison, Angus McInnes and David Vincent, *Crime and Punishment in England: An Introductory History*, University College London Press, 1996.

2. J. B. Black, *The Reign of Elizabeth 1558–1603*, Oxford UP, 1959, pp. 261–7; Sir George Clark, *The Later Stuarts 1661–1714*, 2nd edn, Oxford UP, 1955, pp. 418–20; J. H. Plumb, *The First Four Georges*, Batsford, 1956, pp. 14, 19.

past politics. Social history, when studied on a level above the purely anecdotal, was frequently approached largely in terms of the history of social policy. Even labour history, potentially an exciting subject, took some time to emerge from its preoccupation with the early prefigurations of the modern Labour Party and trade union movement, and to concern itself with the broader social and cultural aspects of working-class history. Only recently has much serious attention been paid to those aspects of life which are outside the ken of such political institutions. This past neglect has led to two problems. The first, to use the words of Keith Thomas, is that social history has usually been treated as an 'undemanding subsidiary', something that at best deserves only brief mention before the historian passes on to those central concerns, politics and the constitution. Secondly, as Edward Thompson put it, to the mainstream historian 'the people of this island (see under Poor Law, Sanitary Reform, Wages Policy) appear as one of the problems which the government has to handle'. Thomas's claims, made as long ago as 1966, that 'the social history of the future will . . . not be a residual subject, but a central one, around which all other branches of history are likely to be organized'³ has not been fulfilled in Britain, least of all in the undergraduate syllabus. Nevertheless, important advances have been made.

These advances are the outcome of a number of factors. One of them is the influence of foreign historians, not least French proponents of the *Annales* school. Another is the contribution made to the study of history by the social sciences, of which social anthropology is probably of the most use to the early modernist.⁴ Both of these influences have done much to encourage historians of Tudor and Stuart England to approach their subject in new ways. But what is arguably the most important contribution to this rewriting of the history of early modern England has come from the massive growth in what might be best described as archive-consciousness: documentary sources are more widely available than ever before, and historians are becoming increasingly imaginative in their ideas of how to use them.⁵ Many sources which were undiscovered, unavailable,

3. Keith Thomas, 'The tools and the job', and E. P. Thompson, 'History from below', *Times Literary Supplement*, 7 April 1966.

4. For two classic explorations of the possible relationship between history and anthropology see: E. E. Evans-Pritchard, *History and Anthropology: A Lecture Delivered in the University of Manchester*, Manchester UP, 1961; and Keith Thomas, 'History and anthropology', *Past and Present*, 24, 1963, pp. 3-24.

5. For a good discussion of these sources, see Alan Macfarlane, in collaboration with Sarah Harrison and Charles Jardine, *Reconstructing Historical Communities*, Cambridge UP, 1977.

or whose usefulness was unappreciated a generation ago, are now readily on hand at the Public Record Office in London, or in local or specialist record offices. Research on these documentary riches is made easier by the way in which many of them have been repaired, cleaned, catalogued and indexed in such a fashion as to facilitate their use. In 1848 Macaulay, at the beginning of the famous third chapter of his *History of England*, lamented the fact that he was forced to base his account upon 'scanty and dispersed materials'. Most later political historians, in their brief accounts of English society in the past, have used a similarly anecdotal approach, although few have matched Macaulay's vividness of writing. Now, thanks to the labours of the archivist, those embarking on the writing of English social history frequently find an embarrassment of primary materials upon which to base their researches.

In particular, this extensive documentation makes it possible to treat crime as something more than an aspect of an undemanding and subsidiary area of history, subject to and deserving only anecdotal treatment. Recent work in the field has confirmed the suspicion that arises from reading a few of the older studies of the subject:⁶ abundant materials await the historian willing to go out and find them, and important results await those willing to show diligence in reading these materials and ingenuity in using them. Court archives, although nowhere near complete, survive in large numbers, and reveal the business of tribunals as disparate as the Star Chamber and King's Bench at Westminster, and the local manorial court in the darkest corner of the realm. Such archives form the basis of the most important research on crime, the actuality of the prosecution of offences and their punishment. Other sources, many of them still relatively unexploited, provide insights into other important if ancillary facets of crime in the past. Popular literature, almost since its inception, has been full of accounts of spectacular crimes, accounts which provide some factual evidence as well as information on attitudes towards illegal behaviour. By the early eighteenth century, newspapers were regularly reporting crime, while additional information on the phenomenon is provided by advertisements concerning stolen goods. The statute book and parliamentary diaries can be used to give evidence on official attitudes

6. Among older studies, L. O. Pike, *A History of Crime in England*, 2 vols, London, 1873–76, although something of an old curiosity shop, is written with enthusiasm, and attacks a wide range of issues. A. H. A. Hamilton, *Quarter Sessions from Queen Elizabeth to Queen Anne*, London, 1878, is an early example of the use of court materials in a more or less systematic fashion.

and preoccupations, while there are also frequent if scattered references to crime in a wide variety of private documents, among them diaries, letters and estate papers. There is certainly no shortage of material and, as we shall see, this is clearly reflected in a diversity of approaches to the subject.

Crime: the problem of definition

This variety of materials relating to the history of crime, and mention of the diversity of ways in which the subject can be approached, serve to introduce a fundamental problem: how 'crime' is to be defined. Our starting-point must be that the word crime is a general blanket term rather than a precise analytical or descriptive category. The term can be used to describe an accident; an incidental and unpremeditated explosion of passion or despair; a behaviour pattern expressive of emotional or mental instability or frustration; something akin to business activity; or even a chosen way of life. Defining behaviour as 'criminal' varies according to different circumstances or social conventions, and there is a constantly moving frontier of what is, and what is not, acceptable conduct in any given society. Crime thus includes not only those acts which most human beings would regard as intrinsically wicked but whose motivation can vary enormously (theft and murder, for example); it also comprehends behaviour which can be newly classified as criminal by a specific society and can therefore be created by legislators or law-enforcement agencies. As criminologists have reminded us, there is a need to distinguish between crime waves and 'enforcement waves' when analysing criminal statistics.⁷

Moreover, definition of behaviour as 'criminal' can vary according to social status or class, and is also prone to change over time: what a workforce might regard simply as taking traditional perquisites might be regarded as pilfering by employers, while types of violence which are acceptable in some periods might be less so in others. 'Crime', therefore, covers a wide range of activities, and is likely to be defined differently by different people at different times.⁸

7. E.g. Jason Ditton, *Controlology: Beyond the New Criminology*, Macmillan, 1979.

8. For some early comments on the difficulties of defining crime in the past see J. B. Post, 'Criminals and the law in the reign of Richard II, with special reference to Hampshire', Oxford University D.Phil. Thesis, 1973, ch. 1, 'A definition of crime'; Barbara Hanawalt, *Crime and Conflict in English Communities, 1300-1348*, Harvard UP, 1979, pp. 3-4; and Timothy Curtis, 'Explaining crime in early modern England', *Criminal Justice History*, 1, 1980, pp. 117-19.

For most of our purposes, however, since the early modern historian's concern must be mainly with recorded crimes, an effective (if by no means exclusive) working definition of the word must be that crime is behaviour which is regarded as illegal and which, if detected, would lead to prosecution in a court of law or summarily before an accredited agent of law enforcement. Above all, such a definition, allied to good court records, allows us to understand how crime was defined by the relevant institutions of the society experiencing it. Overcoming modern preconceptions on this point is a major obstacle.

The sort of problem which historians encounter when they fail to interpret crime in the past in the terms in which it was understood at the time is dearly demonstrated in G. R. Elton's introductory essay, 'Crime and the historian', in the collection of studies edited by J. S. Cockburn under the title *Crime in England 1550–1800*. Elton, for example, had difficulties with the notion that the historian of crime should be concerned with church courts and thus 'throw theft and adultery into one bag', since 'contemporaries did not regard them as of one kind at all'.⁹ This is largely true, although we must bear in mind a number of Puritan writers who did put the two activities on a roughly equal moral plane.¹⁰ Neither, one suspects, did contemporaries regard theft and treason as the same thing: but Elton, a little later, put these two offences into one bag when he spoke of 'the real crimes as it were . . . treasons and felonies'.¹¹ The use of the phrase 'the real crimes' betrays the writer's line of thought. His definition of crime, despite his willingness to accuse another contributor to the volume of 'mildly anachronistic confusion',¹² was evidently based on what is perhaps the modern layman or woman's definition of 'serious crime': burglary, robbery, rape and murder. To restrict a study of crime in early modern England to these offences simply will not do.

The first objection to equating 'real crime' with the serious offences, treason and felony, must be that in early modern England, as in modern British society (and, one suspects, all others), petty crime was more common, more typical, and in many ways more entitled to be described as 'real' crime than was the serious

9. G. R. Elton, 'Introduction: crime and the historian', in *Crime in England 1550–1800*, ed. J. S. Cockburn, Methuen, 1977, pp. 2–3.

10. E.g. John Dod and Richard Cleaver, *A plaine and familiar Exposition of the ten Commandments*, London, 1610, p. 289, where it is claimed that 'the adulterer is a theefe, by intruding his child into another man's possession'. Despite the somewhat odd logic, the rhetorical intent of this statement is clear.

11. Elton, 'Crime and the historian', p. 4. 12. *Ibid.*, p. 3.

offence.¹³ In the crisis years of 1629–31, for example, 93 thefts were prosecuted at the Essex quarter sessions. The same years saw the prosecution of 698 individuals for defaulting on their statutory obligation to work on the highways, and of 652 persons for various offences connected with the drink trade.¹⁴ Work on petty crime in Middlesex in the late seventeenth and eighteenth centuries has unearthed a fascinating pattern of minor offences, and also a considerable official flexibility in dealing with them.¹⁵ Moreover, ignoring petty crime not only obscures the reality of the pattern of prosecutions and punishment, but also loses sight of one or two important points about the objectives of central and local government. One of the distinctive features of law enforcement in the first half of the period covered by this book was the prosecution of regulative offences, of which infractions of the drink laws perhaps loom largest in the archives of the criminal courts. To ignore this phenomenon is to ignore much of what the authorities of the period would have regarded as the essence of crime control, but to understand its full dimensions the historian must extend his or her researches into the records of local and minor tribunals, not least the ecclesiastical and manorial courts. The parish constable sending the unlicensed alehouse-keeper to the quarter sessions and the churchwarden sending the adulterer to the church courts would have regarded themselves as participants in the same struggle: disorder and ungodliness were not readily separable entities.

Mention of parish constable and churchwarden introduces another difficulty touched on by Professor Elton, namely that of distinguishing between crime and sin. The inhabitants of Tudor, Stuart and Hanoverian England were, to say the least, a little unclear on this matter. Even at the end of the eighteenth century, contemporary opinion held crime to be little different from immorality. At

13. This would certainly seem to be the case in Britain in the recent past. There were, for example, 911,365 persons found guilty of non-indictable offences (690,168 for motoring offences) in England and Wales in 1961, compared with 110,761 for indictable offences: F. H. McClintock and N. Howard Avison, *Crime in England and Wales*, Heinemann, 1968, p. 290, table 11.2. Cf. the observations of Nigel Walker, *Crime and Punishment in Britain*, 2nd edn, Edinburgh UP, 1968, p. 36, that the crimes about which public concern is most frequently expressed – murder, violence, and sexual offences – are among the least frequently committed.

14. Keith Wrightson, 'Two concepts of order: justices, constables and jurymen in seventeenth-century England', in *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries*, ed. John Brewer and John Styles, Hutchinson, 1980, table 2, pp. 302–3.

15. Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660–1725*, Cambridge UP, 1991.

earlier moments in time this was probably even more true. Adultery, indeed, is a case in point: in 1650 this sin, hitherto a church court offence, was turned into a crime when it was made felony without benefit of clergy by Act of Parliament. Puritan and other writers, citing both Mosaic law and the example of contemporary societies where such matters were better ordered than England, had been advocating this step for some time. Examination of the intellectual background to the Act provides a neat demonstration not so much of a willingness to criminalize sin as of a widespread inability to comprehend a distinction between the two.¹⁶ Other documentation provides further evidence on this point. When, for example, the Court of Great Sessions at Chester issued an order against unlicensed alehouses in 1654, it justified its action by claiming that alehouses and the disorders found in them were ‘to the great dishonour of Almighty God, scandall of all good government, hardening and encouragem[en]t of wicked and licentious p[er]sons in their vicious courses and endangeringe the publique peace’.¹⁷ This criminal court, therefore, obviously held that certain forms of wrongdoing offended God’s laws as much as man’s: contemporary perceptions, we might therefore suspect, were unused to the idea of any clear-cut division between sin and crime.

This suspicion is strengthened by the way in which contemporary commentators were addicted to the idea that minor sins and vices, if uncorrected, might lead all too easily to major crimes. The highly conventionalized biographies of convicted criminals, as presented in popular literature, abound with illustrations of this notion. Thus we find Edmund Kirk, executed in London in 1684 for murdering his wife, reportedly emphasizing to the crowd how his downfall was in large measure attributable to a youthful indifference to God’s commands. He told how

Time was when I had as great a delight in vanity, as the most debauched among you. The day was lost in my apprehension, in which I met no jovial companion to drink or carouse away my hours; the night misspent that was not improved in the embraces and dalliances of some Dahlila. The sentence came dully and insipidly from my lips that was not graced with an oath.¹⁸

16. See Keith Thomas, ‘The puritans and adultery: the Act of 1650 reconsidered’, in *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill*, ed. Donald Pennington and Keith Thomas, Oxford UP, 1978.

17. Public Record Office (hereafter PRO), CHES 21/4, f. 316 (Chester Crown Book).

18. *The Sufferer’s Legacy to Surviving Sinners: or, Edmund Kirk’s dying advice to young men*, London, 1684 (single page broadsheet).

When dealing with a society which regarded such conduct as the usual first step towards a career of serious crime, historians are obviously obliged to attempt to fit contemporary ideas on sin and its correction into their terms of reference. Indeed, one historian has made this issue central to her interpretation of seventeenth-century law enforcement.¹⁹

If sin and crime were often conflated in the early modern period, a similar if less marked lack of clarity underlay the distinction between crime and what would be regarded currently as tort. A number of offences might be dealt with either by criminal prosecution or a civil action. Hence defamation, although most often remedied through launching a suit at the common law or ecclesiastical courts, might also be prosecuted as a crime, since defamatory language was thought to be conducive to a breach of the peace.²⁰ Similarly assault, itself a very widely defined offence in this period, could lead to either indictment at a criminal court or the launching of a suit at the Court of Common Pleas.²¹ Behind such examples, which could be multiplied, there lies a more general problem. The age was a deeply litigious one, and people were apparently very willing to resolve conflicts and settle disputes by going to law. Indeed, non-criminal litigation, a subject of less overt interest than crime, is a relatively neglected topic. Although it is worth pointing out that the bulk of archives surviving from civil suits is much larger than that for criminal prosecution, and that the records of non-criminal litigation are a largely unexplored source of considerable importance to the social historian.²² What needs to be grasped here

19. Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England*, Cambridge UP, 1987. For a briefer introduction to some of Professor Herrup's main arguments, see her 'Law and morality in seventeenth-century England', *Past and Present*, 106, 1985, pp. 102–24.

20. For two concise discussions of the law of defamation in our period see Theodore F. T. Plucknett, *A Concise History of the Common Law*, 5th edn, Butterworth, 1956, book 2, part II, ch. 5, 'Defamation'; and S. F. C. Milsom, *Historical Foundations of the Common Law*, Butterworth, 1969, ch. 13, 'The rise of the modern law of torts', especially pp. 332ff.

21. M. J. Ingram, 'Communities and courts: law and disorder in early seventeenth-century Wiltshire', in *Crime in England*, ed. Cockburn, p. 114.

22. For an overview of this issue, see C. W. Brooks, 'Interpersonal conflict and social tension: civil litigation in England, 1640–1830', in *The First Modern Society: Essays in Honour of Lawrence Stone*, ed. A. L. Beier, David Cannadine and James M. Rosenheim, Cambridge UP, 1989. Local perspectives are provided by W. A. Champion, 'Litigation in the Borough of Shrewsbury *Curia Parva* 1580–1730', *Journal of Legal History*, 15, 1994, pp. 201–22, and Craig Muldrew, 'Credit and the courts: debt litigation in a seventeenth-century urban community', *Economic History Review*, 2nd series, 46, 1993, pp. 23–38, while some of the deeper aspects of the phenomenon are signposted by idem, 'Interpreting the market: the ethics of credit

is that this willingness to use the law imposes a different perspective on prosecuted crime from that familiar to the modern observer. In the absence of a modern police force, most prosecutions of crime, and the overwhelming majority of prosecutions of felony in particular, were brought either by the victim, by local amateur law-enforcement officers or, indeed, by individuals offended at what they regarded as deviant behaviour. Crime control, at this level, was therefore very dependent upon private initiative, and prosecution throughout the court system was essentially the outcome of a series of personal decisions. The prosecution of even serious crime, therefore, derived something of the flavour of a civil action from the social interactions which so often preceded it. With many petty offences, for example if a tenant confronted by a neighbour who damaged his fence sought remedy by presentment at the manorial court, the practical differences between the criminal and civil aspects of a case could be almost non-existent.

Our aim when studying crime in the past, therefore, must be to take as wide a view of the phenomenon as possible. Serious crime is, of course, a subject which demands serious attention, and much of our argument over developments in the period 1550–1750 will revolve around an analysis of recorded changes in the level of serious crime, combined with changes in its punishment and in attitudes towards it. Statistically, however, most crime is petty crime, and it would thus be idle to ignore the less serious offence. From the viewpoint of the authorities, the essential objective of law enforcement was the control, or at least curbing, of all forms of criminal and delinquent behaviour. If the state saw fit to attempt to regulate certain forms of behaviour through courts operated by the state church, it would be illogical to disregard cases tried before such courts. Similarly, if attempts were made to curb delinquencies through the manorial courts, these too should be numbered among our concerns. An exception must be made for such religious offences as heresy, recusancy and failure to attend church. These are best studied within the context of religious history, and have received considerable attention from historians of religion in early modern England. These offences apart, our intention in this book is to come to grips with past definitions and to leave the modern layman's definition of 'real' crime as far away as possible.

and community relations in early modern England', *Social History*, 18, 1993, pp. 163–84. These latter two articles are based on work carried out for Dr Muldrew's 'Credit, market relations and debt litigation in seventeenth-century England, with special reference to Kings Lynn', Cambridge University Ph.D. Thesis, 1990.

Methodologies

Having discussed definitions, we must now turn to examine the various methodologies which might be adopted in studying our subject. Traditionally, the greatest contribution has been made by legal historians.²³ Legal history remains a lively branch of both legal and historical scholarship,²⁴ and to attempt to study the history of crime without some prior acquaintance with the basics of legal history is akin to making bricks without straw. Nevertheless, studying crime purely through legal history is an activity which is vulnerable to a number of objections. The first of these is that the practice of both courts and law-enforcement officers was often at variance with legal theory. According to this, if we may take the most striking example, the indictment should have been a document so accurate as to constitute an impeccable source upon which the historian might construct a number of conclusions, most of them statistical. Examination of Elizabethan and Jacobean indictments, on the other hand, has shown that they were frequently inaccurate, and that such matters as the occupation or status of offenders, their parish of origin, and even the date of the offence, cannot be derived from them with any reliability.²⁵ Secondly, one of the hallmarks of the law-enforcement system in this period was its flexibility, an attribute which included the correction of a wide variety of conduct which might have defied the precise definitions of the statute book. This flexibility was perhaps most marked in the manorial courts, which were local, decentralized and to a large extent bound by local custom.²⁶ It is also evident, however, in the practices of tribunals dealing with serious crime. In particular, the power to bind persons

23. A full bibliography on the legal history of this period would fill a substantial book in itself. Among the more useful short guides are: J. H. Baker, *An Introduction to English Legal History*, Butterworth, 1971; and Alan Harding, *A Social History of English Law*, Penguin, 1966. Greater detail is provided by W. S. Holdsworth, *A History of English Law*, ed. A. L. Goodhart and H. G. Hanbury, 17 vols, Methuen and Sweet & Maxwell, 1903–72; and Leon Radzinowicz, *A History of English Law and its Administration from 1750*, 5 vols, Stevens, 1948–90.

24. See, for example, *Legal Records and the Historian: Papers Presented to the Cambridge Legal History Conference. 7–10 July 1975*, and in *Lincoln's Inn Old Hall on 3 July 1974*, ed. J. H. Baker, Royal Historical Society, London, 1978.

25. J. S. Cockburn, 'Early modern assize records as historical evidence', *Journal of the Society of Archivists*, 5, 1975 pp. 215–31, provides a forceful demonstration of the unreliability of this source in the early part of our period.

26. For an early attempt to alert historians to the importance of post-medieval manorial institutions, see the comments of Sidney and Beatrice Webb, *English Local Government from the Revolution to the Municipal Corporation Act: The Manor and the Borough*, part 1, Longmans Green, 1924, p. 27.

over to be of good behaviour or to keep the peace, and the custom of sending petty offenders to the house of correction, gave the authorities almost unlimited discretion in what was, and what was not, illegal, dangerous or undesirable behaviour.²⁷ Such cases as the Cheshire man indicted at the Court of Great Sessions in 1617 for drinking healths in his own blood²⁸ obviously take us a little beyond the legal historian's ken. Moreover, legal theory can tell us little about another major characteristic of early modern crime, the essentially personal or parochial circumstances which so often formed its context. Prosecution, it must be reiterated, was usually the outcome of choices made by the person offended against, or by village officers or village opinion, and often followed a lengthy period of interaction between them and the offender. This process, almost invisible to the legal historian, is crucial to the understanding of law enforcement in the early modern era.

A second approach, and one which has enjoyed much favour, is to write the history of crime from literary sources. This approach appealed above all to the writers of textbooks on political history when constructing their brief descriptions of English society. Any social theme, after all, can be illustrated by a brief quote from Chaucer, Shakespeare or the Paston Letters. Once more we are confronted with a refusal to take social history seriously, and the limitations of what might be termed the *belles-lettres* approach to the study of the subject are all too apparent. It is indicative of the priorities of English historical writing that historians who would otherwise have prided themselves on their scholarship, intellectual rigour and talent for source-criticism should become slack, lazy and uncritical when using literary sources to discuss social historical topics, crime included. If we may return to our earlier generation of textbooks, we find J. B. Black, for example, concluding his brief discussion of highwaymen in Elizabethan England by commenting that 'Falstaff's disgraceful exploit at Gadshill was probably a not uncommon occurrence'.²⁹ This exploit, of course, never took place outside the playhouse, and cannot be used as evidence of reality.

27. Conduct which was held to constitute a breach of the peace, or of good behaviour, was very widely defined: for two contemporary discussions of the point, see William Lambarde, *Eirenarcha: or the office of the justice of the peace in four bookes. Gathered 1579: first published 1581: and now secondly revised, corrected and enlarged agreeably to the reformed commission of the peace*, 7th edn, London, 1592, pp. 76–123; and Michael Dalton, *The Countrey Justice: containing the practice of the justices of the peace out of their sessions: gathered for the better help of such justices of peace, as have not been much conversant with the laws of this realm*, 10th edn, London, 1677, pp. 263–93.

28. PRO, CHES 21/3, f. 8v. 29. Black, *Reign of Elizabeth*, p. 263.

Imaginative literature is imaginative literature: it can be used to illustrate past attitudes or preoccupations, but it should not be confused with historical fact. Obviously, as recent work has demonstrated, imaginative literature can be used to explore attitudes to crime, or to raise searching questions about the broader cultural context within which crime and thinking about crime took place.³⁰ Yet it remains clear that, unfortunately, the familiarity, vividness and accessibility of literary sources makes them very attractive, and a number of writers, professional English scholars among them, have thrown these sources together to form easily palatable if hopelessly inadequate books. The reviewer of one such, commenting that its author had simply assembled 'the detritus of some Eng. Lit. lectures and shovelled it lazily behind a catchpenny title', has provided us with an epitaph for a whole approach to the history of crime.³¹

As long as a century ago, however, scholars were already beginning to suggest an alternative body of source material and, by extension, a more systematic approach to the subject. As has been suggested, historians owe a great deal to the modern archives profession, which has done so much to help them come into contact with primary materials. Historians also owe a substantial debt of gratitude to those scholars who, from the middle years of Victoria's reign onwards, took an active role in setting up societies for the publication of local history records. By the end of the nineteenth century, most English counties possessed both a local history journal and a series of publications of local records. The rise of this enthusiasm for local history is an interesting cultural phenomenon, which awaits fuller investigation. Its immediate relevance to our argument is that a number of early publications in these records series consisted of editions of court, and especially quarter sessions, records. The standards of editing of these records vary, although some are excellent, and most of the editors were simply content with a brief and relatively uncritical introduction. Already, however, the enthusiasts editing their county's quarter sessions records were beginning to explore what is arguably the most useful initial approach to the history of crime: the systematic study of court

30. See, for example, Ian A. Bell, *Literature and Crime in Augustan England*, Routledge, 1991. Conversely, for a recent example of the slack use of literary evidence, see Christopher Hill, *Liberty against the Law: Some Seventeenth-Century Controversies*, Allen Lane, 1996.

31. J. B. Post, reviewing Gamini Salgado, *The Elizabethan Underworld*, Dent, 1977, in the *London Journal*, 4, 1978, p. 288.

archives, usually with some notion of statistical analysis in mind. In particular, the work of J. C. Jeaffreson on the Middlesex sessions records provided a number of pointers as to how such sources might be used.³²

It is only in recent years, despite an excellent and neglected early study by C. L. Ewen of witch trials,³³ that such an approach has gained much currency. The 1970s, however, were to see the appearance of a number of studies which adopted it. The methodology seemed simple enough: find a good court archive, master the contemporary law relating to the court and the offences tried before it, work through the archive systematically, and produce a statistically based study. These statistics could then be related to other socio-economic factors, notably grain prices and other economic variables, and important conclusions derived from such correlations as emerged about the nature of crime and punishment in the past. Such a methodology formed the basis of a number of pioneering works, notably a monograph by Joel Samaha and important essays by J. S. Cockburn and J. M. Beattie, constituted a starting point for Alan Macfarlane's book on witchcraft, and was a major feature of the first two doctoral theses to be completed on seventeenth-century crime, the first by T. C. Curtis, the second, subsequently published in rewritten form, by the present writer.³⁴ That it remains a valid approach to the subject was demonstrated in 1986 by J. M. Beattie's magisterial study of crime and punishment in the south-eastern counties of Surrey and Sussex in the late seventeenth and eighteenth centuries.³⁵ Statistically based studies have also appeared on crime in periods outside the early modern, and it is now possible to gain insights into patterns of and

32. *Middlesex County Records*, ed. J. C. Jeaffreson, 4 vols, Middlesex County Records Society, 1886–92.

33. C. L. Ewen, *Witch Hunting and Witch Trials. The Indictments for Witchcraft from the Records of 1373 Assizes Held for the Home Circuit AD 1559–1736*, London, 1929.

34. Joel Samaha, *Law and Order in Historical Perspective: The Case of Elizabethan Essex*, Academic Press, 1974; J. S. Cockburn 'The nature and incidence of crime in England 1559–1625: a preliminary survey', in *Crime in England*, ed. Cockburn; J. M. Beattie, 'The pattern of crime in England 1660–1800', *Past and Present*, 62, 1974, pp. 47–95; Alan Macfarlane, *Witchcraft in Tudor and Stuart England: A Regional and Comparative Study*, Routledge & Kegan Paul, 1970; T. C. Curtis, 'Some aspects of crime in seventeenth-century England, with special reference to Cheshire and Middlesex', Manchester University Ph.D. Thesis, 1973; J. A. Sharpe, 'Crime in the county of Essex, 1620–1680: a study of offences and offenders at the assizes and quarter sessions', Oxford University D.Phil. Thesis, 1978, published as *Crime in Seventeenth-Century England: A County Study*, Cambridge UP/Éditions de la Maison des Sciences de l'Homme, 1983.

35. J. M. Beattie, *Crime and the Courts in England 1660–1800*, Oxford UP, 1986.

fluctuations in prosecuted crime for periods as far apart as the thirteenth and early twentieth centuries.³⁶

The pitfalls involved in attempting to understand any set of criminal statistics are obvious enough, and, since the problems of a statistical approach to the history of crime are discussed in Chapter 3, there is little profit in rehearsing them here. Perhaps the main point to be made at this juncture is that whatever their limitations, these statistically based studies have made a number of important contributions to our understanding of the history of crime and punishment. Not least, such studies have indicated that it is possible to go far beyond that uncritical and anecdotal approach which has so impeded the serious study of the history of crime. Quantification must be limited in its ambitions, extremely cautious in its methods, and its results must be presented and explained with painstaking care. This is not to say that, where appropriate and possible, it is not an essential exercise, and that it cannot yield some important conclusions.

But it rapidly became apparent that counting was not the only thing that could be done with court archives. With some archives, of course, it was possible to do little else: the records of the Home circuit of the assizes, for example, although the only assize material which survives in any bulk between the starting point of our study and 1650, are limited mainly to indictments, whose value consists largely in the quantitative insights they provide into law enforcement in the past. Other records provide us with evidence of a qualitative type, and the intrinsically fascinating nature of much of this evidence soon distracted all but the most dedicated or unimaginative quantifier away from the calculator and the computer. Many court archives contain occasional letters, petitions, and other informal documents on a haphazard basis, and these often provide invaluable insights into the enforcement of the law at a grass-roots level. Moreover, and perhaps more importantly, historians began to appreciate the riches of those depositions, examinations, informations and confessions which survive for some courts, and which contain the evidence of witnesses and the statement of the accused. Unfortunately for the historian, although fortunately for everyone

36. For periods earlier and later than that covered by this book, see: James Buchanan Given, *Society and Homicide in Thirteenth-Century England*, Stanford UP, 1977; Hanawalt, *Crime and Conflict*; David Philips, *Crime and Authority in Victorian England: The Black Country 1835-1860*, Croom Helm, 1977; V. A. C. Gatrell, 'The decline of theft and violence in Victorian and Edwardian England', in *Crime and the Law: The Social History of Crime in Western Europe since 1500*, eds V. A. C. Gatrell, Bruce Lenman and Geoffrey Parker, Europa Publications, 1980.

else, England has never been a police state, and has never possessed an inquisitorial system of criminal justice. For this reason, the historian of crime in England will only rarely have access to records comparable to those which Richard Cobb, for example, turned to such good use in his studies of crime and related topics in late eighteenth-century France.³⁷ Nevertheless, it became evident that materials existed upon which some impression of the social context of crime in early modern England could be founded: a third approach was thus added to the legal-historical and statistical ones.

Although it was realized that even the isolated documents might furnish telling insights into the social background to the commission and prosecution of crime, it rapidly became apparent that a more systematic study of this problem could be gained from examining crime, those committing it, and those prosecuting it, through the medium of the village or community study.³⁸ Given adequate sources, such studies have shown how crime can be placed in a wider context. Court records are combined with other forms of documentation to provide detailed profiles of offenders, their victims, and the local officers of law enforcement. Under ideal circumstances, the documentation available can be adequate for the reconstruction of quite detailed biographies of even very lowly villagers, while it can also give a full impression of the nature of the socio-economic power-structure within the village, a subject of vital importance to study of the history of crime at its most local level. My early investigation of crime and delinquency in Kelvedon in Essex, although intended merely as an exploration of what was then an untested methodology for studying the history of crime, did at least demonstrate the potential usefulness of such an approach.³⁹ Deeper research over a longer timespan on another Essex village, Terling, allowed Keith Wrightson and David Levine to examine petty crime in its village context, and relate fluctuations in it to wider socio-economic change.⁴⁰ The lines of research suggested by these early studies of Essex villages have demonstrated how study

37. Richard Cobb, *The Police and the People: French Popular Protest 1789–1820*, Oxford UP, 1970; and *Death in Paris: The Records of the Basse-Geole de la Seine, October 1795–September 1801*, Oxford UP, 1978.

38. The materials upon which such a study might be based are described in Macfarlane et al., *Reconstructing Historical Communities*; some of Dr Macfarlane's further thoughts on the subject are given in his 'History, anthropology and the study of communities', *Social History*, 5, May 1977, pp. 631–52.

39. J. A. Sharpe, 'Crime and delinquency in an Essex parish 1600–1640', in *Crime in England*, ed. Cockburn.

40. Keith Wrightson and David Levine, *Poverty and Piety in an English Village: Terling 1525–1700*, Academic Press, 1979; 2nd edn, Oxford UP, 1995.

of the local context provides powerful, and sometimes unexpected insights into problems of crime and law enforcement. Arguably, therefore, the village study offers one of the most exciting ways of understanding crime in the past, and there is an urgent need for more studies of this kind, especially for communities outside Essex. Nevertheless, this approach, like all the others, is subject to a number of criticisms, of which the most telling is perhaps the problem of the implications for those embarking on community studies of the high geographical mobility enjoyed in early modern England. Most settlements experienced a high rate of turnover of population, and it seems likely that at least some types of criminal would be drawn from that most mobile sector of all, the rootless and marginal poor. Moreover, there is the objection, evident among even those historians willing to accept the usefulness of detailed village studies, that these must, perforce, be limited in their scope: parish studies are, after all, essentially parochial. Should not the historian be addressing somewhat larger issues?

Initially, the most stimulating work in this direction has been carried out by a group formed by E. P. Thompson and a number of younger scholars, most of whom worked under Thompson when he held a professorial post at the University of Warwick.⁴¹ All of them completed detailed local studies, mostly based on eighteenth-century topics. Their greatest contribution, however, lay in the way in which they raised some far wider issues about the history of crime, and did much to contextualize the subject by fetching it much nearer to the more central concerns of mainstream historical enquiry. The contributors to *Albion's Fatal Tree*, whose lead has already been followed by another important collection of essays,⁴² constructed a wider conceptual framework within which the study of crime in the past might operate. Above all, they showed that the law, even though being what, in plain terms, might be described as an instrument of class oppression, was rather subtle in the ways in which it oppressed. Douglas Hay's discussion of 'Property, authority and the criminal law', and Thompson's *tour de force* on the significance of the rule of law in *Whigs and Hunters*, are of particular

41. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, ed. Douglas Hay, Peter Linebaugh, John G. Rule, E. P. Thompson and Cal Winslow, Allen Lane, 1975; E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act*, Allen Lane, 1975; John G. Rule, 'Social crime in the rural south in the eighteenth and early nineteenth centuries', *Southern History*, 1, 1979, pp. 135-53. Cf. Terry Chapman, 'Crime in eighteenth-century England: E. P. Thompson and the conflict theory of crime', *Criminal Justice History*, 1, 1980, pp. 139-56.

42. *An Ungovernable People*, ed. Brewer and Styles.

importance.⁴³ Their arguments show how the law in eighteenth-century England played a crucial role in maintaining the credibility of the rulers among the ruled. Law, it might be argued, was coming to replace religion as the ideological cement which held society together, but this was a cement which would only prove effective as long as the masses believed in the rule of law, that is to say, the law's equality and the fairness of its operation. Addressing this problem brings the historian into contact with some of the central issues of social history: how the rulers legitimate their authority; why the ruled obey this authority; how the operation of authority is perceived; the way in which different social classes interact; and, ultimately, why and how it is that society coheres.

Thompson and his colleagues isolated a number of other issues of considerable significance. Hay's emphasis on the flexibility of the application of the criminal law, and of its selective application to suit the circumstances of individual offenders, is a theme of central importance, and one to which we will return in due course. More important, however, was the way in which Hay and his collaborators emphasized how different social groups had different perceptions of the law: members of different social strata, they argue, had different assumptions about what constituted 'legal' and hence 'criminal' behaviour. An underlying theme of *Albion's Fatal Tree*, *Whigs and Hunters*, and a later collection, *An Ungovernable People*, is that a number of types of behaviour regarded as illegal by the authorities were thought of as legal, or at least justifiable on quasi-legal grounds, by certain sections of the ruled. Hence poachers, wreckers, coiners, rioters and smugglers are all shown to be operating within a system of popular ideas on legality, or at least of popular legitimizing notions. The emphasis is on 'social crime': behaviour which was defined by officialdom as illegal, but which many of its perpetrators, and large sections of the populace, did not regard as 'criminal'.

The concept of social crime, and the whole idea of differing perceptions of illegal behaviour by differing groups in society, will be discussed at greater length in Chapter 6. For the present, it should be reiterated that the great contribution of the approach favoured in *Albion's Fatal Tree* and *An Ungovernable People* is the way in which it reminds us that crime and punishment in the past operated within an ideological framework, as well as the more

43. Douglas Hay, 'Property, authority and the criminal law', in *Albion's Fatal Tree*, ed. Hay et al.; Thompson, *Whigs and Hunters*, pp. 258–69.

obvious socio-economic one. The arguments of the contributors to these volumes throw light upon a number of topics, among them, for example, the limited and often legalistic demands which have characterized popular uprisings in England from at least 1381. More importantly, however, they remind us that crime, punishment and the law did not exist in some sort of vacuum. As we have seen, concentration on the county or the parish can provide one way around this vacuum, by providing a geographical context. Arguably, the sorts of arguments advanced by Hay, Thompson and others provide an equally valid ideological context. Blackstone, Paley and other eighteenth-century commentators demonstrate that respect for the common law of England, as successfully defended by the Glorious Revolution, was part of the basic political and social assumptions of most contemporary Englishmen of property. This is familiar enough, but it is evident that we must now consider two further problems: the role of law as an ideological force among people of little or no property; and the way in which the criminal law actually operated. And, as we shall see, investigation of these problems, along with others, permits us to gain some impression of how the law operated in earlier periods than the eighteenth century upon which Thompson and his collaborators concentrated, and, indeed, to question some of their interpretations.

Setting the agenda

Legal history; the use of literary materials; the formulation of criminal statistics; study of crime in the context of the county or village community; social crime and legitimizing notions; the role of the law as an ideological cement in society: all of these are important themes, each of them important enough to provide the basis for a number of monographs. Even after more than three decades of research by scholars in Great Britain, the United States and Canada, the history of crime in early modern England remains an extremely problematic field. As we have implied, all of the approaches mentioned in this chapter have their peculiar strengths and weaknesses, and it is doubtful if any of them will prove to be of unique value. There is no single avenue along which the historian of crime might pursue knowledge. At times, this can be infuriating and frustrating: few of those working in the field cannot, at some point or other, have been tempted by more familiar topics, where the guidelines are established and the secondary literature extensive. Conversely,