Violence, authority, cultures and communities in Sussex and Kent c.1690-1760

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Abstract

This thesis deploys both qualitative and quantitative methods to explore the role and meanings of violence within the context of Sussex and Kent in the early part of the eighteenth century. Historians have often approached the topic of violence from the perspective of a history of crime and therefore deviance. The focus has frequently been on measurements of levels and has ignored cultural contexts. In contrast, this research is grounded in experiences of violence demonstrating that it is not a uniform concept and includes a wide variety of behaviours from brawls to murder.

By drawing on a range of sources it has been possible to allow the ritual and meaning of violent actions to be explored in detailed context. Quantitative data is taken from the quarter sessions records of both counties and analysed alongside the interpretations of previous historians. This is supplemented with depositions, literature, letters and notebooks to provide a 'thick description' of the contexts and circumstances of violence. The experience of violence is explored from a range of angles and at several levels, from anonymous brawls in the street to gang violence to household chastisement, the ritual and meaning of violent actions is investigated in detail.

This analysis demonstrates that violence was a subjective concept, dependent on context. No clear definition of violence can be found, instead there are a range of descriptions, portrayals and accounts which all combine to illustrate the plurality of this concept. This thesis concludes that violence was often meaningful and connected with cultural concepts of order, authority and community. It was not random and its purpose can often be found if the signs are read. Evidence for struggles over authority and power can frequently be found as the basis of violent disputes and this can be found at the household, community and county level. This thesis demonstrates how violence was regulated through both formal and informal methods involving concepts of legitimacy and acceptability, as although violence was defined legally the border between legitimate or acceptable and illegitimate and unacceptable was blurred and contested.

Acknowledgements

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Introduction

What is violence?

A concept of violence can be found across all human societies. Vic Gatrell, for example, states in the introduction to his work on execution in the late eighteenth century:

> If western societies over long-time spans have generally contained collective passions within their 'civilizing process', there have always been fractures through which violence recurrently breaks free. Come a collapse in the structures of authority or in the material rewards which sustain our social collaborations and repudiated instincts are easily unleashed. Even in stable times violence is immanent.[1]

Whether or not one agrees with the pessimism of Gatrell's general account of human society, or the specific theory that western Europe underwent a civilising process, it is necessary to concede that violence appears in every society, although it may take a wide variety of forms.[2] Once this universality of violence is understood, one can move beyond the questions of quantity inevitable in any explanation of the civilising process and begin to explore the questions of what violence was, and what it meant to contemporaries.

The meaning of violence, even today, continues to vary and is not clear cut. Violence can be defined in a range of ways, for example, the exercise of physical force, passion, or violation of body or property. In the eighteenth century the concept was no clearer. While there have been numerous studies on the incidence of violence in this period, the ways in which people in the eighteenth century conceived of violence is still poorly understood. Although as Gatrell stated, violence can be found in all societies, the way that violence is considered, enacted and enabled is culturally specific and changes across time. It is for this reason that this thesis will seek to define violence in culturally specific terms. Here, violence is defined through the sources, circumstances and language used by contemporaries. Rather than beginning with a fixed idea of violence as deviance, this thesis explores it as a behaviour defined by its participants. The concept of violence can then be considered at both the level of social attitudes and as a notion removed from the value judgements of a social system, in order to allow wider definitions to be drawn and undiscovered patterns to be seen.

The main aim of this thesis is to investigate the concept of violence in early eighteenth-century eastern Sussex and western Kent. Violence can be used as a lens to look at power structures, the role of authority and the maintenance of order in this period. As such the thesis reappraises previous quantitative research on violence in Sussex and scrutinises sources in order to anatomise the concept of violence and discover its meaning for contemporaries.   To this end it firstly argues that violence had a purpose. This is done through a detailed analysis of the contexts and circumstances surrounding cases of violence

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[1] V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994), pp.11-12.
[2] Norbert Elias, *The Civilizing Process* (London, 2000).

which came before the courts or were related in pamphlet literature in the late seventeenth and early eighteenth centuries. Violence, in nuanced ways, helped to create and enforce boundaries as well as being used as a force to restore order. Therefore, a second thread is the theme of violence as legitimate or illegitimate, acceptable or unacceptable. Like the concept of violence itself, these definitions and their enforcement depended upon context and circumstance. Thirdly, it explores the idea that by considering violent crime, its treatment and meanings within their cultural framework the concept of violence can be used to enhance histories of negotiation, order, ritual, gender, class and family.

In order to examine these ideas' contemporary accounts are used and historicised in contemporary views. Further insight is gained into the concept of violence by exploring these contexts and the patterns and functions of violence. John Carter Wood argues in his discussion on comparative perspectives of violence: 'Every culture has some element of ritual attached to violence and a set of codes that define what, where, when and how violence is legitimate'.[3] The following chapters explore these elements of ritual, the codes and belief systems surrounding violence and the words and symbols used, to establish a meaningful social and cultural context for quantitative data.[4] This methodology allows us to dive into the actual meanings of violence at this time and to piece together a picture of violence and the role it served in the early eighteenth century. In doing this in many ways this study parallels recent research on the history of riot and protest.

New accounts of political radicalism have begun to explore the ritual symbolism and cultural practices of popular politics, in a similar vein to that demonstrated through the examination of the smugglers discussed in chapters three and four. [5] Similarly, new histories of collective action are eschewing over-arching structures such as class in favour of exploring more complex interactions. These histories have been influenced by early modern studies of authority and order, rural history and the conceptual frameworks associated with James C. Scott, in much the same way as this thesis.[6] Using these methodologies, historians of

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[3] J. Carter Wood, 'It's a Small World after All? Reflections on Violence in Comparative Perspectives', in Clive Emsley, Barry Godfrey and Graeme Dunstall, eds., *Comparative Histories of Crime* (Cullompton, 2003), pp. 36-52, p.48; For more on comparisons of violence across cultures see Wendy Wenner, '"A Viper and Engine of the Devil": The Violent Woman and Female Violence in Eighteenth-Century Fiction' (PhD Thesis, Milwaukee, 1993); J. Carter Wood, 'Conceptualising Cultures of Violence and Cultural Change', in Stuart Carroll, ed., *Cultures of Violence* (London, 2007), pp.79-99.

[4] For an argument for this approach see Professor Benjamin Ziemann, review of *Histories of Violence*, (review no. 1232), URL: http://www.history.ac.uk/reviews/review/1232; consulted 1 November 2012.

[5] E.g. K. Navickas, 'Political Clothing and Adornment in England 1780-1840', *Journal of British Studies*, LXIX:3 (2010), pp. 540-565; James Epstein, *In Practice: Studies in the Language and Culture of Popular Politics in Modern Britain* (Stanford, 2003); John Seed and Iain Haywood, eds., *The Gordon Riots: Politics, Culture and Insurrection in Late Eighteenth-Century Britain* (Cambridge, 2012); Andy Wood, 'A Lyttull Worde Ys Tresson: Loyalty, Denunciation and Popular Politics in Tudor England. ', *Journal of British Studies*, 48:4 (2009), pp. 837-847.

[6] Andy Wood, ' Subordination, Solidarity and the Limits of Popular Agency in a Yorkshire Valley.', *Past & Present*, 193:1 (2006), pp. 41-72; James C Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven and London, 1990); Peter Jones, 'Finding Captain Swing: Protest, Parish Relations, and the State of the Public Mind in 1830', *International Review of Social history*, 54:3 (2009), pp. 429-458; Carl Griffin,

violence and protest can strengthen the argument that we need to explore interactions in a context-specific way, rather than allow narratives and typologies to dictate the search for reason behind behaviour. In a similar way this study has eschewed exploring violence from the stance of a deviant behaviour. Events should be considered within their locality and therefore a deep knowledge of the environment and setting of incidents is needed.

The area encompassed in the quantitative element of this study runs from the boroughs of East Grinstead and Lewes in Sussex to Bearsted and Cranbrook in Kent (see figure 1).[7] Eastern Sussex and western Kent had similar geographical and economic systems and the connection of the Weald across the two areas created a continuity of culture that is not necessarily found across large counties. For instance both eastern Sussex and western Kent had judicial systems distinct from the other halves of their counties. There are two reasons for examining sections of two counties rather than the whole of Sussex or Kent. The first relates to similarities between eastern Sussex and western Kent. This area was defined by the natural barrier of the sea to the south. The eastern part of Sussex had a discontinuous line of small coastal towns and ports. These included Rye, Hastings, Bexhill, Eastbourne, Newhaven and Brighton and were areas of increasing strategic importance in military and commercial dealings with the continent. They were also important areas for smugglers. In Kent the greater Thames Estuary provided docks at Greenwich and Chatham. These natural barriers have provided a clear and discrete area to study. While at first glance, towns such as Chatham appear to have little in common with the towns of East Sussex, chapter one illustrates that the central Wealden districts of the two counties were more alike as both had small rural settlements. The localised system of judicial administration means that it is not appropriate to discuss 'counties' as a whole and therefore areas in eastern Sussex and western Kent can be considered according to their geographic and economic situation. The second reason is a practical one related to statistical analysis and qualitative detail: East Sussex, as a rural county with a small population, becomes a much more viable area of study, when located within the wider context of Kent.

'Knowable Geographies? The Reporting of Incendiarism in the Eighteenth- and Early Nineteenth-Century English Provincial Press.', *Journal of Historical Geography*, 32:1 (2006), pp. 38-56; Adrian Randall, *Riotous Assemblies: Popular Protest in Hanoverian England* (Oxford, 2006); Wood, 'A Lyttull Worde Ys Tresson: Loyalty, Denunciation and Popular Politics in Tudor England. '.

[7] West Kent had its own quarter sessions until 1814 when the administrations of East and West Kent were merged. The quarter session divisions consisted of the Lathe of Aylesford, the Lathe of Sutton at Hone, and the Lathe of Scray Lower. Places in West Kent include Dartford, Gillingham, Gravesend, Maidstone, Northfleet, Rochester, Sevenoaks, Swanley, Tonbridge and many places now considered to be greater London such as the London Boroughs of Bexley, Bromley, Greenwich and Lewisham. Eastern Sussex consisted of the Rapes of Lewes, Pevensey and Hastings with places including Brighton, Eastbourne and Rye. See: Kim Leslie and Brian Short, An Historical Atlas of Sussex (Chichester, 1999);Terence Lawson and David Killingray, eds., An Historical Atlas of Kent (Chichester, 2004).
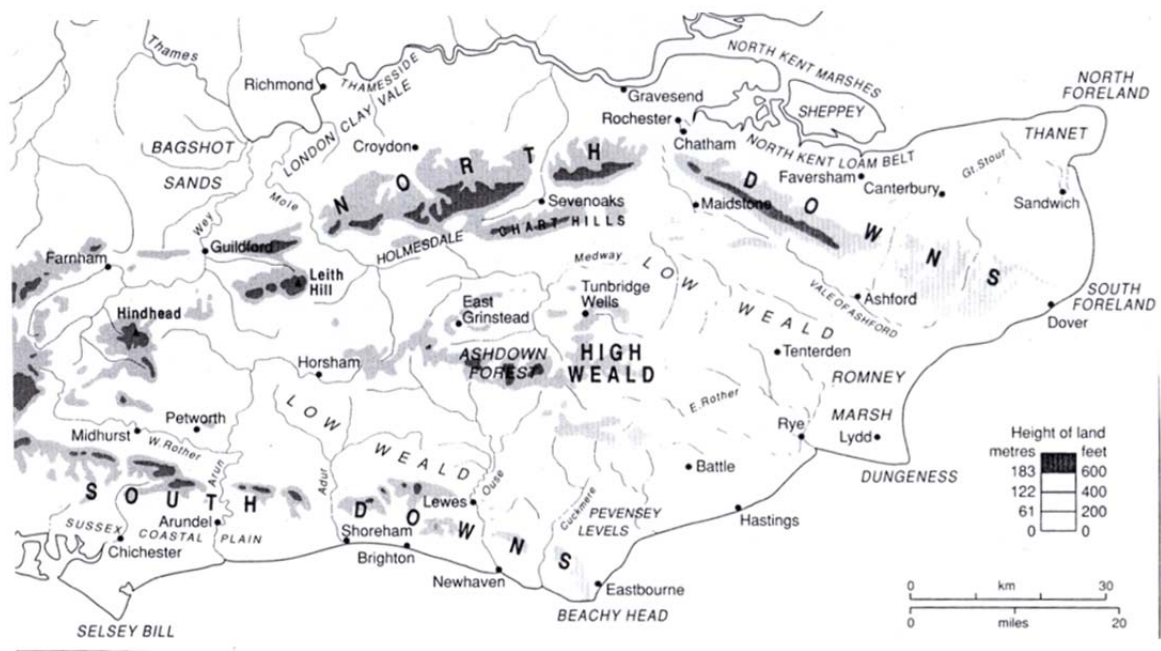
Figure 1 Map taken from: Brian Short, *The English Rural Community: Image and Analysis* (Cambridge: CUP, 1992), p.25

Historiographical and methodological benefits also arise from the study's time frame, c.1690-1760. This period often falls within a historiographical gap, with early modernists studying up to 1700 and eighteenth-century specialists focussing on the period after 1750. The late eighteenth century is often portrayed as a time when patterns of behaviour shifted and this 'missing' period is therefore important as the basis of these shifts.[8] When exploring this time frame it has been necessary to look at the historiography and methodology of both the earlier and later periods, particularly to avoid any false dichotomies due to differences in methodology.[9] The sources and their interpretation have led this thesis to often bear more similarity to the work of early modern scholars and this is perhaps due to the rural, unindustrialised nature of the counties studied.

Significance of the Study:

This work contributes to previous research in three main ways. It explores a geographical area often overlooked in the historiography; it focusses on the early part of the eighteenth century as opposed to the period after 1750; and it combines historiographical methods from both the early modern period and the eighteenth century. Previous studies have tended to focus on specific urban areas such as London or Portsmouth, as these provide a

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[8] See for example, G J Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago, 1996); Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London, 1977); Robert Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London', *Social History*, 26:2 (2001), pp. 190-208; Ruth Perry, *Novel Relations: The Transformation of Kinship in English Literature and Culture, 1748-1818* (Cambridge 2004).

[9] For an example of how the methodology of different historiographical periods may affect findings see: Karen Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England', *Gender & History*, 21:3 (2009), pp. 520-540.

multitude of cases of violence within a small locale, caused, it is often believed, by people living cheek by jowl. The very little research that has been done on rural violence so far is small scale and tends to be part of wider studies on crime in general, including county studies.[10] By contrast, this study explores cases across the predominantly rural South East.

In common with recent research on interpersonal violence, this thesis does more than simply examine the levels of violence within a specific geographic area; rather it attempts to come to an understanding of the cultural context surrounding violent acts. To do this it begins with a quantitative analysis of the number of cases of violence brought before the quarter sessions. It then subjects these and a number of additional sources to qualitative analysis, including justices' notebooks, personal narratives, and popular literature. A detailed examination of atypical incidents, such as two smuggling-related murders in 1747, is also undertaken, in order to compare them to episodes of violence which occurred more frequently. By pursuing such a methodology, and considering violence as a set of behaviours rather than a crime, it is possible to challenge historians' view that firstly, levels of violence reduced during the eighteenth century and secondly, that violence was increasingly viewed as transgressive, particularly after 1740. Crucial in previous analyses is the conclusion that a shift in attitudes led to a reduction in the levels of violence. [11] Rather, this thesis suggests that the quarter sessions in the area studied showed no decline in the numbers of prosecutions. In addition to suggesting that levels of violence may have been more stable than often supposed, this thesis argues that, far from being necessarily transgressive, violence was often seen as beneficial to the maintenance of social order. However, from the very fact that prosecutions were brought at all, it is clear that beneficial or permitted violence was not an uncontested concept. Rather a fuzzy boundary existed between the illicit and permissible. It has been possible to demonstrate this because an analysis of the sources listed above brings the position of this boundary into sharper focus.[12]

By shedding more light on the boundary between the permitted and the illicit, and by providing insights into the form, ritual and meanings of violence, this work shows how people in the early eighteenth century interacted, negotiated and created rules for their communities. It explores the ways in which cultural attitudes towards violence were an

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[10] J.M. Beattie, 'The Pattern of Crime in England, 1660-1800', *Past and Present*, 62 (1974), pp. 47-95; Garthine Walker, *Crime, Gender and Social Order in Early Modern England* (2003); J.M. Beattie, *Crime and the Courts in England* (Oxford, 1986).

[11] The beginning of the decline of actual levels of violence has been traced by Beattie, Stone and Cockburn to the later seventeenth century. Shoemaker has traced the decline from the mid eighteenth century. See: Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London'; Beattie, *Crime and the Courts in England*; J.S. Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985', *Past and Present*, 130 (1991), pp. 70-106; Lawrence Stone, 'Interpersonal Violence in English Society 1300-1980', *Past and Present*, 101 (1983), pp. 22-33.The theory that changes in attitudes affected real levels of crime can be seen in Gatrell, *The Hanging Tree: Execution and the English People 1770-1868*; Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London'; Stone, 'Interpersonal Violence in English Society 1300-1980'.

[12] See for example, Simon Roberts, *The Study of Dispute: Anthropological Perspectives* in John Bossy, *Disputes and Settlements: Law and Human Relations in the West* (Cambridge, 2003).

extension of those held in the early modern period in terms of beliefs about patriarchy, order and social control and also seeks to establish how narrative and practice informed one another in the context of violence.

Historiography:

Histories of violence can be broken down by theme, methodology and chronology. Thematically there have been several studies of marital violence, and, less frequently, studies of violence against servants. There has also been research on the use of violence as a form of protest or riot and on the legal processes involved with violent acts. Methodologically, historians began with quantitative studies before combining these with a qualitative approach to gain more insight into the lived experience of violence, and in terms of chronology studies have tended to focus on the early modern period or the later eighteenth century.

When exploring patterns and trends in violent crime, the majority of historians have focussed on the extent of violence in society, using homicide statistics as a gauge.[13] This model began in the 1980's due to the availability of sources and the belief that this extreme and unusual form of violent crime is most likely to have been reported or recorded. Historians generally used contemporary legal definitions of homicide as these enable swift categorisation and recording and because it is unlikely to have changed dramatically over time. There have been differences of opinion over whether to include infanticide in the discussion.[14] In contrast, definitions of other acts of violence are more likely to shift, according to social and cultural notions of acceptability; they may also be time or situation specific.

Norbert Elias's theory of a civilising process has influenced the focus on measuring levels of violence and particularly homicide. This idea was developed in 1939, and maintains that late medieval European standards with regards to violence, sexual behaviour, manners and speech were gradually transformed as first the gentry, and later the rest of society practised more self-restraint.[15] This theory has formed the methodological basis for a large part of the

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[13]See Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London'; Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985'; Stone, 'Interpersonal Violence in English Society 1300-1980'; Lawrence Stone, 'The History of Violence in England: Some Observations: A Rejoinder', *Past and Present*, 108 (1985), pp. 216-224; J.A. Sharpe, 'The History of Violence in England: Some Observations', *Past and Present*, 108 (1985), pp. 206-215; Eva Lacour, 'Faces of Violence Revisited: A Typology of Violence in Early Modern Rural Germany', *Journal of Social History*, 34:3 (2001), pp. 649-667; Pieter Spierenburg, 'Faces of Violence: Homicide Trends and Cultural Meanings: Amsterdam, 1431-1816', *Journal of Social History*, 27:4 (1994), pp. 701-717; Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge, 2008); Steven Pinker, *The Better Angels of Our Nature. The Decline of Violence in History and Its Causes* (London, 2011); Robert Muchembled, *A History of Violence: From the End of the Middle Ages to the Present* (London, 2011).

[14] Stone, 'Interpersonal Violence in English Society 1300-1980'; Stone, 'The History of Violence in England: Some Observations: A Rejoinder'; Sharpe, 'The History of Violence in England: Some Observations'.

[15] Elias, *The Civilizing Process*.

historiography of violence.[16] One early proponent of this theory was Lawrence Stone who asserted that the early modern period was five times more violent than the twentieth century.[17] Although Stone was heavily criticised for his theoretical framework and methodology, these critics continued to concentrate on the measurement of violence using homicide levels.[18] Whilst the notion of the civilising process has been important in providing an explanatory framework for the history of violence and has enabled historians to consider how social and cultural forces operate on aggression, it is now perhaps time to consider revising the use of Elias as an automatic starting point in the history of violent interaction. Several criticisms can be made of the theory beginning with the question of whether homicide is a good indicator of general societal violence. While it has provided historians with a narrative of decline, it has obscured the subtle nuances that a more general history of violence might reveal; by concentrating only on the extremes, therefore it does not capture the direct experience of the majority. Not only is the use of homicide questionable as a gauge of violence, it also has left no place for an exploration of the meanings of violence.[19] The extrapolation that we can demonstrate a decline in violence because levels of homicide decreased ignores the wider cultural context of these conclusions. Such a totalising theory is in danger of implying a narrative of progress and distracting historians into looking for evidence to fit the model rather than exploring wider causes of perceived changes in behaviour. While Elias and others have tried to address the problem of a trend towards increasing civilisation by discussing 'de-civilising' trends, the theory still does not allow for the complexity of social and cultural interactions particularly with regards to localised ritual acts. A criticism of this use of overarching theoretical structures is also implied in Katrina Navickas' description of new histories of collective action.[20] Indeed recent work by historians of protest shows how piecing together fragments of experience can illuminate the long view of social relations.[21] Katrina Navickas has described this as offering:

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[16] Spierenburg, 'Faces of Violence: Homicide Trends and Cultural Meanings: Amsterdam, 1431-1816';Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present*; Pinker, *The Better Angels of Our Nature. The Decline of Violence in History and Its Causes*; Pieter Spierenburg, 'Violence and the Civilizing Process : Does It Work ?', *Crime, Histoire & Sociétés*, 5:2 (2001); Julius. R. Ruff, *Violence in Early Modern Europe 1500-1800* (Cambridge, 2001); J. Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement* (Abingdon, 2004); Eric A. Johnson and Eric H. Monkkonen, eds., *The Civilization of Crime: Violence in Town and Country since the Middle Ages.* (Illinois, 1996).

[17] Stone, 'Interpersonal Violence in English Society 1300-1980'.P32; Alan Macfarlane, 'Review: The Family, Sex and Marriage in England 1500-1800.', History and Theory, Studies in the Philosophy of History, 18:1 (1979), pp. 103-126.

[18] Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985'.

[19] Ziemann, 'Review of Histories of Violence'.

[20] K. Navickas, 'What Happened to Class? New Histories of Labour and Collective Action in Britain', *Social History*, 36:2 (2011), pp. 192-204.

[21] Randall, *Riotous Assemblies: Popular Protest in Hanoverian England*;Barry Reay, *Rural Englands: Labouring Lives in the Nineteenth-Century* (Basingstoke and New York, 2004); Barry Reay, *The Last Rising of the Agricultural Labourers; Rural Life and Protest in Nineteenth Century England* (Oxford, 1990); Andrew Charlesworth, 'An Agenda for Historical Studies of Rural Protest in Britain, 1750–1850', *Rural History*, 2:2 (1991), pp. 231-240.

a more holistic view of constant negotiations, frictions and tensions, and the complexities of collective action that cannot always be reduced to a single term of 'riot' or an identifiable mass participation political group. The new research defines 'protest' as nuanced and flexible, ambiguous and changing. It rejects the separation of collective action into homogeneous 'movements' and argues that particular protest events must be placed within deeper and more locally specific patterns of social conflict. [22]

During the 1980s John Beattie began to explore violence at the petty level but believed that assault indictments did not reveal much about contemporaries' understanding of the concept of violence arguing: 'Individual cases of assault can illuminate contemporaries' experience of violence, but assault indictments taken as a whole do not disclose very much about the place of violence in eighteenth-century society'.[23] Although exploring the place of violence in society from a quantitative standpoint, Beattie's main question was how far had levels of violence changed over the period? This thesis uses the methods employed by the quantitative historians and extends the work Beattie began on assault indictments for Sussex. However, this is done in order to create a more thorough understanding of the contexts of violence, its meanings and functions, rather than simply a statistical measure of change of violence over time. In part this is because the comparison of quantitative evidence across time, particularly for the period before 1800 is fraught with difficulties, but also because practices of violence, its uses and possible decline cannot be explained without taking account of institutional contexts and the meanings which historical actors attached to them. Within this thesis, violence is therefore considered as the result of social and cultural interactions between not only the perpetrator and victim, but bystanders, the state and community. More recently, in the early 2000s, quantitative analysis of court records has been combined with qualitative accounts, particularly with regards to the relationship between gender and violence. The work of historians on the meanings of domestic violence, masculinity and gender relations has begun to develop a new methodology in line with the holistic approach demonstrated by historians of protest and authority. This involves exploring culture, mentality and local context as well as overarching social structures.[24]

Amongst a new wave of researchers on the history of crime, Jennine Hurl-Eamon, Steve Hindle and Garthine Walker have demonstrated how the use of recognizances, popular amongst prosecutors in the eighteenth century, can shed light on non-fatal violence, neighbourhood tensions and gender relations. For example, Hurl-Eamon has argued that assault victims in London were empowered as prosecutors and used 'victimhood' purposefully to achieve prosecution, stating that female victims of rape could police

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[22] Navickas, 'What Happened to Class? New Histories of Labour and Collective Action in Britain', p.197.

[23] Beattie, *Crime and the Courts in England.*, p.76.

[24] See Susan Dwyer Amussen, 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England', *The Journal of British Studies*, 34:1 (1995), pp. 1-34; Robert Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England* (London, 2004); Alexandra Shepard, 'Violence and Civility in Early Modern Europe', *The Historical Journal*, 49:2 (2006), pp. 593-603.

aggressive male sexuality by asserting themselves with help from the law and authorities. In her book *Gender and Petty Violence in London, 1680-1720* she concludes that women could be as aggressive as men but that the actions of those accused of assault were clearly gendered as men were more likely to attack representatives of the state and women were usually violent in the context of neighbourhood tensions.[25] Qualitative methods have been combined with extensive quantitative surveys to highlight gender differences in the experience of violence, and to build wider understandings of the role of violence in forming gender identities and relations. Alexandra Shepard has thus argued that 'Violence was one of the main props of patriarchy in early modern England, and as such was central to the regulation of social relations between men as well as between men and women'.[26] Acts of violence were not necessarily condemned and were often a legitimate part of social discourse; however, it was the context, meanings and uses which people attached to this violence which made it legitimate or illegitimate. Due to this the boundaries between the illicit and acceptable were often blurred and contested. One area in which these boundaries have been discussed has been the field of domestic violence, however there has been little investigation by historians into the role of violence within the wider household in the eighteenth century beyond suggesting the period was a turning point in the ideals of marriage and gender identities.[27] Key to this argument is Margaret Hunt's view that prescriptive literature was beginning to preach moderation in the physical chastisement of inferiors, leading to feelings of shame and a privatisation of the act.[28] Elizabeth Foyster however, has argued for a more positive reading of the codes of politeness in changing views on domestic violence, whilst at the same time stating: 'Women's responses to male violence were significantly different from the mid-eighteenth century than in previous periods', suggesting that the early part of the century may have more in common with the early modern period and strengthening the argument for drawing on early modern historiography.[29]

The wider arena of the social structure and governance of the home in seventeenth-century England needs to be seriously considered in any history of interpersonal relations, particularly violence, as the concept of order is so interwoven with violent behaviours. Research on this, such as the work of Susan Amussen, tends to agree that the house and its social relationships were important for gender identity, particularly masculinity and men's social status.[30] Sources as varied as Robert Filmer's *Patriarcha*, published in 1680, diaries,

[25]Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus, 2005).

[26]Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003), p.128.

[27]Elizabeth Foyster, 'At the Limits of Liberty : Married Women and Confinement in Eighteenth-Century England', *Continuity and Change*, 17:1 (2002), pp. 39-62.

[28]Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth Century London', *Gender & History*, 4:1 (1992), pp. 10-33

[29]Elizabeth Foyster, 'Creating a Veil of Silence? Politeness and Marital Violence in the English Household ', *Transactions of the Royal Historical Society, Sixth Series*, 12 (2002), pp. 395-415, p.399.

[30]Shepard, *Meanings of Manhood in Early Modern England*; L Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 2005); Steven Ozment, *When Fathers Ruled: Family Life in Reformation*

pamphlet literature and court records demonstrated that the household was the unit of social control and household order became analogous with the wider social order of the state. For example Lena Orlin argued that after the Reformation the household was established as the 'primary unit of social control' with the householder's patriarchal control used for 'macrocosmic benefit' in response to religious upheaval. In short, the householder was responsible for maintenance of moral order, instead of the church in previous years, or the police in later times. There was also a concern with social order at both community and household level in the seventeenth century which Susan Amussen has claimed was caused by rapid social change which dissipated following the Restoration.[31] The control of the household benefitted wider social order as well as reinforcing patriarchal authority for the individual and therefore any history exploring violence and authority in this period must look at both the microcosm of the household as well as the parish, county and national structures which all affected individual action.[32]

Within the seventeenth-century home, a certain amount of violence was deemed acceptable as a form of discipline to maintain the order which Orlin demonstrated was necessary for both household and state. Shaming punishments such as whipping and beating were given by masters to servants, children or wives whilst women were only allowed to legitimately use disciplinary violence against children or servants.[33] However, research on contemporary commentators has suggested that there was a distinction between legitimate punishment and violence'.[34]

As demonstrated above, historians have explored the role of patriarchy and household authority in the seventeenth century from a viewpoint of authority and order. John Tosh filled a gap in the historiography of masculinity for the nineteenth century by looking at men's role in the home and found some basic similarities: 'The domestic sphere then is integral to masculinity. To establish a home, to protect it, to provide for it, to control it, and to train its young aspirants to manhood, have usually been essential to a man's good standing with his peers'.[35] Whilst the stress on discipline and violence is less pronounced in this period, there is still a focus on authority.

Europe (Cambridge, 1985); Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York, 1988); Linda A Pollock, 'Rethinking Patriarchy and the Family in Seventeenth-Century England', *Journal of Family History*, 23:1 (1998), pp. 3-27.

[31]Amussen, *An Ordered Society: Gender and Class in Early Modern England*

[32]Lena Cowan Orlin, *Private Matters and Public Culture in Post-Reformation England* (Ithaca New York, 1994), p.3.

[33]Shepard, *Meanings of Manhood in Early Modern England*;Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London*; Susan Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6:2 (1994), pp. 70-90.

[34]Dwyer Amussen, 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England'

[35]John Tosh, *A Man's Place: Masculinty and the Middle-Class Home in Victorian England* (Bury St Edmunds, 2007), p.4.

Until Karen Harvey began working on aspects of male householders in the late 2000s, historians of this period tended to focus on the location of household violence as part of a greater move towards privatisation of the family and a culture of politeness, rather than using violence as a key to the working of the household and male authority. The central idea behind these original arguments was that violence became more shameful and less important for male governance and identity and so, whilst it continued, it did so behind closed doors as the ideal of companionate marriage grew.[36] This historiographical connection between the location of violence and a move towards privatisation was then clearly questioned by Joanne Bailey in 2006.[37] By mapping the sites of domestic violence, Bailey demonstrated the temporal and spatial fluidity of marital violence across the eighteenth century, arguing against a clear move from public to private. In addition to this, Harvey has argued that the prominence of politeness and separate spheres in eighteenth century explanations of household masculinity may be due to the type of sources used and the style of historians. This thus distorts any continuities between the seventeenth, eighteenth and nineteenth centuries.[38] This thesis also argues for continuities where similar methods are used. Underlying the different methodologies, continuities can still be found. One line of research into household authority has led to some historians to argue that the eighteenth century saw a 'new –style patriarchy' in which the ideas of a father's rule were internalised.[39] Similarly Jennine Hurl-Eamon has suggested that in the early eighteenth century 'patriarchal authority was thus as strong as ever in some respects however, it was purchased at the price of granting wives, servants and extended family the right to label certain acts unacceptable and pursue retribution through the courts, a situation not too dissimilar from that described by historians of the early modern period.[40]

The wider community that benefitted from a household kept in good order was the local parish. In the last three decades, historians have fruitfully opened up the lived experience of non-elite groups by studying the local communities in which inhabitants negotiated the politics of everyday life by playing out their roles as family members, neighbours, producers,

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[36] Foyster, 'At the Limits of Liberty : Married Women and Confinement in Eighteenth-Century England'; Foyster, 'Creating a Veil of Silence? Politeness and Marital Violence in the English Household '; Foyster, 'At the Limits of Liberty : Married Women and Confinement in Eighteenth-Century England'; Foyster, 'Creating a Veil of Silence? Politeness and Marital Violence in the English Household '.

[37] Stone, *The Family, Sex and Marriage in England 1500-1800*; Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London'; Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth Century London'; Joanne Bailey, ''I Dye [Sic] by Inches': Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England.', *Social History*, 31:3 (2006), pp. 273-294.

[38] Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England'; Karen Harvey, 'The History of Masculinity, Circa 1650-1800', *The Journal of British Studies*, 44:2 (2005), pp. 296-311; Karen Harvey and Alexandra Shepard, 'What Have Historians Done with Masculinity? Reflections on Five Centuries of British History, Circa 1500–1950', *Journal of British Studies*, 44:2 (2005), pp. 274-280.

[39] Elizabeth Kowaleski-Wallace, *Their Fathers' Daughters: Hannah More, Maria Edgeworth and Patriarchal Complicity* (Oxford, 1991), p.17; Anthony Fletcher, *Gender, Sex and Subordination* (New Haven, 1995).

[40] Jennine Hurl-Eamon, 'Domestic Violence Prosecuted: Women Binding over Their Husbands for Assault at Westminster Quarter Sessions, 1685-1720', *Journal of Family History*, 26 (2001),.p.450

consumers and authority figures. This understanding of the parish community is important in any analysis of formal and informal negotiations, such as the petty sessions records used in chapter two.[41] Steve Hindle, for example has shown how there was a great deal of popular participation in the process of governing rural England in the early modern period. He has also demonstrated through his work on poor relief, how important a balance of relationships between overseers, magistrates and the poor was in co-ordinating the micro-politics of the parish.[42]

As well as situating this study within the broader historiographical trends, it is necessary to discuss the conceptual frameworks that have informed this research. Rather than follow a strict methodology, it has been necessary, due to the wide range of sources, to borrow strategies and concepts from a variety of disciplines. The ideas which have influenced the research and writing of this thesis are therefore explored here.

Conceptual frameworks

Rather like the way in which the definition of violence has been allowed to grow from the sources, this thesis has considered a range of conceptual methods. No one theoretical idea or model has been applied on the grounds that such an approach conceals as much as it reveals, instead each concept has been used to aid interpretation of events which are otherwise opaque. The techniques which have been useful in interpreting the sources will be discussed here, and include linguistic analysis, narrative theory, microhistory and thick description, hidden transcripts and agency. In each case the sources have determined which approach to consider, for example, the insights of cultural studies and particularly the work of Mikhail Bakhtin and Hayden White have been valuable in stimulating analysis of the concept of violence. Close reading of a range of historiographies has led to the consideration of a wider body of work when developing the analysis of sources for this thesis. For instance, historians such as Natalie Zemon Davies and Robert Muchembled have used the work of Bakhtin, to explore the relationship between high and low culture.[43] The ideas of Bakhtin have been useful in this study when considering the court records:

> Every specific utterance is a link in the chain of verbal communication in a definite sphere… the utterance occupies some *definite* position in this sphere of communication, on a particular issue, in a particular transaction, and so on. It is not possible to define one's own position without relating it to other positions. For this reason each utterance

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[41] Keith Wrightson, *English Society: 1580-1680* (London, 1993); Alexandra Shepard and Phil Withington, eds., *Communities in Early Modern England: Networks, Place, Rhetoric* (Manchester, 2000); Wrightson, *English Society: 1580-1680*.

[42] Steve Hindle, *On the Parish? The Micro-Politics of Poor Relief in Rural England C.1550-1750* (Oxford, 2004); Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke, 2002).

[43] Muchembled, *A History of Violence: From the End of the Middle Ages to the Present*; Natalie Zemon Davis, *The Return of Martin Guerre* (Cambridge, 1984); Burke, 'Bakhtin for Historians', *Social History*, 13 (1988), pp. 85-90; Peter Burke, 'Performing History: The Importance of Occasions', *Rethinking History: The Journal of Theory and Practice*, 9:1 (2005), pp. 35-52.

is full of responses of different types to other utterances in the given sphere of communication.[44]

Within the eighteenth-century context this supposition can be used to suggest that accounts of violent incidents contained in court records draw upon a range of concepts, and shared vocabulary that were informed by contemporary ideas about gender, class, the law and society. If we consider that each person's description of an incident was constructed according to their personal circumstances and setting, we must then pay close attention to these external factors when exploring accounts of their experience, and consider the multiple 'truths' of each event.

Stories, or narratives, can be found in all areas of life. They are a way in which we structure our world and communicate meaning. Hayden White was significant in the 'linguistic turn' that historians took from the 1970s onwards.[45] This development in historiography has influenced studies of social history and agency, both of which are relevant to this thesis and therefore ideas of narrative have been considered when analysing sources.[46] White explained the nature of this:

> So natural is the impulse to narrate, so inevitable is the form of narrative for any report on the way things really happened…Far from being a problem, then, narrative might well be considered a solution to a problem of general human concern, namely the problem of how to translate knowing into telling, the problem of fashioning human experience into a form assimilable to structures of meaning that are generally human rather than culture-specific.[47]

Therefore, an awareness of the narrative structure has been considered when analysing not only the popular and prescriptive literature in this thesis, but any form of account from letters to court depositions. The accounts in the sources consist not only of facts but of other elements which endow the events with meaning based on the perspectives from which they are viewed. This understanding has been particularly useful in this thesis in the analysis of rape. When telling the stories of their rapes, the female victims encode the facts in a narrative plot structure as their stories are shaped by the contexts of the telling, and their needs for justice.[48]

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[44] Quoted in T.V. Akhutina, 'The Theory of Verbal Communication in the works of M.M.Bakhtin and L.S. Vygotsky', *Journal of Russian and East European Psychology*, 41:3 (2003).

[45] Hayden White, *The Content of the Form Narrative Discourse and Historical Representation* (Baltimore, 1987);Hayden White, *Metahistory* (Baltimore, 1973).

[46] James Vernon, 'Who's Afraid of the 'Linguistic Turn'? The Politics of Social History and Its Discontents', *Social History*, 19:1 (1994), pp. 81-97; Jon Lawrence and Miles Taylor, 'The Poverty of Protest: Gareth Stedman Jones and the Politics of Language: A Reply', *Social History*, 18:1 (1993), pp. 1-15; Joan W Scott, 'The Evidence of Experience', *Critical Enquiry*, XVII (1991), pp. 773-797.

[47] White, *The Content of the Form Narrative Discourse and Historical Representation*, p.1.

[48] See David Herman, Manfred Jahn and Marie-Laure Ryan, *Routledge Encyclopedia of Narrative Theory* (Abingdon, 2008), p.87 for a discussion of courtroom narrative.

This thesis has taken account of the work of historians such as Robert Darnton and Roger Chartier in considering the narratives of experiences, such as depositions, in terms of fiction. The concept of narrative teaches us to recognise the role of language and narrative structures in texts and advocates a cross-disciplinary approach to the analysis of stories which support a variety of cognitive and communicative activities such as spontaneous conversation, courtroom activity, art and literature.[49]

Microhistorians have borrowed heavily from the anthropological idea of 'thick description' in order to capture the cultural meanings and build up an explanatory context of the past. This involves using semantically 'thick description' to examine behaviour for what it says, not what it does and to describe the symbolic content of action or texts. In historical practice this can involve a close reading of sources to situate an event within its context and it is within this broader framework that this thesis is located.[50] However, pure cultural analysis and thick description, as advocated by Clifford Geertz, has been criticised for its concentration on the local to the exclusion of wider contexts and its lack of rigour where interpretations are contestable. Ronald Walters argued:

> The tendency of thick description and semiotics is to reinforce the impulse to burrow in and not to try to connect the dots. That occurs because what is an analytical strength – Geertz's attention to particularity and his orientation toward the actor's perspective – is a weakness for synthesis. Thick description leads to brilliant readings of individual situations, rituals and institutions. It does not require saying how "cultural texts" relate to each other or to general processes of economic and social change.[51]

This thesis with its use of the close reading of sources is located within the group of historians aware that writing history is only an interpretation of 'clues' or a fiction created by both contemporaries and the historian.[52] For example Natalie Zemon Davies introduced her book on Martin Guerre by stating 'What I offer you here is in part my invention, but held tightly in check by the voices of the past.'[53] The historical approach should differ slightly from that of Geertz and the anthropologists, as historical sources are not always cultural texts. Therefore historical fact is as important as this awareness of signs.[54] 'Because historians are concerned with the reality of events in the documents they must combine a search for facts, even if only partial, with analysis of discourse'.[55] In this chapter this

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[49] Roland Barthes and Lionel Duisit, 'An Introduction to the Structural Analysis of Narrative', *New Literary History*, 6:2 (1975), pp. 237-272, p.273

[50] R. G. Collingwood, *The Idea of History* (Oxford, 1994), p.213

[51] Ronald G. Walters, 'Signs of the Times: Clifford Geertz and Historians ', *Social Research*, 47:3 (1980), pp. 537-557.

[52] Carlo Ginzburg, 'Morelli, Freud and Sherlock Holmes: Cludes and Scientific Method', *History Workshop Journal*, 9:1 (1980), pp. 5-36.

[53] Davis, *The Return of Martin Guerre,* p.5

[54] See Raphael Samuel, 'Reading the Signs: Ii. Fact-Grubbers and Mind-Readers', *History Workshop Journal*, 33:1 (1992), pp. 220-251.

[55] Ibid., p246

approach can be seen in the triangulation of the sources. It is this combination which strengthens the analysis.

A criticism of microhistory and 'thick description' is that it cannot reveal anything about wider social, cultural or political structures. However, when seen in context, individual acts do affect the greater picture. Therefore each act committed and each word chosen will be analysed for its meaning and its place within wider contexts. This involves analysing the description of individual events in the texts as demonstrated in the previous chapter, and analysing the pressures surrounding the creation of the texts themselves in the murders of Chater and Galley in order to come to conclusions that are applicable to more than just the murders. This method provides the best analysis for understanding the cultural meanings of both the text and its contents through the sources available. This is because the sources were distorted either unconsciously through incomplete accounts of the incidents or through interpretation of the events towards specific goals (i.e. to discourage support of smuggling) leading to a form of 'fiction in the archives'. Therefore this methodology provides an insight into the intentions and cultural beliefs behind the text.

The types of question that this thesis deals with challenge the historian to understand the complexities around ideas of order and here James Scott's distinction between public and hidden transcripts has been useful. Historians such as Andy Wood have used this theory to further their understanding of social relations. According to Scott, the public transcript is the open interaction between subordinates and those who dominate, while the hidden transcripts are what each side may think when they are 'offstage'.[56] This idea has fruitfully opened new avenues of analysis in histories of authority, riot and popular protest, and so should be explored for the history of violence for the period studied here.

The early modern period has tended to be portrayed in the historiography as one in which evidence of labourers' deference is balanced with expressions of contempt, an uneasy mix between status based and class based societies.[57] Using his knowledge of James Scott, Andy Wood has recently posed several questions about what we should make of expressions of contempt. He asks whether they are the main or only reaction to authority. He also queries whether historians should choose between analysing defiance and deference or whether each should be analysed in relation to one another. He has suggested that the answers to these questions are more likely to be found if we are to open up class as a category of analysis for the pre-modern period, thinking of it in the same terms as gender and race. By using postmodern practices from the 'linguistic turn' (such as language as a form of power, no grand narrative, and an understanding of identities as relational and constituted through discourse), Wood has demonstrated that social conflicts can be reconsidered in new ways. For example, conflicts can be explored as relationships between class (in the form of social

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[56] Scott, *Domination and the Arts of Resistance: Hidden Transcripts,* chapter 1.

[57] Andy Wood, 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', *Journal of Social History*, 39:1 (2006), pp. 803-826.

difference) and other forms of identity. His suggestion is that a flexible notion of class and how it relates to other identities will free us to understand social relations in the early modern period.[58]

Michael Braddick and John Walter have also used the insights of Scott to inform their historical practice. They have suggested that Scott's views move the historian from searching for episodes of class consciousness to a regular negotiation between dominant and subordinate groups: 'Scott's findings, as a participant-observer in the sociological present, sensitise historians to the need to search imaginatively for the techniques of resistance which the weak can use without risking confrontation with power'.[59] Knowledge of Scott's theoretical framework, and its use by historians in order to broaden their interpretations of events, combined with insights from linguistics and cultural analysis has led to the development of the methodology used here.

This thesis illustrates the variety of negotiations and forms of power structures at each level of eighteenth century society, from the relationships between servants and masters in the household to battles between smugglers and the authorities throughout the south east. In order to comprehend the complexity of interactions, this study has looked beyond viewing these relationships as the simple oppression by those with power of those without. The concept of agency- allows us to examine how individuals at the lowest levels of society exerted their influence and choices within their world. Agency, in common with Scott's analysis suggests that those subject to the power of dominant groups are 'able to resist, blunt or actively alter the conditions of life that others seek to thrust upon them'.[60] That is, like the peasants studied by Scott, even those in subordinated conditions are able to influence their position in some way. However, in considering the capacity of individuals to make choices and changes, one must always remember that these were limited according to the structures and circumstances in which they lived.[61]While the peasants studied by Scott were able to protest in some ways, they were unable to change their situation entirely. Even though, they are from a different time and place, the same idea holds true for the subordinates in this study. While they may show some level of agency and manoeuvrability in their actions, they were still subject to unequal power relations. This is shown particularly clearly in the negotiations in chapter two. Drawing on the methodology suggested by readings of Scott, Wood, Braddick and Walter, this thesis argues that while Wood's call to use the analysis of class is constructive, a deeper understanding of violence within rural areas of south-east England, gained through exploration of incidents of violence, reveals a more nuanced understanding of how power relations within that society functioned. Class to some extent is a blunt instrument, too broad a category to understand the minutiae of daily life. Instead this thesis has employed the ideas discussed here to analyse identity,

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[58] Ibid.

[59] M. J. Braddick and John Walter, *Negotiating Power in Early Modern Society;Order, Hierarchy and Subordination in Britain and Ireland* (Cambridge, 2001).

[60] Anthony Giddens, *A Contemporary Critique of Historical Materialism* (London, 1981), p.172.

[61] Alex Callinicos, *Making History: Agency, Structure and Change in Social Theory* (Oxford, 1987).

gender, regionality, religion and class through the lens of violence in order to provide greater insight into both the definitions and meanings of violence, and its influence on order, power relations and authority.

Synopsis of Research Methods:

In considering the meaning of violence this thesis has had to use both qualitative and quantitative approaches.[62] By combining quantitative analysis of indictments and recognizances with case studies and close readings of depositions, popular pamphlet and descriptive literature and the notebooks kept by justices, it is possible to piece together more of eighteenth-century life than would be known from exploring one type of source alone. The methodology for this thesis has been led by its sources, their availability and what can be squeezed from them in terms of analysis. This thesis demonstrates how it is possible to move beyond the historiographical constraints of periodization and consider continuity and change across boundaries of time. By using a combination of court records, diaries and literature to explore violence it is possible to examine not only anxieties about law and order at a local level, but also to analyse public perceptions of gender, status and authority. The meanings which were attached to violence changed according to individual, social and historical context. The lens of violence also enables an exploration of the complexity of the legal process with its focus on negotiation. The qualitative analysis has been placed within the quantitative framework of chapter one in order to ascertain the relative significance of the material contained within the court records as called for by Beattie and to draw wider conclusions from them.

This thesis has used a range of sources, and strategies linked to these sources, in order to explore the meaning of violence. Where records are patchy, supplementing with other sources has allowed further insight to be gained and general suggestions to be made. By conceiving of violence as a contested concept rather than one thing, time or place, it has been possible to break down the boundaries of definition. This has meant that patterns have been found across sources, situations, crimes and actions lending support to conclusions. For example when looking at both smugglers and authorities or male perpetrators and their female victims, it is possible to see similarities between groups which are otherwise missed because the concepts of class and gender are obscuring them. Case studies have been explored using strategies borrowed from cultural analysis, thick description and linguistics. One issue with using case studies is that the detailed documents found in the records which allow such analysis may of course be atypical, and that is why they survive. This is almost certainly the case with the smuggling cases discussed in chapters three and four. However, they still provide useful lines for exploration of contemporary attitudes about violence. In an attempt to overcome this criticism, whilst exploiting some of the useful areas of these insights, this thesis has combined the use of description of specific

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[62] Garthine Walker has approached the Cheshire court records for the seventeenth century from a similar standpoint but has not supplemented them with other sources. Walker, *Crime, Gender and Social Order in Early Modern England*.

episodes with quantitative sources in order to place the qualitative readings within wider contexts and understand how they may relate to wider social developments. The benefit of combining the case studies with other methods in this study has been that it is possible to triangulate theories to discover if the cases where more evidence exists are indicative of what was occurring more generally within the local area.

Sources

This thesis explores how violence was understood and used by contemporaries, at the heart of this is the contemporary legal definition of violence. These definitions were the easiest to discover, enabling the selection of sources to study and providing a starting point from which to work. Therefore, violence was taken firstly in the legal sense of violent crime against the person such as assault, murder and rape. These categories were shaped and recorded by legal institutions. From these definitions it then was possible to move on to consider cases of violent behaviour that were not necessarily considered deviant. Therefore, cases were explored in which victims or perpetrators used the language of violence to describe their experiences. These cases include, for example, threats where victims were afraid of violence or cruelty, and arson where deponents stated they had been victims of violence. Although these would not be considered in a conventional history of the crimes of interpersonal violence, they are important in exploring the meanings and mentalities surrounding the concept of violence itself.

The quantitative sections of this thesis examine violence at one of the lowest judicial levels for which we have records, that of the quarter sessions. These were local courts traditionally held at four set times each year (Epiphany, Easter, Midsummer, Michaelmas) in the seat of the county. The court heard cases that needed a jury and could not be tried summarily by the justice of the peace in the petty sessions. It consisted of two or more justices, a jury, a clerk and a chairman. The sessions heard misdemeanours, as serious offences subject to capital punishment were sent to the Assizes. The quarter sessions created three main documents which are used in this study: indictments, recognizances and depositions otherwise known as examinations.

The indictment was the formal charge against a prisoner to be read in court when the prisoner was arraigned. It was written on parchment, in Latin before 1733 and thereafter in English. The indictment slip contained the name, occupation and place of residence of the accused, the date, place and nature of the offence, and, if appropriate, the name of the victim. Occasionally other information such as the occupation of the victim can also be found and notes made by the clerk such as the prisoner's plea or the sentence given by the judge. On the back of the indictment is often recorded the names of witnesses sworn in court and the verdict of the grand jury which was either a "true bill" meaning the accused could be sent to trial or "ignoramous", or "no true bill" meaning that the prisoner was discharged.[63] This information was also copied into indictment books. John Beattie has

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[63] Beattie, *Crime and the Courts in England*, p.19.

demonstrated that the information given in indictments cannot always be taken at face value, for example felony indictments tend to record all occupations as labourers, dates cannot always be trusted and the description of an offence is subject to legal categorisation.[64] Indictments must therefore be supplemented with other legal sources.

The recognizances add details to those given in the indictment, particularly about the victims. These were written on even smaller slips of parchment but were extremely prevalent amongst eighteenth-century prosecutors and are the most numerous sources. Recognizances were the lowest level of the criminal prosecution process and bound people over to discharge a duty, such as to appear in court to answer a charge, to give evidence in a trial, or to prosecute an accused. Failure to do so resulted in the loss of a specified sum of money. Recognizances give the names, place of residence and occupation of sureties, the accused and sometimes witnesses and victims. This information can sometimes be cross referenced with indictments to extend the usefulness of both records. The amounts asked did not vary widely and appear to relate to the wealth of the person bound over or possibly the risk of them defaulting rather than to the seriousness of the crime. Recent scholarship has explored recognizances due to their wide usage and the fact that many cases never resulted in formal prosecution. The study of these sources allows insight into the experience of petty violence at its lowest level.[65]

Depositions and examinations were witness testimonies and although they vary in length they can provide a great deal of information, particularly when more than one deposition survives for an incident. It is important to bear in mind that the statements were not recorded verbatim and that witnesses were prompted with questions when being examined, although the deposition reads like a single statement. These documents can reveal the relationships between participants, what lay behind a charge being made, and provide details not revealed in the short indictments. Very few depositions survive in the records for eastern Sussex and western Kent. However, while they must be treated with caution they are the closest we get to analysing the actual words of participants.

All three documents from the quarter sessions are used in this study as when John Beattie attempted to explore the everyday experience of crime through indictments alone he protested that: The largest numbers of such indictments by far were those for simple assault and it is the least satisfactory category to deal with. This is because assault could mean so many different things and because only in a few cases can one learn from the indictment about the circumstances surrounding a case.[66] By using both a quantitative analysis of indictments and recognizances and a qualitative analysis of depositions and examinations, it

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[64] Ibid., pp.20-21.

[65] Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* ; P Griffith, A Fox and S Hindle, eds., *The Experience of Authority in Early Modern England* (London, 1996). Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* ;

[66] Beattie, *Crime and the Courts in England*.

is possible to overcome shortcomings in both approaches and to provide a picture of the meanings and contexts of everyday violence in early eighteenth century Sussex and Kent.

One advantage to studying the indictments and recognizances that appeared in the quarter sessions is their large number. Because so many men and women appeared so regularly in the process of law enforcement at this level, there are a greater number of records to be analysed. Another practical advantage is record survival. Both Sussex and Kent have complete linear sequences of Quarter Session Rolls from 1700-1760 allowing a record of indictments and recognizances for every year. A third advantage is that unlike the Assizes, where lower level record survival is more patchy, many recognizances have survived allowing an insight into cases which did not progress to full trial, as well as those that were successful.

Source:	Number of records analysed relating to violence.
Quarter Session Indictments	635
Quarter Session Recognisances	512
Quarter Session Depositions	37
Quarter Session Gaol Delivery/ House of Correction Calendars	32
Quarter Session – Other (warrants, letters, petitions and other records of cases)	12
Coroners Records (East Sussex)	38
Justices Notebooks	26
Old Bailey Ordinary Accounts	23
Old Bailey Case Transcripts	69
Total Number of cases relating to violence analysed*: * Excluding the collections of papers relating to smuggling, newspaper accounts and customs correspondence which were not recorded in the database.	**1384**

Table 1. Sources: East Sussex and West Kent quarter sessions 1700-1760; Old Bailey Online, Hunnisett 1998 and 2005.

The period chosen for the quantitative analysis is 1708-1760 as this fits well with the justicing notebooks used in chapter two. The earlier rolls also have fewer clear indictments, more damage and a poorer survival rate of the actual slips. Crimes are still recorded in indictment and recognizance books although these provide less detail than appeared on the slips. A comparison of the East Sussex Indictment book with the rolls suggests that survival of the slips is fairly intact for the period. Unfortunately, there are only 11 depositions for Sussex contained in the rolls and 2 petitions relating to violence for the period 1700-1760.

The depositions for Kent were removed from the rolls but have not fared much better with 28 surviving for the period 1691-1760, although these are more detailed than the Sussex examinations. The total number of depositions found for both areas between 1700 and 1760 is therefore 39. It has been difficult to ascertain the typicality of the records of Sussex and Kent; however, Shani D'Cruze found a much higher rate of 51 depositions for interpersonal violence in the Essex petty sessions and borough courts in 1758-9. Garthine Walker simply stated that for her study of early modern Cheshire a full set of depositions has not survived.[67]

The records from the quarter sessions were placed onto a database to allow for statistical analysis of the data. The database contains details of 1263 violent 'crimes' found in the quarter sessions for East Sussex and West Kent between 1700 and 1760.[68] As the database is organised by crime, where multiple records, such as indictments and recognizances for the same crime appear, these were added to the original record in order to build up a picture of the people and circumstances surrounding a crime. This means that the number of records analysed was naturally higher than the number of crimes as each crime may have more than one record attached.

One issue with coding the incidents into a database was that, in some cases, different information about the people involved in a crime was given in an indictment and a recognizance. For example, the occupation is often given as labourer in an indictment but a recognizance may say blacksmith. Cockburn assumed that where this occurred a mistake had been made by the clerk and one of the recorded occupations was incorrect.[69] However, what seems more likely is the view put forward by Macfarlane that these discrepancies are a result of a social structure where people may have had more than one occupation, or changed occupation frequently. Another reason for the difference may be that legally clerks were able to record either occupation or status.[70] Where this has occurred, the information from the recognizance has been taken for data analysis purposes although the indictment information has been recorded. This was because the recognizance contained more detailed data about occupations than the indictments which often just gave a broad category such as labourer.

Crimes for East Sussex from the Rolls are recorded on the database for every year between 1708 and 1760. From 1708 to 1730 the Indictment books were also used as the survival rate

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[67] See Frederick Lansberry, *Government and Politics in Kent, 1640-1914* (Woodbridge, 2001), chapter 7 for a discussion of the Kent judicial system and records. Walker, *Crime, Gender and Social Order in Early Modern England*; Shani D'Cruze, *A Pleasing Prospect: Social Change and Urban Culture in Eighteenth-Century Colchester* (Hatfield, 2008).

[68] In order to aid explanation of the database 'crime' here is used as a general term for any incident which generated legal paperwork such as a recognizance, even if it went no further. In the analysis section, the author generally prefers to conceptualise these as 'incidents' or 'behaviours'

[69] J.S. Cockburn, 'Early Modern Assize Records as Historical Evidence', *Journal Society of Archivists*, 5:4 (1975), pp. 215-231, p.222.

[70] Alan Macfarlane, 'Review: J.S. Cockburn (Ed.), Calendar of Assize Records; Essex Indictments Elizabeth I. Hmso, 1978.', *American Journal Of Legal History*, 24:2 (1980), p.174.

of the original Indictment slips was found to be lower. The period from 1700 to 1708 was not placed onto the database as the records were in a poor state and any information gleaned was basic. Crimes for West Kent were entered from mixed rolls for the period 1730-1760. From 1700-1730 separate recognizance and indictment rolls were explored. Every year was entered onto the database for the period 1739-1759, but due to time constraints it was decided to enter only the odd years for the period 1701-1739. Even though the sampling frequency was half between 1701 and 1739 compared to 1739-1759 it still provided over 680 cases, with an average of approximately 23 cases per year, which is more than ample for statistical analysis. As Kent kept qualitative sources such as depositions separately these could be examined for every year to further enhance the analysis. The East Sussex Coroners records were also used as supplementary material.[71]

	Sussex	Kent	Total
Number of indictments	248	387	635
Number of recognizances	198	314	512
Number of depositions	6	31	37
Total	452	732	1184

Table 2. Source: East Sussex and West Kent Quarter Sessions 1700-1760

The database is by no means a complete count of violent crimes in the two counties in this period. Crimes were only included if they met certain criteria, crimes against the person and not those against property were taken to be violent. An indictment had to mention the words assault, affray, beat, wound, maltreat, ill-treat, intent to ravish, threat to kill/murder or violence. Riot was only included if it had obviously also led to an interpersonal assault. Recognizances were included if they obviously related to an indictment for violence or if they too contained any of the words above. Recognizances for praying the peace or a breach of peace were only included if it was a wife against her husband or vice versa. Therefore it is likely that many cases of violence have been missed due to the legal convention of writing recognizances for a range of crimes as a breach of the peace. For example crimes as varied as scolding, assault, rioting and theft have all been found in recognizances as breaches of the peace or bonds for good behaviour making it hard to separate the individual crime without supplementary records.[72] Within the database, crimes were labelled according to the category given to them in the legal process and the description of the incident. This was due to the large number of offences being described simply as assault. By allocating a second label such as housebreaking or sexual to the crimes

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[71] R F Hunnisett, *East Sussex Coroners' Records 1688-1838* (Lewes, 2005); R F Hunnisett, *Sussex Coroners Inquests 1603-1688* (London, 1998).

[72] Walker, *Crime, Gender and Social Order in Early Modern England*; Richard Burn, *The Justice of the Peace, and Parish Officer.* (London, 1755).

for which more details were given, it is possible to see more clearly the range of crimes included under this label. The types of violence recorded here depended on individual descriptions and include threats, battery, affray, housebreaking and arson. The largest group of violence was still recorded as assault.[73]

Other sources used to supplement and contextualise the information contained in the quarter sessions included the local justices' notebooks of Paul D'Aranda, James Brockman, William Brockman, Ralf Buffkin, Edward Filmer and Sir Wyndham Knatchbull. These notebooks incompletely cover the period 1689 to 1767 and were used primarily for chapter two. All of the justices worked in rural parishes in Kent and the reason for the selection of these notebooks was the long temporal and distinct spatial areas covered. Other sources used to provide further contextual information include legal handbooks written by Richard Burn and Michael Dalton. The contemporary literature of Henry Fielding and Tobias Smollett will be explored as a cultural text, in the manner suggested by Darnton and Chartier, in order to contextualise attitudes to justices and explore all angles of events as suggested in the methodology section. Several forms of popular literature such as pamphlets, ballads and conduct literature are also analysed in order to gain insights into popular conceptions of violence. These include the booklet *'A Full and Genuine History of the…Murders of Mr William Galley…and Mr Daniel Chater'* and pamphlets surrounding the murders by Mary Blandy and Elizabeth Jeffries amongst others.

Before discussing the benefits and pitfalls of using popular literature as a historical source, it is necessary to give a brief overview of the genres contained within popular print in the early eighteenth century. The novel was a new form of writing in the early eighteenth century which could be written and read by both men and women. Novels have traditionally been associated with female readers, partly due to the concerns of eighteenth century moralists. However, Jan Fergus found that novels were neither written for women, nor exclusively consumed by them. Her research demonstrated that the largest proportion of the audience for novels were the male gentry and professional classes. Those women that did read novels in the provinces tended to be widows or single.[74] By the 1730s the tone of the novel was increasingly sentimental in line with the portrayals of gender in periodicals and it has been suggested by Fergus that it is this which led to contemporary fears about women and novels.[75]

In the late seventeenth century, periodicals, newspapers and pamphlets were rapidly expanding forms of print. The audience for magazines and periodicals was different to that of the novel. Magazines were cheap and accessible to a broad cross section of the community from the gentry, artisans, apprentices and occasionally servants and labourers. By 1770 women of the middling sort were also more likely to read fiction magazines than

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[73] See chapter 1, Table 2.

[74] Jan Fergus, *Provincial Readers in Eighteenth-Century England* (Oxford, 2006), chapter 1.

[75] Robert B Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* (London, 1998), p.40; Fergus, *Provincial Readers in Eighteenth-Century England*, chapter 1.

before.[76] Periodicals such as The *Spectator* or *The Lady's Magazine* sought to attract both male and female readers who were generally wealthier than the audiences of the chapbooks and ballads, and contained social and moral commentary, literary and dramatic criticism as well as short literary works. They portrayed different gender ideals to those evident in the ballads and had more in common with the conduct book form.[77]

Crime literature, in which details of the lives of notorious criminals were published as chapbooks, ballads, broadsides and trial accounts, was an inexpensive and popular form of entertainment. From 1678, The Proceedings of the Old Bailey, which contained details of trials held at a single sessions was published. This was produced shortly after the conclusion of each sessions and gave descriptions of interesting trials, with verbatim accounts of witnesses, prosecutors and defendants. It became an established periodical in the early eighteenth century although its popularity declined in favour of newspapers in the latter part.[78] Ballads or chapbooks were probably the most popular form of literature in this period.[79] These small inexpensive books, sometimes consisting of just a page were sold by peddlers throughout the country.[80] Written largely by men but with an audience of both men and women of a wide ranging social status they were both entertaining and instructive. Woodcut prints allowed those who could not read to see the messages and many would hear the ballads sung to famous tunes. The content ranged from religious devotion and morality to tales of love, crime or humour.

Prescriptive or conduct literature commonly discussed ideas about chastisement and violence. Originating in medieval courtesy literature, these texts were part of a long tradition of moral instruction on subjects such as marriage and the ordering of domestic relations, medical advice and cooking. In the eighteenth century the genre became ever more popular with many books undergoing several reprints (for example Richard Allestree's *The Whole Duty of Man* had sixty-four editions printed between 1659 and 1842).[81] Once again this literature tended to be written by men, although there were some female conduct book writers, particularly in the later eighteenth century. The writers of conduct literature were members of the educated gentry rather than the hacks who wrote chapbooks and their audience tended to be more middle or upper class although often the

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[76] Fergus, *Provincial Readers in Eighteenth-Century England*, chapter 5

[77] Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* pp.39-40

[78] Simon Devereaux, 'From Sessions to Newspaper? Criminal Trial Reporting, the Nature of Crime, and the London Press, 1770-1800', *The London Journal*, 32:1 (2007); Peter King, 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London', *Continuity and Change*, 22:1 (2007), pp. 73-112; Simon Devereaux, 'The City and the Sessions Paper: 'Public Justice' in London, 1770-1800', *Journal of British Studies*, 35 (1996), pp. 466-503; M Harris, 'Trials and Criminal Biographies: A Case Study in Distribution', in R Myers and M Harris, eds., *Sale and Distribution of Books from 1700* (Oxford, 1982).

[79] See Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - Publishing History of the Proceedings", Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 09 September 2013)

[80] Margaret Spufford, *Small Books and Pleasant Histories: Popular Fiction and Its Readership in Seventeenth-Century England* (Cambridge, 1985).

[81] Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* pp.21-22

texts were aimed at a wider audience. The expansion of female literacy during the period also saw a growing number of conduct books aimed solely at women. The gender roles prescribed in these books were closely linked to contemporary theological and medical understanding and Anthony Fletcher has argued that conduct books played an important part in constructing gender roles in the eighteenth century.[82] Conduct books set out how a family ought to be governed and are a useful source with regards to the debate over violence within the family, although there are obvious difficulties with assuming prescription and practice are the same. Robert Shoemaker has argued that 'evidence from a variety of sources reveals that patriarchal authority and love were not inconsistent with one another' demonstrating how the extent of authority was often qualified and reconciled by the contradiction between the 'necessity for wives to submit to their husbands' authority' and the expectation that spouses form a relationship based on love and friendship.[83]

However, prescriptive literature was not the only outlet for discussion about gender and household violence. Domestic homicide was a popular theme in theatre and pamphlet literature as well as, in the later eighteenth-century, newspaper reports with some stories such as that of Alice Arden reprinted several times.[84] These sources can be augmented with court records to discover how printed literature interacted with daily life. For example, Laura Gowing has explored the church court records for an earlier period and argues that they expose '...fantasies of exchange, replacement and 'contriving death'' similar to those seen in the pamphlet literature about petty treason. She has shown how these reveal 'the place literary stories about women's adultery might have in the discourses of real marriage'.[85] This interaction between what people read and their practice would possibly be even truer for the eighteenth century due to the expansion of print culture.[86] Thus this literature would appear to have played an important role in both shaping and responding to a range of gender identities with regards to violence.

The historical interpretation of literary sources involves several difficulties. The most obvious obstacle with using popular literature as a guide to violence is that they, of course, represent only a selection of actual incidents, more so than even court records. This is due in part to survival and the constant 'dark figure' of unrecorded crime but also to the nature of crimes selected for inclusion in ballads and pamphlet literature. The texts that have

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[82] Fletcher, *Gender, Sex and Subordination*., p.335

[83] Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* p.102

[84] Foyster, 'Creating a Veil of Silence? Politeness and Marital Violence in the English Household '; Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London*; Martin J. Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869', *The Journal of British Studies*, 40:2 (2001), pp. 184-212; Frances E. Dolan, 'Gender, Moral Agency, and Dramatic Form in a Warning for Fair Women', *Studies in English Literature, 1500-1900*, 29:2 (1989); Frances E. Dolan, 'The Subordinate('S) Plot: Petty Treason and the Forms of Domestic Rebellion', *Shakespeare Quarterly*, 43:3 (1992), pp. 317-340.

[85] Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London*.

[86] See Donna Andrew and Randall McGowen, *The Perreaus and Mrs. Rudd: Forgery and Betrayal in Eighteenth-Century London* (Berkeley, 2001), p.55-6; Hannah Barker, *Newspapers, Politics, and Public Opinion in Late Eighteenth-Century England* (Oxford, 1998); Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford, 1998).

survived do so due to a few private collectors and libraries and so we cannot be sure that they are fully representative of what once existed. For example Joy Wiltenburg records that of the ballads registered with the Stationers' Company between 1557 and 1709, 'less than a third seem to be extant today; conversely, a relatively small proportion of those now extant appears in the registers.'[87]

The very nature of this literature meant that crimes considered serious, inappropriate, subversive or excessive were selected as themes to be written about; stories were included, which provided a thrilling narrative rather than the staid and ordinary. One possible distortion to be considered is that readers liked sensation but the actions of the author must also be taken into account. Wiltenburg has stressed that:

> Analysis of such sources requires alertness not only to distortions of real actions and social relationships, but to distortions of actual attitudes as well. Cultural ideas…are only one of a combination of influences shaping an author's presentation…including such factors as literary conventions, commercial or political aims, the author's temperament and artistic skill, and even to an uncertain extent, the author's experience of "real life." On the other hand, none of these factors is a static category, as all interact and react upon each other.[88]

This provokes questions about the accuracy with which murders were reported in the pamphlets. In order to overcome this, wherever possible, the pamphlets have been supplemented with court records although Alan Macfarlane has argued, in his comparison of witchcraft trials and pamphlets, that the reporting is fairly accurate, Robert Shoemaker has urged scepticism when reading the *Proceedings of the Old Bailey*.[89] It can also be argued that the pamphlets give a distorted view of the murders contained within them because of their essentially didactic bias. Their objective was to instruct the reader on the correct moral course of action whilst recounting the miseries of others. However, James Sharpe has argued that the normative ideas contained within popular literature were likely to be in accord with readers' ideas and thus provide insight into contemporary attitudes.[90] These texts were shaped by the author and so this must be considered when analysing them. However, their significance can still be found amongst the contemporary reader. As Wiltenburg has argued 'it was in their audience's reception of them that the texts became culturally powerful.'[91]

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[87] Joy Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany* (Charlottesville, 1992), p.42

[88] Ibid., p.28

[89] Alan Macfarlane, *Witchcraft in Tudor and Stuart England* (London, 1970); Robert Shoemaker, 'The Old Bailey Proceedings and the Representation of Crime and Criminal Justice in Eighteenth-Century London', *Journal of British Studies*, 47:3 (2008), pp. 559-580, p.664

[90] J.A. Sharpe, 'Domestic Homicide in Early Modern England', *Historical Journal*, xxiv (1981), pp. 29-48, p.40

[91] Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany*, p28

Once a piece of popular literature left the author's hand, it took upon a life of its own. Whilst the author drew upon conventions and assumptions in producing the text, the audience too drew upon their own common language and assumptions when reading or hearing the piece. Whilst the author may have been promoting certain ideas, the audience was by no means passive in its reception of these. For example, Wiltenburg has shown how ballad singers might choose to remember only parts of songs or create their own segments for sections they disliked or forgot arguing that 'If the texts exerted power on their audience, the reverse was true as well, partly through authors' commercially motivated attempts to respond to popular tastes, but more importantly through audience uses of the texts themselves.'[92]

There is of course great difficulty with ascertaining who these audiences were, but it is generally considered likely that pamphlet literature was popular amongst the lower orders of literate society such as small traders, craftsmen and servants.[93] Ballads were generally designed to be read aloud and could be heard in taverns, fairs and streets. Ballads cost about a penny and so were not an inaccessible luxury to many, whilst chapbooks or pamphlets cost anything from 3d to pounds. Their cheapness also did not deter wealthier buyers and so it appears popular print had a possible readership as large as the literate population.[94] It is however difficult to estimate levels of literacy in the early modern period, particularly as there appears to have been large differences between levels in rural and urban areas. David Cressy has assessed literacy based on the ability to sign names and estimated that by 1714, 45% men and 25% women were literate.[95] As reading was taught before writing in this period many may have acquired the skills to read simple literature without being able to sign their names and so the literacy levels may be higher for our purposes, Margaret Spufford argues that agricultural labourers were 'everywhere face to face with literacy, and the oral with the printed word'.[96] Adam Fox, too, has demonstrated that ballads were disseminated in both oral and written form, and that even those at the lowest social levels appreciated the value of writing, suggesting that contemporaries may have had greater literacy than was previously assumed.[97] Therefore this literature can indeed be called 'popular' in that it reached a wide audience, different social classes, and literacy levels through both oral and printed dissemination.

Just how popular or typical particular pieces and themes were is another question which poses difficulties. One indication of popularity of a text is if a work was reprinted several

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[92] Ibid., p.29

[93] Sharpe, 'Domestic Homicide in Early Modern England', p40; Spufford, *Small Books and Pleasant Histories: Popular Fiction and Its Readership in Seventeenth-Century England*, p.21

[94] 'Background to Ballads' The Bodleian Library, http://www.bodley.ox.ac.uk/ballads/help/background.htm; consulted 9 September 2013

[95] David Cressy, *Literacy and the Social Order: Reading and Writing in Tudor and Stuart England* (Cambridge, 2006), p.72 and p.176

[96] Spufford, *Small Books and Pleasant Histories: Popular Fiction and Its Readership in Seventeenth-Century England*, p.32

[97] Adam Fox, *Oral and Literate Culture in England, 1500-1700* (Oxford, 2000).

times. Another indication of the popularity of a particular criminal case is if several different pamphlets or ballads were printed or if the story received more news coverage than average. Some of the cases mentioned in this thesis were also recalled into the nineteenth century suggesting that they were famous and had remained in collective memory. There is of course no way of knowing the minds of contemporary audiences, and information on distribution is elusive, but by being aware of the typicality of the works it is possible to go some way to overcoming this.

As has been suggested, whilst these narratives were shaped by conventions and for their audiences, this shaping can itself reveal what violence meant to people in the eighteenth century. For example women were overrepresented as murderers in popular publications in the late sixteenth and seventeenth centuries, however knowledge of this can reveal what Martin Wiener calls the prevailing 'nightmares' of intimate violence'.[98] Once we become aware of these conventions it is also possible to look cautiously beyond them at the meanings of violence contained within the narratives of household breakdown themselves.

Overview of Structure:

The thesis takes the form of six chapters including this introductory chapter. Chapter one provides a detailed outline of the incidence and patterns of violence in the area of eastern Sussex and western Kent, based on the records of the relevant quarter sessions. The purpose of this chapter is to explore patterns related to geography, economy, gender and status, to begin to contextualise the records and to identify the roles of violence. It suggests that these records can be used to trace levels, and to some extent, the meanings and functions of petty violence in the first half of the eighteenth century. Violent actions are considered in context by delineating the key geographic and economic characteristics of the counties, and suggesting that differing topography and associated economic activity bred different forms and levels of violence. For example, the Wealden areas reported more violence.

Having considered the influence of the physical and economic environment on the nature and frequency of violence, the chapter examines the way in which the law operated in relation to violence; in particular it explores patterns of prosecution and their relationship to gender and status. Finally the chapter analyses the role and function of violence and its cultural significance by considering the narratives of violence found in the quarter sessions within three thematic categories: retribution, autonomy and discipline.

By means of the analysis outlined above, the chapter argues that, contrary to findings based on homicide statistics that violence decreased during the eighteenth century, levels of

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[98] See Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869';Wiltenburg, *Disorderly Women and Female Power in the Street Literature of Early Modern England and Germany*; Peter Lake, 'Deeds against Nature: Cheap Print, Protestantism and Murder in Early Seventeenth Century England', in Kevin Sharpe and Peter Lake, eds., *Culture and Politics in Early Stuart England* (Oxford, 1994); Frances E. Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1500-1700* (Ithaca, 1994).

violence in eastern Sussex and western Kent were remarkably stable. In addition to challenging the notion of decreasing violence, the chapter contends that the narratives of violence found in the quarter sessions suggest that violence was not a random occurrence, but that it had a function, and that it was in important ways ordered. This chapter introduces the concept of legitimate and illegitimate violence which is developed in chapter two.

If we are to understand disputes, it is necessary to understand the cultural context surrounding them. Chapter two brings us closer to this goal by focusing on the way in which low-level violent disputes were negotiated and settled in the early eighteenth century. Its purpose is to show how order was restored when violence became illegitimate, to show that disputants sought recognition and mediation from authority and to demonstrate how violence can be used as a lens to explore attitudes to authority. This chapter explores the earliest stage of the judicial process in order to fill in the gaps left by the quarter sessions. The chapter examines as its principal source the notes left by several Justices of the Peace working in Kent in the early eighteenth century. These allow us to reconstruct something of the social contexts and meanings of acceptable and unacceptable violence. To do this the chapter considers the character of Justices of the Peace through contemporary literary accounts, as well as the legal frameworks and definitions within which they worked. Primarily however, it examines the many ways in which disputes were resolved and what this meant for local power relations. It also considers the reasons behind the popularity of informal dispute settlement in cases of violence.

In order to understand social relations comprehensively it is necessary to be aware of the power structures surrounding them and vice versa. This view provides a useful framework for examining arbitration in this chapter. The initiatives of the justices and the expectations of the local population combined in each area, time and case to form individual experiences of authority. Patterns can be found such as the treatment of women, due to general cultural commonalities, but each case will also be taken on its own merits.

This chapter concludes that violent disputes were solved through a mixture of formal and informal processes which involved not only the disputants, but those they lived and worked with. Negotiation of disputes was a complex matter dependant on individual agency and local values as well as legal frameworks. The chapter draws on the concept of legitimate and illegitimate violence introduced in chapter one and sets up questions about attitudes to authority.

Having examined the cultural context of low-level violent disputes, chapters three and four explore the ways in which the same factors can be seen to operate in relation to more serious violence, namely that perpetrated by smugglers. As John Beattie acknowledged when he examined crimes against the person, and against property, smuggling 'clearly had a

direct effect on forms of criminal activity' in Sussex and Surrey.[99] For that reason it is impossible to study incidences of violence and violent crime in the South East without reference to smuggling.

Chapter three explores official reactions to large scale violence. It seeks to describe how authorities reacted to the disruptive violence of smugglers in a variety of ways. And begins to show how political and social authority was negotiated by the smugglers and local gentry. This chapter provides a detailed account of a particular instance of smuggling-related violence: the case of Galley and Chater, both murdered by a gang of smugglers in 1748. The case is interesting because, unlike many other similar cases of violence perpetrated by smugglers around this time, it attracted a great deal of attention. Due to this this chapter attempts to find clues about the mind-set of the smugglers and authorities, and reconstruct contemporary mentalities, through an examination of the actions and discourse represented in the sources. This approach reveals hidden stories which disclose the workings of the smuggling gangs.

The purpose of chapter three is to reveal more about the understandings and beliefs that surrounded violent incidents and examine the meaning, form, and context of reactions to the case of Chater and Galley. It begins to show how smugglers used methods of violence found within traditional popular culture and their violence also mirrored that meted out by the authorities. This chapter seeks to understand how large scale violence required officials to react in a variety of ways, including print culture, retributive justice, violence and the theatre of punishment. It uncovers the impact the reactions had on social relationships within the area in the case of informers. This wider repertoire of reactions in response to large scale violence also involved a larger number of people from local customs officers and land agents to MP's and large organisations such as the revenue office. By exploring the violence of smugglers from this angle it is possible to further understand the relationship between the perpetrators of large scale violence and those trying to prevent it and the impact of this relationship on wider community and social structures.

Chapter four uses the evidence provided in newspaper reports, notes of customs officers and official records, to look more deeply at the structure and identity of the smuggling gangs and analyse their violent actions for meaning. It explores how the identity of a specific group was related to violence and to uses this knowledge to enhance previous interpretations for the causes of large scale violence. For example it re-examines the theory put forward by Cal Winslow that the smugglers' violence was a form of social crime consciously challenging the social order. It also considers the notion put forward by John Styles that smuggling may have been redefined as legitimate due to economic benefits, and evaluates the impact this would have had on violence.[100] Following on from chapter three it further shows how the structure of

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[99] Beattie, 'The Pattern of Crime in England, 1660-1800'.

[100] Cal Winslow, 'Sussex Smugglers', in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, eds., *Albion's Fatal Tree. Crime and Society in Eighteenth Century England* (New York, 1975); John Brewer and John Styles, *An Ungovernable People* (London, 1980).

smuggling gangs mirrored those of the authorities with clear leadership and goals. It also picks up on other ways in which the actions of the authorities and the smugglers mirrored each other, for example in their tactics and use of particular forms of violence. This analysis adds to the understandings gained in chapter three of the ways in which smugglers and authorities interacted and how this impacted on the region.

The final chapter considers the nature of violence within the setting of the household. While the previous chapters have explored the concept of violence across the two counties, this chapter demonstrates what it meant at the most personal level. Its purpose is to further anatomise the concept of violence and to show how the definition of violence is complex and context dependant, particularly with regards to legitimacy and acceptability. The strict geographical focus of the other chapters is loosened and the sources shifted to include more pamphlet and prescriptive literature as well as the court records used previously. This demonstrates how a range of sources can interlock to build a picture of the personal meanings of violence more complete than can be gained from any one source. Two related types of violence are discussed, that which played a part in controlling order, and that which reacted against it. Complex networks of authority and agency are revealed. This chapter demonstrates how contemporaries were preoccupied with anxieties about household governance and that intimate violence was seen to be a result of failure in this authority.

This thesis contributes not only to the historical literature on the incidence of violence in the eighteenth century, but to a wide range of historical study. It adds to discussions of the place of gender and class in the period as well as the organising structures of the household, parish and county. It analyses several aspects of interpersonal violence by beginning with a broad overview before narrowing its focus to the eighteenth century household and exploring what violence meant there.

The pattern of violence in East Sussex and West Kent in the early eighteenth century.

Introduction

This chapter focusses on the records of the quarter sessions and argues that these can be contextualised and used to trace the meanings and functions of petty violence in the early eighteenth century. It extends John Beattie's previous work on the pattern of crime in Sussex and Surrey, in order to explore the idea that violence was not a random occurrence but had a function, an order, and that even when it appeared to have got out of hand and was taken to court, it could be made ordered. The discussion does this by studying patterns of prosecution of violent crime within eastern Sussex and western Kent, the character of violent offences and the behaviour of those brought before the lowest court: the Court of quarter sessions. As discussed in the introduction, investigations of patterns and trends within violent crime have often focused on homicide, as this was believed to have been the most likely to have been reported and therefore one of the most reliable offences to be recorded. However, homicide was a rare crime and therefore does not give an insight into how violence was experienced every day. Here, the records contained in recognizances, indictments and depositions are used together to contextualise incidents of violence in the early eighteenth century, allowing further examination of the meanings of violence and the concept of permitted and illicit violent actions.

This chapter falls into two parts, each part relying on the same data set from the quarter sessions but asking different questions and using different methods to provide the answers. The first section of this chapter will begin to place violent actions in a broader context by looking at how this study relates previous work on Sussex and Kent and the relationship between violence and the key geographic and economic characteristics of the counties in which the participants lived. The next section will consider how the law was used in relation to violence, the patterns of prosecution and how these related to gender and status. Here quantitative and qualitative methodologies are combined to gain a more comprehensive understanding of the concept of violence. The third section of the chapter analyses narratives of violence found in the quarter sessions in order to explore the role and function of violence and its cultural significance. These narratives contained three themes: retribution, autonomy and discipline; themes that were also found by John Carter Wood in his work on nineteenth century England.[101]

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[101] J. Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement* (Abingdon, 2004).

Historiography

This chapter exploits both the quantitative surveys used by John Beattie in the 1970s and the approaches demonstrated by the work of historians on culture and mentality.[102] Beattie analysed indictments from the assizes and the quarter sessions in order to demonstrate a chronology of change in prosecution and punishment. This pattern fits well with the theory of the civilising process and has provided a useful starting point in analysing violence in this period. However, such an overarching study leaves many areas untouched, particularly the relationship between the criminal and civil courts and the experience of those who came to court.

As noted in the introduction, Beattie is unusual in analysing levels of violent crime, as the majority of historians looking for patterns in prosecution have explored homicide. They have consistently found declining levels which have often been explained by the theory of the civilising process.[103] Aside from Beattie, the only other historian to measure non-lethal violence was Vic Gatrell. He looked at the levels of violence between 1850 and 1914 and concluded that 'all forms of interpersonal violence, with the exception of sexual violence, declined in the second half of the nineteenth century'.[104] The work of both Beattie and Gatrell has been much praised for its detail and the way they extrapolated from prosecuted rates to real rates of crime. Perhaps due to the way these figures supported the already accepted narrative of decline seen in homicide rates, and fitted neatly with the theory of the civilising process, historians have not questioned these levels further. Instead they have moved towards explaining these changes.

Historians such Jennine Hurl-Eamon in her study of London (1680-1720) and Jessica Warner in her study of Portsmouth (1653-1781) have extended the conclusions of Beattie and explored the patterns found within prosecution rates, and the potential reasons behind these.[105] Instead for looking for patterns of change over time, they have quantitatively and

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[102] ibid;Robert Darnton, *The Great Cat Massacre: And Other Episodes in French Cultural History* (New York, 1985);Carlo Ginzburg, 'Morelli, Freud and Sherlock Holmes: Cludes and Scientific Method', *History Workshop Journal*, 9:1 (1980), pp. 5-36.

[103] Pieter Spierenburg, 'Violence and the Civilizing Process : Does It Work ?', *Crime, Histoire & Sociétés*, 5:2 (2001); Ted Robert Gurr, 'Historical Trends in Violent Crime: A Critical Reviewe of the Evidence', *Crime and Justice*, 3 (1981), pp. 295-353; Manuel Eisner, 'Modernization, Self-Control and Lethal Violence: The Long Term Dynamics of European Homicide Rates in Theoretical Perspective', *British Journal of Criminology*, 41 (2001), pp. 618-638; J.S. Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985', *Past and Present*, 130 (1991), pp. 70-106; Frank H. Denton and Warren Phillips, 'Some Patterns in the History of Violence', *The Journal Of Conflict Resolution*, 12:2 (1968), pp. 182-195; P.E.H. Hair, 'Deaths from Violence in Britain: A Tentative Secular Survey', *Population Studies*, xxv (1971), pp. 5-24; Robert Muchembled, *A History of Violence: From the End of the Middle Ages to the Present* (London, 2011); Stephen Pinker, 'A History of Violence', *The New Statesman* (2007); Steven Pinker, *The Better Angels of Our Nature. The Decline of Violence in History and Its Causes* (London, 2011); Benjamin Ziemann, 'Review of Histories of Violence', *http://www.history.ac.uk/reviews/review/1232*, 1232 (2011).

[104] V.A.C. Gatrell, 'The Decline of Theft and Violence in Victorian and Edwardian England', in V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker, eds., *Crime and the Law: The Social History of Crime in Western Europe since 1500* (London, 1980), pp. 250-251, p.286

[105] Susan Dwyer Amussen, 'Punishment, Discipline, and Power: The Social Meanings of Violence in Early Modern England', *The Journal of British Studies*, 34:1 (1995), pp. 1-34; Robert Shoemaker, *The London Mob:*

qualitatively examined aspects of class and gender found in the records. Both have concluded that the actions of perpetrators of violence were gendered, with women more likely to be involved in violence in the context of neighbourhood tensions. Their work has shown that by combining qualitative approaches with a quantitative survey, it is possible to reach a wider understanding of the patterns and concepts surrounding violence. Unfortunately there have been no similar studies for rural areas that can be compared to these.

In exploring the reasons for violence the findings of John Carter Wood have also been considered. Carter Wood built on previous research in order to explore how and why the decline in prosecutions found by Gatrell occurred.[106] Instead of looking at patterns of prosecution, Carter Wood explored culturally specific incidents. His study of violence amongst the working class in the nineteenth century found three categories or 'mentalities' which ' favoured physical retribution, valued community autonomy and maintained domestic and public norms through disciplinary force or its implied threat'.[107] Although Carter Wood's area of study was urban and in a later century, his insights can still be useful in investigating eighteenth century rural violence. This is because he believed the characteristics mentioned above had their origins in an earlier period. His research demonstrated how violence was used to maintain norms and create order within small localities as well as a way of solving disputes and, in extremis, a form of economic survival. The second section of this chapter explores these themes in order to structure the discussion of the contexts and mentalities of violence in the South East in the eighteenth century.

Methods and sources

This chapter is based upon an analysis of over a thousand violent incidents, which came before the quarter sessions in eastern Sussex and western Kent between 1700 and 1760, plus additional data from depositions and other sampled years for the two counties (see table 1). It considers all cases that were brought under the legal categories of assault and affray. In addition to this, it considers cases where the offence is not recorded as violence per se, but where there is a reference to violence (see table 2). The counties of Sussex and Kent offer an important basis for comparison to other studies, most notably those of

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Violence and Disorder in Eighteenth Century England (London, 2004); Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003); Janine Riviere Jessica Warner, Kathryn Graham, 'Men and Women Fighting Side by Side: Examples from an English Town, 1653-1781', *Journal of Family History*, 33:2 (2008), pp. 156-172; Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus, 2005)

[106] J. Carter Wood, 'The Process of Civilisation (and Its Discontents): Violence, Narrative and History. ', in Dirk Wiemann, Agata Stopinska, Anke Bartels and Johannes Angermller, eds., *Discourses of Violence - Violence of Discourses:Critical Interventions, Transgressive Readings, and Post-National Negotiations* (Frankfurt am Main, 2005), p.119; Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement*.

[107] Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement*, p. 48

London, Portsmouth, and Cheshire.[108] Another benefit of choosing Sussex is that Cynthia Herrup has examined the attitudes behind the enforcement of criminal law for the seventeenth century, including how the legal process functioned and how people participated in the process. This too allows some form of contrast and comparison across time.

	East Sussex 1708-1760				West Kent odd years 1701-1759				Total
Incidences of violence[109]	452				732				1184
Indictments **Verdict**	103 True	49 Ignoramous	96 Unknown	248 Total	274 True	104 Ignoramous	9 Unknown	387 Total	635
Recognizances	198				314				512
Recognizances which led to indictments	50 (25%)				57 (18%)				107 (21%)

Table 1: Numbers of Indictments and Recognizances. Source: East Sussex and West Kent quarter sessions 1700-1760. This is the total number of incidents found from recognizances, indictments and depositions/ examinations. Where several records were created for one incident, this has been recorded as one. Indictments usually have the verdict recorded on the back; however some indictments particularly in the case of Sussex were too damaged or faded to read the verdict.

As stated in the introduction, crimes from the quarter sessions were labelled firstly according to the legal category which led to a large number of cases being described as assault. These cases were then sorted using the information given in the sources. This meant for example, that a case recorded as the legal category of assault might then be coded as a threat if the source recorded no actual harm but mentioned words such as 'threat of violence' or 'afraid of violence'. A breakdown of the types of crimes found in the quarter sessions and JP notebooks can thus be seen:

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[108] See Jessica Warner, 'Men and Women Fighting Side by Side: Examples from an English Town, 1653-1781'; Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720;* J.A. Sharpe, 'Sn 4429 -Violence in Early Modern England : A Regional Survey, 1600-1800; Cheshire', (2008).

[109] See introduction, tables 1 and 2.

Crime	Number of Incidents
Assault	786
Assault/ Housebreaking	14
Assault/ Kidnap	1
Assault/ Attempt to Ravish	37
Assault/ Affray	194
Assault/ Battery	67
Breach of Peace/ Pray the Peace	52
Assault/ Drunk	3
Homicide	35
Infanticide	7
Threats	32
Riot	23
Other (including attempt to assault, arson, window breaking and misdemeanours)	12

Table 2: Number of Incidents According to Type. Source: East Sussex and West Kent quarter sessions 1700-1760.

The table shows the wide variety of violent crimes which can be found in these records. The crimes have been classified according to the descriptions written on the records. The descriptors used are the same as those used by contemporaries as this allows us to understand violence in their terms. It is possible to see that the largest category found was for simple assault. This was also found by Beattie.[110] It is quite likely that this category included other types of crime but was used generically leading to the large number. The more precise descriptions of assault have far fewer crimes recorded, for example assault and drunkenness or assault with housebreaking. This thesis deals with the wide variety of crimes described here, particularly breaches of the peace, threats, and the wide range of assaults, because these far outnumber the other crimes. Homicide is also touched on, particularly in chapters three to five, because of the severity of this type of violence. Riot and infanticide have not been included in this study because both of these were not major components of the records and can be considered special cases, with little relation to the other types of violence studied here.

The general trend and the use of the law.
Several historians have suggested that violent crime decreased from the middle ages to the nineteenth century, and John Beattie's work on Sussex and Surrey agreed with this hypothesis. [111] He showed a significant decline in the number of indictments from 1700-1760 (see figure 3). Although Beattie's original data is no longer available, it has been possible to digitise the graphs found in the article 'The pattern of crime in England' in order

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[110] J.M. Beattie, 'The Pattern of Crime in England, 1660-1800', *Past and Present*, 62 (1974), pp. 47-95.

[111] See Gurr, 'Historical Trends in Violent Crime: A Critical Reviewe of the Evidence'; Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985'; Beattie, 'The Pattern of Crime in England, 1660-1800';Julius. R. Ruff, *Violence in Early Modern Europe 1500-1800* (Cambridge, 2001); Lawrence Stone, 'Interpersonal Violence in English Society 1300-1980', *Past and Present*, 101 (1983), pp. 22-33.

to compare a linear regression plot of Beattie's data to a linear regression plot of my data (see figures 3 and 4). [112] The result of this comparison is that while Beattie demonstrated a significant decline, the data set used in this thesis has shown that violence did not appear to decrease over time. The reasons for these different results and explanations as to how they can be reconciled are detailed below.
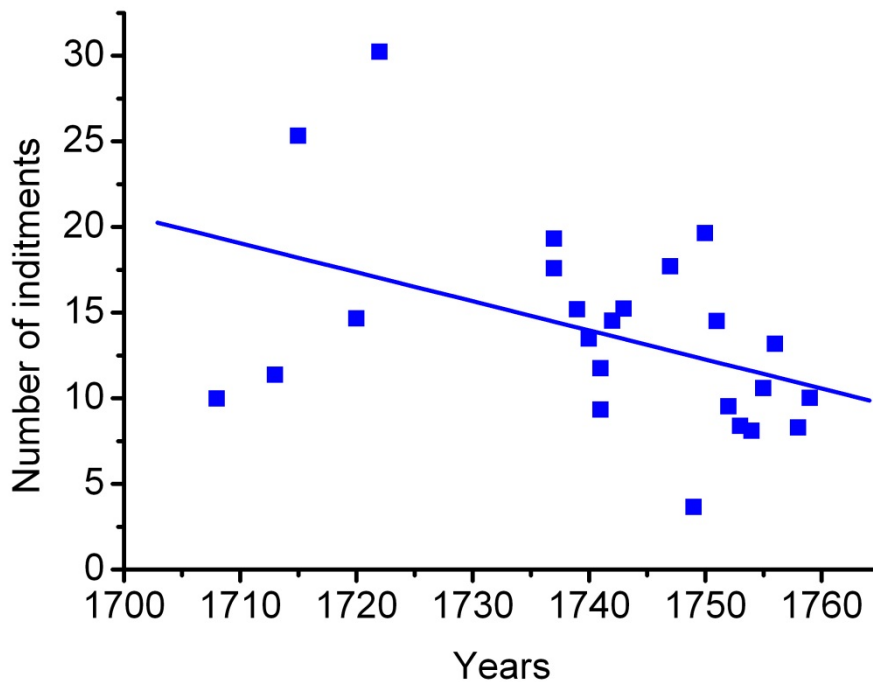

Figure 3: The Number of Indictments for Violent Crime in the Assizes and Quarter Sessions for Sussex. This has been fitted with a linear regression plot. This slope of this line is significantly different from 0 (P<0.05). This data was manually digitised from: Beattie, J. M., 'The Pattern of Crime in England, 1660-1800.', *Past and Present, vol* 62 (1974), pp. 47-95.

Figure 3 shows the data that Beattie collected for Sussex. The graph illustrates a negative correlation between the number of crimes and the year in which the crime occurred, suggesting that there was an actual decline in the number of indictments over the years, rather than a random pattern. [113] Beattie's data was based on information taken from indictments in the assize courts and the quarter sessions for crimes against the person including assault, murder, infanticide, riot and breach of peace. In contrast my data, in figure 4, uses recognizances as well as indictments, exploits only the quarter sessions and concentrates on cases which can be defined as interpersonal violence excluding riot, infanticide and murder. [114] It also uses a larger data set as it includes eastern Sussex and western Kent.

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[112] J.M. Beattie, 'The Pattern of Crime in England, 1660-1800', p.62
[113] This is statistically supported (P<0.05, Correlation coefficient -0.43)
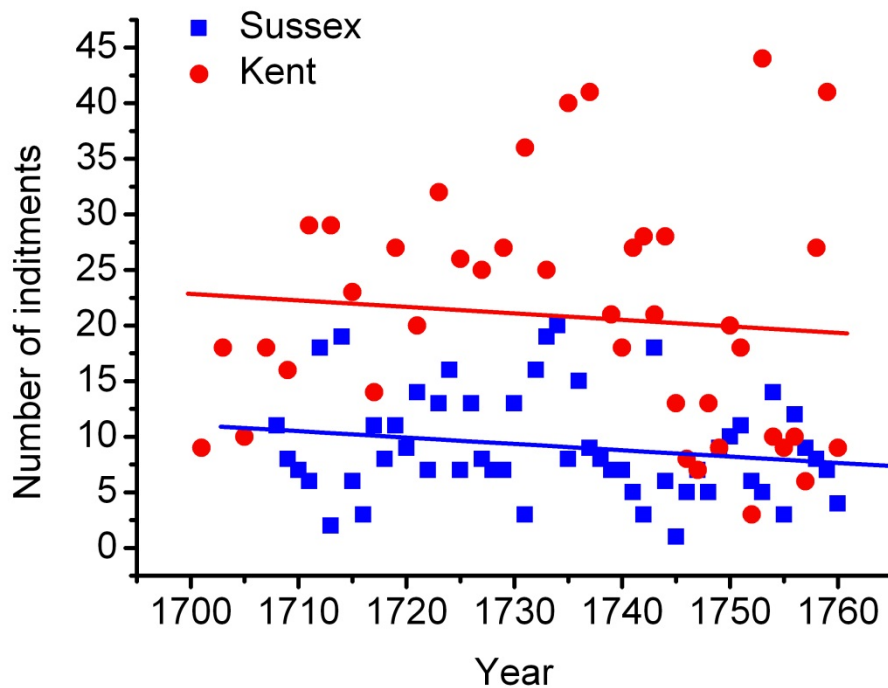[114] See the introduction to this thesis.

Figure 4: The Number of Violent Incidents Brought to Law in Sussex and Kent 1700-1760. This has been fitted with a linear regression plot. This slope of this line is not significantly different from 0 (P>0.05).Source: East Sussex and West Kent quarter sessions.

Unlike Beattie's results, which focussed on indictments, I have found that by exploring solely the lower levels of criminal justice, and including recognizances, there was no significant decline in the number of incidences of interpersonal violence brought to law in the early part of the eighteenth century in either Sussex or Kent.[115] The pattern of prosecution is random and does not suggest major changes over time (see figure 4). The reason for these divergent results may be because the quarter sessions and recognizances give a wider picture at a lower stage in the process to that studied by Beattie, who included data from the assizes in his study. He then suggested that violent crime was being dealt with in a different part of the legal process rather than to a greater or lesser extent.

Beattie considered that the reasons for the decline he found in indictments were due to the state influencing individuals' behaviour. He suggested that a growing concern over the harsh penalties imposed by the state for minor crimes, led to depressed reporting and a growth in summary powers thereby causing fewer offences to be dealt with by the higher courts. Support for Beattie's argument can be seen in Table 1 which demonstrated that the majority of recognizances did not lead to indictments. This pattern has also been found by other historians such as Robert Shoemaker who discovered only 1/3 of recognizances issued in Middlesex led to indictments.[116] Shoemaker, however did not find long term patterns in

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[115] Correlation Coefficient -0.10124, P Value = 0.18157

[116] Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725* (Cambridge, 1991). See also Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720*,

prosecutions, and instead focused on year to year fluctuations.[117] He concluded that fluctuations in offences against the peace could be explained 'in terms of changes in the number of crimes actually committed, shifts in the eagerness of plaintiffs to prosecute, alterations in the commissions of the peace, or some combination of these factors.'[118] Further analysis of the data for Sussex and Kent suggests that Beattie's assumption that there was a shift in the pattern of prosecution may be incorrect. In order to support the argument that patterns of prosecution shifted, we would expect to see an increase in the number of recognizances as the number of indictments fell. This would then explain why the number of crimes in this study appears static. However, when recognizances and indictments for Sussex and Kent are analysed, this does not appear to be the case. Statistical analysis on the number of recognizances and the number of indictments show that both do not significantly change over time (see figure 5). Although it is the case that for the quarter sessions we can see the majority of recognisances do not lead to indictments, we do not find a change over time, which would be expected if there was a change in behaviour. This is not surprising as the majority of violent crimes arose from private disputes between individuals and therefore it is highly likely that no explanation for perceived patterns can be found.[119] Beattie did of course include the records of the Assize courts and this may explain the different results.
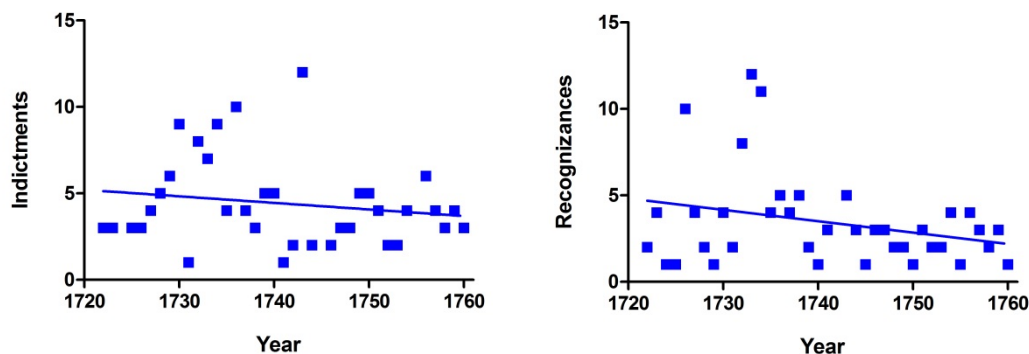
Figure 5: The Number of Violent Incidents Brought to Law in Sussex and Kent 1700-1760. This has been separated into the number of indictments and the number of recognizances and fitted with a linear regression plot. These slopes of both lines are not significantly different from 0. Source: East Sussex and West Kent quarter sessions.

This would suggest that there was not a shift in either patterns of prosecution or prosecution rates in Sussex and Kent in this period. Instead it supports the view that indictments and recognizances were different procedures within the legal process with their own advantages and disadvantages, and used according to context. The research of Robert

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pp. 20-21
[117] Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725*, pp. 62-77
[118] Ibid. p. 77
[119] Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England*, pp. 277-80; Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725*,p. 66, pp. 127-134

Shoemaker adds to this suggestion as he defined each process. Recognizances were therefore a distinct legal procedure which could be used to ensure a minor offence went no further, as a warning to prevent further offences and to keep track of defendants. Shoemaker has therefore suggested that recognizances were most used in cases of suspicions and threatening behaviour.[120] Indictments on the other hand, required the plaintiff to press the case and pay a fee, they therefore tended to be used against specific wrongful acts. The legal system was therefore much more flexible than first appears, and allowed plaintiffs to prosecute by recognizance alone, indictment alone or with both together. Steve Hindle, has also shown that going to a justice and binding a person over for a violent crime was often regulation enough. It demonstrated the fluid dividing line between acceptable and unacceptable violence, provided legitimacy for a complainant and restored order, but avoided costly litigation which may have an uncertain conclusion.[121] This notion is explored further in chapter two of this thesis.

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[120] Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725*, pp.25-27

[121] P Griffith, A Fox and S Hindle, eds., *The Experience of Authority in Early Modern England* (London, 1996). Chapter 7.

The location of violence

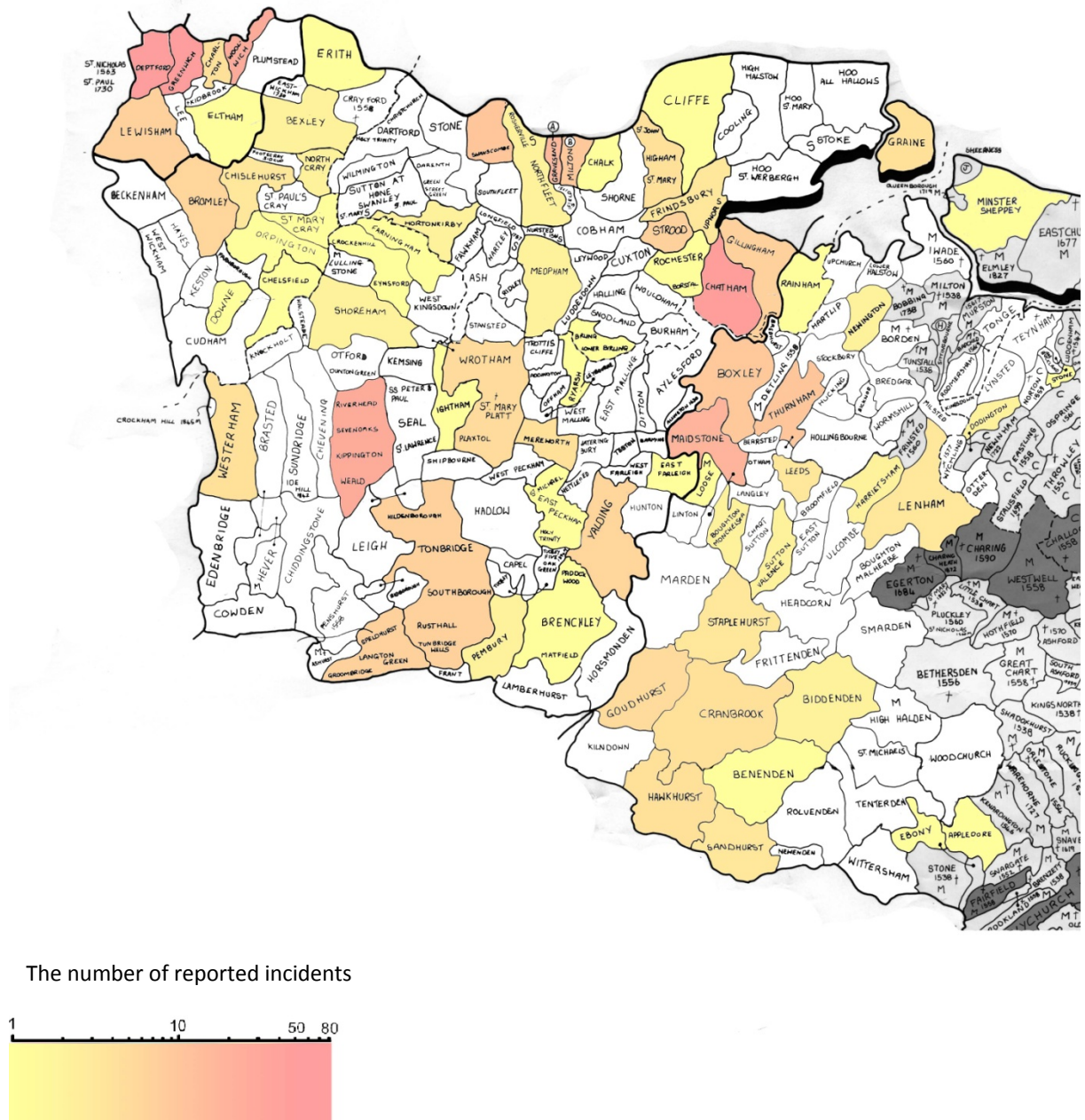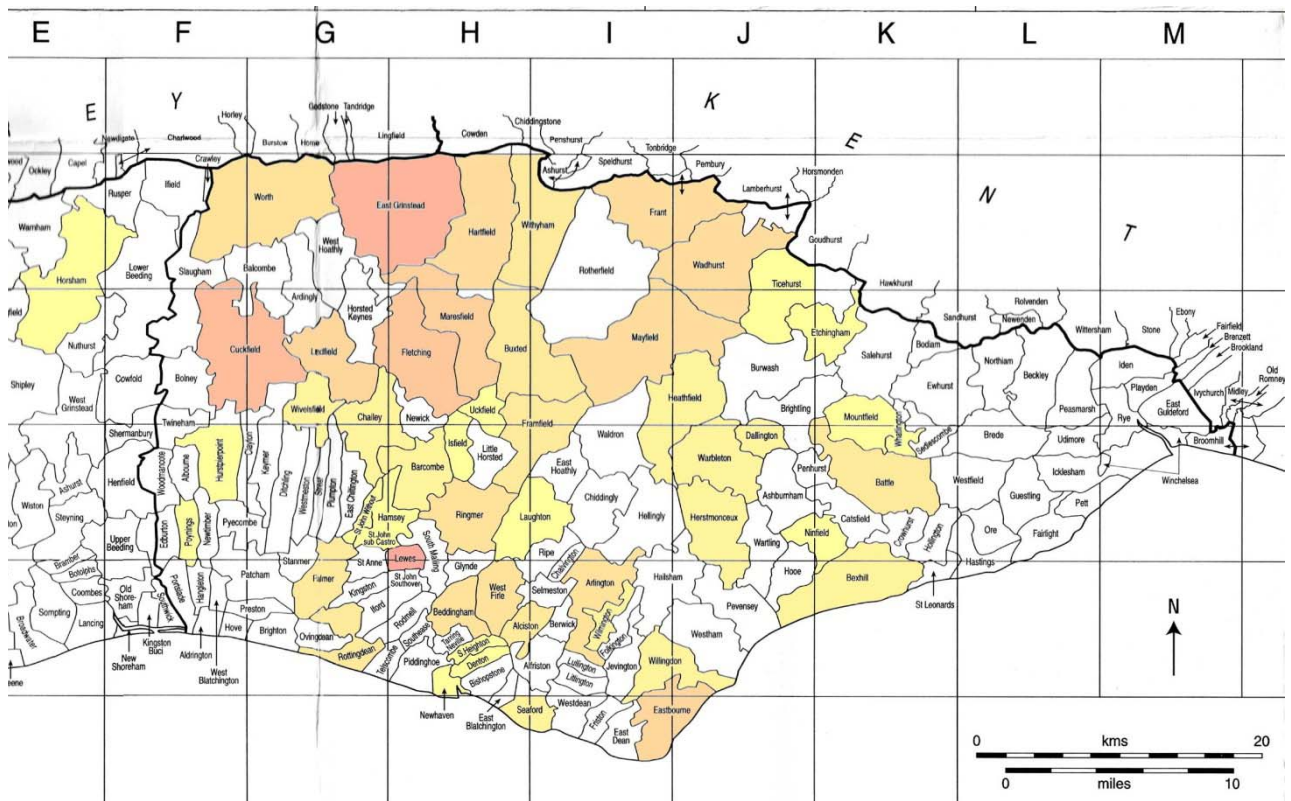**The number of reported incidents**

Figure 6: The Number of Violent Incidents in Western Kent. Source: East Sussex and West Kent quarter sessions. 1701-1759.

The number of reported incidents.
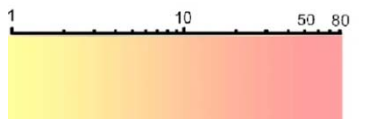
Figure 7: The Number of Violent Incidents in Eastern Sussex. Source: East Sussex and West Kent quarter sessions. 1708-1760.

Figure 6 shows five main areas in western Kent where the greatest number of violent incidents were reported over the early part of the eighteenth century. The North West tip of the county, closest to London, containing the parishes of Deptford, Lewisham and Greenwich was one of these areas. It is perhaps not surprising that a large number of violent incidents took place here compared to other areas, as Deptford was one of the two largest towns in Kent with a population of 7,500 (the other being Canterbury) and Greenwich had a population of over 5,000 people.[122] The area of Sevenoaks also had a high number of people involved in violent crime, but this was due mainly to a riot which occurred in 1758 and will be discussed later. Another area with more violent incidents was a central strip from the Medway towns of Gillingham and Chatham to the district of Maidstone. This too was an area with more town dwellers as Chatham had a population of over 5,000 and Maidstone grew in this period from c.2,000 to c.5,000, although this was not unusual for a county town.[123] Gillingham in contrast was a small town of only 500 people in the late seventeenth

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[122] Alan Armstrong, *The Economy of Kent, 1640-1914* (Woodbridge, 1995), pp. 206-207

[123] Ibid.

century but grew to over 4,000 by 1801.[124] These population figures are important to note as urban population size could have a proportional impact on the number of crimes committed there. It is reasonable to expect a greater number of incidents in an area with a greater number of people which would account for the variation in crime rates across the area. The last two distinct areas with higher reporting rates of violence were near the Sussex borders by Tonbridge in the West and Hawkhurst towards the East. The settlements in these areas were smaller with populations of between 400 and 1,800 people.[125] With the exception of the parishes closest to London, which have been described as 'the North Kent Region', all of the areas outlined above were Wealden.[126] Although one of the reasons for a higher number of violent incidents in these areas may have been that they were more densely populated, they were still not towns in the conventional sense, in that many did not have markets, and were rather collections of 400 or 500 people working on the land. This would have provided a different living environment to towns such as Portsmouth or London in which violent crime has previously been studied. Also there were several parishes in Kent with populations similarly large to Gillingham, Chatham and Maidstone, which did not have equivalent patterns of prosecutions suggesting that the increase in population density, on its own, cannot account for the rise in violence.

In common with the findings for Kent, Sussex had more violence in the Wealden areas around East Grinstead and Cuckfield on the border between both counties, and also in the county town of Lewes. This supports contemporary notions that the Weald was somehow more dangerous.[127] The people of the Weald were more likely to be self-sufficient farmers than those in other areas of the counties and were not embroiled in the London markets. It is therefore possible that this made them more insular leading to particular social stresses not found in the Downland.

Several of the towns in Kent which reported the highest number of incidents were minor docks. Sussex did not have dock yards as such and its coastal towns were mainly small and involved in fishing so it is not possible to compare the influence of dockyards on prosecutions for violence. The Kent dockyards were in decline from 1700 onwards, leading to concerns about economic security. In comparison to Portsmouth, studied by Jessica Warner, the Kent docks were small but were similarly an area where a transient population may have led to less stable households. In the dockyard towns, large numbers of young male apprentices were vulnerable to becoming victims of violence and, without their

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[124]'Gillingham Population', Kent County Council, http://www.hereshistorykent.org.uk /DisplayArticle.cfm?placeID=177&categoryID=11&placename=Gillingham; consulted 20 November 2012

[125] Armstrong, *The Economy of Kent, 1640-1914*.

[126] Terence Lawson and David Killingray, eds., *An Historical Atlas of Kent* (Chichester, 2004), p. 2

[127] See for examples, Joan Thirsk, *The Agrarian History of England and Wales: 1500-1640* (Cambridge, 1967), p.411

guardians, to the alcohol-fuelled atmosphere created by soldier and sailors that was conducive to violence.[128]

Sussex was an even more rural county than Kent and there seems to be less correlation between population and violence. Although some areas with a population of above 2.10 families per 100 acres such as Cuckfield and Lewes experienced higher levels of violence than parishes with a lower population, these differences are again likely to be proportional.[129] Unfortunately, the population information available for Kent and Sussex is not comparable due to the different ways it was collected and the poor range of sources.

One theory which could explain why some areas of the counties had more complaints of violence is that rapid population growth caused pressures which led to an increase in prosecutions. Mancur Olson suggested that high levels of violence were correlated with pressures from population growth.[130] The majority of the population of Kent lived in rural areas and overall the population grew by only 1.75 times in the period 1664-1801.[131] However there were large variations in the growth rates of individual parishes and Olson's thesis should be evaluated. As shown above, the parishes which appeared most violent (figures 6 and 7) often had large populations, however, they did not seem to have large population increases in comparison to the rest of the county as a whole. Deptford, Greenwich Chatham, Maidstone, Tonbridge, Sevenoaks, Goudhurst and Cranbrook all had population increases of less than 150% over the period. Of the areas with relatively high violence reports, only Speldhurst, Charlton and Sandhurst had population increases over 200%. In contrast to this, those areas with a population increase of over 300% such as East Peckham, Wateringbury, Plumstead and Crayford had only one or no crimes reported over the whole period studied, suggesting that contrary to the research by Olson, it was areas that were not growing, possibly due to economic stagnation, which experienced the most violence. This pattern would suggest that rather than just population pressures, violence may also be correlated with economic stress, as if industry which relied on local resources such as the Wealden iron works began to decline, the populace began to suffer due to lack of work. We can then hypothesize that cultural changes started to take place as people had more spare time and less disposable income. Research on other historical periods and places has shown that domestic violence in particular could be vulnerable to economic stress as small disagreements became more important.[132] Further to this, the fear of crime

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[128] Jessica Warner, 'Men and Women Fighting Side by Side: Examples from an English Town, 1653-1781'; Jessica Warner and Robin Griller, '"My Pappa Is out, and My Mamma Is Asleep." Minors, Their Routine Activities and Interpersonal Violence in an Early Modern Town, 1653-1781', *Journal of Social History*, 36:3 (2003), pp. 561-584; Herbert Moller, 'Youth as a Force in the Modern World', *Comparative Studies in Society and History*, 10 (1968), pp. 237-260.

[129] See Kim Leslie and Brian Short, *An Historical Atlas of Sussex* (Chichester, 1999), p. 67

[130] Mancur Olson Jr., 'Rapid Growth as a Destabilizing Force', *The Journal of Economic History*, 23:4 (1963), pp. 529-558.

[131] Lawson and Killingray, eds., *An Historical Atlas of Kent*, p.102.

[132] Pamela Haag, 'The "Ill-Use of a Wife:" Patterns of Working-Class Violence in Domestic and Public New York City, 1860-1880', *Journal of Social History*, 25:3, pp. 447-477.

in general has been shown to increase in times of economic hardship an increase in both fear and the importance of disagreements could have provoked more prosecutions in Kent.[133]

There is evidence for economic stress in Kent which could be a factor in the reporting of violence. The Weald was suffering from a decline in the iron industry in this period. Whilst there is no data for poverty levels in Sussex, there were food riots in Salehurst and Lewes in 1757 which suggests local pressures.[134] Salehurst itself did not contain any records of violent incidents in the Sussex quarter sessions, but it was on the border with the Kent parishes of Hawkhurst and Sandhurst, both areas with slightly higher records of violence. There appears to be no direct link in the data between these riots and levels of interpersonal violence. However, between 1793 and 1796 there were also food riots in Hartfield, Worth, and Eastbourne, all of which were areas with higher reported levels of interpersonal violence. This could possibly suggest that local parishes had their own conventions for when violence was necessary or acceptable as a form of protest or to maintain order. It is at points when these local beliefs intersect with official forms of law and order that incidents are reported.

Further evidence for economic stresses causing violence comes from comparing the levels of poverty in parishes with higher reports of violence. Deptford, Gillingham, Maidstone, Tonbridge, Sevenoaks, Goudhurst and Cranbrook all experienced above average poverty levels in the period 1600-1700.[135] Poverty cannot be the only cause of violent behaviour as parishes such as Lamberhurst and Edenbridge also experienced poverty levels well above average but did not report any violence. However, extreme poverty could be one of a range of factors which built to create a localised culture in which violence became more readily used, or in which violence became less readily tolerated, resulting in more complaints in the courts.[136]

Research on the quarter sessions records has demonstrated that the number of violent incidents brought before magistrates remained relatively stable, and that cases were dealt with in a range of ways by the judicial process, depending on individual circumstances. This is explored further in the next chapter. It has also been possible to find some geographical patterns, with higher levels of violent crime taking place in the Weald. However, it seems there is no simple causal explanation for this; rather it is due to a range of local factors, such as population pressures, economy and the insular nature of the community which have combined to produce this result. The following section explores further the victims and perpetrators of these crimes.

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[133] Peter King, 'Newspaper Reporting, Prosecution Practice and Perceptions of Urban Crime: The Colchester Crime Wave of 1756', *Continuity and Change*, 22:3 (1987), pp. 423-454;Peter King, 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London', *Continuity and Change*, 22:3 (2007), pp. 73-112.

[134] Leslie and Short, *An Historical Atlas of Sussex*, p.75.

[135] Lawson and Killingray, eds., *An Historical Atlas of Kent*, p. 97. Figures based on Heath tax returns 1664.

[136] Lisa L. Ossian, 'Bandits, Mad Men, and Suicides: Fear, Anger, and Death in a Troubled Iowa Landscape, 1929-1933', *Agricultural History*, 80:3 (2006), pp. 296-311.

Who was involved in violent crime?

Figure 8 shows the 24 occupations which occurred most frequently in violent incidents in the quarter session records for East Sussex and West Kent. Unsurprisingly the general occupations of labourer, husbandman, yeoman, spinster and gentleman were found the most. This is for two reasons, firstly, most people in the counties were involved in agricultural work in this period, and secondly, the indictments tended to record occupations in general terms rather than specific jobs.[137] Labourer is also a vague term. Barry Reay has shown that the majority of the nineteenth century rural population were termed labourers or agricultural labourers, but that this could relate to a wide range of actual work depending on agricultural diversity and seasonal variation. Reay found that 99% of men termed labourer in the national census were employed by someone else, suggesting that they were at the lowest economic level of society by working as wage labourers. Several of the accused in the quarter sessions gave more than one occupation such as George Fist the labourer/cordwainer, John Olliver the brickmaker/labourer or more unusually, Turner Bristow, the labourer/surgeon. This fits with the hypotheses of both Reay and J.H. Porter that the rural social structure was more complex than the tripartite suggested by historians such as Hobsbaum and Rudé.[138] Rural labourers could never guarantee themselves a standard wage and bad weather or sickness could mean little or no pay for weeks or months. Therefore they relied on what has been termed an economy of makeshifts or the social economy, diversifying and creating more than one avenue of income. This makes classifying an individual by class particularly difficult. Andrew Miles and David Vincent wrote that the 'main indicator of an individual's location in social space has always been occupation' but if that occupation is fluid across what we believe to be the barriers between the lower and the middling sort how can we analyse social structure?[139] For example, was Turner Bristow a low level labourer or a middling surgeon? The answer is perhaps to be found at the micro level since, as Keith Wrightson has proposed, a social class is a group of people of varied but comparable economic position, linked by similarities of status, power, lifestyle, opportunities, culture and bonds of interaction.[140] Therefore occupation can usefully locate violent disputes within a particular context, but rather than explore social class, the dichotomy of those with power and those aspiring to power may be a more useful category of analysis in this thesis.

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[137]J.S. Cockburn, 'Early Modern Assize Records as Historical Evidence', *Journal Society of Archivists*, 5:4 (1975), pp. 215-231.

[138] Barry Reay, *Microhistories: Demography, Society and Culture in Rural England, 1800-1930* (Cambridge, 2002); J. H. Porter, *Provincial Labour History* (Exeter, 1972); George Rudè and Eric Hobsbawm, *Captain Swing* (London, 2001).

[139] David Vincent Andrew Miles, *Building European Society: Occupational Change and Social Mobility in Europe 1840-1940* (Manchester, 1993), p. 3.

[140] Richard M. Smith Lloyd Bonfield, Keith Wrightson, Peter Laslett, *The World We Have Gained: Histories of Population and Social Structure* (London, 1986).
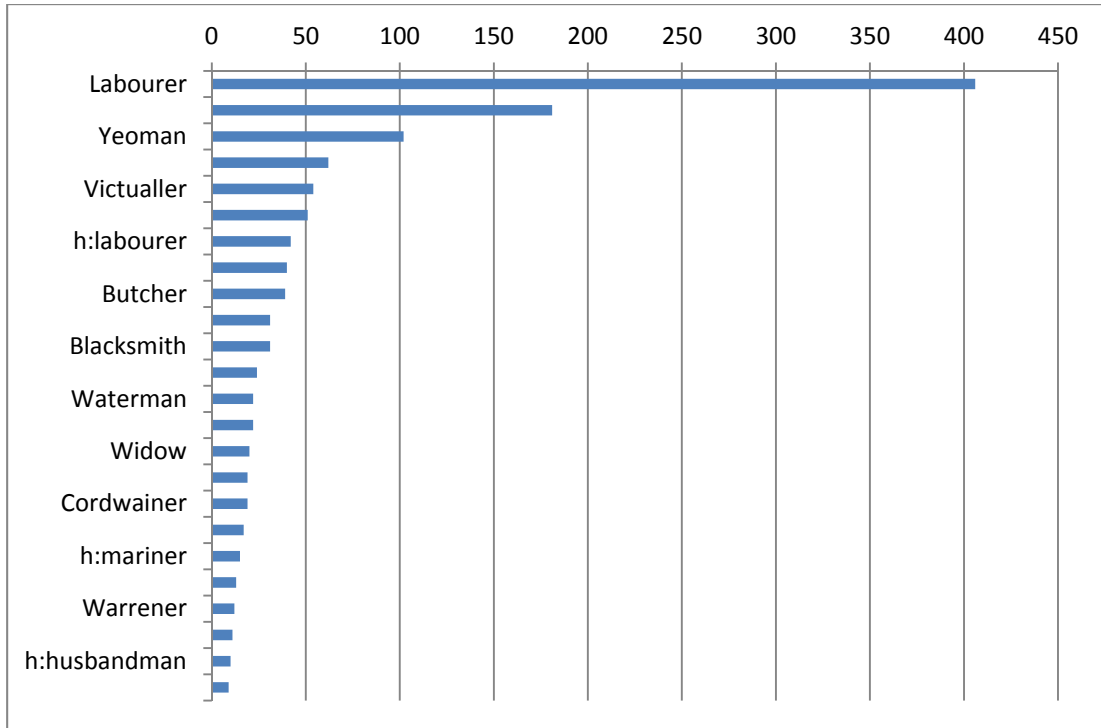
Figure 8: The Most Common Occupations of Those Accused of Violent Crime. Source: East Sussex (1708-1760) and West Kent (odd years 1701-1759) quarter sessions. Where h: appears it records a woman whose husband was employed in that occupation.[141]

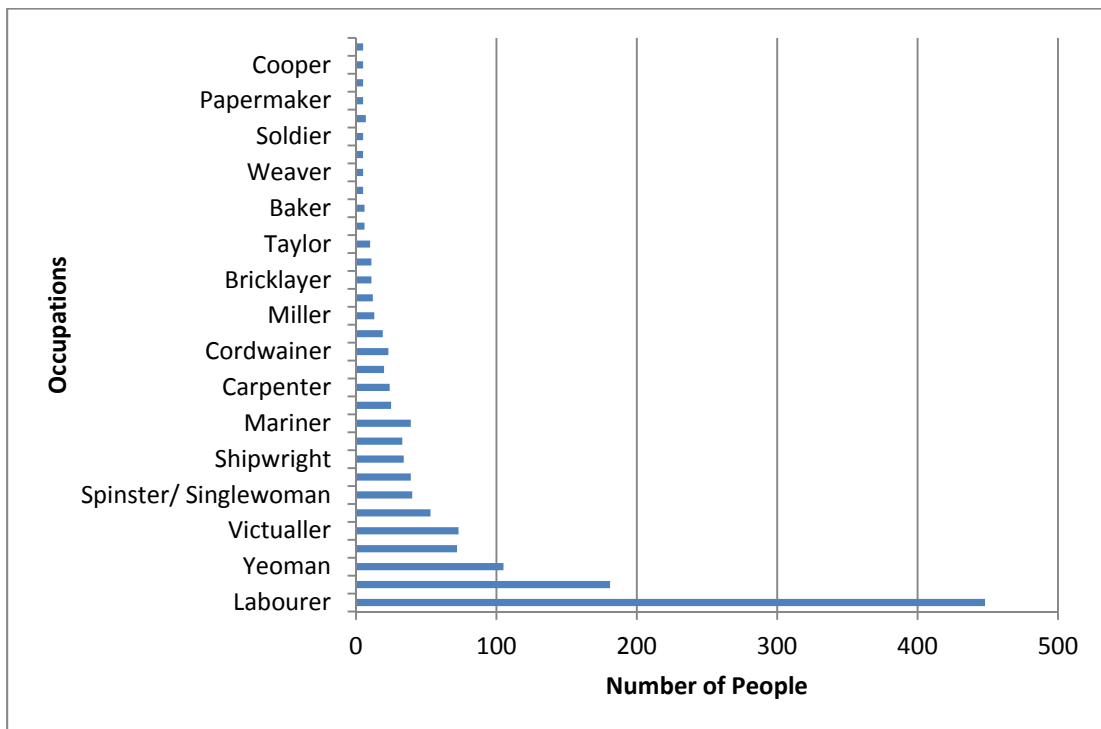**Figure 9: The Most Common Occupations of Those Accused of Violent Crime with Husbands Occupations included as part of the Total.** Source: East Sussex (1708-1760) and West Kent (odd years 1701-1759) quarter sessions.

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[141] Occupations where there were only one or two people have been excluded from this table for clarity. See figure 7 for the occupations of husbands combined with accused males.

Figures 8 and 9 show the most common occupations of those accused of violent crime. These tend to reflect the general occupational structure of both counties and probably demonstrate the overall proportions of types of occupation in the areas.

Victuallers and their wives are the highest single occupation found accused of violence and they were also frequently victims of violence (see figures 6, 7, 8 and 9). Although men were formally in charge of alehouses and tippling houses, it was often a supplementary income for the family and the man of the house had a second job while the woman sold the ale. The tippling house served as a financial institution for the poor, providing credit, acting as informal pawnbrokers and often receiving stolen goods. As a result these women were often portrayed in pamphlets, ballads and fiction as greedy and hard hearted.[142] As a place where strong beer was coupled with youth and socialising, it is perhaps not surprising that brawls sometimes took place in the alehouse and required the victualler to step in. Beyond exploring the bare facts contained in the court records, further contextual analysis of the participants' narratives is useful here in going beyond these figures to the reasons for violence.

Perhaps the most common reasons for assaults both by and upon victuallers were financial. Ale was often sold on credit and refusals to pay could lead to violence. The contextual information given in the quarter sessions allows us to comprehend this further. For example, widow Margaret Fuller was a servant at the White Hart in Ripe, Sussex in 1748 when vagrant James Foxhamilton lodged the night. Although Foxhamilton paid for his accommodation, the next day 'he call'd for five pints of beer and a Quarter and half of Geneva Liquor, for which he could not pay but was very abusive and followed her upstairs and threw her upon the Bed'. Fuller was saved when she called out and the local schoolmaster escorted Foxhamilton off the premises.[143] The deponent recalls for the court clearly the fact that Foxhamilton could not pay. Two possible reasons for the inclusion of this information can be considered. Firstly, it supports any views that Foxhamilton was lacked creditworthiness both financially and in terms of reputation. Secondly it provides the insight that the violence in this case may have had a financial as well as sexual element to it. This analysis demonstrates how the individual circumstances of a crime affect the interpretation of that event, both for contemporaries and the historian. Gambling was another aspect of victuallers' lives which led to them appearing as both accused and victims of assault. Peter Clark has suggested that, by the early eighteenth century, the customers of alehouses were less the wandering poor like Foxhamilton, and more skilled workers and small masters.[144] The case of John Cheeseman can be seen as a reversal of the previous example. In 1755, John Cheeseman, a blacksmith from Storrington, Sussex complained of the violent menaces he was subjected to by innkeeper Robert Bowden after a bout of

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[142] Peter Clark, *The English Alehouse: A Social History, 1200-1830* (London, 1983), p. 205. See also Henry Fielding, *The History of Tom Jones, a Foundling: A Foundling* (London, 1983).

[143] East Sussex Record Office, Deposition of Margaret Fuller 01/02/1748, QR/E 476-470.

[144] Clark, *The English Alehouse: A Social History, 1200-1830.*

drinking and gambling at the White Swan.[145] Rather than the customer becoming aggressive as in the previous case, it was the innkeeper who turned to force. Bowden and friends challenged Cheeseman to a game of shuffleboard and bet a pint of beer and two pence. However, as the night progressed the men continued betting and increasing the amounts until Cheeseman had lost five pounds. At this point:

> Richard Parham and Robert Bowden insisted on this Deponents giving a note of hand for the sum of five pounds. On this the saith Bowden went out of the Room and fetched pen, ink and paper, with which they prevailed on this Deponent, and he wrote and subscribed a promissory note for the said sum of five pounds payable to the said Richard Parham on demand. This Deponent saith when he had given that note they Bowden and himself went to playing again for one pound Each Game, and played till he this Deponent had lost five pounds more, when Bowden and Parham insisted on another note of hand for that sum, which he saith the said Richard Parham wrote and made payable on demand to the aforesaid Robert Bowden; and he this Deponent subscribed it, and the aforesaid William Wheeler witnessed it immediately.

Bowden and Parham may have been concerned that five pounds was a large amount of money and wanted proof should they need it in order to force payment. Not content with having now lost ten pounds, Cheeseman continued to play until he had lost another eight pounds. At this point he decided he could not possibly win and asked Bowden to rub off the last eight games which, after a pause, he consented to. A few days later Cheeseman called at Bowden's house to 'see what Bowden had charged him for liquor that night, and found it six shillings; But did not pay it then.' By considering the specific detail in this account it is possible to see here how victuallers and alehouse keepers allowed quite large sums on credit. [146]

It was about a month later that Bowden and Parham eventually tried to call in Cheeseman's debt, but he was reluctant to pay, telling them 'he would pay them some part of it, but not all because he was sure that, in case he had won as much of them he should never have had it nor should he have desired it.' This led to Bowden and Parham telling Cheeseman they 'would have the money; and that if he would not pay it without they would force him' and a campaign of harassment by the men began. Cheeseman then complained to the quarter sessions about their behaviour and that they had 'outfel' with him.

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[145] West Sussex Record Office Deposition of John Cheeseman 23/12/1755, QR/W 453.

[146] Clark, *The English Alehouse: A Social History, 1200-1830*; Beverly Lemire, 'Petty Pawns and Informal Lending:Gender and the Transformation of Small-Scale Credit in England, C.1600-1800', in P.K. O'Brien and Kristine Bruland, eds., *From Family Firms to Corporate Capitalism:Essays in Business and Industrial History in Honour of Peter Mathias* (Oxford, 1997); Peter Clark, 'The Alehouse and the Alternative Society', in Donald Pennington and Keith Thomas, eds., *Puritans and Revolutionaries: Essays in Seventeenth-Century History Presented to Christopher Hill* (Oxford, 1987).

This case clearly demonstrates the complex issues at play in an accusation of violence against an innkeeper and augments the quantitative pattern shown in the records. Bowden may have taken advantage of Cheeseman's drunken state when he continued to raise the stakes at shuffleboard, but he did wipe out eight pounds of the debt and allow Cheeseman a month in which to pay. Although Bowden carried out a campaign of harassment, constantly asking for his money and threatening force, he did not actually harm Cheeseman. Furthermore, as a major creditor within the community, Bowden had to demonstrate that he would recall debts. This case shows that violence involving victuallers did not necessarily equate to a drunken brawl. For example, it was Bowden's economic role in the community, and his need to ensure that he continued to be respected in order for his business to thrive, that led to threats of violence. The details surrounding this case can therefore be seen as part of the need to maintain the system of credit and social order rather than a drunken outburst.[147]

 It is here too, that we see how violence was a contested concept. For Bowden, the threat of violence was a necessary and acceptable part of the credit system. However, Cheeseman saw this threat as enough of a violation for him to go to the law. In the case of Margaret Fuller described above, she complained that violence was unacceptable when it went beyond insults and Foxhamilton threw her upon the bed. Each of the victims and the accused were acting according to unwritten conventions and circumstances at the time. These two cases demonstrate the importance of the different contexts with regards to understanding interpersonal violence in this period. Each person had different limits depending upon their situation. Bowden and Fuller worked in alehouses and thus perhaps considered insults and the threat of violence an acceptable, if not pleasant, part of everyday discourse. For them, it was the actual act of violence which transgressed these unwritten boundaries. Cheeseman however, was following a different set of social codes, and for him threats alone, were unacceptable violence.

Another case which reveals the complexities surrounding the definition of violence is that of Elizabeth Harris of the parish of Loose in Kent. Recognizances are the only form of legal process used in this prosecution, perhaps as a warning or deterrent.[148] In Easter 1705 Harris complained that Mary Lee, Joseph Boreman and John Joseph Tuppany had assaulted and misused her by 'sowing a P. & L. upon the garement of the sd. Elizabeth Harris contrary to the form of the Stat.'[149] The statute mentioned here is almost certainly that of 1697, under the terms of which the poor were made to wear badges indicating that they received pensions. Originally pauper badges were a sign of the deserving poor, but by this period

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[147] Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (New York, 1988). West Sussex Record Office, Deposition of John Cheeseman 23/12/1755, QR/W 453.

[148] Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725*.

[149] Centre for Kentish Studies, Recognizance Roll Easter 1705: Recognizances for Mary Lee and John Joseph Tuppany, Q/SRC W109.

they had become a symbol of shame and humiliation.[150] The overseers' accounts for Loose show that Elizabeth Harris was in receipt of poor relief and so possibly should have worn a parish badge:

> 1705; Elizabeth Harris being poor and lame, and forced to live without doors upon her complaint made to the Churchwardens and Overseers of the Poor for want of lodging and other necessaries on the 9 day of July in the year 1704 she was admitted into the poor book by the consent of one of Her Majesty's Justices of the Peace and allowed six pence per week until such time as she could subsist without it[151]

However, there is no mention in any records of Joseph Tuppany as an Overseer or Churchwarden, only as a ratepayer.[152] Tuppany and friends therefore took the law into their own hands and forced Harris to wear the badge, even though they did not have the authority to do so. Although Harris may have been wrong in not wearing her badge, she felt that she could complain that an assault had been committed due to the perpetrators' lack of authority. While Tuppany used force to ensure his version of social order, Harris felt that he was unjustified in doing this. This case demonstrates the complexities surrounding the concept of violence and reveals the importance of authority within its definition of violence, a concept extended in the following chapters. Violence by the state and those in authority was in many forms considered legitimate, for example public punishment such as whipping or branding and the chastisement of members of the household. However, this violence was only considered legitimate as long as the person meting out the punishment had the authority to do so. The case of Elizabeth Harris shows not that she was unhappy to receive chastisement, but that it was who she was receiving it from that made it illegitimate and therefore an assault.

In terms of victims, officials such as Constables, sheriffs, bailiffs, and customs officers were much more likely to appear in law as victims of violence than to perpetrate it. Although there were a few cases of parish officers assaulting people, the majority of assaults were against the officers themselves. Usually this occurred in the line of duty, for example Marshalsea Officer Joseph Swann of East Greenwich was assaulted when executing a writ on armourer Robert Parker and his wife Elizabeth in 1711 'in order for Parker to rescue himself', while in 1756, Thomas Crouch of Minfield barricaded himself in his house and threatened to kill Officer Charles Howard if he entered to search for guns. The records demonstrate that being a parish officer such as an overseer or constable would have been a thankless task, with pressure from both other parish officials such as the justices and the local population from which they were chosen. The village officers had the unenviable job of being the point at which legislation and local custom intersected. They were the site of

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[150] Steve Hindle, 'Dependency, Shame and Belongin: Badging the Deserving Poor, C.1550-1750.', *Cultural and Social History*, 1 (2004).

[151] Centre for Kentish Studies, Overseer's Accounts for Loose, P233/12/4.

[152] Centre for Kentish Studies , Churchwardens' accounts, P12/5/1; Kent Overseer's Accounts for Loose P233/12/4.

negotiation and enforcement of both legal and social order. As such, for minor crimes, they had to decide whether to enforce impersonal laws, which may have caused further conflict and financial difficulties in the way of fines, or to turn a blind eye and allow customary practice to continue. By presenting offenders who had not caused major jeopardy to the order of the village, a constable risked hostility from his neighbours, but by neglecting his duty he risked personal financial loss. For example Thomas Townsend the Borsholder of Ryarsh in Kent was fined for allowing Elizabeth Olliver to escape from his custody in 1743 which delayed her trial for assault.[153] Constables may have been elected from the village or the job may have passed round in rotation. It was an unpopular role and those that could afford to, sometimes paid to avoid it.[154] In 1642, between 50-53% of Sussex constables were illiterate, and the popular association of ignorance and negligence with low social position would have made their task difficult, particularly when enforcing the law against those of a higher rank.[155] One should also take into account the individual personalities and prejudices of particular constables. A constable using his office to settle his own grievances or one less likely to allow customary practice to co-exist with legislative enforcement may have found himself more at risk of violence.[156]

Figure 10: The Main Occupations of Victims of Violence.[157] **Source: East Sussex (1708-1760) and West Kent (odd years 1701-1759) quarter sessions.**

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[153] Centre for Kentish Studies , Indictment 1/10/1743, Q/SIW 210.
[154] Keith Wrightson, 'Two Concepts of Order: Justices, Constables and Jurymen in Seventeenth Century England', in John Brewer and John Styles, eds., *An Ungovernable People* (London, 1983).
[155] Ibid, p.27.
[156] Ibid.
[157] The occupations of the victims of violence are less often recorded and so there were 745 unknown
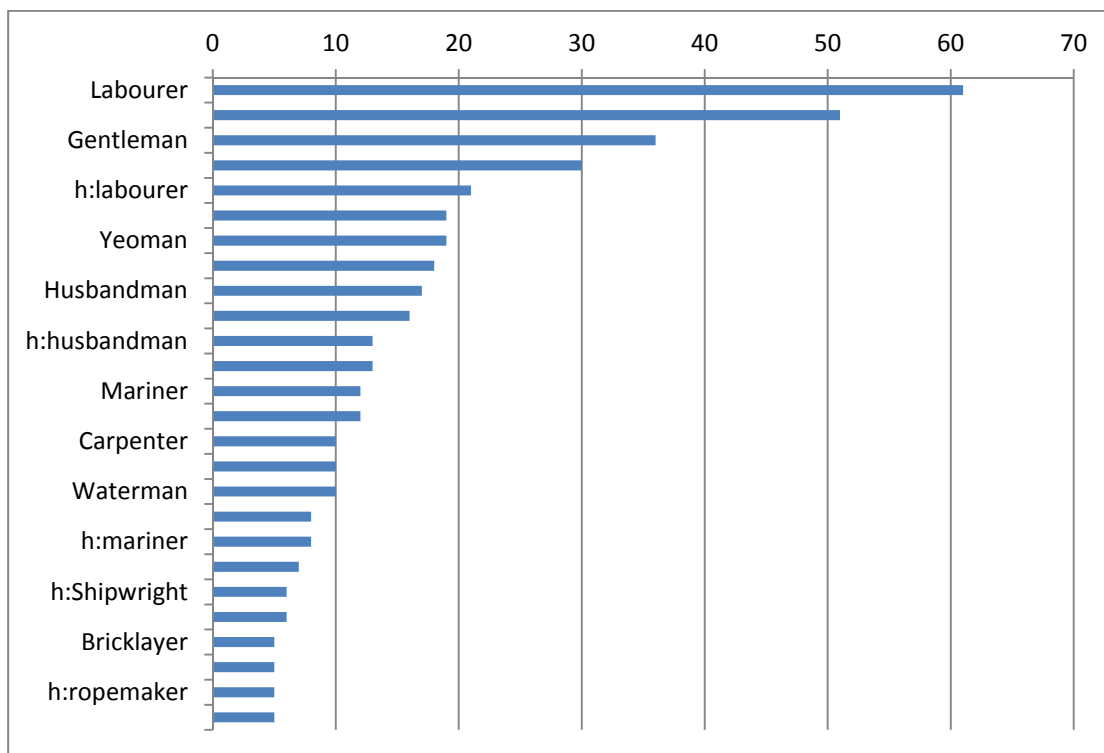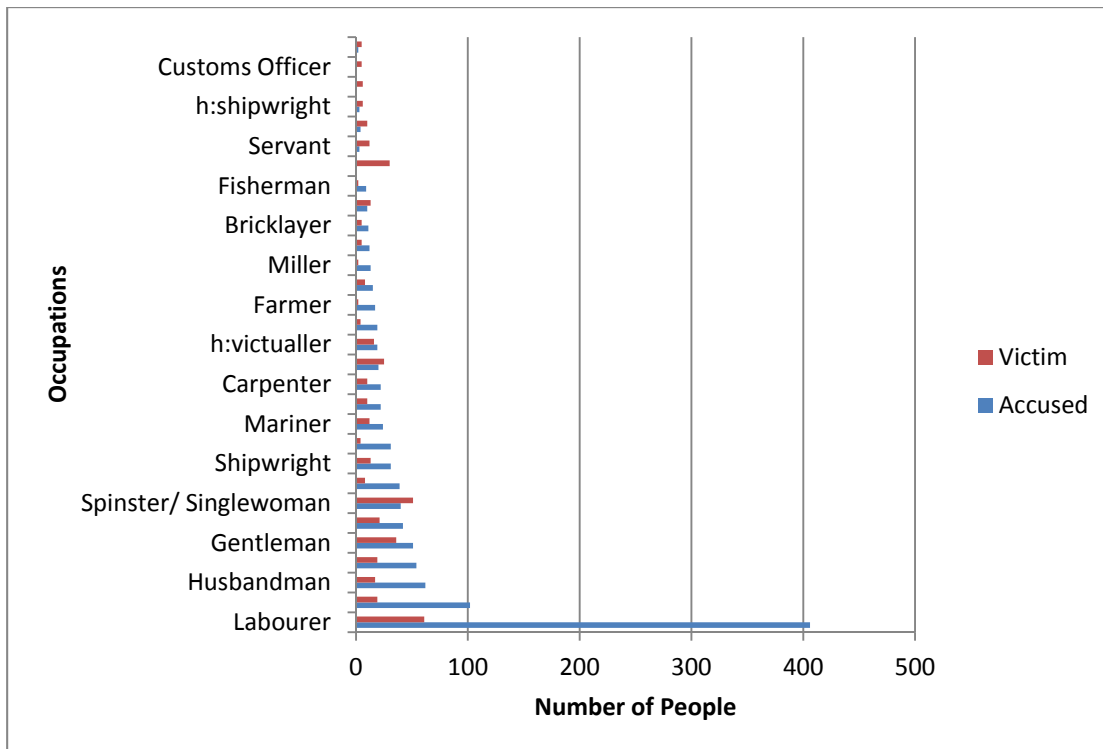
Figure 11: The Main Occupations of Both the Accused and Victims of Violence. Source: East Sussex (1708-1760) and West Kent (odd years 1701-1759) quarter sessions.

The other category of people more likely to be victims of violence than perpetrators was women, as demonstrated by Figure 12.[158] In fact in East Sussex and West Kent women only made up 15% of the assailants compared to 31% in Portsmouth and 33% in London.[159] This was probably due to the differences between rural and urban areas. Towns such as London and Portsmouth had a larger proportion of young single women working to serve the transient population. These women perhaps had more freedom than those in rural areas, and also as has been discussed above, may have been working in businesses such as alehouses where violence was more likely to occur. Another reason for the higher proportion of female assailants in London is that the figures include women prosecuted for raising riots. Neighbourhood tensions in the city caused highly aggressive female-only riots as well as those which included both sexes.[160] The Sussex and Kent data does not include riots as violent assaults and in fact there were barely a handful recorded over the 60 years for both counties highlighting the fact that the economy of the poor was localised. As a mainly agricultural, self-sufficient population, it is possible that Sussex and Kent did not experience the same economic strain that historians originally put forward as causes of food

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occupations which have not been included on the graph. Where h: appears, it records a woman whose husband was employed in that occupation.

[158] A binomial statistical test shows that this difference is significant. The figures include both single and married women.

[159] Jessica Warner, 'Men and Women Fighting Side by Side: Examples from an English Town, 1653-1781';Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720.*

[160] Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720.*

riots, rather this research points towards the more recent trend of locating disturbances within their regional context and identifying local patterns.[161]
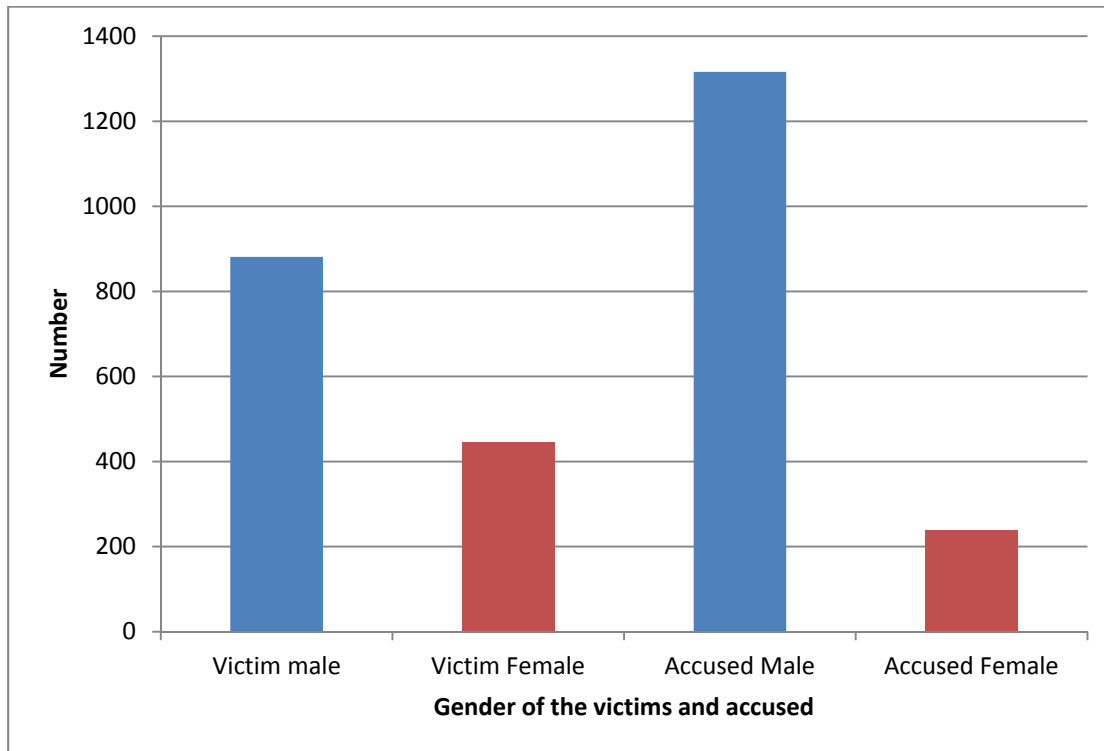
Figure 12: The Number of Male and Female Accused and Victims. Source: East Sussex (1708-1760) and West Kent (odd years 1701-1759) quarter sessions.[162]

E. P. Thompson argued that by rioting, the poor were protesting in order to defend their traditional rights of buying grain directly from farmers at market.[163] This idea has been extended more recently to include the suggestion that riots were part of the everyday dynamics of power, with rioters protesting against the way these power structures were applied. This interpretation argues that the moral economy is a complex mix of negotiation, tradition, experience, moral norms and tactical calculations.[164] This allows for the regional peculiarities and lack of riots seen here. Sussex incidents were scattered and sporadic with only a few small food riots taking place in 1757 in Lewes and Salehurst. The only major riots recorded in the sessions were the Militia riots of 1757-8 which occurred in Sevenoaks, Kent.

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[161] E Hobsbawm, 'Economic Fluctuations and Some Social Movements ', in E Hobsbawm, ed., *Labouring Men* (London, 1964); A Randall and A Charlesworth, eds., *Moral Economy and Popular Protest: Crowds, Conflict and Authority* (London, 2000); Andrew Charlesworth, 'An Agenda for Historical Studies of Rural Protest in Britain, 1750–1850', *Rural History*, 2:2 (1991), pp. 231-240; John E Archer, *Social Unrest and Popular Protest in England 1780-1840* (Cambridge, 2000), pp.1-8, pp.94-96.

[162] There were 2 victims for whom no gender was recorded. These have been omitted from this table.

[163] E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past and Present*, 50 (1971), pp. 76-136.

[164] John Bohstedt, *The Politics of Provisions: Food Riots, Moral Economy and Market Transition in England, C.1550 - 1850* (Farnham, 2010), pp. 94-96;James C Scott, *The Moral Economy of the Peasant: Rebellion and Subsistence in Southeast Asia* (London, 1976);M. Steinberg, 'A Way of Struggle: Reformations and Affirmations of E.P. Thompson's Class Analysis', *British Journal of Sociology*, 48:3 (1997), pp. 471-492.

Local working class men and women rose up against a ballot system of raising troops in case of French invasion, suggesting both political awareness and the possible beginnings of the mass forms of rural protest seen in the Swing riots of the later eighteenth century.

The assaults by women, where details are given, appear to fit roughly into three categories: fights for survival, family protection, and neighbourly disputes involving retribution or reputation. The category of 'fights for survival' usually included some form of economic difficulty and a sense of desperation surrounds the accounts. For example in Sussex in 1742, Hannah Pointon threatened those who had refused to give her poor relief and in Kent in 1717 Mary Brigbar exposed 'her Bastard Child naked in a Ditch with Intent the said Child should perish with cold and hunger'.[165] This second case was treated as an attempted assault rather than infanticide so perhaps the child was not new born. These accounts show the women using forms of violence from a feeling of necessity and anger as they were powerless to change their situations in other ways. Their only form of agency was the threat of violence.

In terms of family protection, women were involved in assaults against authority figures and officials both on their own and with others. They helped those arrested to escape and protected themselves and their families' interests. In 1733 Anne Curtis singlehandedly assaulted John Linn for assisting the local constable and in 1738 Audrey Mitchell, along with her husband Henry used a gun to assault bailiff and sheriff John Clark. Elizabeth Parker also helped her husband rescue himself from the Marshalsea officer in 1711 and the case of Bennet Palmer, detailed later in this chapter, also fits into this category somewhat with her sister coming to her aid.[166] Although there are eight incidences of women attacking officers in this way, there are few details given about the nature of the assaults.[167] Jennine Hurl-Eamon has argued that in London female rescuers were as aggressive and assertive as their male counterparts, and sometimes more so.[168] However, violence by women was portrayed in print culture as the result of defects in female nature and against normative femininity.[169] The women here may have been motivated to aggression by a desire to ensure the stability of their family, particularly against the economic and social threat of having the male head of the household taken away and imprisoned. This, combined with the intrusion of the state into their family, led them to violence.

The third kind of violence that involved women as assailants appears to be based around neighbourly disputes, retribution and the maintenance of reputation. There are only scraps

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[165] East Sussex Record office, Hannah Pointon 22/01/1742, QR/E 455; Centre for Kentish Studies, Mary Brigbar 13/07/1707, Q/SRC W135.

[166] East Sussex Record Office, Anne Curtis 08/03/1733, QR/E416; Henry Mitchell 23/06/1738, QR/E437; Elizabeth Parker 08/10/1711, Q/SRC W121.

[167] There are in total 55 offences against officials such as constables, borsholders and excisemen. 8 of these involved women as the aggressors and 2 involved women as co-defendants.

[168] Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720,* p. 120.

[169] Wendy Wenner, '"A Viper and Engine of the Devil": The Violent Woman and Female Violence in Eighteenth-Century Fiction' (PhD Thesis, Milwaukee University, 1993).

of information available for these cases but they often seem the most violent, taking place inside the home and hinting at private arguments. Mary Dibbins was accused in 1715 of 'Abusing, assaulting, pushing and shufting' Ann Merchant 'up against the wales & making her arms Bleed'. At seven o'clock in the evening on the 1st January 1759 Margaret Jones stabbed Elizabeth Roney 'in the back of the head with a fork, whereby she was wounded very much and obliged to apply to the surgeon for the cure thereof' and in 1733 Judith Mobb broke open the door of Mary Laker and threatened to kill her, although later 'Laker acknowledged they were agreed and she would not appear or prosecute'.[170] The fact that these assaults happened in locations such as the home, used household objects and that the women made up and dropped charges suggests that these types of fights were disputes amongst servants, friends, family or neighbours and that women tended to keep their violence within the environment they knew best, the home.

Male assailants were by far the majority and much harder to categorise than the women. There are fewer notes recorded on the recognizances for assaults by men about the circumstances surrounding the crime, perhaps reflecting its more expected occurrence and therefore that the JP did not feel a need to record any specific details. Male violence, in contrast to that perpetrated by women, was an inevitable, if not totally acceptable part of society which occurred generally in public places, often involved weapons, and was used to settle disputes. For example George Smith confessed to killing Patrick Miller in self-defence in 1704 after they had an argument and Miller drew his sword against Smith. Richard Goatley also deposed that he had 'severall differences' and 'ill language' with Paul and Robert Gill before they assaulted him in May 1706. Generally, however, violence was a way of affirming status or settling disputes and was limited in terms of the potential for injury or death.[171] Men, like women were involved in attacking officers, but they were also more likely to be accused of assaulting their spouse or servant.

In general, the majority of people involved in violence were men; where women were involved they were more likely to be victims than assailants. It is here that once again the qualitative information found in depositions allows us to draw further conclusions. Women drew on medical and cultural ideas of status and appropriate conduct in order to empower themselves as victims, gain legitimacy and sympathy. This was particularly true in the case of pregnant women who often drew on their pregnancy in their narratives. When Mary Compton complained of an assault by Thomas Landen in 1742 she made sure to state that at the time she was 'big with a quick child' as quickening was the point at which the child could be considered to have its own life.[172] This meant that when Comton went on to state

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[170] Centre for Kentish Studies, Mary Dibbins 12/09/1715, Q/SRC W 130; Centre for Kentish Studies Margaret Jones 17/01/1759, Q/SIW 272; East Sussex Record Office, Judith Mobb 12/06/1733, QR/E418.

[171] Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England*, p.168.

[172] The case in law was not clear. Richard Burn in his handbook wrote that 'if a woman be quick or great with child…if a man strikes her, whereby the child within her is killed, tho' it be a great crime, yet it is not murder or manslaughter…'Richard Burn, *The Justice of the Peace, and Parish Officer*. (London, 1755). While Giles Jacob stated that if a man beat a woman and the child was born with bruises and later died, it was murder,

that the assault caused 'she the said Mary afterwards to wit on the Twelfth day of June in the year aforesaid…[to] bring forth the said child dead' she was actually accusing Landen of what was a more serious crime in the eyes of the community if not the law.[173] Other women made sure to point out that they were pregnant and emphasised the popular conception that a shock to the woman could seriously harm the foetus. The narratives tend to suggest that the women were 'like to miscarry' although some, such as Elizabeth Adams who was knocked from her horse, give great detail, as she 'fell into fits which did occasion her to miscarry'.[174] As Jennine Hurl-Eamon has argued, the detailed descriptions of pregnancy and the damage done to the women suggests that more attention was given to pregnancy than many other circumstances. Women who were not visibly pregnant had to volunteer the information and this could possibly be because they could use popular ideas about pregnancy to gain sympathy and legitimacy as victims.[175] On the other hand, Laura Gowing has suggested that pregnant women felt that their bodies were particularly vulnerable.[176] That women drew attention to their pregnancies in court would also support this interpretation.

In each of the cases illustrated so far, order was a central concern: either violence was directed towards ordering a situation, even if it was not the dominant discourse, or order was restored through the use of the law. Cases of sexual violence, in contrast, can generally only be seen as disruptive of order. However, victims made sense of their experiences through structuring a narrative which begins to create order from these violent incidents. Further analysis of narratives of sexual violence reveals patterns of behaviour and experience. In the records there are 31 female and 6 male victims of sexual violence. In the case of women these were usually recorded as attempts to rape, ravish or carnally know, whilst the male victims complained of assault with intended buggary, sodomy, molestation or lewd behaviour. These crimes accounted for 3% of the total number of violent crimes in the database although the rate of reporting was in all probability lower for sexual crimes than other forms of violence.[177] There are three narratives by women which relate to sexual violence, each demonstrating particular patterns in the way these crimes were described. In the case mentioned previously, Margaret Fuller gave an account of an assault which although did not mention sexual abuse, follows the linguistic pattern of many women reporting attempted rape. She was working at the White Hart Inn when James Foxhamilton 'followed her upstairs and threw her upon the Bed'. There is no mention of further assault

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but not murder if the child was born dead. Giles Jacob, *The Modern Justice* (London, 1720).

[173] Centre for Kentish Studies, Thomas Landen 15/05/1742, Q/SIW 205.

[174] Centre for Kentish Studies, Elizabeth Drybutter 20/09/1755, Q/SIW 257; Elizabeth Adams 14/03/1712, Q/SB 31/162.

[175] Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720,* Chapter 4.

[176] Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003), p. 59.

[177] See J.M. Beattie, *Crime and the Courts in England* (Oxford, 1986); Roy Porter, 'Rape - Does It Have a Historical Meaning?', in Sylvana Tomaselli and Roy Porter, eds., *Rape* (Oxford, 1986);Edward Shorter, 'Writing the History of Rape', *Signs*, 3 (1977), pp. 471-483.

but Margaret was saved when she 'call'd out' and Henry Brown rescued her.[178] Previous research on early modern rape narratives has shown how women commonly recall details of their work and describe how they call for help, but the victims make no mention of the actual incident. There is some disagreement as to psychoanalytical or cultural explanations for this.[179] When placing the rape narratives in the context of other depositions for violent crime, however, it seems that victims of rape may also have drawn upon the cultural contexts available to them in their prosecutions. Margaret Fuller claimed that Foxhamilton followed her upstairs, thus violating the private area of her workplace and her personal privacy.

The invasion of the home, a place of feminine honour, provided a metaphor for the invasion of the female body which can be found again in the examination of Elizabeth Gatland.[180] When Elizabeth refused to buy any of Samuel Wilson's goods at the door he 'said he would give her some and forced himself into the said house & sett his pack on the table'.[181] Here Elizabeth is clearly setting out the violation that has occurred with her choice of language. Not only has Wilson forced himself in, but he has laid claim to her table. The violation continued when she attended to her child and 'ye said Wilson ran up stayers', the same phrase that Margaret Fuller used nearly thirty years later, suggesting a common cultural language of sexual assault. Elizabeth Gatland strengthens the sense of violation by setting herself and her home up as possessions of her husband. She states that 'Samuel Wilson a Scotchman who travels the country with a pack came to this Examt husbands house…'. By emphasising this, Gatland is both using the narrative structures available to her to gain agency and power over the event and is constrained by convention. She is setting up the rape as a property crime rather than emphasizing the sexual nature. Miranda Chaytor has suggested that for the seventeenth century, this was an unconscious act by women in order to repress the rape's significance and protect their morality due to new ways the crime was being perceived:

> But once the law began to turn on consent, what was at stake was not property, but sexuality, morality, not the criminal's act but the victim's resistance, her innocence, her will, her desires.[182]

Although an interesting hypothesis, it is however untestable and possibly ahistorical, relying as it does on suppositions that experience of rape is timeless. In contrast, this thesis demonstrates that interpretations of events are in fact context specific .What is perhaps more likely considering the evidence from other narratives of violent crime is that Gatland

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[178] East Sussex Record Office, Information of Margaret Fuller 01/02/1747, QR/E 476-479.

[179] Miranda Chaytor, 'Husband(Ry): Narratives of Rape in the Seventeenth Century', *Gender & History*, 7:3 (1995), pp. 378-407; G. Walker, 'Rereading Rape and Sexual Violence in Early Modern England', *Gender & History*, 10:1 (1998), pp. 1-25.

[180] G. Walker, 'Expanding the Boundaries of Female Honour in Early Modern England', *Transactions of the Royal Historical Society, Sixth Series*, 6 (1996), pp. 235-245.

[181] Centre for Kentish Studies, Examination of Elizabeth Gatland 16/08/1710, Q/SB 30/186.

[182] Chaytor, 'Husband(Ry): Narratives of Rape in the Seventeenth Century'.

was choosing her words carefully, had rehearsed what she wanted to say and was using common cultural and legal terms. It is quite possible that Elizabeth Gatland was presenting the rape in terms of a common discourse, one in which it was unacceptable to present it as a sexual crime. This was due to the early eighteenth century being point at which cultural ideas about female sexuality involved an uneasy combination of ancient and modern ideals.[183] These two incompatible systems of belief led men to believe that women concealed 'venery beneath a veneer of respectability'.[184] Jennie Mills, in her exploration of the discourse of rape in the eighteenth century has shown how women implicitly became unable to be raped, if they presented their testimony in court in a way that perpetuated the image shown in literature that women were carnal creatures: 'as sexual women had been banished from civilised society, the only figure with which the raped woman could be identified was that of the prostitute'.[185] Therefore women like Gatland were restricted by the sexual discourse that surrounded rape. In order to prove the crime, they had to show that they had not transgressed the boundaries of acceptable feminine behaviour, but that the male had exceeded the bounds of acceptable masculine sexual aggression. Gatland does this by setting herself up in the home and stressing Wilson's deviance from the ideals of patriarchy by attempting to seduce (or rape) another man's wife.

Further evidence for this comes from the description of resistance that Elizabeth Gatland gives. She remains passive throughout the account of the incident, without fighting and only crying out. Garthine Walker has demonstrated that this was a common element in rape depositions with women using verbal rather than physical resistance and emphasizing male force due to the fact that they had to be seen to be resisting consent but not emasculate their attacker:

> A potent and value-laden repertoire of concepts and images … restricted the ways in which women could speak of their self-defence in practice. A woman who described her own attempt to fight off a violent man was potentially in an untenable position…The questions raised by the spectre of female violence appear to have made it difficult for women to give weight to testimonies in which they depicted their own success in resisting rape.[186]

The information of Elizabeth Rickles who avoided an attempt to ravish her by Mr Vane, a Dragoon stationed in Lewes, contrasts with some of the previous accounts.[187] She managed to prevent any physical harm from coming to her and her narrative demonstrates slightly more agency. Like Margaret Fuller and Elizabeth Gatland, Rickles begins by situating her

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[183] Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England*. Thomas Walter Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, 1990).

[184] Jennie Mills, 'Rape and the Construction of Sexuality in Early Eighteenth-Century Texts' (PhD Thesis, University of Sussex, 2001), p. 4.

[185] Ibid. p. 147.

[186] Walker, 'Rereading Rape and Sexual Violence in Early Modern England', p. 9.

[187] East Sussex Record Office, Information of Elizabeth Rickles 23/08/1755, QR/E 503-506.

account in everyday life. In the early hours of the morning she was sent by her master to fetch the doctor for an apprentice 'who lay at the Point of Death'. Elizabeth Rickles here stresses the importance of her mission to the justice, and perhaps, her importance as an agent in the incident that followed. Rickles was met in the street by Vane 'who immediately took hold of her by Force, and in a very Rude manner, upon which she beg'd him to let her go for that she was sent on an Errand which was upon the Point of Life and Death and then struggled from him'. It is possible again to see Rickles' agency in the language she uses, beginning as the object that was taken by force, she becomes the subject that struggles from him and runs to the doctor. In contrast to the other narratives of sexual violence, Rickles continues to turn the repeated attacks by Vane into accounts of her agency, for example, she recalls how Vane takes hold of her again 'telling her he had a Thing a great many Inches long insisting upon going with her' rather than how she must go with him.

In common with other descriptions of rape, Rickles describes running away and screaming for help, again suggesting that these were collective narratives used for these crimes rather than revealing psychoanalytical details. However, the slight differences in the depositions do allow for some cultural interpretation. For example, this case took place in the street rather than a house, the usual site of these rape cases. What is also unusual in this case is that rather than be rescued by another, Rickles places herself as the protector of her chastity stating that 'if the said Mr Vane could have got her into a private place, and he had not been prevented by the Noise she this informant made, he could have actually attempted to ravish her.' Her fear of being taken to a private place again reveals something of the concept of privacy in this period. For Rickles and women like her, privacy could be dangerous. Servants were used to the constrictive safety of being constantly watched.[188] Further analysis of cases of sexual violence would need to be done in order to understand whether other women stressed their agency, and in what situations, but it appears that just like other cases of violence, there was a common language used in the discussion of these crimes. As Garthine Walker and Miranda Chaytor have stated, albeit in different ways, women focused on stressing the issues surrounding consent and violence rather than the sexual act itself.[189]

In contrast to the female victims of sexual assault, the narratives of male victims focus more on the sexual aspect of the violence although familiar patterns can be found. There are three depositions by male victims of sexual violence, all against John Williamson in 1711. It is therefore possible that they are not representative of the experience of men, they may have been malicious prosecutions or it may have been only when three victims came forward together that a case was made. Nevertheless, these statements provide a starting point for further investigation into the experiences and outward expression of male victims of sexual violence.

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[188] Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England*.
[189] Walker, 'Rereading Rape and Sexual Violence in Early Modern England'.

In common with the female victims, all three of the men were lower status in some way. William Botton and Joseph Stephens were live-in servants of John Williamson and therefore subject to the same familial power relations as many of the female servants mentioned. William Jeffries was working for Williamson and therefore lower on the hierarchy, like women because of his wage labour. The narratives of the men begin in the same way as those of the women with a sense of normality setting the scene. Botton and Stephens explained how they shared a bed with their master and Jeffries told how he went to the Sun Alehouse to talk about a job. In common with the female narratives the men stressed their non-consent. Jeffries stated that 'having heard that he [Williamson] was a lewd person did not care to have anything to doe with him' but lured by the offer of work 'this Examinant would have gone into a publique roome where there was a fier and other people there a drinking but the said Williamson would not goe into that roome but would have a private roome'.[190] Once again here we see the uneasiness of a servant with privacy, and the dangers that it could bring. Joseph Stephens 'rebuffed him for his filthiness & turned from him' whilst William Botton claimed he was 'unwilling to submit to it [being] not used to such filthy matters'.[191]

However, in contrast with the women who state attempted ravishment, the men describe the actual assaults in some detail: 'he still pressed him to let him handle his privy member', 'endeavoured to put his hands into this Examinants codpiece', 'the said Williamson offered to putt his privy member into this deponants Backside'. This demonstrates a clear difference in the use of sexual language for men and women. A woman was unable to talk about rape in this way as it would have implied knowledge about sex, and in the medical contexts of the day perhaps negated her claim for non-compliance. Men however were able to use this language because there was no issue of innocence for men. If the female victims were stressing non-consent over the actual act of rape in order to overcome a paradox created by sexual discourse, caused by the impossibility of discussing the actual act, why then were men stressing non-consent at the same time as providing graphic descriptions?[192] The answer can perhaps be found in the legal contexts of the day. According to the legal authority Richard Burn 'if buggary be committed upon a man of the age of discretion, it is felony in them both' quite probably due to the belief that a man should be able to fight off unwanted advances. Therefore whilst men were able to discuss the actual assaults in detail, they also stressed their non-compliance and their agency in preventing the act from going further.[193] Jeffries stated he 'prevented by force', an option not open to the female victims whilst Botton claims that he 'would lye with him [Williamson] no longer' and Stephens 'hindered him' until he was rescued by a knocking at the door, a tale also found in the female narratives.

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[190] Centre for Kentish Studies, William Jeffries 11/10/1711, Q/SB 31/138.

[191] Centre for Kentish Studies, Joseph Stephens 11/10/1711, Q/SB 31/139; William Botton 11/10/171, Q/SB 31/140 1.

[192] Walker, 'Rereading Rape and Sexual Violence in Early Modern England', p.6.

[193] Richard Burn, *The Justice of the Peace, and Parish Officer.* (London, 1755).

With regards to sexual assault, both men and women were trapped by sexual discourse and contemporary perceptions of gender. Women needed to appear innocent and ignorant of sexual acts in order to appear chaste and so stressed their agency in non-consent. Men were able to use sexual language, but again had to stress their agency and strength in resistance in line with masculine ideals. An examination of the male narratives of male sexual violence reveals many similarities with those of the female stories. The accused bribes the victims with money or goods, the victims are often seen as possessions, non-consent is stressed. However, there are also differences. Men are able to, and must, use force of some kind to resist. They must prevent the attack or they too are culpable. Men are able to use the language of sex in order to describe their experiences. Of course it is entirely possible that the men in these depositions were not assaulted and were trying to avoid accusations of homosexuality. However, that too raises interesting points as they have used the language and structure of female rape narratives, suggesting an awareness of this language of violence.

The function and cultural significance of violence.
It is their unusual amount of detail that make depositions for sexual violence a starting point for the analysis of violent crime. Themes which occur in the description of a violent incident may be glimpsed in other more partial sources which can be combined together to create an overall picture of the meanings and function of violence in this society. The final section of this chapter explores the themes highlighted by the quarter session records to demonstrate further how violence was involved in solving disputes, economic survival, power relations and the maintenance of social order. These cases often involve the household, women, masters and servants and therefore the context of social norms, discipline and order in its various forms can be found at the heart of many of these stories, revealing the language of violence. The relationships within the household and between masters and servants are then explored further in chapter five.

At 11pm on Wednesday 1st July 1696 in St Dunstans, Kent, Anne Warwick was in bed with her children when she heard a noise at the door. Before she could get dressed, two soldiers broke into her house and said they had come to take her away. She clung to the bedposts but was flung down the stairs where more soldiers awaited. Warwick was dragged to the river, had a rope tied around her waist and was thrown into the water. The soldiers continued to push her under with their muskets until she was exhausted, when they laid her on the side before untying her and helping her to her feet stating: 'Whore you tell your mayor what I have done'. Warwick proceeded to run back to the town but her ordeal was not over. [194]

The noise of the soldiers dragging Anne Warwick to the river had alerted patrons of the local inn, The George. Bennet Palmer ran outside to see her sister being drawn along by five soldiers and cried out murder, upon which she was beaten by the soldiers until her husband

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[194] Centre for Kentish Studies, Deposition of Anne Warwick, Q/SB 24/208-209.

carried her back to The George. She ran back out but was beaten again and her husband again brought her back to the inn. Soon after this Warwick came up the street looking wet and in a bad condition so they got her into The George and locked the door. After a short while, ten soldiers came to the inn demanding that the door be opened so that they could duck Palmer and Warwick. The patrons of the inn got the sisters out into an orchard while the soldiers searched the building but the women were too frightened to go back to their own homes.[195]

A close analysis of these events allows us to understand the meanings and the surrounding context of the violence in this case. The soldiers can be seen to be controlling Anne Warwick's sexual morality of ducking her. In the original deposition, Warwick clearly states that she was in bed with her two children and 'noe body else'. While she could be making this statement in response to a question asking if there were any witnesses. She may also be trying to clearly set out her position as a woman of honour at the start of the examination, as she was called a whore by the soldiers and ducking was a punishment related to sexual offenses as well as scolding.[196]

Upon seeing her sister in danger Bennet Palmer stated she 'Crydd out murther', in order to stop the soldiers from attacking Warwick. This calling for help was also seen in some of the cases of sexual violence when women asserted their innocence by stressing their resistance. Palmer stated that she then became the victim of the attack, even though her initial aggression towards the soldiers had been only verbal. It is possible to see a gender difference in violence here as the verbal attack by Palmer resulted in physical retaliation from the soldiers. Palmer describes herself as being in a 'fury' after being attacked and escaped from The George to chase after the colonel. At this point, she changed from being a minor participant, calling attention to the fact that her kinswoman was in danger from an aggressor, to a major actor in the drama. Hence from that time she too became vulnerable to the soldiers. Palmer's husband's response was very different. Palmer claims that 'her husband defended her & had her to the George again'. The implication in the text whenever Palmer's husband is mentioned is that his 'defence' involved removing her from the situation rather than getting involved in the fighting himself. This could demonstrate a gender difference in the response to threat towards family members. Like the cases in the alehouses, each participant saw violence or violation according to their own role and circumstances in the event. Violation could be a threat or an action depending on the context and people involved.

There is a strong community element on both sides of this case. The phrase 'your mayor' potentially constructs the soldiers as outsiders to Palmer, Warwick and their community. It

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[195] Ibid.

[196] Martin Ingram, '"Scolding Women Cucked or Washed": A Crisis in Gender Relations in Early Modern England?', in Jenny Kermode and Garthine Walker, eds., *Women, Crime and the Courts in Early Modern England.* (London, 1994), pp. 47-81; L Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 2005).

could be argued that the soldiers were using violence and informal punishment as an external force in order to maintain community order, since if Warwick was transgressing acceptable sexual behaviour this could have been seen as a threat. The statement of the soldiers 'now you Whore you tell your mayor what I have done' is also puzzling without context but may hint at some dispute between the town authorities and the soldiers. The community in The George were drawn into helping Warwick and Palmer. They protected the women by locking the doors against the soldiers and 'the people in the house conighed [connived] for this Deponent [Palmer] and for her sister over a pair of pales into an orchard'. This suggests that violent events did not just affect the participants. They were community affairs which caused people to take sides and act in specific ways, the incidents had wider significance than may at first glance be thought.

This case also demonstrates the importance of symbolism and ritual within violence. Both Palmer and Warwick said that they cried 'murder' in order to get attention and stop the soldiers from attacking them. This has parallels with the Hue and Cry ordered against criminals and indicates that they believed this was the most effective way of getting help from others. The extreme reaction of the soldiers to the cry from Palmer of 'damn her knock her brains out' suggests that this may have been an effective tactic, possibly to be found in other depositions. The ritual of the ducking also implies that this violence was not random. Although not all the circumstances are known, we can be sure that the soldiers chose to do this to Warwick for a reason, perhaps due to the symbolism of that particular punishment. There are other aspects of this case which are common to other cases of violence. Location is important. Warwick was removed from her house and as has been demonstrated, breaking into someone's house added an extra dimension to the violence perpetrated. Breaking and entering into a house at night was a hanging offence, even if the burglar did not steal. It was considered more serious than housebreaking in the daytime, which was also a capital offence, partly because it involved a greater invasion of privacy and personal safety.[197] The incident took place late at night and involved an inn. These are also factors which can be explored for their symbolism, and are expanded on in chapter three.

To some extent violence was legitimated in the eighteenth century as a way to solve disputes and punish deviants. This could be seen both in the state's response to criminals, but also in the informal ways in which communities dealt with a range of transgressions from adultery to drunkenness. The women and community in the Warwick case challenged the actions of the soldiers without using physical violence. Instead, they used cries for help, aided the women's escape and barricaded doors in response to the threat. However, redress and retribution by physical force rather than turning to the law was an established way to resolve mundane arguments over such things as money or work, as long as the perpetrator did not go too far.

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[197] Amanda Vickery, 'An Englishman's Home Is His Castle? Thresholds, Boundaries and Privacies in the Eighteenth-Century London House', *Past and Present*, 199:1 (2008), pp. 147-173.

Examples of retributive violence litter the session's papers. For example, in Kent in July 1714 Edward Fendall attacked a constable after he had been stopped by him, and in Sussex in 1721 John Heather threatened to beat Richard Weeden for poaching. An argument over money led to violence in Kent in August 1713, when Joseph Davis complained that William Culpepper beat him and threatened to shoot him when he asked for his wages.[198] Each of these men felt that they had a legitimate reason to turn to violence according to the contemporary custom; however, the prosecutors in these cases either disagreed with this legitimacy, feeling that their violent response had gone too far, or decided to invoke the legal system as an alternative avenue to express their grievances.

Arguments of this type often have similar narrative forms which involve both clothes and weapons. This, like the patterns found in narratives of rape, suggests that the description of violence had some sort of order or process. Thomas Muggeridge deposed that on the 16th April 1717 Abraham Clement came to Muggeridge's house to have some work done and was informed that Roger Davis, an officer, was also coming to Muggeridge's house and wanted to quarrel with Clement. Muggeridge persuaded Clement to go upstairs to avoid Davis but:

> Just as Clement came down the stairs the Officer met him and began a Quarrell with the sd Clement and took him by the neck cloath at which the sd Clement struck him and after they struggled for sometime this Examint parted them But the Officer whose name is Roger Davis strip'd of his Cloathes and Challenge'd to fight the s'd Clement which he was very unwilling to do, and desired this Examint to keep him off, but he not being able to prevent itt, they went to fighting again and in the fight the sd Clement did bite the sd Roger Davis Ear as the sd Roger Davis did inform and this Examint did see the Ear drop down between the sd Roger Davis and the sd Clement.

The motive for the original attack by Davis is not altogether clear although Clement was previously the excise officer for Duty on Leather and Davis held the post currently so it may have been work related. It is reported that Davis stripped off his clothes. This appeared to signal an intention to fight as another deposition from a different case in 1749 records 'Ticehurst and Pearse entered the House strip'd naked from the wast upward and swore they would pay them to their Hearts Content'.[199] The stripping may have been a way of ordering the fight in the manner of a boxing match.[200] Another common ritualised element that is found when Davis grabbed Clement by the neck cloth; this, or grabbing someone by the collar was a common element of attacks or brawls involving two men. That this case was brought to the courts by the instigator of the fight, Davis, clearly expressed the complexity surrounding the mentalities of retributive violence in the eighteenth century. Davis believed that violence was a legitimate way to solve his dispute with Clement, even though the

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[198] Centre for Kentish Studies, Deposition of Edward Fendall 26/07/1714, Q/SB 32 fo337-338; East Sussex Record Office, Recognizance John Heather 18/03/1721, QRE 367 fo 19; Centre for Kentish Studies, Deposition of Joseph Davis 21/08/1713, Q/SB 32/88-89.

[199] East Sussex Record Office, Deposition 6/12/1749, QRE480-483.

[200] See Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England*, p.195.

witness Muggeridge claims that Clement was not keen to fight. However, when Davis became seriously injured he felt he could legitimately take Clement to court for assault. The instigator of the attack reversed the situation to portray himself as the victim due to injury caused in the fight. This case demonstrates the context that surrounded attacks seen as customarily legitimate by perpetrators, and the fine lines that could lead these cases to court.

The use of violence as a response to settle disputes was common in the eighteenth century for several reasons. Firstly, the absence of formal police and the reliance of the legal system on private prosecution meant that those who felt wronged were used to 'taking the matter into their own hands'. This could even involve physically apprehending criminals and therefore lead to a mentality of retributive violence.[201] Secondly a culture of community self-policing which relied on shared notions of honour and respect, and had the aim of community stability, provided an environment in which disputes could be settled outside of legal process.

The case of Anne Warwick, already discussed, demonstrated how the crowd in the pub could mobilise against those from outside their community. The people in the public house protected Anne and her sister from the soldiers and although there is no record of where the soldiers were from, the assistance of the people at the Inn was quite possibly due to their 'perceptions of the soldiers as invaders'.[202] Members of the community were ready to intervene against local transgressors too when they believed that the violence they were perpetrating was not justified. Victualler Jasper Wiltshire did not intervene when Richard Vokins followed Thomas Sewers into his house 'threatening and abusing him', 'abusing and railing at him and threatening to beat him'.[203] However, Vokins disturbed two women, Elizabeth Cooke and Anna Browne, and their children from out of town who had stopped for a quiet drink with their waggoner. Elizabeth Cooke recalled seeing Vokins 'in so great a passion and as they verily believed drunk and fearing least he might do them some mischief did presently call for and accordingly did pay their reckoning'.[204] The victualler Wiltshire deposed that as the women left the house:

> The said Richard Vokins, did strike the s'd Elizabeth Cooke who was then & still is Bigg with child a Blow on the face & said Damn you Bitch I will give you as much more, and then this depon't [Wiltshire] interposed and took hold of him the s'd Vokins to prevent his kicking of her seeing his feet up for that purpose, and he did accordingly kick at her, and this depon't verily believes he would have hit her with

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[201] See Beattie, *Crime and the Courts in England*, pp. 36-8.

[202] Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement*, p. 57; Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560-1985', pp. 87-90; Carolyn Conley, *The Unwritten Law: Criminal Justice in Victorian Kent* (Oxford, 1991), pp.10, 155-7.

[203] East Sussex Record Office, Jasper Wiltshire 24th May 1714, Q/SB32/329; Elizabeth Cooke 24th May 1714, Q/SB 32/331.

[204] East Sussex Record Office, Elizabeth Cooke 24th May 1714, Q/SB 32/331.

the said kick and that the Blow might have occaisioned her Death…and afterwards the said Vokins did take the said Anna Browne by the arm, who had a young Child in her arms, and threw her down against a bench.[205]

Elizabeth Cooke's evidence agreed with that of Wiltshire when she stated that she:

doth verily believe that if the said Jasper Wiltshire had not taken hold of him [Vokins] at that instant and prevented the said kick he would have struck her with great force upon her belly that might have occasioned her to have a miscarriage if not have lost her life.[206]

What is clear in this case is the point at which Wiltshire intervened against Vokins. He did not get involved in the initial dispute between Vokins and Sewers: two men arguing in a victualing house. This suggests that Wiltshire does not see this violence as transgressionary in any way. At that point, Vokins was not threatening Wiltshire's business, his violent outbursts were mainly threats and there was no risk to social order. Like Margaret Fuller in the alehouse, the threats were not seen as violence here, perhaps due to their common use in the victualing house context. However, once Vokins turned on the women he crossed the line from violence into violation. He violated the social codes which advised that men protect women and children, particularly as these women were strangers to him. He went too far in his violence by attempting to cause actual bodily harm, and had no justification for his act, for example, in the form of chastisement, which is seen in chapter five as a defence for violence on household members. It was at this point that Wiltshire stepped in demonstrating his autonomy as head of the household and ensuring his tavern was effectively policed.

Violence was also used in a disciplinary way to ensure that people conformed to accepted social conventions. In the case of Anne Warwick, the soldiers were enforcing their own form of discipline by ducking her as a whore. Disciplinary violence was most accepted when shaped by the discourse of the household. The quarter sessions contain several stories of servants taking their masters to court such as that of Elizabeth Bishop who deposed that her master John Warren ill-treated her. Bishop's current employer Joseph Johnson also reported that he saw Warren kick her.[207] Another similar example is that of Berthia Bunting. The parishioners of Willingdon in Sussex petitioned the justices because they felt that she:

Hath had very ill usage from her said master without any just or reasonable cause. And that he does abuse her not onely in the allowing and providing her necessary

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[205] East Sussex Record Office, Jasper Wiltshire 24th May 1714, Q/SB32/329.
[206] East Sussex Record Office, Elizabeth Cooke 24th May 1714, Q/SB 32/331.
[207] Centre for Kentish Studies, Elizabeth Bishop 1704, CKS-Q/SB 27/110; Joseph Johnson 1704, CKS-Q/SB 27/110.

apparel and dyett. But constantly Beates her soe intolerable that she lives (with her said master) in Feare of her Life[208]

The comment in the petition that the master had no reasonable cause demonstrates clearly the cultural mentality of disciplinary violence. When disciplinary violence went too far the community stepped in, even to the point of putting themselves in danger of violence. On the 17th March 1757 William Russell met William Stace at the Horse and Groom in Warbleton. Russell asked Stace:

> why he struck his Servant and desiring him to acknowledge himself in the wrong and ask his Servant's Pardon, he [Stace] put himself in a Passion, and took this examinant by the collar, and struck his head up against the mantle piece

It is not surprising Stace was so angry at Russell's suggestion. Russell was not only questioning Stace's right to chastise his servant, he was questioning the legitimacy of Stace's original use of disciplinary violence, going straight to the heart of Stace's masculine identity as a respectable restrained, ordered master. By adding the request that Stace ask his servant's pardon, Russell was compounding the insult turning the master-servant relationship on its head and threatening domestic order held in place by Stace's masculine authority. The sessions do not reveal the original incident with the servant but another witness also confronted him and received similar treatment. It appears then that disciplinary violence was a contested concept fraught with threats to social order, gender identity and social conscience.[209] Due to the small amount of detail in these cases they only hint at the boundaries of disciplinary violence, a subject extended in chapter five.

Conclusion

This chapter has explored how the records of the quarter sessions reveal the meanings and functions of petty violence if they are contextualised through a combination of qualitative and quantitative analysis. The discussion aimed to determine the relationship between violence and order. It has suggested that violence was not random but had a function or order of its own.

The quantitative evidence from the quarter sessions records suggests that there was no significant change over time in this period in cases of violence coming through the courts. This is in contrast to previous research by John Beattie, which suggested a gradual decline in prosecutions for violence. It is therefore evident that what Beattie found at assize and quarter session level combined was not occurring at the level of indictments and recognizances in just the quarter sessions. This difference may be due to the source material used, as Beattie combined indictments from the assizes and the quarter sessions to form his analysis. The material used in this study included only the quarter sessions. It is therefore possible that the number of cases going to the assize courts fell dramatically which led to a

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[208] East Sussex Record Office, Berthia Bunting 31/12/1702, QRE 295/ 35.
[209] Amussen, *An Ordered Society: Gender and Class in Early Modern England*.

picture of overall decline when these were combined with the more stable quarter session indictments. Another possibility for the different pictures which emerge is that Beattie had fewer data points as statistically; this can lead to a less accurate analysis. Only further analysis using both the assize and the quarter session indictments would be able to clarify this. Whatever the cause for the differences seen in the data, it is clear that when only the quarter sessions are considered, there is no discernible decline in patterns of prosecution. This challenges the idea of a civilising process with regards to violence in this context and suggests a more complex and nuanced analysis of the pattern of violence needs to be considered. This would need to take into account the continuities in behaviour as well as the changes, for example, during the first half of the eighteenth century, local courts were still used in the same way as in the seventeenth century, mainly for binding over, rather than for formal charges.

A second conclusion that can be drawn from this material is that the concept of violence was bound up with the concept of order.[210] Violence occurred as a response to disorder, for example some-one not paying their debts or a bill; it also occurred as a response to the enforcement of order imposing on customary practices, for example violence against constables and bailiffs; and violence was involved in the maintenance of order and hierarchy, for example within the household. This idea of order contained within moments of disorder is one that is also being considered by the historians or riot and protest.[211] It is a fruitful area of further consideration and can be seen throughout many of the case studies in this thesis. The narratives in this chapter have demonstrated that in each case violence had a function within society, be that economic survival, solving disputes or the negotiation of power relations and social order. Violence, or the threat of violence, was used as part of everyday social discourse, and the points at which it became violation were nuanced. For example, threats were ignored within the confines of an alehouse, but within the household were unacceptable. The starting of a brawl to settle an argument did not cause complaint to the court, but injuries resulting from it did. Within each case the participants negotiated their own understandings of the concept of violence based on the cultural, legal and social circumstances surrounding them.

The third conclusion is that the stories of violence themselves demonstrate a specialised language of violence, one which was formed by the contexts of the courtroom, social status and gender relations and the nature of the crime itself, but has enough commonalities in it that we can be sure it was understood by contemporaries. This chapter has combined the quantitative overview and 'bare facts' found in indictments with the rich descriptions of cases found in depositions, it is possible to gain a broader understanding of the concept of violence in early eighteenth century Sussex and Kent. The following chapter further explores the themes of order, violence and the negotiation of violence. The cases within this chapter

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[210] Ibid.

[211] Bohstedt, *The Politics of Provisions: Food Riots, Moral Economy and Market Transition in England, C.1550 – 1850*, pp. 1-20; Archer, *Social Unrest and Popular Protest in England 1780-1840*, p.3, pp.94-96.

have shown that the definition of violence was contested and that participants negotiated their actions according to their own particular situations. Violence was used for a range of reasons including protection, discipline and settling disputes. Order could be restored in a variety of ways such as taking the person to court, retaliating or using avoidance strategies. Another way in which violent disputes could be settled was by formal or informal negotiation and the following chapter uncovers the circumstances surrounding this in more detail.

Resolving violent disputes: the concept of negotiation

Introduction

This chapter will explore early-modern concepts of negotiation and arbitration to shed light on the close relationship with social order. In order to do this it will examine two themes surrounding violent disputes and the maintenance of order. The first theme concerns the ways in which order was restored after violence had crossed the boundary between permitted and illicit actions. It investigates how order was restored, in order to extend discussion of both legitimate or acceptable violence, and explores what was considered illegitimate and needed to be taken to court, as introduced in chapter one. The second theme explores contemporary attitudes to authority, the order that it tried to establish, and the disorder that it opposed. The mechanism of re-establishing order, as described qualitatively in the Justices' notebooks, legal depositions and popular literature, gives key insights which contribute to our understanding of how communities participated in making law.

This chapter argues that through a complex mix of formal and informal structures, aimed at keeping the public peace, disputants sought recognition and mediation from authority. Justicing notebooks are used to bring us closer to understanding the cultural meanings surrounding violence and, through the study of petty violence, allow us to glimpse the workings of the local justice system in the first half of the eighteenth century. Arbitration or negotiation served a purpose for both public bodies and the individual. For the state, it helped to secure public order, whilst for the individual and local community, a settlement was achieved at limited cost and loss of face. This chapter follows the process of a dispute, looking first at what arbitration entailed, and then exploring the practice of dispute resolution, the outcome and resolution itself, and community involvement in the process. It is important to note however that power structures were at play within arbitration and participation was not always positive. Analysing this point suggests that rather than view disputes as a straightforward choice between capitulating or resisting authority, an examination into the context surrounding cases enables a more complex picture of the meanings, uses and process surrounding violent disputes to emerge. Through examining the purposes negotiation served, and the rituals at play, it will be possible to go some way towards developing a typology of arbitration. In looking at community politics, the arbitration process, and the power structures involved, this chapter will explore how structures of authority were not simply mediated in a typical one-way 'top-down' fashion, where those in authority controlled the disputes of the lower classes. This chapter proposes that the concept of negotiation was more complex and contested in this period than has previously been suggested.

Sources and Methodology

At the heart of this chapter are the local justices' notebooks of Paul D'Aranda, James Brockman, William Brockman, Ralph Buffkin, Edward Filmer and Sir Wyndham Knatchbull. These justices worked in rural parishes in Kent and their notebooks incompletely cover the period 1689 to 1767.
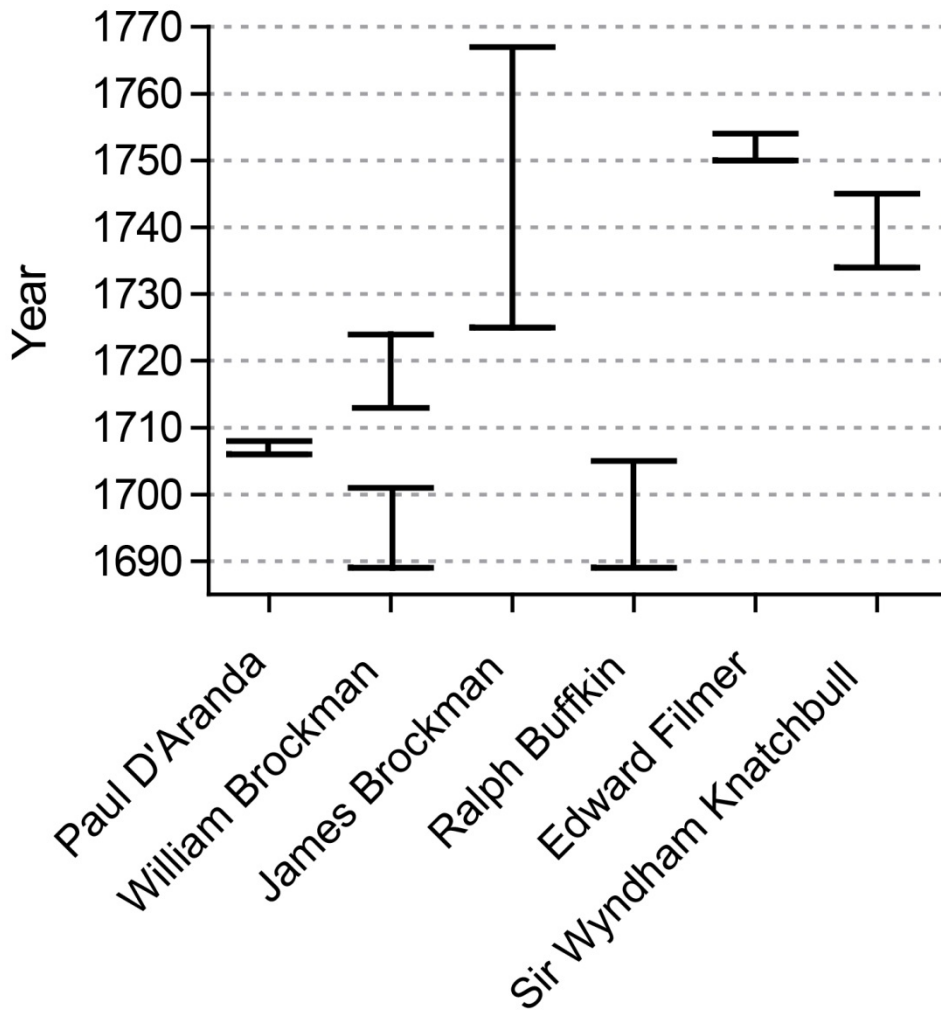
Figure 2. The periods covered by each justice's notebook.

There are no equivalent Sussex sources, indeed notebooks of this type are rare, and for that reason material of this nature has been drawn from the whole of the county of Kent. The magistrates of Kent appeared to have had a tedious job, with the majority of their business involving settlement orders or repairs to roads. Within the notebooks a wide range of business was recorded and violent incidents were in fact fairly uncommon (see figure 2). An analysis of the types of cases dealt with was undertaken for four of the justices. Filmer and James Brockman were not analysed in this way because they noted far fewer cases. This analysis demonstrates how different the role could be for each individual justice. For example, Ralph Buffkin wrote mostly about swearing in officeholders, whilst Paul D'Aranda

and Wyndham Knatchbull were preoccupied with the state of the roads and ditches. An overview of offences can be seen in the table below:

	Paul D'Aranda 1706-08	Ralph Buffkin 1689-1705	Wyndham Knatchbull 1734-45	William Brockman (1700/1 book)
Violent crime	5 (4.5%)	5 (5.1%)	13 (8.1%)	3 (2.1%)
Settlement certificates / vagrancy	20 (18.1%)	5 (5.1%)	24 (15%)	9 (6.3%)
Burial in wool	4 (3.6%)	1 (1%)	0	0
Poor relief / rates	9 (8.1%)	0	20 (12.5%)	13 (9.1%)
Weights and measures	25 (22.5%)	2 (2%)	19 (11.8%)	0
Theft	18 (16.2%)	8 (8.2%)	2 (1.3%)	14 (9.8%)
Servant disputes e.g. unpaid wages, apprentices	3 (2.7%)	2 (2%)	11 (6.9%)	11 (7.7%)
Bastardy	0	12 (12.2%)	9 (5.6%)	3 (2.1%)
Administative duties e.g. swearing officers	0	25 (25.5%)	14 (8.8%)	3 (2.1%)
Other including repairs and taxes.	27 (24.3%)	9 (9.2%)	48 (30%)	11 (7.7%)
Damaged / unreadable	0	29 (29.6%)	0	3 (2.1%)

Figure 2. The types of business dealt with in the notebooks.

The cases included in this chapter were not included in the data for chapter one, since the poor survival rates of justices' notebooks skew any quantitative analysis from the quarter sessions. It was also more difficult to give these cases a legal classification as often the justices described the incidents rather than gave them a legal label. A breakdown of the types of violence cases can be found in the following table:

	Paul D'Aranda	William Brockman (1700/1 book)	Ralph Buffkin	Edward Filmer	Wyndham Knatchbull
Beating and Assaulting/ Assault and Battery	1	1	3	3	3
Insolence/ speaking disrespectfully	2	0	0	0	1
Resisting arrest or enlistment	2	0	0	0	0
Breach of the Peace	0	0	1	1	4
Verbal abuse	0	1	0	0	2
Idle/ Disorderly	0	0	0	0	1
Suspicious death	0	0	0	0	1
Rape	0	1	1	0	1

Figure 3. A breakdown of the violent cases found in the notebooks.

The number of cases is too small to enable a quantitative analysis of the types of crime recorded. Justices may have only noted down cases that they felt were particularly troubling or complex. This may explain why three JP's recorded incidents of rape whereas lesser crimes such as insolence were recorded less often. The justice of the peace was a central figure in local law enforcement. He dealt with a wide range of crimes as well as having administrative duties. Justices could hear and determine some cases themselves, bail cases for trial, or act as an investigator by examining defendants and witnesses.[212] It is likely that most crimes which were officially prosecuted, some of which were later dropped, came before a local justice, giving a more realistic picture of concepts of criminality than court records alone. The justices' notebooks record the initial stages of the process of going to law, often taking place in the justice of the peace's own house. Sitting alone, a magistrate could hear grievances and make decisions about whether to dismiss a case or proceed to the next stage of the criminal process. This was known as the summary court, the lowest level of the criminal justice system, dealing more frequently and speedily with disputes than any other court.

In order to understand the business of a justice, it is necessary to know something about the man who held the office himself. The six Kent justices of the peace (JP) who left notebooks had very different approaches, backgrounds and geographical locations. The notebook of Paul D'Aranda is particularly unusual for two reasons.[213] Firstly, he recorded the results of some of the actions started before the justice which allows an insight into the whole case. Secondly the business in the notebook was also recorded in a surviving petty sessions book.

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[212] Norma Landau, *The Justices of the Peace, 1679-1760* (Berkeley, 1984).
[213] Centre for Kentish Studies, Maidstone, Note book, CKS-U442/9/3/4.

The only other surviving notebook with corresponding sessions book is that of Henry Norris of Hackney.[214] D'Aranda lived in Shoreham in the administrative district of Sevenoaks in western Kent and so provided legal services for people in that area. He was born in 1652, the son of a merchant and grandson of a French minister, of a social standing in common with many justices of the time. In 1689, D'Aranda bought the estates of Preston and Shoreham from John Polhill and lived there until his death in 1712, aged 60. He was fairly well connected to the Whigs, writing to John Locke and caring for the son of the MP Edward Clarke.[215] D'Aranda appears to have been a conscientious JP who recorded his business in a notebook approximately once weekly alongside the proceedings of the sessions. Although the notebooks only survive for part of the period 1706-1708, it is likely that he kept records for the duration of his office. The records of his family no longer survive and so little is known of the man himself beyond his official duties.

Sir Wyndham Knatchbull was a justice of a much higher social standing than Paul D'Aranda. Born on 26th November 1699, he became the 5th Baronet Knatchbull of Mersham Hatch in 1730 and held the office of High Sheriff of Kent between June and December 1733 before dying in 1749.[216] The parish of Mersham was in the administrative district of East-Ashford in eastern Kent. Knatchbull's papers contain a printed precedent book setting out capital and non-capital crimes, an account of warrants,and a detailed account of petty sessions at which he was present covering the period July 1734-1745.[217] There is a clear pattern as to when Knatchbull heard cases as a justice, with nothing written in the notebook for the months January to May. He appears to have heard all of his cases, bar two, in the months June to October. This may have been due to other political duties calling him away from his local justicing tasks. His notebook is perhaps the most revealing in that he records his reasons for action as well as the actions themselves. He appears to have been conscientious in recording warrants, perhaps in case of future litigation, but he did not record the general business of the court or sessions. The notebooks give the impression of a peacemaker who liked to resolve matters without resorting to litigation. However, it appears he was not freely available to local people as his notes are dated only every few months, in time for the quarter Sessions.

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[214] Ruth Paley, *Justice in Eighteenth-Century Hackney : The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London, 1991).

[215] Edward Clarke to John (Jack) Clarke London May ye 18th 1703; Paul d'Aranda Jun* to Edward Clarke 22 June 1705; Paul d'Aranda to Furly? 22 June 1705. Bridget Clarke, 'The Life and Correspondence of Edward Clarke of Chipley 1650-1710', (Nynehead Parish, Somerset. Available from: http://www.nynehead.org/index.php?option=com_content&view=article&id=32&Itemid=364 part 4. Accessed 1/10/2010. Copies also held at Somerset archives**.**

[216] 'Sir Wyndham Knatchbull', The Peerage, http://thepeerage.com/p14826.htm#i148256; consulted 25th April 2013

[217] Centre for Kentish Studies, Precedent book, U951/02; Centre for Kentish Studies, Justices Diary Kept by Sir Wyndham Knatchbull , U951/04; Centre for Kentish Studies, An Account of Warrants Issued by Sir Wyndham Knatchbull 1734-1744, U951/03.

The third justice, whose notebook is used comprehensively here, is Ralph Buffkin. Less is known about him, perhaps due to his lower social status and his notebook is more damaged than the others. Norma Landau has compared the notebook with the quarter sessions and demonstrated that it is a very incomplete account of his activities.[218] Buffkin lived and worked near Maidstone, most probably in the village of Boughton Monchelsea as a will dated 25 February 1700/1 (proved 20th March 1710/1) left a manor house there to a cousin.[219] The collected papers surviving in the Centre for Kentish studies suggest that Buffkin may have been constable of the hundreds of Maidstone, Littlefield and Twyford East, as well as captain of a company in Sir John Tufton's foot regiment, between 1661 and 1674.[220] By 1690, the records suggest that Buffkin may have progressed to become a Major in the regiment of foot.[221] The justicing notebook left by Ralph Buffkin covers the period October 1689 to October 1705, but if taken as an indication of the work of a justice shows a sporadic pattern. He recorded business at irregular intervals, sometimes making an entry every week and at other times leaving it several months. The largest gap in entries was between February 1691 and October 1692. The entries are very short and contain little detail. Buffkin appears to have only heard two cases in December, one in 1699 and again in 1704. Unlike Knatchbull's notebook, there is no clear pattern as to when Buffkin preferred to hear his cases. However, when the year is split approximately into winter and summer, it seems he heard the majority of cases in the six months between September and February, leaving the summer months freer.[222] This demonstrates that although justices had the same tasks, there were dramatic differences between individuals in the administration and recording of these.

Other Kent justices from this period are William Brockman and his son James Brockman. They worked near Hythe in the Elham division. They were wealthy landowners with a mansion at Beachborough. Another justice, Sir Edward Filmer, 5th Baronet, was of a social standing comparable to that of Wyndham Knatchbull, and lived at East Sutton near Maidstone. His notebook runs from 1750 to 1754.

A limitation of justice's notebooks as a source is that they are fragmentary and provide incomplete accounts of the cases. They are also, of course, located within specific contexts. Therefore a selection of notebooks has been supplemented with additional sources to illuminate the broader cultural contexts surrounding interactions between litigants and justices. Popular literature is one source which has provided some of these contexts. Representations in both fictional and factual genres have the power to both shape societal

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[218] Landau, *Justices of the Peace*, p175.

[219] 'Francis Fairfax' Culpepper Connections, http://gen.culpepper.com/historical/nneck/5c-leeds.htm; consulted 24th April 2013

[220] Centre for Kentish Studies, Muster warrants addressed to Ralph Buffkin, EK-DO/Z/Z/4/3.

[221] Centre for Kentish Studies, Letter from T. Lanier, churchwarden of Benenden, Kent to Major Buffkin, EK-DO/Z/Z/4/4.

[222] 57 cases in total between September and February, 25 cases between March and August.

views but also constitute 'a privileged form of access to the collective inner life'.[223] Literature provides connections between private and public discourse in a way that newspaper accounts and official records of proceedings cannot do. Novels however do comment on the magistrates, and provide one view of the way the justice was presented to the middling sort. Although a higher degree of literacy was needed to read these, they were a place in which ideas about justices were aired and have been largely ignored by historians of crime. Works written by Tobias Smollet and used in this chapter are: *The Life and Adventures of Sir Launcelot Greaves*, first serialised in *The British Magazine* from January 1760 to December 1761, and published in 1762, and *The Expedition of Henry Clinker*, published in 1771. By the time these works were published, Smollett was a well-known satirical author. A third book used in this chapter, *The History of Tom Jones, A Foundling* was published in 1749. Its author, Henry Fielding, was an experienced London magistrate who also published commentaries on poverty and crime. Recent research has shown that print and oral culture had a reciprocal relationship and that elite and popular culture overlapped.[224]

Satirical work was particularly popular during the early eighteenth century, drawing on and expanding the previous Jacobean coney-catching pamphlets. The stock figures of rogue literature included the cardsharper, the sturdy beggar and the confidence man, but by the early eighteenth century these 'had been replaced by the highwayman as the social critic *par excellence'.*[225] While the highwayman was not a common figure in the day to day work of the justice, the JP's operated within the cultural world of this popular literature. Many of these criminal celebrities then assumed the role of 'social critic' and turned on the system that had caught them:

> Moreover the highwayman delivered a more specific and hence potentially more powerful social critique than that of his predecessors. He was, after all, discriminating in his choice of victims, collecting "contributions" only from the rich or those who travelled by coach, while the fact that he robbed on horseback and dressed like a beau seemed to suggest the possibility that the "Knight of the Road" was not the only thief disguised as a gentleman.[226]

The popular literature which characterised the highwayman as critic, included the justice as one to be criticised. Justices of the peace along with lawyers, moneylenders and figures in positions of power were often seen as petty tyrants or a figure of fun within the context described by McKenzie above. However, outside of these satirical works, the justice is rarely

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[223] Martin Wiener, 'Treating "Historical" Sources as Literary Texts: Literary Historicism and Modern British History', *The Journal of Modern History*, 70:3 (1998), pp.619-638 , p.620.

[224] Andrea McKenzie, 'The Real Macheath: Social Satire, Appropriation, and Eighteenth-Century Criminal Biography', *Huntingdon Library Quarterly*, 69:4 (2006), pp. 581-605, p.585, Footnote 15; Adam Fox, *Oral and Literate Culture in England, 1500-1700* (Oxford, 2000).

[225] McKenzie, 'The Real Macheath', p.584.

[226]Ibid., p.585.

mentioned. A brief search of ballads and the eighteenth-century press for the period reveals little in the way of comments on the character of justices.[227] Historians of crime have tended to focus on popular literature such as ballads and pamphlets when exploring representations of criminal activities. This narrow range of sources provides insight into the representation of criminals but is lacking when it comes to the representation of law enforcers.

The final source used in this chapter is the legal handbook. A range of these deal with arbitration, sometimes as part of a larger set of instructions on parish government: for example, Richard Burn's *The Justice of The Peace* sets out the process of arbitration for a JP as part of its many editions. The 1740 edition of *A Compendious Library of the Law,* also contains examples of arbitration in practice and bonds to copy.[228] There were also books dedicated specifically to the practice of arbitration itself such as Matthew Bacon's *The Compleat Arbitrator,* originally published in 1731 and reprinted with additions in 1744, and *Arbitrium Redivivum* published in 1694.[229] The amount of text devoted to clarifying this aspect of the legal system suggests that it was an important part of legal administration in this period. However, many historians have overlooked exploring the definitions of arbitration by focusing on the quantitative aspect of court records, rather than the linguistic and cultural aspects of court narratives and procedures.[230]

Landau has shown that the majority of justices of the peace relied on the help of their clerks and legal handbooks because they had only a low level of narrowly classical education and usually no legal training.[231] Dalton also presented his handbook as being for JP's with less education as he wrote his manuscript 'for the better help of such Justices of Peace as have not been much conversant in the study of the laws of this Realm'.[232] However, the sample of justices used in this chapter indicates that the handbooks were used by a wide social range, as Sir Wyndham Knatchbull wrote of using a legal handbook.[233] These handbooks laid out

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[227] Drew Gray, Author's Response to: 'Professor Greg Smith, review of *Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century*, (review no. 976) URL: http://www.history.ac.uk/reviews/review/976 Date accessed: 22 November, 2013'The only ballad commenting on a justice's character in the Bodleian collection was *Roome for a justice or, The life and death of justice Waterton*, (London: C. Gustavus,1660): 'A petulant bold pragmatic fellow, A knave deckt up in the fools colour yellow, That when he should speak did use for to bellow.'

[228] Anon, *A Compendious Library of the Law, Necessary for Persons of All Degrees and Professions* (London, 1740).

[229] Matthew Bacon, *The Compleat Arbitrator; or the Law of Awards; Containing, I. Plain and Easy Directions to All Kind of Arbitrators; What Matters May Be Submitted...* (London, 1770); Anonymous, *Arbitrium Redivivum, or, the Law of Arbitration* (London, 1694).

[230] For one study of arbitration see Robert Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, Ca. 1660-1725* (Cambridge, 1991).

[231] Landau, *The Justices of the Peace.*

[232] Michael Dalton, *The Country Justice: Containing the Practice of the Justices of the Peace out of Their Sessions* (London, 1705).

[233] There is evidence of these books being used in some of the records left by JPs, for example Centre for Kentish Studies, Diary kept by Sir Wyndham Knatchbull, Cks-U951 04; Paley, *Justice in Eighteenth-Century Hackney.*

the categories of offences and how a JP should proceed, which allow for an insight into the ideals of the legal system during the early eighteenth century, as proposed by lawyers and specialists. While we cannot be sure exactly how magistrates obtained knowledge of the law, Smollet mentions Burn in *Henry Clinker*: 'he had studied Burn with uncommon application', which suggests JPs would have been familiar with handbooks.[234] Peter King has suggested that JP's notebooks show that magistrates did not follow these handbooks, but the large number of reprints of books such as Richard Burn's *Justice of the Peace* or Michael Dalton's *Countrey Justice*, imply that they were widely known, as does Sir Wyndham Knatchbull's citation of his justice's manual when informing the justices of his division that all those bound in recognizances had to attend the Quarter Sessions.[235]

Historiography
Justicing Notebooks and Justices

Norma Landau's study of the Kent notebooks draws a group portrait of the work of eighteenth-century Kent JPs. Using a wide range of quantitative data drawn from various court records, notebooks and local administrative sources, Landau traces the political allegiance and social status of Kent justices, as well as examining the types of cases they dealt with and the administrative structure of the county. Her main argument is that 1679 to 1760 was 'a crucial stage in the self-transformation of England's most autonomous patriarchs into administrators for the nation'.[236] She claims that the period saw a move away from justices as 'patriarchal paternalists', protecting and reflecting the interests of their communities, to 'patrician paternalists', 'a mode of rule which replaced government by the gentry as eminent individuals with government by the rulers as a group'.[237]

Landau contends that this change was due to the appearance of, and arguments between, national political parties which had a significant impact on the local bench as appointments and removals were manipulated according to party loyalty. This in turn led to a greater number of JPs and the appointment of men of lesser rank, some of whom relied on the fees of their office and thus provided useful dispute resolution forums for the urban poor. Landau further argues that these changes led to a rise in the importance of petty sessions which detached a JP from his particular community and undercut the importance of the quarter sessions. Whilst Landau's work is important in studying the justices themselves, rather than just process, a clear picture of an eighteenth-century justice still does not emerge. Although a local Kent-based study, Landau sometimes overgeneralises and theorises the points that can be made from such a quantitative study. By exploring in greater detail the qualitative nature of the sources, this chapter will supplement Landau's picture of a justice of the peace.

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[234] Tobias Smollett, *The Expedition of Humphry Clinker'*, first published in 1771, (Chadwyck-Healey, 1996) Chapter 70.

[235] Peter King, *Crime, Justice and Discretion in England 1740-1820* (Oxford, 2000),p.88; Centre for Kentish Studies, Diary kept by Sir Wyndham Knatchbull, Cks-U951 04.

[236] Landau, *The Justices of the Peace*, p.5

[237] Ibid. p.15

Apart from Landau's work, justices' notebooks have generally been used as microstudies to focus on the work and social relationships of a single justice.[238] This is often due to the survival of records and the methodological challenges faced by historians working with these sources. Such expositions are limited in their scope as they fail to allow for wider conclusions to be drawn, focussing as they do on very specific local and temporal contexts. Despite these limitations, these accounts are highly descriptive and offer useful contextual detail, which is essential in analysing attitudes to authority.

Local magistrates in the eighteenth century had vastly differing practices. For example, Samuel Whitbread of Bedfordshire was available for business every day; Charles Matthews of Essex took examinations several times a week whilst Edmund Waller of Buckinghamshire only did business on Mondays and frequently went away for long periods.[239] The role of a justice of the peace (JP) was often a difficult one and could take up much time. Ruth Paley has suggested that

> To read through the entries in his notebook, in the knowledge that what appears there represents no more than a sizeable fraction of the totality of petty crime in Hackney, is to be left in no doubt of the unrelenting tedium of a justice's criminal business, made up as it was of an apparently interminable succession of assaults, occasionally enlivened by a few broken windows, the theft of the washerwoman's laundry or the arrival of an unlicensed pedlar.[240]

Frequently JPs were taken from the middling ranks and becoming a JP could be seen as a badge of social status for a man moving up in social position. The magistrates in Kent were not all from humble backgrounds and so would have had differing reasons for becoming a JP. Ruth Paley has demonstrated that a little of a man's character can be seen from the way he dealt with the business of the court and what he chose to record. In Paley's account, the Hackney magistrate Henry Norris comes across as a man with harsh authoritarian views, struggling for status, leading to the conclusion that class was important in his dealings. The Kent justices do not often record the occupation, status or class of those they submit to arbitration and so a comparison with Norris is difficult. However, as we shall see, their notebooks suggest that gender provoked a difference in treatment by magistrates.

Ruth Paley's discussion is focussed on Norris.[241] Over two-thirds of the offences brought before him between 1730-1753 involved some form of assault and in over 80% of these cases no further process was recorded, suggesting that a justice's warrant would force a settlement. Paley summarises her assessment of justices thus:

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[238] Ibid.
[239] King, *Crime, Justice and Discretion in England,* p.83.
[240] Paley, *Justice in Eighteenth-Century Hackney* , pp. IX-XXXIII.
[241] Ibid.

> Norris regularly committed poor men and women to gaol on the flimsiest of evidence, yet when poor people came to him for the protection of the law, he did his best to discourage them, offering a form of dispute arbitration instead…What these entries show us more clearly than anything else, is that for Norris, and probably also for most of his colleagues on the bench, there really was one law for the rich and another for the poor. [242]

The theme of polarisation between the classes when applying the law is prominent across historiography of the notebooks. However, the weakness of Paley's observation of a class difference in the use of negotiation and arbitration by the Hackney justice is that she is not able to relate this more substantially to the work of other justices. However, this weakness provides a useful methodological point that will be compared to the practices of the Kent justices in this chapter.

Another example of using a single notebook in order to analyse the relationship of the legal system to a local population is the work done by Gwenda Morgan and Peter Rushton for County Durham 1750-1764. In common with Paley, they found that *The Justicing Notebook of Edmund Tew* contained a large number of assaults, many without a formal conclusion. They concluded that:

> The local availability of the justice, however, provided a vital source of state authority which people could try to use for their own advantage or as a measure against their neighbours. To that extent, the magistrate allowed people to create their own social order.[243]

Studies based on individual notebooks are helpful as a starting point and have led Paley to suggest a clear class divide, while Morgan and Rushton suggested that the population used the law to their advantage. Both these interpretations highlight the importance of the locality and personality in shaping the local practice of justice and the relationships which influenced it. For example, Edmund Tew lived in the prosperous rural village of Bolden but his business as a justice involved the industrial areas of South Shields, Sunderland and Bishopswearmouth. The in-depth study of a JP's notebook has the advantage of providing important local context, however a limitation of the previous work on justice's notebooks is that by focussing on individual justices in isolation, general patterns of power relations and social order may have been missed.

Summary courts

Research on this level of proceeding has been generally limited to analysis of the process of how the courts worked and the aims of prosecutors and magistrates. Magistrates were not required to keep any formal records of preliminary hearings resulting in a paucity of records

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[242] Ibid.

[243] Gwenda Morgan and Peter Rushden, 'The Magistrate, the Community and the Maintenance of an Orderly Society in Eighteenth-Century England. ', *Historical Research*, 76 (2003), pp.54-77.

for other types of study.[244] Despite this, historians such as Peter King and Drew Gray have begun to use the few surviving minute books, petty sessions books and justices notebooks to build a wider picture of summary justice, particularly for the later eighteenth century. Drew Gray has shown how the summary courts were crucial to the regulation of violence in the City of London in the late eighteenth century.[245] In many cases the preliminary hearing of the summary court was the only trial and the aim of prosecutors was a hearing in a public place for public apologies and compensation. [246] Gray's argument, based on quantitative analysis allows a framework to be developed, against which the more fragmented material of the rural Kent justices can be assessed. The work of Peter King, although based on an urban area and for a later period, also suggests that many householders encountered the summary courts and this chapter will suggest that violent disputes were frequently solved at the summary level.[247] Both Drew Gray and Peter King agree that the summary courts blurred the line between civil and criminal procedure, 'The magistrates of the eighteenth century adopted neither a purely civil nor a purely criminal approach...The magistrates who manned the eighteenth-century summary courts were both adjudicators and arbitrators...'[248] Whilst both historians point out this phenomenon, neither offers exploration beyond the fact that assault was being treated as a civil matter and the justice's main role in such cases was as a mediator.[249] The research, to date, has tended to focus on the process inside the summary court, rather than the cultural meanings behind this.

King claims that the extensive range of decision-making opportunities available for a justice, juries and local groups allowed for a golden age of discretion.[250] This idea has been examined in depth for property crime, but there is a gap in the historiography with regards to what negotiation entailed in terms of violence, particularly for provincial areas in the early eighteenth century. This observation provides a starting point for the chapter in its examination of violent crime. While historians of the eighteenth-century criminal justice system such as King state that negotiation and discretion were an important part of the process, a lack of clarity with regards to what discretion, negotiation, mediation and arbitration actually meant to contemporaries and when these terms were used, can cause confusion.

In order to understand these concepts fully, it is necessary to follow the examples of the early modernists in their work on authority, and unpack the cultural influences surrounding them. In the early eighteenth century many of the old conceptions and value systems still strongly remained such as a belief in hierarchy and order, neighbourliness, and a spirit of

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[244] Shoemaker, *Prosecution and Punishment*;King, *Crime, Justice and Discretion in England.*

[245] Drew Gray, 'The Regulation of Violence in the Metropolis; the Prosecution of Assault in the Summary Courts, C. 1780-1820', *The London Journal*, 23:1 (2007), pp. 75-87, p.83 and p.76.

[246] Drew Gray, *Crime, Prosecution and Social Relations: The Summary Courts and the City of London in the Late Eighteenth Century* (Basingstoke, 2009).

[247] Peter King, 'The Summary Courts ', *Past & Present*, 183 (2004), pp.125-172 , p.132.

[248] Ibid. p.153.

[249] Gray, 'The Regulation of Violence in the Metropolis', p.75; King, 'The Summary Courts', p.148.

[250] King, *Crime, Justice and Discretion in England,* p.335.

hospitality.[251] Arbitration appealed to these value systems whilst at the same time introducing authority into the process of informal dispute settlement. It allowed disputants a space in which to resolve conflicts without recourse to litigation. It is important at this juncture to note that for contemporaries there appears to have been a distinction between going to authority in the form of a justice, or getting a recognisance and litigation which involved trial before a jury.[252] It is clear then that further investigation into the role of arbitration, mediation and the contexts surrounding these is needed to avoid pitfalls of generalisation. The meaning of discretion and negotiation at a local level is therefore explored here in order to expand our understanding of the relationship between the criminal law and eighteenth century social relations.

What was arbitration?

Arbitration was an important tool for the authorities, the disputants and the wider community. For the authorities it helped to maintain public order, for the disputants, summary justice was quick, of limited cost, provided recognition of their grievances and resulted in minimal loss of face. For the community it ensured speedy and smooth continuation of peaceful relations.

Prescriptive texts clearly assert that indictable offences such as assault and battery could not be submitted to arbitration. Burn explains the reason for this by stating: 'for it is for the good of the common wealth, that such offenders be made known and punished; and the King in such cases is a party, for whom other parties cannot undertake'.[253] Clearly then, arbitration in a legal sense without formal prosecution was not considered possible for violent offences due to the threat it posed to public order. The language of Burn makes it clear that an assault on an individual was not considered a private matter as it had greater effects on the public peace. However, once a formal prosecution had begun, arbitration could be considered. Burn reasoned that: 'if the party injured proceeds by way of action, as he may in assaults and batteries, libels and the like; the damages he sustained or expects to recover, may be submitted to arbitration: for in such case the action is for himself, and not for the King'.[254] Therefore, it appears that arbitration was legally available in cases of violence only once a suit had begun. An understanding of the complexities of the law in this way may go some way to understanding why people in this period appeared to be litigious.[255] The additional contextual information provided by the handbooks sheds light on

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[251] Julian Hoppit, *A Land of Liberty? England 1689-1727* (Oxford, 2002), chapter 3.

[252] See Steve Hindle,'The Keeping of the Public Peace'in P Griffith, A Fox and S Hindle, eds., *The Experience of Authority in Early Modern England* (London, 1996), pp.213-48 .

[253] Richard Burn, *The Justice of the Peace, and Parish Officer* (London, 1755), p.80.

[254] Ibid. p.80.

[255] See: Alexandra Shepard, 'Manhood, Credit and Patriarchy in Early Modern England C. 1580-1640', *Past and Present*, 167 (2000), pp. 75-106, p.80; Craig Muldrew, 'The Culture of Reconcilliation: Community and the Settlement of Economic Disputes in Early Modern England.', *The Historical Journal*, 39:4 (1996), pp. 915-942; Laurie Edelstein, 'An Accusation Easily to Be Made? Rape and Malicious Prosecution in Eighteenth-Century England', *The American Journal of Legal History*, 42:4 (1998), pp. 351-190, p.361; Lawrence Stone, 'Interpersonal Violence in English Society 1300-1980', *Past and Present*, 101 (1983), pp. 22-33, p.28.

patterns found in the court records. Beginning a legal suit may have been the only way to gain entry into the process of negotiating damages, leading to the blurring of boundaries between civil and criminal procedures which Drew Grey and Peter King have observed in the summary courts.

Although generally written for justices of the peace or other parish officers, the handbooks are clear that anyone could be an arbitrator as long as they had 'understanding' and were 'honest'.[256] Arbitrators were chosen by the disputing parties and as such there were not expected to be any difficulties with the decisions made. It was possible to have up to three arbitrators with one acting as an umpire to give a final judgement if the parties could not agree.[257] Steve Hindle has suggested that in practice mediators were chosen by disputants in the sixteenth century, but that this was not a very successful system, and that by the seventeenth century 'the desire for authoritative arbitration therefore led to a substantial increase in quasi-formal dispute settlement'.[258] It is highly likely that men other than justices were used as arbitrators, although little evidence survives. There is occasional mention of this in diaries such as that of Ralph Josselin, and clergymen were possibly the type of understanding and honest men chosen to assist in disputes.[259] Justices' notebooks contain evidence of arbitration and negotiation, particularly with regards to cases of violence, probably due to the unique legal position these crimes held in that they had to be seen to be prosecuted formally first.

Arbitration differed from normal legal process because:

> The Judges elected therein, may determine the Controversie not according to the Law, but according to their Opinion and Judgement as honest Men; or else because the Parties to the Controversie have submitted themselves to the Judgement of the Arbitrators, not by Compulsion or Coertion of the Law, but of their own accord'.[260]

Therefore the practice was more inclusive of the community than other forms of legal settlement, supporting the view of Morgan and Rushden that arbitration allowed people to create their own social order. In theory, it involved parties solving problems together rather than feeling that they had judgement forced upon them by an outside authority of which they had no ownership, although as the case of Clendon in 1743 will demonstrate, the practice was not always so beneficial to both parties. Because parties needed to feel involved in the process, it was important for arbitrators to understand 'when their Authority begins, and when it ends'.[261] Arbitration using a justice of the peace was popular because it injected some form of authority into the process whilst at the same time restoring community peace and preventing further expensive litigation. Steve Hindle has claimed that

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[256] Bacon, *Compleat Arbitrator,* p.73.
[257] Ibid. p.72.
[258] Hindle, 'The Keeping of the Public Peace', p.229.
[259] Alan Macfarlane, ed., *The Diary of Ralph Josselin, 1616-1683* (Oxford, 1991).
[260] Bacon, *Compleat Arbitrator*.
[261] Ibid. p.76.

the process of binding over enabled authority to work 'through the ordering of violence: a 'rite of violence' presided over by a magistrate regulated the right of violence'.[262] A close examination of these 'rites', of what occurred within the magistrates' rooms, allows us to further understand the dispute process and see the power relationships between participants, addressing one of the main questions of this chapter.

How were violent disputes solved in practice?

A good starting point for understanding how order was restored, and the resulting attitudes to the authority used to settle such disputes, is to look qualitatively at how disputes were solved in practice. Peter King has found that for urban summary courts, the most numerous category of offence involved an alleged assault or offence against the person as 'assault-related disputes constituted nearly twice' the proportion of property offences.[263] However, he has observed that:

> By contrast, in the rural areas of Essex theft accusations outnumbered assaults in every area except Lexden and Winstree. In Tendring the ratio was two to one against, and similar ratios are found in rural Bedfordshire and Wiltshire and in William Brockman's rural area of Kent. Further research is needed here, but from this sample it appears that urban dwellers had a much greater liking for assault-related disputes than those living in rural areas.[264]

Paul D'Aranda did not record hearing any cases of violence as a single justice, the majority of his work instead concerned settlement examinations and poor law disputes (26.2%) with the remainder spent on issuing certificates for victuallers and merchants (22.5%), investigating theft (16.2%) and other miscellaneous crimes such as grubbing up trees. D'Aranda instead preferred to hear the violent disputes at the petty sessions. However, when we look at D'Aranda's records for the petty sessions a different pattern emerges. For D'Aranda, violent disputes outnumbered property offences in a similar way to those in urban areas (see Table 1).

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[262] Hindle, 'The Keeping of the Public Peace', p.221.
[263] King, 'The Summary Courts', p.136.
[264] Ibid. p.137.

Category of Offence	Rural JPs			Urban JPs		
	Paul D'Aranda Kent 1708 (unpublished notebook)	Samuel Whitbread Beds 1810-14 (published notebook) [265]	William Hunt Wilts 1744-8 (published notebook)	Henry Norris Hackney 1730-41 (published notebook)	Mayor Brocas City of London 1729-30 (City of London's mayoral court)	Colchester 1770-2; 1799-1800 (petty sessions)
Offences involving property and its appropriation. (%)	11	20	42	23	28	12
Offences involving interpersonal violence, threat or defamation. (%)	20	12	29	64	51	52

Figure 4. A comparison of the caseloads of rural justices and urban justices with regards to violent crime.[266] **Source**: Peter King, "The Summary Courts and Social Relations in Eighteenth-Century England," Past & Present 183, no.1 (2004) p137 and the notebook of Paul D'Aranda.

King suggested that the higher number of assault cases in urban areas meant that urban dwellers were more litigious. However, the evidence from D'Aranda sheds doubt on this argument and it could be that it is a matter of sources instead. For example, King used justices' notebooks for his rural data and the petty sessions records for some of his urban data. D'Aranda offers a unique insight into the workings of the system as he is the only rural justice for which concurrent petty sessions records and a notebook are available. It thus appears that the populace of rural Kent did visit the JP proportionally as often as their urban counterparts with complaints of violent disputes;   however, instead of dealing with them immediately and recording this in his notebook, D'Aranda referred them to the petty sessions which he held approximately every week with another justice. By widening the lens of analysis to explore a range of sources, it is therefore possible to expose more of the patterns of behaviour. This glance into the summary system also reveals more of the views

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[265] King took his data from Paley, *Justice in Eighteenth-Century Hackney*; Shoemaker, *Prosecution and Punishment*; Alan F Cirkett, ed., *Samuel Whitbread's Notebooks, 1810-11, 1813-14* (Luton, 1971); Elizabeth Crittall, ed., *The Justicing Notebook of William Hunt* (1982).

[266] The numbers for Paul D'Aranda are possibly smaller due to differences in methods of data collection and organising categories. They include cases heard as a single justice and in sessions.

of justices about assault and indicates that cases of violence were often dealt with in a more formal setting than the other business of D'Aranda. Drew Gray has suggested that 'assault was being treated very much as a civil rather than a criminal matter' and argues that 'we need to rethink whether these are criminal courts within a criminal justice system...or are they better seen as an integral part of an arbitration service?'.[267]

The evidence of D'Aranda, although only the practice of one person, implies that violent disputes were seen as more than a civil matter. Therefore disputants went to the quasi formal petty sessions court, treating violent incidents in a more formal manner than disputes over property or wages. This may have been due to justices following the rules set out in the handbooks and believing that an assault was a crime against the order of the king rather than against an individual person. Perhaps it is better to rethink the treatment of assault as part of a system which not only encompasses the criminal justice system but wider issues of local culture, power and social relations. This research adds more complexity to Peter King's initial analysis of assault disputes.

Of all the assault cases dealt with by the justices, a large proportion involved some form of arbitration, even at the petty sessions. Justices of the peace have been described as negotiators and limiters by previous historians and a glance at the notebook of Sir Wyndham Knatchbull suggests that for assault cases, this was true.[268] Of seven cases of violence recorded between August 1734 and October 1741, Knatchbull records a clear reconciliation of the parties in three of the cases and no further action in two cases. One case, a rape, went to the assizes, and the last was a warrant for a wife to appear against her husband at the quarter sessions, with no further details recorded. Whilst it is clear that justices mediated between parties in order to achieve reconciliation, it should not be taken for granted that this was considered an informal or civil settlement. By exploring how key terms were used when negotiating for peace, it may be possible to get closer to an understanding of the concept of negotiation in the eighteenth century. Unfortunately the patchy survival of records means that there is not enough information for a clear pattern to emerge of the process of arbitration with regards to violent disputes. The process itself may have been highly individual, depending on the character and style of a particular justice. However, the snippets of cases recorded in the justices' notebooks do suggest several themes which shall be explored further here. To do this it is especially useful to examine the process of negotiation, focusing on the language and symbolism used. This approach is used in the next case to explore the themes of gender and class in dispute resolution.

On 30th January 1743/4, Mary Hunt the servant of John Clendon went to the JP Edward Filmer to complain about Clendon's treatment of her. In Filmer's examination, Hunt stated:

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[267] Gray, 'The Regulation of Violence in the Metropolis', pp.75, 84.
[268] See Landau, *The Justices of the Peace*; King, *Crime, Justice and Discretion in England* .

That she had not been in his [Clendon's] service above a Week before he began to be very rude to her in kissing & pulling her about...That he once offered her half a Guinea to let him have his will of her and said he would not get her with child...and she fear'd wou'd have overpower'd her if she had not cry'd out for help and she was hear'd cry out...upon which he say'd he wondered she was so cross, that his wife would hear her, and then let her go.[269]

The reverse of the examination contains a note from the 3rd February which suggests that some form of arbitration took place and that Hunt was paid compensation resulting in a satisfactory outcome for all parties: 'Received of the within named Mr John Clendon Clerk by the hands of Mr Waller the sum of three Guineas in full for his assaulting & seducing me to debauch me as within mentioned'. This case contains much of the regular business of the justice. Hunt complained that her master Clendon, a clergyman, was abusing her, which was a matter of serious concern. Filmer intervened in some way and three guineas were paid which can be seen as a form of conclusion perhaps through the restoration of social order. However, Filmer's records reveal that this case is not as simple as might first appear and that several pressures were applied to each party in order to stop this case from going to the quarter sessions. In addition, the use of mediation for this type of crime may have been unusual as Robert Shoemaker reports that in Middlesex the 1722 quarter session forbade arbitration for serious misdemeanors such as assaulting women with intent to rape. While no similar record has been found for Kent, justices may have been aware of the controversy surrounding arbitrations and the beliefs that their actions could be seen to be contributing to increasing crime rates. It is therefore interesting to consider why Filmer took this course of action, possibly because of the status of Clendon.

Arbitration was not always a positive experience, therefore, and this case demonstrates that it cannot be viewed as a neutral form of justice. The survival of contextual records suggests that behind apparently simple everyday cases found in the local courts, lay more complex issues of power and social relations, particularly with regards to gender. These issues, which may be overlooked when a case is taken at face value, provoke speculation over the beneficiaries of this system and call into question the notion of a golden age of discretion. A letter from Filmer to Clendon dated 31st January 1743/4 demonstrates this point:

I am very sorry to tell you that I had yesterday a most scandalous Information made against you by your servant Mary Hunt upon Oath for assaulting her in a very rude unseemly indecent manner...This from a Clergyman in Holy Orders that has taken upon the care of immortal souls...must be most shocking to every true Christian. Therefore Sr...for your own sake I hope you will stop this womans mouth & not make

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[269] Centre for Kentish Studies, Notebook and Papers Kept by Sir Edward Filmer as a Justice of the Peace, Cks-U120/Uk3.

your self a publick spectacle to the world – For if you don't give her satisfaction I must desire you to come before me & answer her complaint face to face.[270]

Later on in this letter Filmer threatens Clendon with divestiture and public humiliation if he does not 'stop this womans mouth'. Filmer, of course, had no formal power to do this, but Clendon's status as a clergyman was significant. The language used here suggests that although Filmer chastised Clendon, he still did not want this case to proceed to the quarter sessions. The letter suggests that the view of justice for Hunt was not public punishment and humiliation for Clendon but rather compensation and for the behaviour to stop. Filmer was protecting not only Clendon's interests, but also the reputation of the church and the authority of the clergy, by not allowing the case to proceed. However, Clendon was not in a position of total agency. He needed to capitulate to the authority and demands of the magistrate in order to protect himself. The motivations for these views were most likely complex and can only be guessed at, but again it is probable that behind each case for which we have only a snippet of text, there was a similar tangle of thoughts, actions and expressions closely linked to contemporary beliefs and ideals. A note dated 3rd February 1743/4 demonstrates the practice of negotiation: 'Mr Waller came to Mary Hunt in behalf of Mr Clendon...& desired her to make up ye matter with Mr Clendon & not let it be brought to ye sessions & she accepted of three Guineas for damages & agreed to stop any further prosecution if he would likewise give her under his hand that he would give her no Disturbance nor more molestation upon this account here after'. [271] In a time when a female domestic servant could expect to earn between £2 and £6 per year, three guineas could be equivalent to a year's wage.[272]

This is the only case in the records where a woman has 'made up' with a man and this could be read several ways. It could be interpreted that Hunt has worked her way to a satisfactory outcome of gaining compensation and an agreement of peace in the manner that two men in a violent dispute would. However, it should be remembered that Hunt is seen as Clendon's inferior both in terms of class and in gender and therefore it is unlikely that she would have any influence over the outcome of this case. In truth it seems that the outcome was manipulated by the authorities in order to achieve a swift restoration of peace and order. Steve Hindle has stated that 'historians should be more sensitive to the contours on the power structures which are all too often levelled by indiscriminate use of the term 'arbitration'.[273] The case of Hunt and Clendon illustrates his point. Although too often the sources contain just snippets, we should be aware of the stories behind the handshakes and compensation, and consider that arbitration was still an aspect of the legal system, albeit one with blurred boundaries and less formality than the quarter sessions courts. This case

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[270]Centre for Kentish Studies, Cks-U120/Uk3.

[271] Centre for Kentish Studies, Cks-U120/Uk3.

[272] Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'London History - Currency, Coinage and the Cost of Living', Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 20 November 2013).

[273] Hindle, 'The Keeping of the Public Peace'p.234.

was not typical of those detailed in the handbooks, which tended to discuss disputes over land, property or debts. However, both *Arbitrium Redivivum* and the *Compleat Arbitrator* insist that the outcome or 'compromise' should be fair to both parties and that those submitting to arbitration should not be compelled by threats. In practice it seems that impartiality was not completely achieved.[274]

A gender bias in magistrates' use of negotiation suggests that there were unwritten rules for its application, based on cultural concepts such as ideals of patriarchy, as discussed in the introduction to this thesis. An analysis of the language used in the notebook of Sir Wyndham Knatchbull reveals that he and his agents were more likely to persuade the parties to settle out of court if both were men. For example in the case of Thomas Gurkin against John Knowlden in 1734, Knatchbull records the memorandum that: 'No return has ever been made upon of sd Warrant; but I have heard that Mr Gook prevailed on him to make up the matter'.[275] Again when Daniel Wood claimed he was set upon in the road by Joseph Knight, Knatchbull and his assistants 'advised him to make the matter up, wh. he accordingly did to ye complainants satisfaction.'[276] Knatchbull may have been keen for men to settle their differences out of court due to the large number of assault cases brought before him which involved men fighting amongst each other. It is impossible to tell reliably from Knatchbull's records how many cases he dealt with but research from quarter sessions records and other notebooks has shown that statistically, assaults between men generally numbered large amongst complaints brought before a justice.[277] As equals in a patriarchal society, men were able to 'shake hands' and 'make-up' in a seemingly egalitarian manner before the law, although of course issues of class and other power relations may have had some impact on the actual settlement and willingness to participate in arbitration.

However, Knatchbull, in common with other justices at the time, did not seem to be so keen on negotiating peace when a woman was complaining of violence from a man. For example, he complained of a constable taking it upon himself to persuade Elizabeth Hill to make up with John Eady after a breach of the peace:

> This warrant was after 2 or 3 days returned to me again by ye hand of some person who was coming this way by whom ye Constable had sent it. And ye woman since told me that she had delivered it to ye constable, that he never executed it, but persuaded her against her own inclinations to make ye matter up with the man. Happening to me that the constable had done this out of mere ignorance, I proceeded no further than to reprimand him for it.[278]

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[274] Bacon, *Compleat Arbitrator,*; Anonymous, *Arbitrium Redivivum.*

[275] Centre for Kentish Studies, An Account of Warrants Issued by Sir Wyndham Knatchbull, Cks-U951 03 (Sept 20th 1734).

[276] Centre for Kentish Studies, An Account of Warrants Issued by Sir Wyndham Knatchbull, Cks-U951 03, (July 28 1735).

[277] See chapter one.

[278] Centre for Kentish Studies, An Account of Warrants Issued by Sir Wyndham Knatchbull, Cks-U951 03,

It is once again interesting to note that Knatchbull writes that the woman was persuaded against her own inclinations suggesting that, as in the case of Hunt, arbitration was not always a neutral affair between sexes. Perhaps Knatchbull was unhappy because he believed negotiation between parties should only be attempted when both were amenable to the idea, as the handbooks instructed, or perhaps he felt that the constable had overstepped his role; without further context it is impossible to know. However this case demonstrates that the process of arbitration was not a simple matter and involved several agents, each with their own agendas. Gwenda Morgan and Peter Rushden have also found a gender difference in the notebook of Edmund Tew, concluding that 'Magistrates, therefore, may have regarded men's assaults against women as more serious, and were more likely to refer them to the sessions'.[279] However, as shown in chapter one and discussed in detail in chapter five, violence by men against women in this period was not particularly unusual nor, depending on context, was it universally unacceptable. Therefore, it is also possible that magistrates were acting in this way because women were perhaps unable to participate fully in 'making up' due to their legal status, for example as 'femme coverts'.

A further note in Knatchbull's book from July 1735 suggests that the concept of negotiating not to go to court did not always mean mediation; instead it could consist of a reproach by the JP: 'Some days before came to me Eliz H- and - ... to complain agt. Richd Wrait...for having abused them in ye highway and offered to lye with them...sent for Wrait and admonished him befor them and on his promise to behave himself better for the future, they were intent to forgive him this time so I discharged him this time'.[280] Once again in this case there was no mention of reconciliation or arbitration. Instead, the man was admonished before the two women and they then forgave him. This supports the view that magistrates dealt with crimes by men against women differently, rather than more harshly. This incident could also be seen as a way in which the magistrate was used by the local community to maintain their own version of satisfaction and order.

In the case of Clendon there was also a class distinction, because Mary Hunt was a servant. It is probable that her status, as well as her gender affected the negotiation and outcome of this case. The Kent notebooks rarely mention the status or occupation of the participants, however, popular literature gives some insight into how this may have influenced the process. Justices were perceived to act differently according to the class of the defendant or plaintiff. In *The Life and Adventures of Sir Launcelot Greaves*, 1760, Tobias Smollett records a conversation between the Knight Sir Launcelot Greaves and a woman he is trying to assist, which illustrates stereotypes of the magistracy and an uneducated woman's view of it 'Mr Gobble...has always behaved like a magistrate, and treated them with the rigger of authority." – "In other words," said the knight, "he has tyrannised over the poor,

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(August 1734) .

[279] Morgan and Rushden, 'The Magistrate, the Community and the Maintenance of an Orderly Society ', p.70.

[280] Centre for Kentish Studies, An Account of Warrants Issued by Sir Wyndham Knatchbull, Cks-U951 03, (July 1735).

and connived at the vices of the rich....'[281] Ruth Paley has painted a similar portrait in her analysis of the notebook of Henry Norris. For Norris at least, there was one law for the rich, and another for the poor. Justices were both perceived to act differently according to the class of the plaintiff or defendant, and in practice, some did act in this manner.

Resolution

The main ritual in the process of arbitration appears to have been that of shaking hands. The shaking of hands was a common way of showing respect in the eighteenth-century both in terms of business and friendship. [282] An example of the ritual can be found in Paul D'Aranda's records of the sessions of 31 January 1707: 'Anne wife of Richd. Jenner accusing Elizabeth wife of Cowland of Sundridge of giving her much foul abusive language and beating her. The whole appearing to be only the effect of a sudden heat of words between Brothers and Sisters. They were perswaded to Reconcile forgive & shake hands with each other as they accordingly did'.

By encouraging the disputants to do this, D'Aranda was lending some authority and legality to the settlement. This case demonstrates how in the early eighteenth-century a private argument between family members was still very much a public affair. Robert Shoemaker has argued that during the eighteenth century there was a shift towards private rather than public violence, and whilst the notes of the justices do not allow us details of where the original incidents took place, the use of the summary courts as a public arena to air grievances suggests that for the early part of the century, in Kent at least, violent disputes were still a matter for public contestation and reparation.[283]

When bringing a violent dispute to a magistrate, it appears that prosecutors had some notion of the outcome they would be satisfied with. Ideas about what was acceptable are useful in understanding social relationships between those involved in the dispute. The outcome sought may have been public reconciliation as in the case of Anne Jenner above, or it could have been some form of financial recompense. This frequently took the form of the payment of any doctor's bills due as in the case of Simon Dane. Paul D'Aranda noted at the sessions on 25th September 1708: 'Simon Dane of Seal Labourer complaining of his having been much Beaten and abused by Robert Porter George Relfe & Thom Relfe on their submission asking excuse and promising satisfaction and to pay ye surgeon for curing ye wound Old Dane had Received in the Fray. Both parties were ordered to withdraw & agree as they did'.   William Simmonds received not only his bills but compensation for himself and payment for the witnesses; a note recorded on the back of his warrant by Filmer on 12th Oct 1753 reads: 'memdum that the within named Wm Simmons did this 12th day of Oct

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[281] Tobias Smollett, *The Life and Adventures of Sir Launcelot Greaves,* first published in 1760 (Chadwyck-Healey, 1996) (chapter12).

[282] Herman Roodenburg and Pieter Spierenburg, *Social Control in Europe: 1500-1800* (Columbus, 2004), p.315; Thomas Alan King, *The Gendering of Men, 1600-1750* (Madison, 2004), p.328.

[283] Robert Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London', *Social History*, 26:2 (2001), pp. 190-208; Robert Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England* (London, 2004).

1753 pay to the within named Wm Barrington 6s by way of damages & 2s to Mr Beckkett for curing his wounds & spent 2s more upon the witnesses yc'.

A note made by Paul D'Aranda about Joyce Matthews reveals that money for damages could include loss of time, suggesting that violence was seen as detrimental to social order by wasting time and working hours. This note, made on 17th July 1708, also demonstrates that prosecutors did not always get the amount of compensation they requested:

> Joyce Matthews appear alledging yt she would bring security for ye Parish of Westerham, but yt she hath been abused & wounded by Judith ye wife of Jn Wood & yt her Dr & Surgeons Bills amt to £5:- & ye loss of her time & other charges came to more than 3 Guineas & yt if ye said Judith pay her ye £8:-1:6 She'll discharge her. Ordered that ye said Joyce Matthews have 3 weeks time to bring a certificate to ye said Parish or to depart from it. And that ye said Judith Wood do pay to ye said Joyce Five pounds & 3 Guineas forthwith.

Three guineas was a large sum and it is unfortunate that D'Aranda does not reveal what the charges were that Matthews incurred. Aside from this case however, wherever money changed hands, it was generally small amounts or covered costs already incurred such as doctor's bills or the amount paid for the warrant as in the case of Thomas Clark; Filmer records on the back of his warrant: 'Nov 11th 1749 ' Mentioned Thoms Clark agreed to discharge the complaint within upon Thomas Knight paying him 2/s & 11 for paying for ye warrant'. This suggests that the main aim of prosecutors was a public airing of their grievance and then a return on any money spent, with the possibility of further compensation in only a very few cases. This aim was balanced by the accused's desire to resolve disputes without a great deal of publicity, as in the case of Clendon, resulting in arbitration and negotiation as a reasonable outcome for both parties in many situations. Norma Landau has argued that: 'When eighteenth-century prosecutors brought indictments for assault, riot, or other non-felonious offences against the person, their goal was not punishment of the defendant, but instead the extraction of payment, or less frequently, apology from the defendant'.[284] Landau therefore implies that cases were brought to court for more complex reasons that those stated on an indictment and that prosecutors were litigious for profit. The cases analysed here add further to our understanding of these complexities and suggest that appeals to court were important outcomes in themselves as prosecutors sought not only money or retribution. Although defendants were not punished in a retributive sense, the use of a variety of public arenas and appeal to the authority of the justice should not be underestimated.

The terms used by disputants and justices can give further insight into the aims of each party. In the case of Harry Gold, the justice warned him that he should 'not have carried

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[284] Norma Landau, 'Indictment for Fun and Profit: A Prosecutor's Reward at Eighteenth-Century Quarter Sessions', *Law and History Review*, 17:3 (1999), pp. 507-536.

malice about him so long' and instead should have sought a legal remedy.[285] This outcome was preferable for the justice as it allowed him to gain control of the situation. A legal remedy did not necessarily mean prosecution and could include 'making up'. Whichever method was used it was preferable for unresolved conflicts or resolution by violence for both the general populace and the justices for several reasons. For the justices, it allowed authoritative control over small disputes, stopping them from becoming larger issues, whilst for the general populace it provided an ordered resolution for disputes without large cost or loss of face. The summary courts were places where grievances were dealt with swiftly and therefore should have avoided any long term disputes or build-up of resentment. Gold however felt justified in using violence for an old complaint suggesting that the system had not worked for him, or that he had not used the system in the way that his accuser did. Again this suggests that magistrates were seen as an accessible way for the poor to gain their own legal advantage or to prevent their neighbours from doing so.

There is evidence in the notebooks that prosecutors tried their own form of mediation before turning to a justice, again suggesting that the local communities were *au fait* with the process of law. Edward Filmer received a letter from Thomas Sloman on 10th December 1750 which stated:

> Sr my service to you desiring your Honour if you please to send a warrant by my wife according to law against Stepn Ofmar Ale-house keeper in Headcorn aforesaid living in the half Hundred of iron who is Borsholder of the said Circuit for abuses that he gave one Evening throwing of my wife against a Dresser in his own house by which means my wife has received hurt by so doing and also I have sent him a letter for to come to agree with me and my wife and he doth not apply any answer to me for Recompense and Satisfaction therefore I Beg of you to send the warrant not for us to agree at home but to be brought before your Honr or some other Justices.[286]

Sloman was obviously seeking compensation for his wife's injuries but he was also seeking 'satisfaction'. It is impossible to identify what this may have been but it is possible it was some form of recognition of the wrong he and his wife had suffered.

The pattern of negotiation and apparent readiness of parties to participate also suggests a number of things about the relationship of the legal system to the people. Men and women in these cases went to the law but not to court implying that official recognition of their complaint was sufficient to enact a conclusion. Morgan and Rushden have also proposed that the rarity of actual court action demonstrates that assault was primarily viewed as a private matter.[287] This argument is interesting as, although an appeal to a justice could be

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[285] Centre for Kentish Studies, Notebook and Papers Kept by Sir Edward Filmer as a Justice of the Peace, Cks-U120/Uk3

[286] Centre for Kentish Studies, Notebook and Papers Kept by Sir Edward Filmer as a Justice of the Peace, Cks-U120/Uk3

[287] Morgan and Rushden, 'The Magistrate, the Community and the Maintenance of an Orderly Society'', p.71.

seen as making an argument public, it would not have been as much of a spectacle as a court case and therefore could have been a middle ground for participants in the law between private dispute and public accusation. However, the rarity of prosecutors going to the quarter sessions could have a more simple explanation. If the summary courts allowed them to air their grievances quickly, cheaply and regain their expenses rather than punishment for the accused, it may have been a more practical option for many people.

Collective action

The justices' notes demonstrate that the community was involved in the maintenance of the public peace and a summary court would have been part of that procedure. Collective action was used to maintain order both by upholding the behaviour of community members and by ensuring that those involved in the legal system carried out their jobs effectively. On Sept 30th 1708 Paul D'Aranda recorded an examination of Robert Russell as a witness to an attempted rape by William Hammond. Russell revealed how another man had ensured Hammond's good behaviour by using his own form of surety or bond:

> Ann Willicks going over the Gate into the wood… the said Wm Hammond said he would only bring her through the wood and return to them presently and they, the said Examinant and Thomas Capon expressing doubt of ye said Wm Hammond's staying too long, he ye said Wm Hammond, gave this Examinant a shilling into his hand, to be forfeited if he did not return to them within half an hour at farthest, and then he the said Wm Hammond followd her ye said Ann Willicks over the Gate and went with her into the wood; and this Examinant with Thomas Capon sat down on a Bank …waited there… till the said Wm Hammond return's so certainly within the appointed half hour that he this Examinant return's to him the shilling which he had reciev'd of him [288]

This passage demonstrates how there was a congruence between local custom and the legal system. The men of the community used the legal form of binding someone over for good behaviour and in their own way ensured the good behaviour and protection of their friends. This case shows how the legal system was intertwined with the cultural life of the local populace and that the men had a good knowledge of the procedures of the law, more of which can be seen in the chapters on smuggling. The legal system itself was not separate from the community, extra-legal processes such as community pressure were just as important for maintaining the public peace.

While not always available, the justice was an access point for the community to press for further investigation into local matters. Although murder was a felony and tried at the assizes, it was up to a justice to investigate in the initial stages. Sir Wyndham Knatchbull wrote in his notebook of sittings on 6th September 1735:

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[288] Centre for Kentish Studies, Note book, CKS-U442/9/3/4.

> The greatest part of this day was spent in the taking of depositions of witnesses concerning a maid of one Houghton a Maltster at Ashford who was found drowned in a Cistern of her master's – day of July last. The coroner had sat upon her and brought in their verdict that she had made away with herself. But some circumstances were talked of afterwards that gave room for suspecting that her master had made away with her upon which the relations of the maid applied to the justices to examine further into the matter, wch they accordingly did this day. But by all the evidence that was examined it did not appear that the master was guilty.[289]

Knatchbull's notes demonstrate once again the power of collective action. The justice was used by the family to investigate common rumour, demonstrating clearly the relationship of the legal system to the community, not just as an enforcer but in a patriarchal capacity working to solve problems. As suicide or self-murder was considered both a crime and a sin, it is not surprising that the young girl's family wanted her death reinvestigated, particularly as it seems that there were many female witnesses who found the death suspicious.

> The most suspicious parts of it were what the wife of one Snowed said her husband had told her, viz: that he saw Houghton and his wife between 12 and 1 o clock in the night in a storeroom adjoining to ye Malthouse water Ciston in close conversation with each other of them and what Mrs Swineyard and a Midwife deposed; viz: that upon turning up the muffler on one side of her throat at ye time as ye coroner was sitting on her, she perceived her throat to be very dark under it as far as she turned it up. One of her hands was likewise black. Those who were present when she was taken out of the cistern affirmed that her eyes and mouth were closed.[290]

The context provided here demonstrates the collective power of women within the legal system. The midwife and Mrs Swineyard were likely to know the rest of the local community more intimately than the justice, yet were still part of the judicial process. This demonstrates the interplay between the community and the law. In order for murder to be proved the justice had to find evidence of malice or forethought. It seems that the accused may also have had some awareness of this need for evidence as the above statement clearly points to the Maltster and his wife in the area of the death, perhaps suggesting they were lying in wait or acting suspiciously. The evidence of the midwife too suggests evidence of violence. It appears that several locals believed that the maid may have been having an affair and was pregnant. It is quite possible that she was carrying her master's child, adding fuel to rumours that he had killed her. The coroner and his jury did not examine the girl in great detail, perhaps assuming that an unmarried pregnant maid was likely to want to 'make away with herself'.

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[289]Centre for Kentish Studies, Diary kept by Sir Wyndham Knatchbull, Cks-U951 04 (Sept 6th 1735).
[290]Centre for Kentish Studies, Diary kept by Sir Wyndham Knatchbull, Cks-U951.

Mr March and Mr. Adcock who were on the jury said that they did not perceive any marks of violence on the body. That their chief enquiry was to know how far she was gone with Child for which purpose they opened her belly, but no other part of her. And that, not suspecting in the least at that time but that she had made away with herself, they did not examine all her other part so nicely as they might have done, if they had any other suspicions. That Mr Marsh did unpin her cap and tilt her head all over but as to the matter they all agreed it was not taken off. The wife of Snowed and another woman who assisted in laying her forth did both say that they perceived a swelling on one side of her throat; and Snoads wife said that the day after she observed a blackness in that part of her throat. She likewise said she made the bed of the deceased and was pretty certain that no body had been in it, although it was much humbled. That her shoes stood by the bed buckled as when they were on. All that saw her soon after she was taken out of the cistern agreed that she had her stays and all her cloaths on wch she wore the day before she was found except for her shoes and apron and that she had put on her nightcap.[291]

Knatchbull records that the master did not appear to be guilty and the charge was dropped. A clear gender and class bias can be seen in the treatment of this case. The coroner's jury stated that their chief aim was to find out how pregnant she was and that they did not at any time suspect any other verdict but suicide, leading to a less than thorough examination. The phase 'at that time' suggests that suspicions and feelings changed over time in a similar way to the case of Harry Gold above. The system of summary courts was intended to deal with these problems quickly in order to return the balance of order. There were however several women who called for justice for the maid detailing marks of violence and possible motives. Whilst their voices were heard to some extent, in that Knatchbull spent 'the greatest part of this day' examining witnesses, he did not record the maid's name in his book suggesting she was inconsequential to him and the evidence of the women did not make any difference to the verdict. It is possible that Knatchbull believed that a public airing of the rumours might satisfy the women. This case therefore demonstrates how the local poor could use collective action to push for verdicts but that the power remained with the justices.

Conclusion

This analysis has shown that violent crime was a small proportion of that recorded in justicing notebooks. Of the violence they recorded, the majority, like the quarter sessions, involved assault. Therefore while the sample size was too small to do a detailed quantitative analysis, these numbers contribute further to the picture gained in chapter one. They also provided a starting point for a qualitative contextual analysis as they situated cases within this wider context.

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[291] Centre for Kentish Studies, Diary kept by Sir Wyndham Knatchbull, Cks-U951 04.

Disputes about violence were solved through a mix of informal and formal processes which involved the whole community. Extra-legal procedure was just as powerful and ritualised as those which involved the legal system. Informal dispute settlement was used not only due to practical benefits such as cost and convenience, but it also allowed the freedom of involvement of the community in their own policing.

One of the more significant findings to emerge from this study is that the meaning of negotiation for people in the eighteenth century was a complex matter. In order to understand this it has been necessary to discuss the language and practice of negotiation for individuals, rather than simply look at the legal process. This approach has been influenced by historians of the early modern period, as well as the eighteenth-century historiography of crime. This chapter has demonstrated that negotiation meant different things to different people and was infused with issues of power, gender and class. For the JP, as Landau discovered, arbitration provided a means of upholding their power in the community and sealing their position as a community leader. For disputants, arbitration provided active participation in the outcomes of their case at a low risk. And for the community it allowed involvement in upholding collective values and the public peace as well as an investment in local governance.

Whilst it has not been possible to create clear links between the class of disputants and their treatment by magistrates in the way that Ruth Paley did for Hackney, what has emerged from examining novels and conduct literature, as well as from observing gender differences in settling violent disputes, is support for Paley's view that there was 'one rule for the rich'. This attitude was likely not to have been restricted to Norris, but also informed the magistrates of this study in their relationship to the local community. This study has also found evidence, in the form of communal actions, that Morgan and Rushden's assertion that the local populace manoeuvred around the magistrate to create their own social order can be generalised. This provides a picture of the eighteenth-century magistrate as a resource used by the local people, rather than as a simple authority figure. Care should be taken not to oversimplify this picture however, as analysis of the cases has demonstrated that although arbitration involved parties and allowed them to participate in making the law, they were still subject to issues of power and authority beyond their control.

The findings from this study make several contributions to the current literature. First they confirm and generalise conclusions from other studies on justices' notebooks, second they provide a useful methodological framework which may be used to further the history of crime in the eighteenth century by demonstrating the importance of contextualising sources and exploring cultural meanings as well as process. Third they demonstrate that negotiation was a contested concept, one in which on the surface parties may have seemed satisfied, but underneath consisted of power struggles for authority. Finally this chapter has demonstrated that the law in terms of arbitration cannot be seen as solely a matter of the criminal justice system, instead it informs and is informed by the society in which it exists.

Chapter one provided a further understanding of the patterns of prosecution at the quarter session level. This chapter has looked deeper at the relationships between justices and the local populace. Chapter three widens the scope of analysis to further explore these concepts of negotiation and interaction between authorities and individuals on a grand scale.

Official reactions to large scale violence: smuggling in Kent and Sussex

Introduction

During the early part of the eighteenth century, Sussex and Kent became a major site for smuggling. The early small scale activities of Owlers had developed into large gangs smuggling tea, tobacco and spirits from the continent.[292] One conservative estimate stated that smugglers accounted for a share of one third of legitimate trade with Holland and France in 1733 and further evidence of an upsurge in smuggling can be seen in the early 1740s when the legal markets contracted by 50 per cent.[293] Throughout the 1740s, the counties of Sussex and Kent were the scenes of violent clashes between smugglers and the state which were increasingly concerning customs officials, the courts and newspapers. The Duke of Richmond was particularly worried about the implications of allowing these activities to continue:

> For this is not only murders of the deepest dye attended with the most shocking circumstances of cruelty but also committed by whole gangs of villains in open defiance of the laws and all government whatsoever. So though it may not be treason in law, I am sure it is so in common sense.[294]

Reports of gangs of seventy men and eighty horses, seizing thirty or forty hundredweight of tea while fighting off customs officers, can be regularly found in the above sources.[295] The levels of violence associated with smuggling in the South East, and the elite responses to that violence are specific to this area and are not typical of the country as a whole.[296] Any study of violence in these counties must therefore take incidents of smugglers' violence into account. However, despite the concern smuggling caused contemporaries, its history remains an underdeveloped field of enquiry, perhaps due to the patchy nature of the sources and the difficulty of placing the topic within historiographical frameworks. Discussion of the increase in eighteenth century smuggling has been fragmented, with interpretations falling to either economic or social historians, and little dialogue between

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[292] An Owler was an export smuggler who dealt in wool.

[293] G. D. Ramsay, 'The Smugglers' Trade: A Neglected Aspect of English Commercial Development', Transactions of the Royal Historical Society, Fifth Series, 2 (1952), pp. 131-157, p.135; Hoh-Cheung and Lorna H. Mui, ''Trends in Eighteenth-Century Smuggling' Reconsidered', *The Economic History Review*, 28:1 (1975), pp. 28-43, p.51.

[294] East Sussex Record Office, Typescript and manuscript draft material, Sayer 3872.

[295] See for example *Old Bailey Proceedings* Online (www.oldbaileyonline.org, version 7.0, 19 November 2013), September 1747, trial of THOMAS PURYOUR , otherwise called and known by the Name of Blacktooth (t17470909-36); West Sussex Record Office, Papers Relating to Smuggling, Goodwood manuscripts MS154-6; The National Archives, Customs Briefs in Smuggling Cases, Kent, CUST 41/42, 1734 – 1744; The National Archives, Treasury Board: Minute Books, T29, 1667-1870.

[296] Frank McLynn, *Crime and Punishment in Eighteenth Century England* (London and New York, 2002), p.196.

each group. As a result, our understanding of the violence involved and its relationship to wider social and economic trends continue to be unclear.

Following on from examination in the previous chapters of an ordered response to small-scale violence, the next three chapters explore violence across a wider geographical area, beginning with a focus on smugglers from Sussex and Kent. Smuggling is important to investigate because it was an economic activity which cut across boundaries of class, nationality and identity. In addition, this created a culture of violence, in which economic dealings brought specific social and political repercussions. Chapters one and two analysed how officials such as JPs and the courts dealt with individual cases of violence. This chapter seeks to understand how large scale violence, which involved a great number of people over a wide geographical area, required officials to react in a variety of ways, and deploy a diverse range of resources in response. This broader repertoire of reactions drew in an assortment of people, from local customs officers and land agents to MPs and large organisations such as the revenue office. By exploring how the authorities reacted to smuggling it is possible to understand the relationship between the perpetrators of large scale violence and those trying to prevent it, as well as the impact these interactions had on community and social structures.

Of the cases of smuggler-related violence, one in particular seized the imagination of local elites and became highly publicised: the murders of William Galley and Daniel Chater in 1748. [297] Two land-based groups, known as the Hawkhurst Gang and the East-Country People, had stormed the Customs House at Poole on the night of the 6th October 1747 and reclaimed tea and spirits which revenue officers had previously seized from sea smugglers. They travelled back through Fordingbridge and John Diamond (also known as Dimar) reportedly gave a bag of tea to Daniel Chater, a former work colleague. A royal proclamation was issued which promised a reward for apprehending those concerned in the raid and John Diamond was taken into custody. However, no-one could be found to appear as witness against him. Eventually the Collector of Southampton persuaded Daniel Chater to give evidence to the Justice of the Peace and sent William Galley, an elderly tidewaiter, with him. Chater and Galley left on 14th February 1748 and stopped at the White Hart tavern in Rowlands Castle, where the Hawkhurst gang were alerted. The Gang took the two men prisoner and whipped them to Lady Holt Park. [298] Galley fell from his horse and was buried, whilst Chater was tied up for three days. Chater was then thrown down a well and murdered. Galley's body was found on 15th September 1758 and two smugglers turned informant revealed the whereabouts of the body of Chater. The Duke of Richmond, a major land owner, requested that a special Assize be held in Sussex to bring the culprits to trial.

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[297] Anonymous, *A Full and Genuine History of the Inhuman and Unparrallell'd Murders of Mr. William Galley, ... And Mr. Daniel Chater,* (London, 1749), p.290. Previously the murder of Thomas Carswell in 1740 had gained some attention, but this was limited to a brief description in the press. See West Sussex Record Office, 'Papers Relating to Smuggling'.

[298] See figure 1.

Figure 1: The locations important in the murders of Chater and Galley.

In comparison to the other forms of violence explored in this thesis, the violence perpetrated by and against smugglers has produced a wealth of qualitative sources. This wealth of material means it is possible to explore smuggling from the view of both smugglers and the authorities, to reveal the complicated interactions between violence perpetrated and experienced by both those in power and those subject to it. The particular nature and circumstances of reactions to smugglers' violence reveal important aspects of contemporary attitudes, including the boundary between legitimate and illegitimate violence and the relationship between the state and the governed. This chapter looks at the fight between those challenging this order and those trying to maintain it, and explores how the authorities, working in a legal context, resisted the violence of smugglers and negotiated social and political authority in the region. As has been stated, smuggling in the South East was unusual in terms of the elite response to it. This chapter explores these responses and the reasons for their distinctiveness concluding that the personalities of Sussex landowners had much to do with these reactions.

Historiography

There has been little work on the portrayal of smugglers in the eighteenth century, and the social and cultural history of smugglers and their opponents has many gaps. A few historians have touched on the culture of violence surrounding smuggling, but this has tended to be only as an illustration of their arguments about crime or economics. Until recently, historians have focussed on two separate interpretations of the boom in smuggling in the eighteenth century. A strong tradition sees smuggling as an assertion of popular rights, with locals fighting against an increasingly intrusive government.[299] This view was

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[299] Hoh-Cheung and Mui, ''Trends in Eighteenth-Century Smuggling' Reconsidered';Richard Platt, *Smuggling in the British Isles* (Chalford, 2007); W. A. Cole, 'Trends in Eighteenth-Century Smuggling', *Economic History Review*, 10:3 (1958), pp. 395-410; F. F. Nicholls, *Honest Thieves: The Violent Heyday of English Smuggling* (London, 1973); Geoffrey Hufton and Elaine Baird, *Scarecrow's Legion: Smuggling in Sussex and Kent* (Sittingbourne, 1983); Paul Muskett, 'English Smuggling in the Eighteenth Century' (Unpublished Phd Thesis,

explored further in the 1970s by Cal Winslow, who claimed that smuggling in Sussex and Kent in the 1740s could be seen as a 'social crime' in which smugglers protested against capitalist landowners who had curtailed their customary rights.[300] In contrast, economic historians have described smuggling as 'big business' bringing about commercial change.[301] The apparent incompatibility of these arguments has led to a lack of progress in research. How could an interpretation of smugglers' violence as a form of protest against commercialisation be compatible with the idea of them as commercial innovators? In trying to reconcile these interpretations, John Styles criticised the 'social crime' model and demonstrated that crime and economic success could be interdependent.[302] More recently, Paul Monod has added a third dimension, that of politics. He has claimed that smugglers could be both social conservatives and commercialists and proposed that smuggling provided a picture of an 'alternative commercial culture', 'shaped less by individualism than by the concept of community in which diverse interests coalesced for the good of the whole.'[303] Each of these interpretations has explored the practices and motivations for smuggling. However, there is more to be understood about social relations and community structures within the South East, focussing instead on the context and meaning of the violent incidents recorded. Therefore this chapter looks at the violent culture surrounding smugglers' which has been neglected in considering the reactions to particular incidents.

Sources and methodology

A wide range of sources are drawn on, which allows to some extent corroboration of events, and hints at the meanings behind actions.[304] None of the sources however, were written by the smugglers themselves and so care must be taken when analysing them. Private papers of the Duke of Richmond, newspapers, the Ordinary of Newgate and Old Bailey accounts, an assortment of letters and papers relating to smuggling collected by customs man, John Collier, and a published account of the Chater and Galley case from 1749 have all been used here.[305] Although it is possible to see that records of smuggling and the violence associated with it increased in the early eighteenth century, it has not been possible to quantify this increase. This is because the records associated with smuggling are to be found in so many different places. Cases went to a variety of courts including the quarter sessions, the assizes, the old bailey, and the privy council. Records of cases can also be found in the national

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Open University, 1996); Paul Monod, 'Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690-1760', *The Journal of British Studies*, 30 :2(1991), pp. 150-182.

[300] Cal Winslow, 'Sussex Smugglers', in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, eds., *Albion's Fatal Tree. Crime and Society in Eighteenth Century England* (New York, 1975);E. P. Thompson, *Whigs and Hunters: Origin of the Black Act* (London, 1977); E P Thompson, *The Making of the English Working Class* (London, 1963), p. 838.

[301] Hoh-Cheung and Mui, ''Trends in Eighteenth-Century Smuggling' Reconsidered'.

[302] John Brewer and John Styles, *An Ungovernable People* (London, 1980).

[303] Monod, 'Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690-1760',p.180.

[304] James C Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven and London, 1990),p.ix.

[305] *A Full and Genuine History*; East Sussex Record Office, Collier papers relating to Custom House matters, 1713-1720 and 1734-1736, SAY/4/11/1/3870.

archives of treasury, tax, customs and excise as well as newspapers and private notes and diaries. It is very difficult to separate each of these accounts or to discover which records relate to the same case in order to provide a quantitative count of the number of cases each year. This task is beyond the remit of this thesis. However, from exploring the records, it is possible to see that there was an increase in the number of incidents recorded, particularly in the 1740's.

The Goodwood Estate Archives Family Papers contain numerous papers, newspaper articles, trial records and depositions pertaining to smuggling. These were kept by Charles Lennox, the second Duke of Richmond and can be found in two folders. 'Goodwood 155' relates to the attack on Poole Customs House and the murders of Chater and Galley. 'Goodwood 154' contains miscellaneous papers and notes regarding smugglers and smuggling. These records were produced by administrators and men working to prevent smuggling, and as such portray the history of the law rather than the history of crime or the criminal. The papers reveal that Lennox had a network of paid agents active from London to Holland. He had support from important Whigs in government such as the Prime Minister Henry Pelham, - Pelham's brother, the Duke of Newcastle, and their friend, Lord Hardwicke. The London justice of the peace, Henry Fielding also assisted Lennox in interviewing suspects accused of smuggling.

The law itself was not static and its interpretation by justices and administrators reflected contemporary thoughts and feelings about current threats to security as much as real levels of crime. Douglas Hay has written that 'the upper class hold on power remained strong throughout the period' suggesting that the actions of men such as the Duke of Richmond could have influenced the labouring poor in the surrounding area. [306] Historians have pondered why Richmond was so aggressive in his pursuit of smugglers, with the majority suggesting that he was prompted by anti-jacobitism due to his friendship with the Pelhams.[307] However the following examination suggests it is also possible that he was acting from a sense of social responsibility or because his power base of West Sussex was threatened by the gangs.

There are no local newspapers available for eastern Sussex and western Kent for the early eighteenth century, as few were printed and none for this period survive.[308] However, records of the smugglers' activities and their violence did occasionally appear in the London papers and the names of smugglers to be apprehended were published in the *Gazette.* These papers show how smuggling was perceived and portrayed by wider society and give

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[306] Douglas Hay, 'Crime and Justice in Eighteenth and Nineteenth-Century England', *Crime and Justice*, 2 (1980), pp. 45-84, p.46.

[307] See McLynn, *Crime and Punishment in Eighteenth Century England*, p.187; Monod, 'Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690-1760'.

[308] The Kentish Post covering East Kent began in 1717. The earliest paper for Sussex is the Sussex Weekly advertiser which began in 1746; however examples only exist from 1751. The Kentish Gazette began in 1768.

clues as to the contexts of violence which can be built up in order to see common patterns of violence perpetrated by the smugglers.

As several of the smugglers were tried in the Old Bailey, the Ordinary of Newgate's accounts have also been explored. Whilst there are glimpses of the smugglers' words in the depositions from the Old Bailey, these answers were not recorded verbatim and so were to some extent still modified by the authorities. The Ordinaries' accounts too, were formulaic and had an agenda of instructing principles of morality, order, and correct living through fear of punishment and the morals provided at the end. Therefore, mothers were encouraged to read these books and pamphlets to children and servants.[309] However, historians have found that at the same time as being didactic and stereotyped, this popular literature was usually correct in terms of the bare facts.[310] The accounts of smugglers lives tend to follow the same patterns as has been found for other criminals. For example, Phillip Rawlings writes that 'a typical plot was that of the hardworking apprentice from a poor but honest background, who, through contact with "bad company"...becomes a criminal'.[311] The identity of a violent criminal both shaped and was shaped by these narratives. When using only the Ordinary's accounts, it is impossible to know to what extent the smugglers' stories were influenced by popular fiction. However, Andrea McKenzie amongst others has shown that executions were often discursive places and that 'the condemned could, within the boundaries of convention, nonetheless exercise some choice in terms of expression'.[312] The way in which a person died, as well as his or her words could be used by the condemned to leave a last message and therefore some minor insight into their beliefs and identity.

More information about the practices of customs men is held in the Sayer Archive in East Sussex. This contains the papers of John Collier (1685-1760) who was the Surveyor General of the Riding Officers of the Customs for Kent from 1733 until 1756, a post he obtained with the help of the Duke of Newcastle, and which offered an annual salary of approximately £200. Collier appears to have been a politically ambitious man holding the offices of town clerk and mayor of Hastings, solicitor of the Cinque Ports, Usher and Cryer at the Kings Bench, the Duke of Newcastle's land agent in Hastings and the agent of the Pelham family amongst other notable families.   Collier was a serious opponent of smuggling and his papers include various notes, evidence taken against smugglers and over 2000 letters concerning customs business. These provide a useful insight into the power relations in the gang as well as concerns of the authorities and the mindset of informers.

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[309] Janel M. Mueller, *The Cambridge History of Early Modern English Literature* (Cambridge, 2002).

[310] See J.A. Sharpe, '"Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth Century England', *Past and Present*, 107 (1985), pp. 144-167, p.148.

[311] Philip Rawlings, *Drunks, Whores, and Idle Apprentices: Criminal Biographies of the Eighteenth Century* (Oxford, 1992).

[312] Andrea McKenzie, 'Martyrs in Low Life? Dying "Game" in Augustan England', *The Journal of British Studies*, 42:2 (2003), pp. 167-295, p.172.

The murders of Galley & Chater generated a pamphlet literature, and in particular the key source of a published book. *A Full and Genuine History of the Inhuman and Unparallel'd Murders of Mr. William Galley, a custom-house officer, and Mr. Daniel Chater, a shoemaker, by fourteen notorious smugglers* written by an anonymous author,* is used here to analyse reactions to the murder. There were several editions of this book beginning with four print runs in 1749 and continuing throughout the eighteenth century which attested to its popularity. It was then reprinted in 1779 when smuggling was once again troubling the authorities, with the author now given as 'A Gentleman at Chichester'. Originally published in parts, this book contains a detailed summary of the murders, along with records of the trial and a description of the execution. It also contains details of other trials of Sussex smugglers as well as a selection of sermons. The book was illustrated with seven plates 'descriptive of the barbarous cruelties'. This would have made the book expensive to produce, although no price is recorded for it. The author chose to remain anonymous, perhaps to protect himself from retribution, but there has been speculation, both at the time and by historians since, that it was written by Charles Lennox, the Duke of Richmond, or possibly an agent of his. This is due to his notes showing that Lennox made it his personal mission to bring the smugglers to justice. [313] Lennox would have had the funds, as well as the motive of maintaining authority in Sussex, to publish such a book. If the book was written by him, it strengthens the argument that his personality was important in the responses to smugglers' violence. Not only are we examining events which occurred in one locale, we are examining an interpretation by someone closely connected with that area, created for a wider audience.

Whether Lennox was the author or not, officials did view the text before it was printed, and Sir Thomas Denison, a Justice at the King's Bench, made some adjustments. However, it was not seen as appropriate for the Commissioners of the Customs to publish the book. A letter sent from Henry Simon, Solicitor to the Commissioners of the Customs, to the Duke of Richmond, on 1st May 1749 stated:

> In obedience to Your Grace's commands of yesterday, I have sent with this the draught of the trial. In three or four days after I last waited upon Your Grace at Whitehall, Sir Thomas Denison sent back the draught to me by his clerk Mr. Fenton with the obliterations and alterations which you find therein. And with his positive orders that no mention should be made, or the least intimation should be given, that he had perused it, or that the draught had been under his examination. This was a sufficient declaration to me, that the judge of the

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[313] See: Cal Winslow 'Sussex Smugglers' in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth Century England* (New York, 1975). See Also: Platt, *Smuggling in the British Isles*; Nicholls, *Honest Thieves: The Violent Heyday of English Smuggling*; Hufton and Baird, *Scarecrow's Legion: Smuggling in Sussex and Kent*; E Keble Chatterton, *King's Cutters and Smugglers* (London, 1912).

> Assize did not then think proper to license the publication, and if it had been
> published by order of the Commissioners of His Majesty's Customs only, I had
> good reason to know that in Westminster Hall this would have been thought an
> irregular and improper proceeding. The circumstances therefore were too nice
> for me to proceed one step further during Your Grace's absence.[314]

It can therefore be seen that the authorities had a hand in the creation and the publication
of this book, although the legal mores of the time did not allow for it to become an official
publication. Therefore an examination of it should reveal something of their responses and
reactions to smugglers' violence.

As an unofficial publication by the authorities, *A full and genuine history… enables* us to
understand beliefs about, and reactions to, smugglers' violence. Although pamphlet
literature often contains stereotypes and false representations, careful interrogation of
these sources can recover lost voices and provide further understanding of the concept of
violence. By recognising these stereotypes they can be made less opaque and truer
representations of historical facts can be discovered.[315] In addition, careful interrogation of
the authors' voice in the preface and comments can reveal preoccupations and beliefs. The
narrative of the literature itself provides insight because its setting is within a frame of
reference of, and was written for, a particular audience. In thinking about this text, the
approaches of Marion Gibson and Robert Darnton have been helpful, as they suggest using
close reading to gain meaning: 'By treating the narrative as fiction or meaningful
fabrication we can use it to develop an ethnological *explication de texte'*.[316]In terms of this
chapter this means that through a thorough and relatively objective examination of the
structure, style, imagery and other aspects of the book it is possible to observe the work as
a product of the discourses that surrounded its creation, and therefore to understand more
fully the attitudes of the book's creators and supporters.

Legal Contexts

In order to understand the acts of violence committed by the smugglers, and the reactions
to them, it is necessary first to appreciate the legal contexts that shaped both the responses
of the authorities and the actions of the smugglers.[317] The legal penalties for smuggling
became harsher, and the definition of smuggling acts became wider, during the long
eighteenth century and historians have therefore suggested that punitive legislation from
1746 onwards increased levels of violence.[318]

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[314] West Sussex Record Office, Letter from Henry Simon to the Duke of Richmond 1st May 1749, The Goodwood
Estate Archives Family Papers 1 *MSS 155/H 128.*

[315] Marion Gibson, *Reading Witchcraft: Stories of Early English Witches.* (London, 1999).

[316] Robert Darnton, *The Great Cat Massacre: And Other Episodes in French Cultural History* (New York, 1985),
p.82.

[317] Professor Benjamin Ziemann, review of *Histories of Violence*, (review no. 1232)
URL: http://www.history.ac.uk/reviews/review/1232; consulted 27 September 2011.

[318] See: McLynn, *Crime and Punishment in Eighteenth Century England*.

The first form of smuggling to be legislated against was Owling which involved illegally exporting wool. These laws, which began in the reign of Edward III, were strengthened in the 1690's with the creation of riding officers. The new laws introduced a fine of up to £100 for assaulting a customs officer, and stated that the inhabitants of a Hundred could be financially penalised for offences committed within their districts. By 1722, import smuggling had become a much larger enterprise and the government became worried about large gangs of men working together. A new act deemed all men found within 20 miles of the sea, in the company of 5 or more others, bearing arms and carrying contraband, to be smugglers. It made resisting a customs officer a felony to be tried at the court of assize, and the penalty became transportation for seven years. The act also recognised that local communities often received the goods in return for turning a blind eye, and so introduced a fine of £40 for those in possession of contraband. This clause shows the struggle the authorities faced in upholding laws which were consistently undermined not only by those they considered criminals, but by the whole populace.

In 1733 Sir John Cope led a House of Commons committee to investigate smuggling and this brought about the Indemnity Act of 1736. Assemblies of armed men were made a felony; even if they were not carrying contraband, heavy fines for bribery were introduced, as was the death penalty for injuring an officer. The act provided for the use of informers, with a pardon for those giving evidence, and violence was legitimised for officers who were able to use force and cite the Act in their defence in court. The subduing effect of the Indemnity Act did not last long and the 1740s saw an 'unprecedented wave of violence...[that] was a compound of wartime opportunity, the Jacobite threat and the gradual replacement of property-owning 'owlers' by a new organization of tea smugglers'.[319] In response to this violence, the authorities introduced the harsher Act of 1746 which has been compared to the Black Act introduced against poaching in 1723.[320] The aims of both were similar in that they were introduced to stop large gangs of lawbreakers. The 1746 Act dispensed with the need for juries, and stated that failing to surrender was a felony punishable by death. Once again this intensified the level of legitimate violence sanctioned by the state against smugglers and their collaborators. Smugglers were encouraged to turn the King's evidence in return for a pardon, and locals were encouraged to become informers. The names given by informers were published in the *London Gazette* and the accused were given 40 days to turn themselves in. After this they were outlawed and a bounty of £500 placed on their capture. The authorities were exploiting information networks in more sophisticated ways, and including local people in their fight. The death penalty was extended to cover assembling for a run and harbouring known smugglers. Men could be convicted and hanged on the basis of a single witness, and their bodies displayed in local gibbets, using what historians have termed a 'theatre of punishment' to maintain social order.[321] Excise officers

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[319] Ibid. p.185
[320] Ibid.
[321] Richard Van Dülmen, *Theatre of Horror: Crime and Punishment in Early Modern Germany* (Cambridge, 1990); Randall McGowen, 'The Body and Punishment in Eighteenth-Century England', *The Journal of*

were also given more powers to seek redress from the parish.[322] This act can be seen as trying to create social order through a range of responses aimed at stopping community coherence and collusion. As seen here, these responses included legitimizing state violence, creating a theatre of retributive justice and creating local distrust through informing networks.

For the smugglers the 1740s were a time when their livelihoods and their lives were increasingly under threat. Both social and economic interpretations of the increase in smugglers' violence at this time have suggested that these threats were significant, as they could have been the impetus for social action against punitive authorities, or a way to protect their business. The increase in legislation also affected the smugglers' relationships with the wider populace. Harsher penalties and the use of informers may have caused smuggling gangs to become more insular and this in turn could have created an 'us and them' mentality and contributed to the persistent use of violence in relation to smuggling. The legislation created a public display of power but chapter four will show how smugglers violently protested against this power in the form of parades, threats and murders. In order to examine this particular power struggle, this chapter now explores how authorities responded to the violence using print culture, legitimate violence and by manipulating social relationships.

Print Culture and Narrative Devices

An examination of the book *A Full and Genuine History* as a narrative provides insight into how the authorities fought smuggler violence. As it is an interpretation of events, it is important to consider the devices used to pass implicit messages to the readers, these messages would have been clear to both author and reader in the eighteenth century as the work draws on both established and newer literary clichés. In addition, by closely reading the text, several motives for its publication can be found, for example it is one of the ways in which officials tried to maintain order in the South East. In common with the aims of the 1746 Act, this book can be seen as a way to persuade community members not to assist smugglers, by moralising and warning the public.

Modern History, 59 (1987), pp. 651-179; Peter Burke, 'Performing History: The Importance of Occasions', *Rethinking History: The Journal of Theory and Practice*, 9 (2005), pp. 35-52; Andrea McKenzie, *Tyburn's Martyrs: Execution in England 1675-1775* (London, 2007).

[322] 8 Geo I C 18. An Act to Prevent the Clandestine Running of Goods. (1721); The Report, with the Appendix, from the Committee of the House of Commons appointed to enquire into the Frauds and Abuses in the Customs to the Prejudice of Trade and Diminution of the Revenue, 1733; 9 Geo. II C 35. An Act for indemnifying Persons who have been guilty of Offences against the Laws made for securing the Revenues of Customs and Excise and for enforcing those laws for the future. (1735); 19 Geo. II C 69. An Act for the further Punishment of Persons going armed or disguised in Defiance of the Laws of Customs and Excise and for indemnifying Offenders against those Laws upon the Terms in this Act mentioned; and for the Relief of Officers. (1745); 20 Geo II C 48. Indemnity Act. (1746).

The author emotively sets the scene at the trial where, ' horror and detestation appeared in the countenance of everyone present!...The judges themselves declared on the bench, that in all their reading they never met with such a continued scene of barbarity, so deliberately carried on and so cruelly executed.'[323] The effect of this type of language may have been to shock the audience at the violence in this particular case, and the impression given was that this was more barbaric than other murders. The *Complete Newgate Calendar* corroborates this impression: 'We do not recollect ever to have heard of a case exhibiting a greater brutality on the part of the murderers towards their victims than this.'[324] Violent and cruel murders were often recorded in pamphlet literature but this particular case was portrayed as something exceptionally shocking, perhaps because it was seen as a response by the smugglers to the 1746 Act. The decision to create a pamphlet after the murders represents a watershed in the attitude of the authorities to smuggler violence, as these murders were not isolated incidents; they were part of a pattern of violence that had been occurring for over ten years.

The author of *A Full and Genuine History* used several narrative devices in order to persuade readers that smugglers were a danger to society. In the paternalistic tradition, his 'chief motive' for publishing the account was that of 'serving the community':

> parents, guardians, and others who have the tuition of youth (we mean here the youth of the poor and the illiterate in general) should now and then take occasion to read, or cause to be read, to their servants, etc., diverse passages of this true history; at the same time make such remarks and draw such inferences from them as their own natural good sense and experience might point out... "He who sheddeth man's blood, by man shall his blood be shed".[325]

This moralising tone was common for crime literature at the time as although it provided shocking tales of horrific murders, there was still a concern that the suggestible minds of the lower-classes might be corrupted.[326] The passage reflects an anxiety that without guidance the youth of the poor would become violent and cause bloodshed. This motif can be seen as one way in which officials were trying to win the battle over smuggling by influencing the mindset of readers.[327]

The sentimental genre was used to great narrative effect to warn readers of the slippery slope of wickedness. [328] In common with many other crime pamphlets, the author warns that small indiscretions could lead to serious acts:

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[323] *A Full and Genuine History*, p. iv.
[324] Rayner, John L., *The Complete Newgate Calendar* (London, 1926), pp.156-158.
[325] *A Full and Genuine History,* p.304, p.vii.
[326] Rawlings, *Drunks, Whores, and Idle Apprentices: Criminal Biographies of the Eighteenth Century*.
[327] Ibid.
[328] Marianne Noble, *The Masochistic Pleasures of Sentimental Literature,* (Princeton, 2000), p.64.

Thus, when a course of villainy is once begun, it is impossible to say where it will end; one crime brings on another, and that treads on the heels of a third, till at length both the innocent and the guilty are swept away into the gulf of destruction.[329]

Readers were encouraged to empathise with the victims whilst considering the possibility that they could also commit such acts:[330]

Poor unhappy Galley! Who can read the melancholy story of thy tragical catastrophe without shedding tears at thy sorrowful relation? What variety of pains did thy body feel in every member of it...to struggle with death even in thy wretched grave, what imagination can form to itself a scene of greater horror...? Sure thy murderers must be devils incarnate!...But such is the depravity of human nature, that when a man once abandons himself to all manner of wickedness, he sets no bounds to his passions, his conscience is seared, every tender sentiment is lost, reason is no more, and he has nothing left him of the man but the form. [331]

These passages reveal a belief that crimes of this nature were not necessarily committed by monsters, but could be committed by anyone tempted away from a life of virtue, particularly the poor and illiterate. Violent crime then, was not a distant concept, but one to be feared from within. Smuggling was a trade which needed the custom and cooperation of ordinary people. By communicating the idea that one illegal act could eventually lead to murder, the book implicitly encourages readers not to participate in any activity related to smuggling.

The book and court records contain discussions of the possible motivations of the smugglers. This need for a motive was common in pamphlet literature and results in generic stories of denial, revenge and 'motiveless malignity'.[332] However they do allow us to see where the boundaries of violence lay for the author.[333] One aspect which struck contemporary observers and commentators was the apparent senselessness of the violence. The 1749 preface to *A Full and Genuine History* stated: 'We have an instance of two men suffering the most cruel torments that malice itself could invent, without any provocation given...'.[334] Similarly, Counsel for the Crown stated that: 'securing themselves and their Companions was not their principal Aim...but their Motive seems to have been

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[329] *A Full and Genuine History*, p.18.

[330] See G J Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago, 1996).

[331] *A Full and Genuine History,* p.12.

[332] Gibson, *Reading Witchcraft: Stories of Early English Witches,* Chapter .3

[333] Ibid.

[334] *A Full and Genuine History.*

Revenge, and a disposition to torture one, who should dare to give any Information...'[335]. The language used suggested that the violence went beyond that which was deemed 'necessary' for the smugglers' safety and into brutality. The description of Galley's burial above contains the phrase 'reason is no more, and he has nothing left him of the man but the form'. This suggests that without reason the murderers are no more than shells of men, and in an era when masculinity was increasingly based on reason and self-control, the loss of this reason was a fatal blow to manliness.[336] Reference to cruelty and reason was important for distinguishing violation from violence and is discussed further in chapter five.

The legitimacy of violence can also be seen in the book, when the narrator demonstrates that it was to some extent considered acceptable to use purposeful and limited violence to escape the law. His rhetorical conversation with the murderers prompts the reader to reflect on the purpose of violence:

> had you thought it was necessary to secure your own lives, could you not have dispatched him at once, without exercising such a variety of merciless cruelties upon him?...I say... [if] upon meeting him on the road you had shot him through the head, merely to prevent his bringing you to that righteous judgement...it might have been some mitigation of your crime.[337]

The only way the narrator could explain events was to dehumanise the perpetrators, stating: 'this surely must convince mankind that some malicious demon had taken possession of your souls, and banished every sentiment of humanity from your hardened hearts' and 'sure thy murderers must be devils incarnate!' [338]Here, the author taps into a consciousness commonly seen in witchcraft and murder narratives of the seventeenth century, that of the devil. Experiences with the devil were common in the early modern period and the strategy may have been used here to warn readers that they were in fact close to committing these crimes themselves. However, as the devil is not a systematic presence in the narrative, it is likely that it is used here to explain the inexplicable.[339] This lends support to the view that the murders of Chater and Galley were considered to be dangerous because they were in fact inexplicable and beyond reason.

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[335] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 19 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1).

[336]Robert Shoemaker, 'Male Honour and the Decline of Public Violence in Eighteenth Century London', *Social History*, 26:2 (2001), pp. 190-208; Robert Shoemaker, *The London Mob: Violence and Disorder in Eighteenth Century England* (London, 2004) ; Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003); Matthew McCormack, *The Independent Man: Citizenship and Gender Politics in Georgian England* (Manchester, 2005).

[337] *A Full and Genuine History, p.*31.

[338] Ibid. See: Julian Hoppit, *A Land of Liberty? England 1689-1727* (Oxford, 2002), p.223 and Noble, *The Masochistic Pleasures of Sentimental Literature.*

[339] Lincoln Faller, *Turned to Account: The Forms and Functions of Criminal Biography in Late Seventeenth- and Early Eighteenth-Century England* (Cambridge, 1987), p.52-4; Nathan Johnstone, *The Devil and Demonism in Early Modern England* (Cambridge, 2006), Chapter 5.

After the legal response of the 1746 Act, publication was a novel way of tackling smuggler violence. Those responsible for creating *A Full and Genuine History* had attempted a new way to reassert power. Rather than simply punishing the offenders and those involved with them, this involved recruiting the public to their cause and diminishing the smugglers' power as folk heroes. However, this did not mean that the Authorities did not use their own forms of violence as a response to this threat against law and order. They responded to smugglers' violence with what they believed to be legitimate force. An examination of this reveals further the boundaries between legitimate and illegitimate violence.

The theatre of punishment and state-sanctioned violence.

The Duke of Richmond was particularly interested in the raid on the Customs House at Poole which preceded the murders of Chater and Galley. He responded with specific instructions: 'I have forwarded Mr Milner's letter to him by this Post, and acquainted him that he must make a particular enquiry into this affair, and use his utmost endeavors to obey your Grace's commands.'[340] Although no murders were committed during this raid, the gang was highly armed and organised. William Steel recalled at his trial that when they stormed the Custom House each man had a weapon:

> They had them from their own houses, as far as I know. I do not remember one man without; some had pistols, some blunderbusses; all the Hawkhurst men had long arms, flung round their shoulders. Fairall, alias Shepherd had a hanger...they had got a little horse, to carry their arms....I think there were seven long muskets on him.[341]

As they moved forward the smugglers kept prisoners in order to stop them running away and informing the dragoons.[342] It is easy to see why Richmond would have been concerned to apprehend those involved as not only was it was a clear defiance of excise law, but by retaking seized goods, the smugglers opened up questions of order and authority in the region. The violence created by these incidents led the Duke of Richmond and his political colleagues, Pelham and Newcastle, to believe that 'nothing butt an active Zeal in the Government, manifested by publick acts, can give a cheque to these dangerous outrages and Barbarous and inhumane Murders, with which our part of the country is so justly terryfyd. '[343] These 'publick acts' included ensuring as many local people as possible witnessed the prosecution and punishment of the smugglers.

Richmond requested a special commission trial to be held at Horsham. This it was hoped would reassure the community most affected by the murders that something was being done and provide a warning to other smugglers in the area. Richmond wrote, with the

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[340] West Sussex Record Office, Letter from Wm Wood to Richmond 19th Dec 1747, Goodwood Letters and Papers, MSS 155 H6.

[341] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 19 November 2013), April 1749, trial of Thomas Kingsmill , alias Staymaker William Fairall , alias Shepherd Richard Perin , alias Pain, alias Carpenter Thomas Lillewhite Richard Glover (t17490405-36).

[342] Ibid.

[343] West Sussex Record Office, Goodwood Letters and Papers, MSS 155/24.

backing of Newcastle and Pelham, to the Commissioners of Customs suggesting that such a trial 'will have the best effect as it will strike a fervor upon all guilty minds & consequently be the greatest protection the innocent.'[344] In the event the commissioners went one step further and moved the trial to Chichester, the nearest town to the murders. The author of the pamphlet believed this was done 'as it was contiguous to the place where the murders were committed, they [the authorities] thought it the most proper place for the assizes to be held.'[345] Location was therefore important in the government's response to serious crimes such as these.

William Carter, one of the Hawkhurst Gang, was certainly afraid when he heard that the trial was to be in Chichester. A letter from Henry Simon, solicitor to the commissioners of the Customs, stated that when Carter was told, 'His countenance changed, His chains rattled with a tremor and agony which shook every limb and joint of him'.[346] No doubt, local people knew of the murders and the power of smugglers in the area. However, the authorities fought back with a symbolic demonstration of their power. The spectacle of trial and punishment played a significant role in the prevention of crime as the judiciary relied upon fear of punishment as a deterrent.[347] By locating the trial and execution in Chichester in front of friends, family, neighbours, co-workers and peers, they heightened its impact. [348] Just as for the author of the book the choice of audience was, therefore, an important one for the judiciary. It is no wonder then that Carter was unnerved at the indignity of being tried before his peers as they were a source of his authority and were being used by the judiciary to remove any power the smugglers held over the area.

At the Chichester Assize, Benjamin Tapner, John Hammond, John Cobby, William Jackson, William Carter, Richard Mills Sen. and Richard Mills Jun. were tried and sentenced to be hanged. All of them except the Mills' were also to be hanged in chains. This was to act as further warning to others and was echoed in some of the violent acts of the smugglers themselves (discussed in the next chapter), whilst the display of the bodies was an important show of power on the part of the judiciary. Thomas Kingsmill, William Fairall and Richard Perrin were tried at the Old Bailey, and they too were displayed in the areas in which they had lived, again in a show of judicial authority and caution to others.

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[344] West Sussex Record Office, 9th December 1748, Goodwood Letters and Papers, MSS 155/H32.

[345] *A Full and Genuine History,* p.41; Nicholls, *Honest Thieves: The Violent Heyday of English Smuggling.*

[346] West Sussex Record Office, Letter from Henry Simon to Richmond 6 Dec 1748, Goodwood Letters and Papers, MSS 155/H49.

[347] Steven Wilf, 'Imagining Justice: Aesthetics and Public Executions in Late Eighteenth-Century England', *Yale Journal of Law & the Humanities*, 5:1 (1993), pp. 50-78, p.54; Sharpe, '"Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth Century England'; McGowen, 'The Body and Punishment in Eighteenth-Century England'; Douglas Hay, 'Property, Authority, and the Criminal Law', in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, eds., *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England.* (New York, 1975), pp. 17-63; Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (Cambridge, 1992).

[348] Scott, *Domination and the Arts of Resistance: Hidden Transcripts,* p,113-114.

The Duke of Richmond wrote several letters inviting his friends to see the trial at Chichester.[349] He believed that the special assizes 'will be thought not an improper complishment to the gentlemen here' and appeared very proud of his achievements.[350] His friends also wrote to congratulate him. For example, William Madgwick, possibly the owner of Yapton Manor, stated 'I acknowledge myself very thankfull and highly obliged to your Grace for your indefatigable pains in bringing those human murderers to justice.'[351] It is clear then that this case brought some prestige and recognition to Richmond for the work he had done in overcoming smugglers.

The legal responses to the Chater and Galley case, in particular moving of the trial to the local area, can be seen as further evidence that the authorities were using a range of tactics in the fight against the smugglers. State violence and the theatre of punishment was one of the tools the authorities used to restore order. The difference for elites, between this and the acts of the smugglers, was that the authorities believed they were deploying legitimate acts of violence. Along with obvious shows of power such as the trials and hangings, Richmond also persuaded the local populace to side with him rather than the smugglers by the use of informers.

Informers and social relationships.

The Duke of Richmond used informers to try to break the smugglers' hold over the region. He wrote to the Commissioners of Customs:

> I am very certain it is the only way to bring these wicked villains to justice, & at the same time it will be the greatest means to destroy the gangs of smugglers, by breaking into all confidence they may have with one another.[352]

The Duke clearly believed that a network of informers was needed and that publicity was the key to overcoming the smugglers. He frequently pleaded for the names of smugglers to be published, demonstrating that his personal agenda was a campaign of propaganda and spies, in order to destroy the gangs at ground level, rather than just trying to catch smugglers through force. Print was obviously significant to the Duke as he also kept copies of the *Gazette* in his personal papers and highlighted the names of smugglers he was concerned with. This suggests that there was a particularly modern dimension to his work in chasing the smugglers, that of using print culture.[353]

Informing was a main theme of the story of Galley and Chater, and a direct link with Richmond's agenda. When John Diamond was apprehended, the authorities believed that

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[349]West Sussex Record Office, Replies to Richmond invitations, Goodwood Letters and Papers, MSS 155 /H77-82

[350] West Sussex Record Office, Goodwood Letters and Papers, MSS155 /H42

[351] West Sussex Record Office, Letter to Richmond from Wm Madgwick feb 5th 1749, Goodwood Letters and Papers, MSS 155 H82

[352]West Sussex Record Office, Letter from the Duke of Richmond to the Commissioners of Customs 9 December 1748, Goodwood Letters and Papers, MSS 155 H33

[353] Richard Ward, 'Print Culture and Responses to Crime in Mid-Eighteenth-Century London.' (PhD Thesis, University of Sheffield, 2010).

the smugglers had control over the region and 'so great was the Terror of the Smugglers in these Parts, that no Body cared to appear against him'.[354] In line with the 1746 Act, Daniel Chater may have been offered a reward of up to £500 for information leading to the conviction of the smugglers and so may have willingly appeared. On the other hand, it is possible he had no choice but to inform as he was a poor shoemaker with a large family and the authorities could put pressure on him for allegedly receiving tea. [355] Chapter four reveals how smugglers may have turned to crime to supplement their income, and Chater may have also faced a constrained decision. Whether or not this is true, it is quite likely he was apprehensive about informing, as the smugglers had a reputation for seeking revenge. This is not surprising as informers threatened the very core of the smugglers' power and violated any sense of trust or community.

Once Chater had made the irrevocable decision to become an informer, his position within both the social and narrative contexts had changed. Whereas before, as someone who had worked with Diamond, he was an acquaintance and someone deserving of a gift, he now became estranged, a situation which would incite the smugglers to perpetrate their violence.[356] It is unlikely this shift was simply because of distance, as although Chater came from Fordingbridge, fifty miles from Rowlands Castle, the smugglers regularly travelled large distances and had social networks which bridged those distances. For example, although the smuggler Diamond, was based in Hawkshurst, he had known Chater and so it is more likely that Chater was considered a stranger or outsider, not because of distance, but because of behaviour.

The smugglers, worried about informing from within their ranks, were not afraid to use threats against members of the gang who failed in their performance. Richard Glover, a smuggler turned informer, claimed that he was forced into participating in the Customs House raid by his brother-in-law Edmund Richards 'who threaten'd to shoot me, if I would not go along with them.'[357] Glover provided several witnesses to support his statement. Whilst for the elites the raid was seen as a threat to the constitution, for the smugglers it was a matter of taking back what belonged to them:

> The smugglers being very much incensed at this fatal miscarriage of their purchase, resolved not to sit down contented with the loss; but, on a consultation held among

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[354] *General Evening Post,* Tuesday October 11, 1748, Issue 2350.

[355] For example see *General Advertiser,* Tuesday November 10, 1747; Issue 4068 and *Old England* Saturday, April 15, 1749, Issue 259*; General Evening Post,* Tuesday October 11, 1748, Issue 2350; *A Full and Genuine History.*

[356] Dehumanisation of victims has been shown to lead to more violent acts see: A Bandura, 'Moral Disengagement in the Perpetration of Inhumanities', *Personality and Social Psychology Review (Special Issue on Evil and Violence)*, 3 (1999), pp.193-209, p.201; Craig Haney, *Death by Design: Capital Punishment as a Social Psychological System* (Oxford, 2005).

[357] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 20 November 2013), April 1749, trial of Thomas Kingsmill , alias Staymaker William Fairall , alias Shepherd Richard Perin , alias Pain, alias Carpenter Thomas Lillewhite Richard Glover (t17490405-36).

them, they agreed to go and take away the tea from the warehouse where it was lodged.[358]

The raid can therefore be seen as an important site of interaction between the two groups with both parties feeling they had legitimate grievances.

The Duke of Richmond was puzzled by Glover's situation and asked John Miller, one of his agents, to investigate by questioning Richards:

> 'I asked him to go, but he was not willing, he never was a smuggler, nor had any shares in the tea at Pool Custom House', 'Why then you forced him to go, did you not Richards?' Then he was afraid to speak, tho often entreated and told his answer might be of service to his Brother at last he said I was the occaision [sic] of Glovers going to Pool but wou'd not confess any menaces to compel him.[359]

In this interrogation we see that for Edmund Richards, the thought of helping his brother was not enough to overcome either his fear of being an informer or of being further implicated as a smuggler Whilst in gaol Richards believed his wife 'was the means of his being taken' a situation which left him confused and angry.[360] As has been demonstrated above, the smuggling business involved the whole family and betrayal by his wife was naturally very upsetting for Richards. It is quite possible of course, that the authorities were already trying to divide the gangs by lowering morale and that they had invented the story of Richards' wife informing on him. However, this episode reveals the deep social ties and rifts created within the smuggling community. Richards' wife was being forced to choose not only between her brother and husband, but her decision also reflected her feelings on the legitimacy of each side's actions. This division in the feelings of the inhabitants of smuggling areas is seen further in chapter four.

Whilst the elites may have sometimes found it difficult to persuade informers, the Indemnity Act (1736) did have some effect on the thinking and behaviour of the smugglers. They appear to have become more afraid of each other and their local community, for example, when deciding what to do with Chater, John Mills was concerned that his fellow gang members might inform against him and so he proposed:

> To take him [Chater] out, and load a Gun, and tie a String to the Tricker, and place him [Chater] against the Gun, and that they should all of them pull the

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[358] *A Full and Genuine History,* p.7.

[359] West Sussex Record Office, Letter to the Duke of Richmond from John Miller ,Goodwood Letters and Papers, MSS 155/H123.

[360] West Sussex Record Office, Letter to the Duke of Richmond from John Miller ,Goodwood Letters and Papers, MSS 155/H123.

> String, to involve every one of them in the same Degree of Guilt; but this proposal was not agreed to.[361]

This is a fascinating insight into the mindset of the smugglers and contrasts with previously portrayed images of a group united in their love of violence. The historiography on smugglers has often portrayed them as social criminals, unified in the fight against capitalist landowners.[362] However, rather than showing a coherent group, we see a distrustful group of individuals joined together to destroy a common threat. This concept of social crime is pursued further in the next chapter.

Mills' proposal was rejected as the smugglers 'were resolved that he [Chater] should suffer...as a terror to all such informing rogues...for the future,' in echo of the reasons the criminal justice system imposed such harsh penalties as the Indemnity Act.[363] This episode demonstrates the struggle for authority over the region between the smugglers and the ruling classes. Both groups were using the same language and symbolism of violence and terror in order to demonstrate their roles. However, neither the smugglers, nor the authorities were coherent groups as each struggled with issues of trust, the smugglers with informers, and the authorities with bribes. Therefore the behaviour of each group demonstrates that there was not a simple dichotomy between the smugglers and authorities with each side distrustful of the other, rather individuals within each group considered allegiances based on a scale of mistrust and personal gain.

Whilst some smugglers like Richards did not take advantage of the pardon offered to them for informing, others did change sides. One informant mentioned that William Steele, alias Hardware had been involved in the murder of Chater and Galley. Steele was then arrested and turned informer himself. This was not an easy decision for him to make and he risked death from both sides. By making the irrevocable decision to inform, Steele would be banished from his community and he was understandably frightened as a letter from Henry Simon, solicitor to the Commissioners of the Customs, to William Wood, a customs official, attested:

> He seems to be under great apprehension from Jackson, Carter and John Mills and gives this reason for his fears. If says he they hear of my being in a publick gaol, and that any particular people come after me, it will give them a suspicion, and then they

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[361] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 20 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1; .See also *A Full and Genuine History,* p.20.

[362] Winslow, 'Sussex Smugglers'; Thompson, *Whigs and Hunters: Origin of the Black Act* ; Thompson, *The Making of the English Working Class*; E Hobsbawm, *Bandits* (London, 1969); E Hobsbawm, *Primitive Rebels: Studies in Archaic Forms of Social Movement in the 19th and 20th Centuries,* (Manchester, 1959); E Hobsbawm, 'Social Banditry', in Henry A Landsberger, ed., *Rural Protest: Peasant Movements and Social Change* (London, 1974); E P Thompson, *Customs in Common* (London, 1991).

[363] *A Full and Genuine History,* p.21.

may burn my House and murder my family. For there is nothing even so cruel & desperate which they are not ready to attempt or execute as far as they are able. [364]

Steele's particular concern over Jackson, Carter and Mills suggests that they were in some way important in the gang. John Mills' whole family appears to have been key members of the gang. His brother and father were hanged for the murders of Chater and Galley, although Mills himself was not caught for this. Mills was however involved in several other acts of extreme violence before his capture including the kidnap and beating to death of Richard Hawkins, who was accused of stealing tea. This episode mirrored that of the Chater and Galley case in many ways, including a ride on horseback to an inn at Slendon Common, beating and imprisonment. Mills was eventually hanged for this murder at Slendon Common in 1749, again demonstrating the authority's technique of using location in their punishment of smugglers.[365] The testimony of Steele, along with that of other informers, suggests that fear of smugglers was real and not just an impression of the authorities. William Wood, the Secretary to the Commissioners of Customs testified to the parliamentary committee that he: 'Had known of large rewards offered by advertisements published in the country; but they were to no purpose, the people being afraid to inform'.[366]

One of the ways in which smugglers created this fear was by using fire. John Darby, a revenue officer, who himself was driven from his home by smugglers' threats, wrote to Collier of the difficulties in getting informers:

> I have done everything that is in my power to induce the man that informed me, but he is a farmer and lives at Reculver and says that he is afraid the gang will burn down his house and barn if he should discover any of them and so says everyone.[367]

The threat of setting fire to an informers' house has important cultural contexts. Arson had long been employed as a means of revenge, and in disputes between neighbours. It was a major felony, punishable by hanging, due to the threat it posed to both life and property. In 1723 the Waltham Black Act had extended the law in the wake of arson attacks by poaching gangs, therefore the threat of setting fire to houses and properties by both individuals and gangs had many precedents. [368] The threat would have been very real to informers and taken seriously as a way for the smugglers to protect themselves and provide an example to

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[364] West Sussex Record Office, 28th October 1748, Goodwood Letters and Papers, MSS 155/H16.

[365] Rayner, John L., *The Complete Newgate Calendar*, pp.172-176

[366] Seventh Parliament of Great Britain: Sixth Session (16 January 1733 - 13 June 1733) the Report of the Committee Appointed to Inquire into the Frauds and Abuses in the Customs, to the Prejudice of Trade, and Diminution of the Revenue.

[367] East Sussex Record Office, Correspondence between John Collier and John Darby concerning Darby's evidence about a customs officer suspected of screening a smuggler, SAY 3870 1746 MSS347

[368] Bernard Capp, 'Arson, Threats of Arson, and Incivility in Early Modern England', in P Burke, B Harrison and P Slack, eds., *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford, 2000), p198. However, arson was very rarely prosecuted in Elizabethan Sussex, perhaps due to its narrow legal definition meaning that it applied to only occupied houses and corn barns. Arsonists burning hedges in protest were prosecuted for riot instead.

others. The burning of a house would have been a dramatic act, which would serve as a warning, enabling the smugglers to maintain authority in the area through fear.

Bernard Capp has created a typology of arson in the early modern period which demonstrates six categories in which arson was used.[369] Given the context above, it is unlikely that the smuggling gangs were using arson as a protest or against what they considered their superiors. Instead they were using it to forcefully persuade the local community away from the influence of the authorities, in much the same way as the elites had used negative persuasion by giving excise men the power to seek redress from the parish. This mirroring can also be seen in the positive persuasion used in the form of bribes of money or goods by both sides.

The authorities were well aware of the dangers facing informers and John Collier wrote to the Commissioners of Customs in December 1744 describing 'the insults, menaces and abuses given not only to officers of the Revenue, but to any other persons that offer to speak against their detestable practices.'[370] However, the large rewards offered may have persuaded some informers. Steele was to receive £500 for his part in the capture of the gang, whilst another smuggler John Raise was to receive £200.[371] By offering such rewards the authorities put the cohesion of local communities under strain, splitting them into collaborators, or informers and making people distrust their own neighbours. For example, when landowner Mr. Wakefield was attacked he dared not complain 'even to his neighbours' for fear that 'a greater Evil should fall upon him'.[372]

Wakefield had woken to find the Hawkhurst gang in his bedroom with Jeremiah Curteis threatening to 'cut him to pieces' if he did not tell them where his money was kept and later left him, 'having threatened to murder him if he made any noise'.[373] The intimidating behavior of the smugglers was enough make Wakefield reluctant about complaining. This reflects the way the conflict between the smugglers and the authorities over the avoidance of tax had begun to affect the fabric of social order. Cal Winslow interprets this event as the smugglers turning their attention to all in authority but the context of the attack is unclear and it may be that Wakefield had some business with the smugglers before this. A letter concerning the case in which Richmond is told of the evidence collected states:

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[369] Bernard Capp, 'Arson, Threats of Arson, and Incivility in Early Modern England', in P Burke, B Harrison and P Slack, eds., *Civil Histories: Essays Presented to Sir Keith Thomas* (Oxford, 2000), pp.200-201. The six categories include: as a political weapon; as threats against superiors (part of a fantasy of revenge, power and control); domestic arson, once again often used by subordinates against authority; quarrels between those of equal standing; use of arson by the strong against the weak, and arson against those likely to contaminate or divide the community.

[370] East Sussex Record Office, Letter from John Collier to Mr Freemantle of Customs House London referring to the prosecution of one Macdonald December 1744, SAY 3870.

[371] West Sussex Record Office, Goodwood Letters and Papers, MSS 155/H138.

[372] West Sussex Record Office, Memorandum to Mr Henry Pelham, Goodwood Letters and Papers, Mss 155/H19

[373] Ibid.

There is no material variation between this & what Winter gave to you & Mr Feilding, but That the Fourteen Guineas & Half was took by Winter & Butcher Tom, who concealed that from the rest of the Gang & I don't doubt, but some of the others played the same Games, which explains part of Mr Woodroffe's letter to you, in which he say's Like Old Falstaff's Gang, they Robbed one another, for Mr Wakeford [sic] had lost more than had been brought to light.[374]

Again this suggests that whilst smugglers were able to work together in gangs for large profits, they were not above deceiving one another in order to benefit themselves individually.

A further problem with the use of informers was that rewards offered by the government were often paid late and this, combined with the terrorization of the community, led to few people coming forward. The Duke of Richmond's papers suggest a tension between local and national levels of governance; in 1748, Richmond complained to the commissioners of the Customs: 'I do assure you that I find the country not only disatisfyd butt even diffident of the rewards being pay'd at all, which will be attended with very bad consequences to the government'.[375]

The Duke had previously written to Henry Pelham describing the difficulty in getting informers due to 'the whole County being intimidated' and that: 'Mr Wicker of Horsham & Mr Mitford & Mr Goodwin of Petworth have (as I have heard) declared they would act in nothing relating to smugglers…tis particularly scandalous in that Mr Mitford who is a servant of the Government.'[376] It is clear that the government's policy of providing incentives for the capture of smugglers was not working due to inefficiency and that this was frustrating to those at a local level. In the battle for informers, and the hearts and minds of the locals, the Duke did not appear to feel he was winning. In fact it appears he felt some personal responsibility for the failure of the government to provide rewards. In a letter to the Commissioners of the Customs in 1748, he stated:

I am very sorry to tell you that the delay of payment of the 500L reward for the takeing of Steel has extreamly disappointed not only myself butt all the gentlemen that act with me in this County, for wee all look upon ourselves as engaged in honour for it; I wish therefore it may not produce a coolness in them, which would make my acting as I would do for the service of the government extreamly difficult.[377]

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[374] West Sussex Record Office, Miscellaneous Papers Concerning Smugglers and Smuggling, *The Goodwood Estate Archives Family Papers 1* (Chichester, 1745 - Nov 1749), MSS 154 J9.

[375] West Sussex Record Office, Letter to the commissioner of customs for Duke of Richmond 9th Dec 1748, Goodwood Letters and Papers, MSS 155/H32.

[376] West Sussex Record Office, Memorandum to Mr Henry Pelham, Goodwood Letters and Papers, MSS 155/H19.

[377] West Sussex Record Office, Letter from Duke of Richmond to Commissioners of Customs 9 Dec 1748,

The personality of the Duke was important for the battle against smugglers in Sussex. His persuasive voice did not result in immediate payment from the government but certainly brought the issue to their attention. The Duke was a representative of the government as a paternalistic landlord and as such his personal honour and status in the community was at stake. Not providing a reward to those that had risked so much in informing would have had further implications for his authority in the region. As the government's representative and major political figure in the county he was in the position to see first-hand the effects of smuggling on the lives of local people, and the effects of turning informant.

Richmond's papers show a great deal of correspondence between him, Newcastle and Pelham at this time. Although Henry Pelham as the Prime Minister was probably interested in the situation due to matters of political order and economics, it is likely he had a somewhat more personal interest as well, as both he and his brother had estates in Sussex, and he was the MP for Seaford until 1722. There was perhaps more to Richmond's alarm than general worry about disorder too. The particular case of Galley and Chater may have provoked feelings of paternal responsibility towards his tenants and servants that other cases did not. Galley was carrying a list of informers names to Major Battine, among which were several of Richmond's close servants such as his huntsman. A letter from Mr Sherer, the Collector of Southampton warned Richmond:

> As the smugglers have got possession of that inclosed to ye Major tis not unlikely that those abandoned villains who stick at nothing may watch an opportunity to seize upon and carry off those servants to prevent their giving Evidence against them. And as therefore some Caution may be necessary I have thought it my Duty to give your Grace this notice of it that such speedy measures may be taken on the occasion as your Grace shall think proper.[378]

Aside from the risk to his powerful network of agents, Richmond therefore may have felt that it was his duty to discover the murderers and protect his servants as he had allowed the list to fall into the smugglers hands by not keeping order in the county.

The life of an informer was not a comfortable one and the decision to inform was irreversible and could have long term repercussions. Steele and Raise were kept in safe custody in the customs house rather than a public gaol but once the trial was over Raise found his life could not return to normal.[379], In 1759 Raise was sentenced to death for stealing horses; in his defence he stated 'I bought this horse of one William Ling at Westbourn. This is done out of spite against me, to draw me in, for what I did in the year

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Goodwood Letters and Papers, MSS 155 H33.

[378] West Sussex Record Office, Letter from Mr Sherer to Richmond 16 Feb 1747, Goodwood Letters and Papers , MSS 155 H8

[379] West Sussex Record Office, Letter from Mr Milton to Duke of Richmond 6th Jan 1748/9, Goodwood Letters and Papers, MSS 155/ 64

1747-8. [sic] In regard to the smuggling affair.'[380] Whether Raise did steal horses or not, it seems he felt there was still some tension surrounding his part in the affair and the transition from informer back to community member was not a smooth one. Ten years after the original trial, this demonstrates the anger that the smugglers and their supporters must have felt towards informers for transgressing their social mores. Raise too may have felt guilt for betraying his colleagues as it is clear that he still recalled the incident.

The use of informers by the authorities went straight to the heart of social relations. By choosing to become an informer Chater had upset the local balance of mutual obligations evident in the pattern of gifting. He had allegedly received a gift of tea from Diamond, only to turn against him as an informer. Chater, along with 'turned' informers such as Steele and Raise, also posed a threat to the economic livelihood of smugglers by informing on their practices. The violent murders of Chater and Galley can therefore be seen as a response to this, by allowing an informer to escape, the smugglers would 'lose face' and thus some of the control over their region which was founded on fear and threats.[381]

Conclusion

This chapter has explored the wide range of official reactions to the violence of the smugglers. This violence was unlike that usually seen by justices and judges, and so required different reactions from those seen in chapters one and two. Negotiation, settlements and fines did not work against organised gangs as their influence spread further than a single village or town. Instead we have seen that this form of violence involved many more people in its control, including sometimes the perpetrators themselves, as smugglers turned informers. It led to the involvement of members of local communities, local agents and officials, aristocracy and landowners, and the government at a variety of levels. Central to co-ordinating this campaign was the personality of Charles Lennox, the Duke of Richmond who provided a link between national policy and local practice.

The authorities' reactions can be seen as two fold. They responded through punishment and by coercion and co-operation. They used the legislation, popular press, social relations and a theatre of punishment. The two elements of punishment and persuasion can be seen throughout each of these practical responses. Several Acts of Parliament were created, with increasing levels of restriction and punishment. This culminated in the 1746 Act which both encouraged informers and created harsher punishments for anyone involved in smuggling. Many of the other responses to the violence can be seen to have their origins in this Act. Officials used the popular press as a form of early propaganda to remove some of the support networks surrounding smugglers and this effect was heightened by the financial

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[380] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 20 November 2013), September 1759, trial of John Rice (t17590912-16); Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 20 November 2013); Ordinary of Newgate's Account, October 1759 (OA17591003).

[381] Pierre Bourdieu, 'The Sense of Honour', *Algeria 1960* (Cambridge, 1979); James Garbarino, 'Making Sense of Senseless Youth Violence', in Jack M Richman and Mark W. Fraser, eds., *The Context of Youth Violence* (Westport, 2001).

incentives given to informers. In many ways, both the official reactions against smugglers and the actions of the smugglers themselves were interlinked as each responded to the other. In common with the smugglers, the authorities used highly visible shows of power in the form of humiliation, murder and display and persuasion in the form of bribery. The next chapter explores more deeply this symbiosis in terms of the actions of the smugglers and how this mirrored official reactions.

The form and function of organised violence within smuggling gangs.

Introduction

The previous chapter examined the reactions of officials to smugglers' violence. This chapter now explores these incidents from a different perspective, by looking at the smugglers and their actions. The large amount of qualitative material available with regards to the violence perpetrated by, and against, smugglers allows us to undertake a detailed analysis of the form and function of the events which occurred in this area. By looking more deeply at the structure and identity of the smuggling gangs, and analysing their violent actions for meaning, it is possible to explore how the identity of a specific group was related to violence, and to enhance previous interpretations for the causes of this large scale violence.

Whether talking about the economics of smuggling or analysing it as a social crime, historians have often noted organisation and structure within smuggling gangs. Hoh-Cheung Mui and Lorna Mui have suggested that the commercial side of smuggling became more sophisticated and ordered in the second half of the eighteenth century. The smuggling gangs of the 1740s, described by Cal Winslow as 'social criminals', also appear to be highly organised in their use of violence.[382] It is this apparent organisation and the suggestion of order amongst a violent gang which provides an interesting link to the issues previously explored in this thesis. The first three chapters have looked at how violence was negotiated, and used to maintain or restore order in the South East. This chapter seeks to understand how social organisation and order was maintained within a violent culture by exploring how smuggling groups were structured.

Explanations for the violence of smugglers, and the relationship between smugglers, the community and authority, have previously focussed on models of either social crime or economics. This chapter argues that the model of class war, based on working-class challenges to elite authority, and the model of economic motivations, to protect business interests, are too simplistic and that a more detailed contextual analysis of the actions of both smugglers and the authorities gives a more nuanced account of local social relations. A detailed analysis of extreme violence and disorder can therefore reveal alternative patterns of order and power within the smuggling gangs themselves and in their relation to wider communities.

Following on from chapter three, this chapter shows how the structure of smuggling gangs mirrored those of the authorities, with clear leadership and goals. It also demonstrates

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[382] Hoh-Cheung and Lorna H. Mui, ''Trends in Eighteenth-Century Smuggling' Reconsidered', *The Economic History Review*, 28:1 (1975), pp. 28-43; Cal Winslow, 'Sussex Smugglers', in Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, eds., *Albion's Fatal Tree. Crime and Society in Eighteenth Century England* (New York, 1975).

other ways in which the actions of the authorities and the smugglers mirrored each other, for example in their tactics and use of particular forms of violence. This analysis adds to the understandings of the ways in which smugglers and authorities interacted and how this impacted on the region. This is done by firstly discussing the social and economic status of the smugglers. Secondly the meanings and uses of both gang and individual identity within this group, and in relation to the wider community, are examined. Finally, the violent acts themselves are analysed in detail to illustrate how detailed contextual analysis opens new ways to address questions about social crime, and illuminate the negotiation of authority within gangs in eighteenth-century England.

Historiography

Although there has been little work on the social and cultural history of smugglers, a few historians have attempted to provide some explanation for their use of violence in the South East. These accounts have tended to be based in either social theories of violence as a form of protest, or economic theories in which violence is considered as an instrumental by-product of the business of smuggling. Added to this has been the suggestion of a political element by linking smugglers with Jacobites.[383] An amalgamation of these three theories have led to the conclusion that 'the turbulence of 1740s Sussex was a compound of wartime opportunity, the Jacobite threat, and the gradual replacement of property owning 'Owlers' with a new organisation of tea smugglers drawn from the 'lower orders''.[384] There are therefore many gaps in the examination of smuggler violence in 1740s Sussex and Kent, as each of these explanations has not considered the relationship between smugglers and authorities fully. Instead of a complex cultural history, we are left with a range of disconnected causal explanations of the rise in violence in the 1740s.

Cal Winslow has argued that contemporaries believed smuggling was a social crime. He focussed on the conflicts involving armed gangs in Sussex in the first half of the eighteenth century, and applied a class war model with the preventative agencies represented as agents of the ruling elite opposed to the 'social bandit' smugglers:

> ...while smuggling always remained something unique, it was commonly linked with other offences, primarily poaching and theft, but also with crimes of protest, riot and forms of collective or popular action.'[385]

Winslow regards this crime as 'social' because he sees it as presenting a potentially conscious challenge to the prevailing social order; Marxist historians claim that smuggling, like poaching and food riots, were popular customs criminalised by the ruling classes, but not necessarily regarded as criminal acts by those committing them, or the communities from

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[383] Paul Monod, 'Dangerous Merchandise: Smuggling, Jacobitism, and Commercial Culture in Southeast England, 1690-1760', *The Journal of British Studies*, 30:2 (1991), pp. 150-182.

[384] Frank McLynn, *Crime and Punishment in Eighteenth Century England* (London and New York, 2002), p.185.

[385] Winslow, 'Sussex Smugglers', p.120.

which they came.[386] However, the label, social crime has been criticised as a 'coherent category of analysis' and John Styles has argued for a review of the term as it could exaggerate the number of illegal activities which are considered to be protests against the elite:

> Clearly there were a number of illegal activities that were exceptional in the consistent and unequivocal popular support and participation they enjoyed. But do even these activities which...qualify for the label 'social' crime' have enough in common to justify that label's retention...especially when it carries the implication that all such activities were expressions of social protest against the prevailing social order and its values?[387]

Therefore the question remains of whether all or any of the violent actions by the smuggling gangs were challenges by a working class to the authority and order of elites, or whether these incidents meant something else and had different motivations and meanings. Paul Muskett has suggested that smuggler violence was caused by the necessity to protect business interests, and their own lives. Muskett has argued against the social crime model, claiming that smugglers were violent against officers for economic reasons in order to protect their goods.[388] Muskett's argument suggests that the violence committed by smugglers was instrumental and driven by 'financial imperatives and the instinct for self – preservation'.[389]

John Styles has also suggested alternative reasons for the widespread support of smuggling. Styles has stated that smuggling, in common with coining, may have been redefined as legitimate due to its economic benefits and that this interpretation has been ignored in favour of a focus on social aspects:

> Smuggling, poaching and wrecking were all forms of illegal appropriation which were redefined as legitimate, both by men of middling rank and by the poor. That redefinition has not been analysed by historians merely in terms of the economic benefits bestowed by such activities.[390]

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[386] For example see: E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past and Present*, 50 (1971), pp. 76-136.; E. P. Thompson, *Whigs and Hunters: Origin of the Black Act* (London, 1977).; Douglas Hay, Peter Linebaugh, John G Rule, E P Thompson and Cal Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth Century England* (New York, 1975); E Hobsbawm, 'Social Banditry', in Henry A Landsberger, ed., *Rural Protest: Peasant Movements and Social Change* (London, 1974).; E Hobsbawm, *Bandits* (London, 1969).

[387] John Brewer and John Styles, *An Ungovernable People* (London, 1980), pp.209-210

[388] See Cal Winslow in Hay, Linebaugh, Rule, Thompson and Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth Century England*;Paul Muskett, 'English Smuggling in the Eighteenth Century' (PhD Thesis, Milton Keynes, 1996).

[389] Muskett, 'English Smuggling in the Eighteenth Century', p.443.

[390] Brewer and Styles, *An Ungovernable People*, p.246.

Styles argued that coining in Yorkshire enjoyed general support, but the trade was not a custom or traditional right as it was new to the area. The same could be said for smuggling. Import smuggling was a new phenomenon, which had only begun at the end of the seventeenth century, when customs and excise taxes were restructured to provide money for the exchequer.[391] It is therefore possible that the violence committed by smugglers, and their claim that it was legitimate, was due in some part to its importance as a business.

This chapter re-examines the sources in light of these differing interpretations. It proposes that the violence of smugglers in 1740s Sussex can be seen, to some extent, as the result of local patterns of subordination and resistance, but that these are not as clear cut as those in Winslow's model. In the same way, it suggests that while instrumental violence may also have been used to protect business interests, these are bound up with cultural ideas of identity.

Sources and method

This chapter draws on the same sources as the previous chapter to analyse incidents from a range of perspectives. The papers of the Duke of Richmond and John Collier, as well as the published account of the Chater and Galley case, have all been studied. This chapter also uses a range of newspapers and the Ordinary of Newgate and Old Bailey accounts more extensively than in the previous chapter. In addition to these sources, The Calendars of Treasury Books (1557-1719), Calendars of Treasury Papers (1660-1718) and the Calendar of Treasury Books and Papers (1729-1745), and the records of the Boards of Customs and Excise were also studied.[392] The Calendar of Treasury Books shows in great detail the income, expenditure and debts of the government between 1660 and 1718, including payments to soldiers involved in fighting smuggling, and requests from local officials for military assistance. They also contain letters and petitions from local officers as well as some details about informers, and the cost to the revenue of policing smuggling. The Records of the Boards of Customs and Excise contains information passed to and from local customs officers and reports on the prevention and detection of smuggling.

Instead of searching for cause and reason behind the violence, as have other historians, this chapter seeks to describe contexts and events, allowing these to shed further light on interpretations. In order to do this the ideas of James Scott and Andy Wood have been drawn on. Wood has suggested that:

> Some of the practices of postmodern historians (in particular, the emphasis upon language as a form of power; the hostility to grand narratives; the interest in understanding identities as relational and as constituted through discourse) can be usefully exploited in the exploration of social relations... enabling us to understand early

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[391] Richard Platt, *Smuggling in the British Isles* (Chalford, 2007).

[392] 'Calendar of Treasury Books' British History Online, http://www.british-history.ac.uk/catalogue.aspx?gid=128, consulted 12 January 2012.

modern social conflicts in their own terms rather than as partial distorted echoes of something that lay in the future.[393]

By exploiting these practices when examining the violence of smugglers, it has been possible to move towards a deeper understanding of the complex dance of power, both between smugglers and authorities, and within each group.

Who were the smugglers?

In light of previous research, which has suggested that power struggles between smugglers and the state could be, in a large part, explained as working-class men protesting against elites, it is first necessary to consider their social and economic backgrounds. The Sussex and Kent smugglers did not differ greatly from those of many other petty criminals of the time, particularly those involved in some kind of violence. [394] Only men were convicted of smuggling or violence related to smuggling, although the Galley and Chater case demonstrates that women could be accused of being an accessory.[395] In the trials of the smugglers, their occupation was usually recorded as labourer, and a detailed list contained in the Goodwood archives reveals that most of the smugglers were indeed labouring men or farm servants, with a few skilled workers such as a thatcher and a shoemaker involved.[396] As waged labourers it seems likely the men initially turned to smuggling to supplement their income in an 'economy of makeshifts', a story which is also found in the published accounts. [397]

The financial climate in the South East during the early part of the eighteenth century was not favourable to labouring men, as the area had been in decline since the end of the ironworks on the Weald in the seventeenth century. [398] The temptation to increase their income by smuggling was hard to resist for many. All five of the smugglers convicted for the murders of Chater and Galley had been apprenticed as butchers, shoemakers and carpenters, with most mentioning that they had had some form of schooling. These smugglers, sent to the Old Bailey for trial, were of a slightly higher social status than many of those questioned by The Duke of Richmond, suggesting a relationship between this status and either the punishment given or the part played in the gangs. Two of the smugglers

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[393] Andy Wood, 'Fear, Hatred and the Hidden Injuries of Class in Early Modern England', *Journal of Social History*, 39:1 (2006), pp. 803-826, p.804.

[394] A comparison to the Berkshire Blacks suggests a similar social status. See Pat Rogers, 'The Waltham Blacks and the Black Act', *The Historical Journal*, 17:3 (1974), pp. 465-486, p.485.

[395] Anonymous, *A Full and Genuine History of the Inhuman and Unparrallell'd Murders of Mr. William Galley, ... And Mr. Daniel Chater,* (London, 1749), p.290.

[396] This category of labourer was very wide and could have included any number of occupations (see chapter 1) West Sussex Record Office, Goodwood Letters and Papers, MSS 155/H4.

[397] Steven King and Alannah Tomkins, eds., *The Poor in England, 1700–1850: An Economy of Makeshifts* (Manchester, 2003); Olwen Hufton, *Poor of Eighteenth-Century France, 1750-89* (Oxford, 1978); Rayner, John L., *The Complete Newgate Calendar* (1926).

[398] The industry was employing 1,500 people in 1664, falling to 1,000 in 1717. 'But by the 1660s uncertainties of water power in dry years, temporary shortages in charcoal supply, deteriorating roads and falling government contracts were beginning to spell the end.' Brian Short, *England's Landscape: The South East* (London, 2006), p.129

mentioned that they were married or had a family to support, and most of the stories suggest that money was the main incentive to begin smuggling. Smugglers by nature worked over large distances and dealt with a wide variety of people within the community. In order to make their living they depended on the patronage of local people, particularly those unable to afford highly taxed luxury goods.[399] Therefore it is likely that the unspoken acquiescence of communities suggested some form of popular legitimisation of their activities. The trades the smugglers tended to be involved in also often included travel. This allowed both the recruitment of new members to the gangs as well as a disguise for smugglers' activities. This resonates with John Styles's argument that smuggling was redefined as legitimate amongst the lower classes due to its economic benefits. As the number of people who benefitted from smuggling grew, so would its legitimacy in their eyes.

Some went into smuggling for economic motives which were tempered by sociable connections or allegiances. For example, Arthur Gray said that, while a butcher at Hawkhurst, 'Smugglers were constantly and daily calling upon him and taking him from his Business; by which Means, he had almost spent and destroyed what Monies he had got by and kept in Trade'.[400] He was frequently in the company of smugglers and saw how they worked which caused him to be 'captivated with the Hopes of the Profits arising from such Practices.' [401] Samuel Hill told a similar story of falling into smuggling through his shoemaking business. Hill made shoes for the smugglers and became friends with James Stampford, also known as Trip. Trip stayed with Hill and persuaded him to help finance his smuggling runs. Hill said 'I had my Money duly returned for some Time; but after a while, they would have me take up Tea, etc. Which I consented to; and here was the Beginning of all my Misfortunes.'[402] Richard Perrin was another who claimed that he turned to smuggling more from necessity than desire. He was a successful carpenter until his right hand was affected by palsy. He then turned to smuggling and was 'esteemed a very honest Man as to every other Affair of Life' and so given the task of going to France to collect the brandy, rum or tea. Smuggling was therefore considered a trade much like any other by those involved, one in which normal conventions of honour and status applied. Each of these men were involved in trades important to their local community and interacted regularly with law-abiding citizens. The examples above suggest that economics played an important part in encouraging men to begin smuggling and, although on the boundaries of respectability, interacting with or becoming a smuggler was not necessarily seen as criminal way to live.

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[399] James C Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven and London, 1990), p.124.

[400] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), Ordinary of Newgate's Account, May 1748 (OA17480511).

[401] Ibid.

[402] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), Ordinary of Newgate's Account, March 1752 (OA17520323).

Gang Identity

The word gang is used throughout the sources to identify groups of smugglers. However it is necessary to question the use of this term in order to understand what it meant to both smugglers and authorities in the eighteenth century. Historians of gangs in the nineteenth and twentieth centuries describe them as generally being made up of men in their late teens, and argue that membership of gangs provided both a sense of belonging through shared identities in opposition to rivals; and a source of power, often created through fear, violence and intimidation.[403] However, eighteenth century smugglers appear to have been at a very different stage in the life-cycle and this raises questions about the applicability of the term 'gang'. These questions are not only significant for understanding the phenomena of smuggler violence, but also to understand what Winslow describes as social crime, because social crime implies collectivity. Chapter three has suggested that although smugglers worked in groups, this did not mean they were always loyal. Evidence for a strong communal identity amongst smugglers can be seen in the language, names and physical descriptions of the men, as well as through their use of location. It is therefore necessary to consider these elements in order to assess Winslow's assertion that smuggling was a social crime.

Gang was a term that could be used for a group of workers but it is evident that the authorities applied the term 'criminal gang' to the smugglers as this can be found in newspaper reports, customs' correspondence and court transcripts involving smuggling. The records left by the Duke of Richmond also show that the authorities identified gangs as groups of men who frequently worked together in smuggling, often with a specific leader or leaders.[404]

The eighteenth-century definition and terms of work for a smuggler may imply that the smugglers saw themselves as working for a business like structure, rather than a social movement. In this way, smuggling could be seen as an occupation, part of the rural economy of makeshifts for many men, rather than a distinctive community set apart from the local labourers or tradesmen.[405] It is more difficult to assess whether the smugglers themselves identified as being part of a gang, as the only records available of their words are the court transcripts or depositions in which the term appears rarely. In the trial of Thomas Puryour, one of the witnesses, Christopher Barret, was asked:

> Q. Was you one of that Gang at that Time?
>
> Barret. Yes, I was one of that Gang.

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[403] Andrew Davies, 'Street Gangs, Crime and Policing in Glasgow During the 1930s: The Case of the Beehive Boys', *Social History*, 23:3 (1998), pp. 251-267; Stephen Humphries, *Hooligans or Rebels? An Oral History of Working Class Childhood and Youth 1889-1939* (Oxford, 1981), Chapter 7.

[404] West Sussex Record Office, Goodwood Letters and Papers, MSS 155/H138.

[405] King and Tomkins, eds., *The Poor in England, 1700–1850: An Economy of Makeshifts*.

It is not clear whether the word gang was being used by Barret simply in response to the nature of the question or if they were referring to criminal or work gangs. When giving evidence in the trial for the murders of Chater and Galley, smuggler John Raise talked of a named gang in describing a break-in at Poole Custom House:

> Kingsmill, and Fairall, and the rest of their countrymen, said, if you will not do it, we will go and do it ourselves. This was the Hawkhurst gang; John and Richard Mills were with them: We call them the East-country people; they were fetched to help break the Custom-house, &c.[406]

Again, his answer may have been determined by the question, but by using the phrase 'We call them the East Country People' and stating 'rest of their countrymen', Raise was identifying the Hawkhurst gang both in relation to, and as distinct from, another gang. It is clear that the gangs were not rivals, at least in this situation, but this suggests that they were well defined amongst themselves, at least in terms of business practice, perhaps in order to determine factors such as payment and job roles.

Large groups of men or 'gangs' were necessary for the smuggling trade, both physically to move goods and to provide safety in numbers. Winslow has suggested that there were more to gangs than just this by stating: 'fighting...between the plebeian gangs and the forces of the Government...contained elements of class war'.[407] By considering the features of shared identities in the face of opposition which has been found in nineteenth century gangs, it is possible to explore this contention further. Many of the gangs had names based on location which suggest that this was important to them, producing easy identifiers and linking men with the areas in which they lived. It is unknown whether the local groups gave themselves names, or whether these were given by the excise officers to identify them. However, they appear in a variety of sources, from the published book to the trial transcripts and notes made by Richmond and Collier. By using their point of origin as a name, the gangs became linked to local territories although they would travel over quite long distances in their work of smuggling. The Hawkhurst Gang, the Groombridge Gang, the Mayfield Gang and the Folkestone Gang all took their names from a geographical area.[408] This was not uncommon for eighteenth-century rural groups as many poaching gangs in the early part of the century took their names from their places of origin such as the Waltham Gang (Waltham Blacks), The Holt Forest Gang and the Berkshire Blacks.[409] The use of these names suggests a link between the organisation of smuggling gangs and poaching gangs which has been expounded in theories of social crime.[410] By using the names of villages, the smugglers could

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[406] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 19 November 2013), April 1749, trial of Thomas Kingsmill , alias Staymaker William Fairall , alias Shepherd Richard Perin , alias Pain, alias Carpenter Thomas Lillewhite Richard Glover (t17490405-36).

[407] Winslow, 'Sussex Smugglers', p.158.

[408] All of these can be found mentioned in court records, newspaper accounts, letters and diaries at the time.

[409] Rogers, 'The Waltham Blacks and the Black Act'.

[410] Hay, Linebaugh, Rule, Thompson and Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth Century*

project an image of control over particular areas, whilst still remaining essentially anonymous. This mixture of belonging to and being separate from communities can also be seen the nicknames smugglers used individually, which is discussed below.

The names of the smuggling gangs appear to have been widely used, for example in 1732 the *Grub Street Journal* reported:

> The Smugglers called the Mayfield gang, were in this town [Dover] and neighbourhood on Sunday...the custom-house Officers having some notice, were upon their guard or duty, when the gang and boat appeared. The gang consisting of about 20 men and 25 horses, seized 2 of the Officers, and put them into an Alehouse, and set a guard upon them...Rich Hill was shot into the back of his neck and out at his mouth, and had a very large wound on his head to the scull; and Tho. Low was wounded in the head...They are extremely well armed, and their Heads or Captains (as we hear) are Gib. Tomkins, and one Toms, Outlaws.[411]

Unlike nineteenth and twentieth century gangs, the Kent and Sussex smugglers were not territorial. They did not guard places, but they did identify with them and this may have been due to the fact that their adversary was the state rather than rival gangs.[412] They occasionally worked together and although this sometimes caused arguments and fights over who got the major share of the bounty, the collaborations were usually peaceful, as all gangs were fighting the common enemy of the revenue officers. One example of this can be seen in the Poole Customs House raid where the Hawkhurst gang worked with the East Country people. Other examples of collaborative working with both other gangs and the French are contained in the Collier papers.[413] That there was more to be gained both financially and in terms of safety by working together must not be underestimated. Evidence for group identity can be seen in the way smugglers occupied both a shared landscape and language. They identified places by giving them specific names, for example before the Poole Custom House raid the Hawkhurst Gang and the East-Country People, 'met in Charlton Forest at the Center-tree'.[414] The use of the term 'Center-tree' would have meant the place was known to smugglers but not easily identifiable to outsiders. The men used this coded language for important locations in response to the real economic threat to their business from the authorities, however, they were also possibly some sort of taunt to the Customs officials who found it so hard to catch them. Therefore, in terms of identity, we

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England.

[411] *Grub Street Journal* ,Thursday, April 6, 1732; Issue 118.

[412] Karen L. Kinnear, *Gangs: A Reference Handbook* (Santa Barbara, 1996). See Scott H. Decker and Barrik van Winkle, *Life in the Gang Family, Friends, and Violence* (Cambridge, 1996).

[413] East Sussex Record Office, Typescript and manuscript draft material, Sayer 3870-3871.

[414] *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 7.0, 19 November 2013), April 1749, trial of Thomas Kingsmill , alias Staymaker William Fairall , alias Shepherd Richard Perin , alias Pain, alias Carpenter Thomas Lillewhite Richard Glover (t17490405-36).

can see a complex mixture of business tactics and secret knowledge in the smugglers' use of location.

The gangs had specific leaders suggesting organisation and hierarchy within each group. This can be clearly seen in the Hawkhurst case where the names of Jackson and Carter often reoccurred, the Hawkhurst gang was initially led by Arthur Gray, and Thomas Kingsmill was also a leader in this period. Other gangs had named leaders too, for example, Gabriel Tompkin, first found in the records in 1721, led the Mayfield Gang. What made a leader of a smuggling gang is open to interpretation but familial support may have been useful. Both Arthur Gray and Gabriel Tompkin had brothers by their sides. The ability to call on kin when faced with opposition must have strengthened their position, if only in numbers. Little is known about the early history of Tompkin and Kingsmill, but the information given about Arthur Gray suggests his background was unremarkable in relation to other smugglers being:

> Born at Hawkhurst, and put Apprentice to a Butcher at Malden near Maidstone, to whom he served seven Years; after which he returned to Hawkhurst, and there carried on his Trade for about three Years. .

The Ordinaries' accounts and the Newgate Calendar would suggest that the leaders of the smuggling gangs were seen to have a specific personality type, being more violent, daring or enterprising than their colleagues. For example Arthur Gray was described as a man who 'was a Fellow of a bold, daring, enterprising Spirit, feared nothing, would undertake anything...' Whilst Kingsmill was 'a young Fellow of enterprising Spirit...a bold resolute Man, undaunted, and fit for the wicked Purposes of Smuggling; such as intimidated People'. These descriptions are of course subject to the literary conventions imposed by the Ordinary, but they are notably different in their content to those of the other smugglers suggesting that a reputation for enterprise, fearlessness and violence was necessary in order to progress to be the leader of a smuggling gang.[415]   The personality of the leaders most likely had an effect on the actions of the gang and Mclynn has suggested that one reason for the violence in 1747 was the arrest of Arthur Gray for highway robbery and his replacement with Thomas Kingsmill.[416] The Old Bailey descriptions would certainly suggest that the men had different personalities.

A reputation for violence may often have been enough to coerce gang victims due to the important connection between power and reputation within gangs.[417] However, a gang

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[415] Clive Emsley, Tim Hitchcock and Robert Shoemaker, 'Ordinary of Newgate's Accounts', *www.oldbaileyonline.org, consulted* 18 August 2009.

[416] McLynn, *Crime and Punishment in Eighteenth Century England*, p .186

[417] See Davies, 'Street Gangs, Crime and Policing in Glasgow During the 1930s: The Case of the Beehive Boys'; Kinnear, *Gangs: A Reference Handbook* ; Decker and Winkle, *Life in the Gang Family, Friends, and Violence*; George Tita and Greg Ridgeway, 'The Impact of Gang Formation on Local Patterns of Crime', *Journal of Research in Crime and Delinquency* 44:2 (2007);Frederic Milton Thrasher, *The Gang: A Study of 1,313 Gangs in Chicago* (Chicago, 1963).

leader also needed to use violence to demonstrate his power and Arthur Gray was described thus:

> In his Cups, which too frequently are attended with ill consequences, especially by Men of his unhappy Turn of Temper, firing of Pistols has been his wonted Practice; even in such Company, and at such Persons, as he was thought to have the greatest Regard for.[418]

The use of violence by gang leaders had a symbolic role defining the ethos of the gang, the status of the leader, and established the legend that they were tough. Like the innkeeper , Robert Bowden who threatened violence against Cheeseman in chapter one, these actions helped to maintain order within the smugglers' business, particularly as there was not the usual recourse to traditional power structures available due to its place outside of the law.

An analysis of the gangs of smugglers has revealed that there were many elements of collective identity such as group names, shared language and opposition to the authorities. However, it is not possible to take these simply as evidence of a gang culture or social crime. These elements do not necessarily equate to political potential as Winslow has suggested. There were many inconsistencies in the ways in which smugglers operated as a group and perhaps it is therefore more fitting to think of them as a collection of individuals working for mutual benefit, than a cohesive band of rebels.

Issues of individual identity

Identity for the individual smuggler was constructed, experienced and perceived in a variety of ways. The smugglers themselves, the local communities living near the smuggling ports, the press and the customs authorities all had differing views on what made a smuggler. Detail and context were consistently important in allowing personal identity to be a fluid concept for the smugglers; terms used suggest that the body and its associated attributes such as clothing, marks on the skin and colours could reveal both the external identity of an individual and their internal attributes.[419] The eighteenth century has been described as an 'age of disguise' obsessed with discovering what was below the surface, whilst it has also been argued that there was an obsession with the body in the eighteenth century because it contained clues to people's true identity.[420] There were many reports of men disguised as women and vice versa in criminal trials, leading to anxieties over identity and in order to overcome the problems of identifying mobile criminals, the authorities developed a full language of description which was published and circulated in newspapers. This allows for a detailed analysis of one aspect of smugglers' identity.

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[418] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), Ordinary of Newgate's Account, May 1748 (OA17480511).

[419] See Valentin Groebner, *Who Are You?: Indentification, Deception and Surveillance in Early Modern Europe* (Cambridge and London, 2007).

[420] Karen Harvey, 'The Century of Sex? Gender, Bodies, and Sexuality in the Long Eighteenth Century', *The Historical Journal*, 45:4 (2002).

Smugglers had a fluidity of identity which helped in evading the law and dealing with other violent criminals. Several of the smugglers had aliases which would enable them to present various personae to others, and this could possibly have helped men move away from the smuggling community, as a change of name meant they were less likely to be caught by either smugglers or officials. There are no surviving records of men who managed to do this due to the fact they managed to successfully evade the criminal justice system. In contrast, men who turned informers can often be found due to their continuation in this system. Another example of fluidity of identity can be found in a letter from William Page complaining that Edmund Richards had pretended to be his son when seeking work in Buckinghamshire.[421] The propensity to impersonate others concerned the authorities and led to the development of detailed bodily descriptions. These allow an insight into the way smugglers presented themselves to the world, and the marks of identity that were important at the time.

The descriptions of wanted smugglers presented eighteenth-century audiences with images of rough men who were a threat to order and sensibility. Gabriel Tomkins was portrayed as:

> a Man of between Forty and fifty Years of Age, of a very Swarthy Complexion, Somewhat mark'd with the Small-Pox, about Five Foot Nine or Ten Inches high, is a very well made Man, walks very upright, with large dark Eye-Brows, which hang over his Eyes, and has formerly received a Wound in his Left Arm with a pistol or Musket Bullet...[he] has a small Wart or Wen at the Corner of one of his Eye-Brows, next to his Nose, and is said to appear in a shabby Brown Duffel coat, much pieced and torn, and trimmed with White Metal Buttons, a Deep Blue Waistcoat, and an old Light or Lightish Wig turned Yellow with the wearing.[422]

The most visible features which were likely to lead to identification and conviction were publicised. For example, the nature of a person's skin in terms of its complexion, were often commented on, dark or swarthy skin may have been associated with particular occupations such as sailors as they became tanned on the seas. Swarthy was also a term used for poorly shaved men with dark hair.[423] Wigs were often mentioned in the descriptions. The wig was a useful way to hide the true colour of hair and therefore a good disguise, but it has also been suggested that there was a class and age distinction as wigs were a sign of maturity and respectability.[424]

The description of Tomkins's gait -- 'walks very upright' -- was common in descriptions of criminals at the time. This along with his large eye brows, wart and injury would have been

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[421]West Sussex Record Office, Letter from William Page to Jacob Page ,'Goodwood Letters and Papers', MS155 / H89

[422] *General Advertiser* Wednesday, September 17, 1746; Issue 3709

[423] Gwenda Morgan and Peter Rushden, 'The Magistrate, the Community and the Maintenance of an Orderly Society in Eighteenth-Century England. ', *Historical Research*, 76 (2003), pp. 54-77, p.42.

[424] Ibid., p.45.

difficult to hide and were therefore vital to note and publicise. The description of Edward Jervis, Tompkins' brother made much of the marks on his body caused by injury which provided evidence of this work and lifestyle:

> a Short well set Man, of a pale Complexion, black Hair, Large black Eyebrows, thick Lips, and a thick short Nose, formerly wore a light Wig and light Fustian Coat, and has the Mark of a Cut on his Right Hand on the Knuckles, and some time ago was shot in the Breast with small Shot, of which the Marks are still supposed to remain, aged about 30 Years.[425]

In an age when outward appearance could signify respectability, this detailed description paints a picture of a man to be feared. The marks of violence on his body, torn clothes and old wig did not present the image of a man able to be trusted or as being creditworthy. The eighteenth-century justice system used appearance, deportment and reputation in order to make judgements about a man's character, and seventeenth-century Acts of Settlement asserted the authorities' concern with geographic mobility and mistrust of the poor, who could not be subjected to the usual rules of order and subordination.[426] The importance of detail in the descriptions reflects this anxiety. Newspaper readers would have seen Gabriel Tomkins as a violent threat due to his appearance and reports of his actions as 'contemporaries' sense of the prevalence of various types of crime and their overall fear of crime and violence may well have been deeply influenced by what they read in the newspapers'.[427] This would have led to a stereotyped image of a smuggler becoming fixed in popular imagination.

The question of the smuggler's appearance can also be seen from another angle. Whilst the newspaper accounts presented the public with this image, and therefore it may not be a true account, it is also important to understand why a smuggler may have wanted to portray himself in a certain manner. Identity was often linked with outward appearance, and while not all of a man's facade may be through choice, elements such as clothes could be changed or disguised. The signs of violence on the men could have signified their belonging to a certain group, and the stereotypical image of them in scruffy clothes was possibly useful when they wanted to change their appearance and blend into the crowds. Gabriel Tompkins must have been able to adapt his image as he had worked for the customs service as a riding officer, as well as against it as a smuggler, demonstrating the permeability of overlapping communities in this period.[428]

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[425] *The London Gazette* 6374, Tuesday 18th May to Saturday 22nd May 1725.

[426] Morgan and Rushden, 'The Magistrate, the Community and the Maintenance of an Orderly Society in Eighteenth-Century England. '.

[427] Peter King, 'Newspaper Reporting and Attitudes to Crime and Justice in Late-Eighteenth- and Early-Nineteenth-Century London', *Continuity and Change*, 22:1 (2007), pp. 73-112, p.75-6.

[428] *Daily Post* (London, England), Wednesday, August 30, 1732; Issue 4036

Tompkins' ability to move between occupations and communities was at the heart of concerns about smugglers. Not only were they violent and to be feared, but they made a mockery of the laws of the country by working with, and as, corrupt officials, turning ideas of coastal security and authority on their head. However, while the smugglers did cause fear amongst the gentry, used disguise and anonymity in order to move about the country, and did infiltrate the customs service, it seems unlikely that their main intention was to attack their superiors. Rather, the fear generated appears to have been a beneficial by-product of their commercial activities. The range of identities created around smugglers reveals a complexity to their violence which has not been addressed in previous studies, their use of violence, like their identity, was more fluid than has been suggested, with a range of motivations and outcomes.

Fears about violence, as well as the act of violence itself, were constructed culturally. The descriptions detailed above ensured the men fitted into the stereotype of the criminal underworld, which had its roots in Elizabethan representations of vagrants. [429] The descriptions of Jervis and Tompkins, for example, focussed on their physical appearance. However, the stereotypical descriptions suggest that the smugglers were a product of the criminal culture of the time as much as an example of the way in which fact and fiction merged in depictions of the criminal underworld.[430]

The meaning of names

The use of their own language of names was an important part of the smugglers' identity. Study of their language also reveals hierarchies and power relations within the gangs. As has already been shown, they used their own versions of place names to increase a sense of belonging and to protect their anonymity. The records also reveal that smugglers used derogatory names when referring to their victims. For example, in the case of Chater and Galley, they called the captives dogs, using a distancing mechanism also used by the wives of Jackson and Carter. This enabled them to see the men as something other than human and to disengage morally from their victims, a technique used throughout history: 'It is easier to brutalize people when they are viewed as low animal forms, as when Greek torturers referred to their victims as "worms". [431]

The choice of the word 'dog' as an animal metaphor may demonstrate that the smugglers thought of Galley and Chater as pets or servants of the authorities rather than as a threat in themselves. This mirrors the way that the authorities also saw the smugglers as animals. The elites often used metaphors to describe the smugglers, for example a friend of the Duke of

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[429] A. L. Beier, *Masterless Men: The Vagrancy Problem in England 1560-1640* (New York, 1985).

[430] Julius. R. Ruff, *Violence in Early Modern Europe 1500-1800* (Cambridge, 2001), p.31.

[431] A Bandura, 'Moral Disengagement in the Perpetration of Inhumanities', *Personality and Social Psychology Review (Special Issue on Evil and Violence)*, 3 (1999), pp. 193-209, p.200.

Richmond wrote of 'horrid villains who infest that country' giving the impression of an infestation of rats or other vermin.[432]

Many of the men also had, what would now be classed as a nickname. These names had more symbolism and meaning attached than aliases, perhaps further allowing the smuggler to distance himself from the violence he was committing, and projecting complex codes of identity to others. Nicknames had an important informative function in a society faced by changing patterns of social and geographical mobility.[433] The nickname was particularly important to the smugglers for several reasons. It enabled them to communicate and recognise each other across large geographical regions and spread their reputation. At the same time, nicknames had the advantage of excluding those in authority from knowledge of identity. Certain nicknames could be used to spread reputation and fear, whilst others contained references to jokes and localised culture. The use of these names provides evidence once again of the importance of some form of anonymity within violent acts, although here it is heightened. By using a nickname, the perpetrator both protected himself from capture whilst at the same time projecting an image, thus doubling the fear.

Friedrich Bock provided nine areas of classification for nicknames based on his study of Nuremburg between 1200 and 1800.[434] It is possible to classify some of the smugglers' nicknames in this way, but the task is made harder by the lack of contextual information available and the fact that nicknames were often meant to be opaque to the outsider, for example the nickname 'coachman' may have been a reference to an occupation, to a role within the smuggling fraternity or an inside joke. Whilst at the time Jeremiah Curtis was called 'boy', he was the leader of a gang and one of the older smugglers, although it is possible he had had the same name for many years.[435] A name involving a private joke was then, as today, a sign of belonging. In the table below an addition has been made to category three of Boch's classifications to include references to violence, and a further two categories of folk names and names of unknown origin have been added Some categories have been missed out or amalgamated as none of the nicknames apply. The fact that an addition is needed to category three to take account of the quantity of nicknames related to violence reveals the centrality of this to smuggling, as opposed to the nicknames gained in other trades. It demonstrates the proximity of the men to violence in their everyday life and the need to project a certain image to others. This addition shows how important an examination of smuggling is in order to understand the eighteenth century concept of

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[432] West Sussex Record Office, letter from Thos Phillips 12 Jan 1749, 'Goodwood Letters and Papers', MSS 155 H77.

[433] Norbert Schindler, *Rebellion, Community, and Custom in Early Modern Germany* (Cambridge, 2002).

[434] F. Bock, 'Nuernburger Spitznamen. Bock divides his classification into: 1. Peculiarities of appearance, 2. Language and manner of speaking, 3. Mental and moral qualities, habits and hobbies 4. Remarkable experiences 5. Occupations and economic circumstances 6. Origins, 7. Place of residence, 8. Plays on names, 9. Simple first names.

[435] *General Evening Post,* Tuesday, June 9, 1747; Issue 2132.

violence. Moreover, it shows that an understanding of violence is important in understanding the culture and social relationships of smuggling.

1. **Peculiarities of appearance (including age)**	3. **Mental and moral qualities, habits and hobbies (violent references)**
Blacktooth (Thomas Puryour)	*Club George*
Little Fat Back (Richard Rowland)	*Club (James Michael)*
Brindle Tom (Tom Chancey)	*Bloodthirsty Dick (Richards)*
Tawney Sam	*Tim Rough/ Bludgeon (Timothy Harris)*
Kevenhuller/ Black Jack (John Smallwood)	*Bloodthirsty (Farmer)*
Young Gib (Gabriel Tomkins)	*Pain (Richard Perrin)*
Boy Curtis (Jeremiah Curtis)	*Pouncer (Thomas Boffis)*
Nasty Face	*Rough Tickner*
Footsey (Thomas Winter)	*Cursemother Jack (John Turner)*
Ball / Cuddy Joe (Joseph Ware)	
4. **Remarkable Experiences**	5. **References to occupations and economic circumstances**
Slippery Sam (Sam Jackson)[436]	
Stick-in-the-mud (Thomas Gurr)	*Smoker Mills (John Mills)*
	The Coachman (Thomas Winter)
	Shepherd (William Fairall)
	Staymaker (Thomas Kingsmill)
	Butcher Tom (John Cheeseman)
	Carpenter (Richard Perrin)
	Pedlar Jack (Halsey)
	Shoemaker Tom (Thomas Dixon)
6/7. **Origins / places of residence**	8. **Plays on names**
Yorkshire George (George Watson)	*Ely Covert*
Bulverhythe Tom (Thomas Ward)	*Galloway Tom (Thomas Galloway)*
	Hawk/ Ratcatcher (Hunter)
	Joseph Nobody (Lanton)
10. **Folk names**	11. **Unknown**
Robinhood	*Unkle (Gabriel Tomkins)*
	Jockey Tom
	Gingles
	Toms
	Capt Rat
	Trip
	Towzer
	Flushing Jack (John Kitchen)
	Old Oatmeal (David Wenham)
	Poison(James Hodges)

Figure 1. This table shows all the names of smugglers collected from the Goodwood and Collier papers, divided into the categories devised by Frederick Bock. (amended)

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[436] See 'Kent Resources: Smuggling in Kent', http://www.kentresources.co.uk/sam.htm, consulted 14 May 2009 for a version of how this name came about.

As can be seen from the table, many of the nicknames related to a man's outward appearance or character. This may be due to the obsession with the body seen already in smugglers' disguises and descriptions.[437] Just like outward appearance or clothing, the use of nicknames within the smuggling fraternity of Kent and Sussex provides insights into the culture of smugglers and how they wanted to be perceived by the outside world.

The nicknames classified as relating to mental and moral qualities or character, all contain references to violence within the smuggling community. This is likely to be due to the high status afforded men who could defend themselves and their goods within this group. The use of violent nicknames was another way of spreading a fearsome reputation and relates to the qualities demonstrated by the leaders of the gangs. There are also many nicknames which contain references to occupations. These cannot be reduced to their informative function and instead, like the case of The Coachman, could articulate a specific emotional relationship which people enter into with each other as 'The nickname contributed significantly to the social cohesion of group cultures'.[438] This, added to the previous evidence of gang violence, suggests some cohesion amongst smugglers. However, there is no evidence here to suggest the purpose of this, which would be a key factor in labelling this a crime of resistance.

Like the names of the gangs which connected smugglers with poachers, individual names suggest connections with other social groups. For example, the leader of one small gang called himself 'Robinhood'.[439] This has connotations of social crime, in that Robin Hood was a folk hero who stole from the rich to give to the poor and suggests that smugglers saw themselves as engaged in a legitimate activity. [440] It also links smugglers into a tradition of using this name. William Blackstone, whose *Commentaries on the Laws of England* (1765) was an important source on the common law, believed that the Waltham Gang of poachers modelled themselves on the Roberdsmen or followers of Robin Hood.[441] More recently, E. P. Thompson has suggested that the poachers followed the traditional tales of Robin Hood, as in 1721 one group led by 'King John' symbolically contested power in Farnham.[442] The use of names linking these groups can furthermore be seen in a case in which smugglers: 'Amongst other threatening language defied the Officers, & told them they were the Ffarnham Blacks'.[443] It is possible that the smugglers were appropriating the name of the poaching gang and its connotations for their own purpose. However, the full meaning of this statement is lost and it is also possible that the smugglers saw themselves as different to the poachers and thought the comparison more applicable to the officers who deprived them of the goods they had paid for, calling the officers the Farnham Blacks. Whatever the original

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[437] Schindler, *Rebellion, Community, and Custom in Early Modern Germany*.

[438] Ibid., p.71.

[439] *General Advertiser* Friday, October 16, 1747

[440] See Clive Emsley, *Crime and Society in England 1750-1900* (London and New York, 1996).

[441] William Blackstone, *Commentaries on the Laws of England* (1791).Vol IV (1765).

[442] Thompson, *Whigs and Hunters: Origin of the Black Act.*

[443] East Sussex Record Office, Brief for the King ag. Chandler and Others 1720, SAY 3870

context, what is interesting to note is the way recent events in Farnham were put to new uses by the smugglers. This again demonstrates that the acts of smuggling gangs were more complex than previous analysis has suggested.

Analysis and anatomy of violence

The smugglers of Sussex and Kent were involved in violent clashes with the excise authorities throughout the 1740s. This violence included riding in armed groups through towns, large-scale battles with the authorities, and beating or killing customs officers and informers. This culminated in the murders of Chater and Galley and the execution at a special assizes discussed in chapter three. An analysis of the events preceding this, along with that of the incident itself can reveal further how issues of class were not the only cause of this violence, rather these social conflicts were the result of a relationship between various forms of identity related to local patterns of subordination and resistance.

For a short time, Sussex and Kent were considered by some to be the homes of lawless marauders. The counsel for the crown stated that:

> being armed and disciplined in Banditties, they have begun to be the Terror of the Publick; and, unless a timely Stop is put to these Proceedings, they will, in the end, strike at the Constitution itself. 'Tis now known to every body, that this Practice of Smuggling has increased to that Degree, that 'tis not carried on clandestinely and secretly, but it is carried on in the Face of Day, and in Defiance of Law and Justice. There are notorious Gangs on the Sea-Coasts, that publickly ride armed and disciplined in Troops, and that set the Officers of the Revenue at Defiance; often take and imprison them, and carry on their desperate Attempts, breaking through Laws, without any Fear or Terror from the Justice of the Nation.[444]

This speech, taken from the trial of Thomas Puryour in 1747 reveals much about the violence of the smugglers and the struggle over time, space and power between them and the authorities. The term banditti suggests that the counsel saw smugglers as coherent, organised gangs.[445] What struck contemporary observers was the smugglers' assertive visibility: instead of skulking in dark corners or operating at night they were active during the day; they rode in a disciplined manner, mirroring the acts of the authorities by

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[444] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), September 1747, trial of THOMAS PURYOUR , otherwise called and known by the Name of Blacktooth (t17470909-36).

[445] The term Banditti can be found in the OED as meaning the same as the modern terms gangster or bandit and applied to organised gangs of outlaws: **1602** *Life T. Cromwell* II. i. 95 The banditti do you call them?.. I am sure we call them plain thieves in England. **1611** CORYAT *Crudities* 117 The Bandits..are the murdering robbers upon the Alpes. **1688** *Lond. Gaz.* No. 2310/3 He had lived as a Banditi in Anatolia. **1713** STEELE *Englishm.* No. 13. 84 The Examiner is no more a Tory..than a Bandito is a Soldier. **1719** D'URFEY *Pills* (1872) II. 292 Each conquering great Commander, And mighty Alexander, Were **Banditties** too. **1800** COLQUHOUN *Comm. Thames* vi. 240 A set of lawless Banditti infested the River. And the collective singular: **1706** DE FOE *Jure Div.* II. 15 He form'd the First Banditty of the Age. **1799** WELLINGTON in Owen *Disp.* 146 In which province an adventurer had assembled a banditti. **1826** SCOTT *Woodst.* v. 195 Deer-stealers..are ever a desperate banditti.

'arresting' customs officers.[446] Disciplined in both their threats and organisation, smugglers apparently presented the authorities with a fundamental challenge as the telling phrase 'strike at the Constitution itself' attests. In this short, dramatic statement, the counsel for the crown summed up particular features of smugglers violence in relation to location, visibility, legitimacy and content. These features allow us to understand this culture better and are explored in this final section.

Aside from as identification for gangs, location was important to the smugglers in other ways, for example taverns feature strongly in the sources. In the case of Chater and Galley, the first example of actual violence detailed in the book *A full and genuine history…* took place when William Jackson questioned Chater in the yard at the White Hart Tavern in Rowlands Castle.[447] It appears that Jackson was angry that Galley, an instrument of authority, was interfering in a conversation he was having with Chater. Jackson reportedly said:

> "G..d d......n your b......d, what is that to you?" strikes him a blow in the face and knocks him down, and set his nose and mouth a-bleeding; after which they all came into the house, Jackson abusing Galley; when Galley said he was the King's officer, and could not put up with such usage; then Jackson replied "You a King's officer! I'll make a King's officer of you; and for a quarter of gin I'll serve you again"; and some time after offering to strike him again, one of the Paynes interposed, and said, "Don't be such a fool, do you know what you are doing?".[448]

Taverns have been shown to be safe places for many dissident subcultures.[449] They were generally places where workers could congregate without interference from officials or those in positions of authority, and as such allowed freedom from some of the surveillance present in other aspects of life. However, the tavern was not a completely safe place as two trial witnesses recalled overhearing the conversation and later reported seeing a man, presumed to be Galley, with a bloody handkerchief held to his face. Jackson needed to be reminded not to go too far in his treatment of Chater and Galley in such a public place, and the smugglers removed their prisoners before committing more violence. Although the rest of the patrons may have accepted some violence from the smugglers in the form of a brawl, there was some form of popular limitation, similar to that seen in the case of Anne Warwick in Chapter One. This reminds us that smuggling communities were fragmented and splintered. As was seen in the discussion of informers, there was not a binary opposition

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[446] Schindler, *Rebellion, Community, and Custom in Early Modern Germany,*Chapter 5; Scott, *Domination and the Arts of Resistance: Hidden Transcripts,*Chapter 6.

[447] For more on the categorisation of violence see: Eva Lacour, 'Faces of Violence Revisited: A Typology of Violence in Early Modern Rural Germany', *Journal of Social History* 34:3 (2001), pp. 649-667; Robert E. Johnson, 'Primitive Rebels? Reflections on Collective Violence in Imperial Russia', *Slavic Review*, 41:3 (1982), pp. 432-435; G Barak, 'A Critical Perspective on Violence', in Walter S. DeKeseredy and Barbara Perry, eds., *Advancing Critical Criminology: Theory and Application* (Oxford, 2006).

[448] *A Full and Genuine History…,* p.6

[449] Scott, *Domination and the Arts of Resistance: Hidden Transcripts,* p.121-122

between the smuggling community and the authorities. Discursively smugglers and authorities have been constructed in opposition, however we can see in practice that this idea is undermined.

Many reports of the smugglers suggest they made highly visible threats of violence and created great levels of public disorder with the intention of demonstrating their power to local communities and authorities. The Sussex and Kent Smugglers often rode during the day, and not clandestinely, suggesting significance in the choice of time as well as location for their actions. These parades hint that the smugglers saw themselves as part of a legitimate subculture, in opposition to the authorities and their legal restraints on business. As they rode through towns on horseback they echoed military victory parades. For example in Dover in May 1744:

> They rode thro' the Town about 5 o'clock in the afternoon with Pistols cock't in their Hands, each having two Carbines, and Cutlasses, Swearing and threatening Destruction to the officers of the Customs, and to blow out their Brains and burn their Houses; and Put the whole Town into the utmost Consternation.[450]

These parades may have also allowed the smugglers to economise somewhat on the use of actual violence. The method of creating a spectacle and an image of power in order to control others was one well used by the authorities themselves, as seen in the special assizes described in the previous chapter. By using visible displays of strength, the smugglers too were able to create the impression of a powerful combatant, and deter customs officers and the local populace from opposing them.[451] Therefore while the source of power for the smugglers was different to that of the authorities, both used similar techniques. The smugglers could not put people in gaols as such, but they did capture and hold people in makeshift cells, as was the case with Chater, and they frequently gave open threats. While the actual power of the smugglers may not have been as strong as records imply, the impression of power and control was complete. It is intriguing that a subordinate group gave the notion of control in the same way as an elite landlord, supporting the idea that they themselves believed that what they were doing was legitimate, their authority gained from the conditional support of the populace.

Whilst episodes like the one in Dover disturbed the local peace, it was for officers of the customs and informers that the most brutal violence was reserved. Very few cases of violence against ordinary people were reported but Sir John Cope, the MP in charge of the 1733 enquiry into smuggling, acknowledged:

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[450]East Sussex Record Office, Dover 4th May 1744, SAY 3870

[451] Scott, *Domination and the Arts of Resistance: Hidden Transcripts,* p. 48.

> The Number of Custom-house Officers who have been beaten, abused and wounded since Christmas 1723, being no less than two hundred and fifty, besides Six others, who have been actually murdered in the Execution of their Duty.[452]

Violence against these officers and informers served several purposes as discussed in chapter three. On a purely instrumental level, the smugglers attacked the customs officers in order to protect both their economic interests and themselves from capture. Skirmishes between the smugglers and the authorities would lead to violence due to both parties being armed. For example in 1729 over 100 smugglers were gathered together to land goods at Battle:

> …of which the King's Officers having Intelligence, called the Soldiers to their Assistance, who are quarter'd in those Parts for that Purpose: These divided themselves into two Parties, and took two different Routs, in case one should happen to miss 'em; and meeting at length with the Smugglers, reciev'd their Fire first; then the King's Party fir'd, and killed three Horses and shot one of their Men thro' the Leg…[453]

This episode, with its ordered pattern of firing, along with evidence of a skirmish in Goudhurst in which the smugglers fought a local militia group, suggests that the smugglers may have had some experience or knowledge of military custom.[454] Once again this gives the impression of an organised group as the smugglers mirrored and appropriated the actions of the authorities.

Not only did the smugglers mirror the actions of the systems they fought against, they also created punishments to fit what they perceived as crimes. Forced drinking can be seen in several incidents involving smugglers from the South East and was discussed in the London papers. This practice allowed the smugglers to silently comment on the corruption and double standards within the customs service, whilst at the same time warning and punishing their enemies. *The Universal Spectator and Weekly Journal* published in 1721 an account of:

> another Officer, for whom those Miscreants had some small Regard, falling into their Hands a few Days after the Commitment of the former Fact, they did not think proper to treat him in the same barbarous Manner, but oblid'd him to drink Brandy, as long as he was sensible; and after he was dead drunk, they pour'd it down his Throat with a Funnel, to the amount about two Quarts and a pint. This being done, they set him on Horse-back, Ty'd him on, and turn'd his Horse a-drift, which carry'd him in that Condition a Mile or two, when the Cords breaking he dropp'd in the High

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[452] 'Seventh Parliament of Great Britain: Sixth Session (16 January 1733 - 13 June 1733) the Report of the Committee Appointed to Inquire into the Frauds and Abuses in the Customs, to the Prejudice of Trade, and Diminution of the Revenue.',

[453] *Universal Spectator and Weekly Journal*, Saturday, October 11, 1729; Issue LIII

[454] East Sussex Record Office, 'John Collier's Papers', *SAY 3870.*

Way, and lay there till the next Day, when he was relieved by Passengers accidentally coming by, and prevented his expiring upon the place.[455]

It is quite possible that this officer was engaged in drinking with the smugglers voluntarily, before they decided to pour the alcohol down him, as many officers were accused of turning a blind eye in return for brandy. The over-feeding of the alcohol may have had some symbolic significance for the smugglers as well as wider cultural resonance, as officers were often considered greedy for seizing alcohol only to drink it themselves.[456] This shaming ritual can be seen as an example of the smugglers appropriating traditional culture in protest of the restrictions on their trade.

The smugglers frequently plied officials with alcohol in this way, and in 1746 *The London Advertiser* reported:

> Friday Night last, two Watchmen stopped some Brandy, carrying through Leixlip [sic], and were in Possession of their Booty, when one of the Smugglers, with great Address went up, and whispering one of them in the Ear, let him know that it was of the right Sort. And that he had proper Instruments about him to give him a Dram. The Bait took, a Vent was made, and a Quill put in, through which he drank, unceasing, till he fell Back and died.[457]

Whilst death was probably not the aim of this venture, the symbolism is once again clear. The smugglers were preventing the watchmen from stealing their goods by providing a surfeit of them.

A less fatal 'trick' in 1743 involved sending officers on false trails and not so subtly threatening them to keep away:

> Last Saturday an odd Trick was put upon two Custom-House-Officers, who had lately made several Seizures of unenter'd Goods about Peckham &c. By two fellows (supposed to belong to the Smugglers) who gave Information to them at a Publick-House in Thame-Street, that they had discover'd several Sacks fill'd with Tea, in a Hay-Stack near the Lock-Hospital and for two Guineas promis'd to conduct them to the Place. It was agreed to, and the Officers getting a Possee to their Assistance, with Horses to bring off the Cargo, went to the Place, and found three Sacks, which they brought to the Custom-House; but, when they came to examine them, found they were fill'd with dry'd Cow-Dung, with about a Pound of Tea on the Top of each, and a Letter wrapp'd up in Brown Paper, which inform'd them, that if they came up that Road again before Christmas Day, they should go home without their heads.'[458]

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[455] *London Journal* Saturday, April 22, 1721; Issue XCI.
[456] David Vaisey, ed., *The Diary of Thomas Turner 1754-1765* (Oxford 1984), p.182
[457] *General Advertiser* Tuesday, November 25, 1746; Issue 3770.
[458] *London Evening Post* Saturday, September 24, 1743; Issue 2478

In calling this 'an odd trick' the newspaper placed the cultural identity of the smugglers within the context of a trickster or picaresque figure.[459] This is in contrast to other reports which portrayed the smugglers as dangerous. The different ways in which smugglers punished and avoided officials can be seen as part of the cultures of resistance found in cases of poachers or, later, the Captain Swing riots. [460]

The letter placed in the sacks is reminiscent of the threatening letter tradition which E. P. Thompson believed was 'a characteristic form of social protest'.[461] Each of these incidents, both those containing alcohol, and the one in which smugglers tricked the officers, appear to have elements of humour or fun as well as menace and violence. It is however impossible to get at the motivation of the smugglers in their letter to the officers. Whether the smugglers would have identified themselves as being ideologically motivated is open for debate and this chapter has shown that these incidents were often more complex than first appeared. What is uncovered in these episodes is how smugglers absorbed contemporary cultural developments in their actions and that smuggling culture integrated within other popular cultural forms.

Chapter three showed how the authorities perceived smuggler violence as extreme and without reason. However, like the cases of rape in chapter one, an analysis of the most shocking aspects of the violence reveals patterns and order within them. *The London Journal* reported the murder of a customs officer in Kent, in 1721:

> And they tell us, one of the King's Officers was shot by them a few Days ago in the Exercise of his duty; and to render him a Terror to others, they stabb'd him in about a Dozen Places after he was dead.[462]

It is quite possible that the officer was shot accidentally whilst the smugglers were discharging their weapons to deter interference. The guns they used were not always accurate and the many gun accidents reported to the coroner at this time confirm their danger.[463] However, by abusing the body of the dead officer, the smugglers were sending a clear message to the authorities, echoing the way in which the authorities displayed the bodies of criminals after execution. The smugglers not only controlled the import of goods, and some of the local community, but by violating the body they also offended both older customs and new modes of gentility around the body.[464]

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[459] Barbara Babcock-Abrahams, 'A Tolerated Margin of Mess": The Trickster and His Tales Reconsidered ', *Journal of the Folklore Institute*, 11:3 (1975), pp. 147-186.

[460] Thompson, *Whigs and Hunters: Origin of the Black Act* ; Hobsbawm, 'Social Banditry';Hobsbawm, *Bandits*; E P Thompson, *The Making of the English Working Class* (London, 1963), p. 838.

[461] Hay, Linebaugh, Rule, Thompson and Winslow, *Albion's Fatal Tree. Crime and Society in Eighteenth Century England*; E P Thompson, 'Patrician Society, Plebeian Culture ', *Journal of Social History*, 7:4 (1974), pp. 382-405.

[462] *London Journal*, Saturday, April 22, 1721

[463] R F Hunnisett, *East Sussex Coroners' Records 1688-1838* (Lewes, 2005).

[464] Roy Porter, *Bodies Politic; Disease, Death and Doctors in Britain 1650-1900* (London, 2001).

A similar episode can be seen when *A full and genuine history…*told the story of Galley's burial After much travelling and abuse, Galley eventually fell from his horse and was presumed dead. It was here that the smugglers performed an act which horrified contemporaries by removing the ritual and symbolism surrounding a normal respectable burial. They buried Galley's body in a secret place so that it was not discovered until decomposed and according to some reports, buried him whilst he was still alive. [465] The account of the murders suggested that an anonymous letter led the authorities to Hake 'where they found the corpse of Galley buried; and the reason why it is supposed he was buried alive, they found him standing almost upright, with his hands covering his eyes.'[466] To bury a man alive would have seemed horrific to all but the most hardened of men and the literary image of Galley with his hands covering his face was haunting. In burying him, the smugglers can be seen to be following convention; however, the mode in which they buried Galley removes some of the expected ritual of this act. By concealing the body the smugglers protected themselves from prosecution but also by burying Galley in unconsecrated ground, where only criminals and suicide victims would be laid, they denied mourning and accentuated humiliation and desecration of the body. This once again turned natural order on its head with smugglers acting as the 'officials' and burying the true officer Galley as a criminal.[467]

Ruth Richardson has shown that as late as the nineteenth century: 'Several traditional observances seem to embody the belief that *post-mortem* customs enacted or arranged by survivors could affect the fate of a dead person's soul.'[468] Reports of mutilation or display of dead bodies were rare, but the practice did occur and caused great consternation. In 1746, The *London Evening Post* reported:

> On Thursday last Week an Attempt was made at a Warehouse near Eastbourne in Sussex, where a great Quantity of Port Wine is lodg'd…but the Design being discover'd by one of the Watch appointed to guard the said Warehouse, the Villains who made the Attempt cut the poor Fellow's Throat, and afterwards hang'd him up near the place.[469]

This type of violence goes beyond the functional and therefore questions the analysis of Muskett who suggested that smugglers' violence was instrumental. Whilst it may have been deemed necessary to kill the watchman in order to preserve their own lives and carry off the goods, the displaying of the body has a more ritualistic tone reminiscent of the

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[465] See Anton Blok, *Honour and Violence* (Oxford, 2001); *Penny London Post or The Morning Advertiser* Wednesday, September 28, 1748; Issue 1007

[466] *A Full and Genuine History…P33*

[467] For more on death and burial see Porter, *Bodies Politic; Disease, Death and Doctors in Britain 1650-1900*; Clare Gittings, *Death, Burial and the Individual in Early Modern England* (London, 1988); Ralph Anthony Houlbrooke, *Death, Religion and the Family in England 1480-1750* (Oxford, 2000); David Cressy, *Birth, Marriage, and Death: Ritual, Religion, and the Life-Cycle in Tudor and Stuart England* (Oxford, 1997).

[468] Ruth Richardson, *Death, Dissection and the Destitute* (Chicago, 2001).

[469] *London Evening Post* Thursday, March 27, 1746; Issue 2870.

agricultural practice of hanging dead crows as a warning to leave crops alone. The smugglers were using violent elements already present in local traditional forms of ritualistic demonstration and violence was used not only to protect goods or prove a point, but as a complex cultural construction which mirrored the activities of the state. Violence was a form of power and control, as well as a culturally specific messaging system.[470]

A custom which can be found in several reports of smugglers' violence is that of tying victims to horses. Most notably it appears in the case of Galley and Chater. When leaving the tavern, Galley and Chater were placed on a horse with their legs tied together. The counsel for the prosecution gave the explanation that this was to prevent their escape, rationalising the act.[471] However, the image of the men being whipped along on the horse has echoes of charivari (see figure 2). This would not have been a quiet way of removing the prisoners and so it is likely there was a specific meaning for the act in the minds of the smugglers. Charivari was used in the eighteenth century to mete out popular justice and was usually perfomed for crimes such as adultery or scolding.[472] This incident suggests that the smugglers believed they had the authority to punish Galley and Chater in this way for a transgression they had committed against their community. Chater had betrayed the smugglers by agreeing to inform on them and so the whipping may have been a ritualised punishment for his breach of the collective norms of behaviour. Whipping was also used as a punishment for secular crimes and so adds weight to the suggestion that the smugglers were mirroring modern forms of state punishment, turning it against itself.
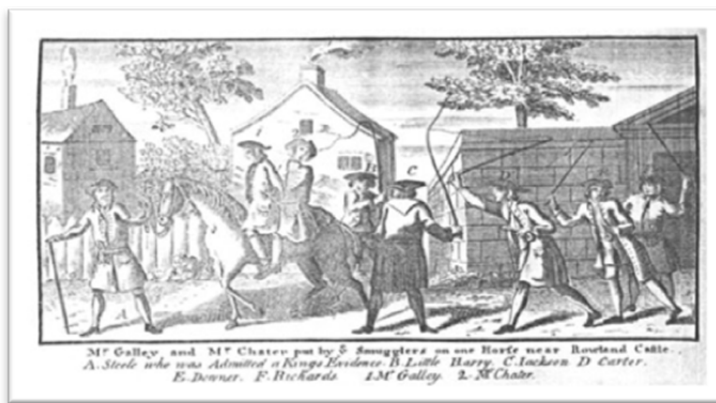
Figure 2 - "A Full and genuine History…" Page 1

Galley was further humiliated and emasculated after he appeared to submit to the smugglers, crying 'for God's sake shoot me through the head or through the body' and became indifferent to what they did to him lying limply over the saddle. Jackson put him on

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[470]Vaisey, ed., *The Diary of Thomas Turner 1754-1765*.

[471] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1).

[472] E P Thompson, *Customs in Common* (London, 1991).

his horse and held him there 'pinching him by the privy Parts'.[473] As the customs official Galey represented authority and was therefore subjected to this symbolic emasculation as a demonstration of the smugglers' power. This would have been a titillating inclusion in the narrative for the eighteenth-century reader who, whilst remaining morally superior at all times, enjoyed tales with any sexual reference. It is impossible to know if this statement had any further meaning for the reader that is lost today, for example, it has been suggested that a 'pinch-buttock' was another word for a whoremonger in the seventeenth-century and this may have added further meaning to the phrase.[474] It seems likely that the smugglers were using forms of rough justice that had been common in the area for centuries and applying this to Galley in order to stake their claim over his authority. The smugglers can therefore be seen to be borrowing elements of ritual from traditional culture and the contemporary judiciary, taking the traditional custom of humiliation such as that seen in charivari and appropriating elements of it for their own use.

A final perspective on the culture and identity of smugglers can be gained by looking at the women on the periphery of the gangs. This chapter has revealed a male world. However, although it was the male smugglers who explicitly took part in the violent rituals, women were also involved on the periphery to some extent. In the printed accounts, female voices are obscured even more than those of smugglers, but they can still provide insights into how contemporaries perceived women in relation to smuggling and violence. Mrs Payne, the owner of the White Hart tavern in Rowlands Castle was tried at Winchester Assizes for being an accessory to the murder of Chater and Galley because she had sent for the smugglers.[475] Mrs Payne had become suspicious of Galley and Chater and told one of their travelling companions 'she was afraid these two strangers were come with intent to do some injury to the smugglers.'[476] The use of the term stranger could mean that unknown people did not visit the tavern often, but as it was on a travelling route, it is more likely that the term is meant figuratively, meaning that the men were considered dangerous. Mrs Payne then advised George Austin who had been showing Galley and Chater the way, to 'go away about his business, telling him, as she respected him, he had better go and not stay, lest he should come to some harm'.[477] This again highlights the difference between the 'known' Austin who provides no threat and the 'strangers' of Galley and Chater. In fetching the smugglers, Mrs Payne was not unusual, women at this time were often responsible for negotiating the conventions of everyday life, and as shown in chapter two any responsible person could act

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[473]Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1). See also *A Full and Genuine History…* p. 11

[474]Gordon Williams, *Dictionary of Sexual Language and Imagery in Shakespearean and Stuart Literature* (London, 1994), p.182

[475] Although Mrs Payne was acquitted, she was afterwards indicted for a misdemeanour for harbouring smugglers. *Old England* , Saturday, July 15, 1749; Issue 272.

[476] *A Full and Genuine History…* p.9

[477] Ibid. p.10

as arbitrators in disputes.[478] Women, particularly victuallers and ale house owners, were in a particular position to be able to communicate between various groups and in many cases told the wider community about informers.[479] When Mrs Payne discovered that unwritten conventions might be broken and disrupt the social order, as in the case of Chater informing on Diamond, she communicated this violation to her wider community by calling for Jackson and Carter. This episode may serve as fuel for Winslow's argument that the smugglers and their followers saw themselves as a separate 'society' preserving their way of life in defiance of the authorities. However, there were numerous economic and social reasons why the families of smugglers, and tavern owners in particular, would want to keep them in business. Rather than just resting on feelings of kinship and customary rights, the smugglers' support may therefore have been due to a more complex pattern involving subsistence.

Another example of women's involvement is found later in the court transcript. When Galley and Chater wanted to leave the tavern it is reported that Jackson's wife attempted to keep them there by trickery:

> to pacify them, told them that she lived at Major Battine's, and her Horse was gone for, and as soon as it came she would shew them the Way to Mr Battine's[480]

This suggests that Galley and Chater would have trusted Jackson's wife to help them. Although not physically violent, the women were as involved as the men in the affair, albeit their involvement was shaped by the cultural context. This is consistent with what has been observed of violence against informers and female rioters.[481] The women had a vested interest in keeping their husbands safe due, in part, to the economic benefits the smuggling trade afforded them as well as feelings of loyalty.

While the smugglers were deciding what to do with Galley and Chater, the wives of Jackson and Carter called for violence.[482] As has been demonstrated above, the printed accounts showed them morally disengaging from their victims by using animal metaphors for the men. Their speech also demonstrates an element of revenge or self preservation, '"Hang the dogs, for they came here to hang us"'.[483] It is interesting to note that the women apparently identify with the smuggling gangs using the term 'us'. Although this is reported speech, it

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[478] Jessica Warner and Frank Ivis, '"Damn You, You Informing Bitch." Vox Populi and the Unmaking of the Gin Act of 1736', *Journal of Social History*, 33:2 (1999), pp. 299-330.

[479] Ibid., p.313.

[480] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1).

[481] Warner and Ivis, '"Damn You, You Informing Bitch." Vox Populi and the Unmaking of the Gin Act of 1736', p.311; Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', p.115; Thompson, *Customs in Common*, p.310; Malcom I. Thomis and Jennifer Grimmett, *Women in Protest 1800-1850* (London, 1982).

[482] Old Bailey Proceedings Online (www.oldbaileyonline.org, version 7.0, 24 November 2013), January 1748, trial of Benjamin Tapner John Cobby John Hammond Richard Mills the elder Richard Mills the younger William Jackson William Carter (t17480116-1).

[483] *A Full and Genuine History…*, .p.8

suggests that the author thought the women were part of the smuggling gangs and therefore as capable of violence as the men. The gender divide was only in the detail of the violence.

Jackson's and Carter's wives were playing an important part in the ritual as by providing their backing and encouragement to the men they legitimised their actions, and the smugglers eventually hanged Chater, perhaps following their wives advice . Research on violence against informers of the Gin Act has also shown that women were the inciters of violence.[484] The courts too thought the wives played an important part as they were gaoled at Winchester for being accessories to the murder.[485] There is no evidence that the women were hanged but their importance in the story highlights that this case was one which involved the whole family or community and as such was more of a threat to the order of the country.

Conclusion

The previous chapter looked at how officials responded to smuggler violence, and gave a view of the smuggling gangs from the outside. This chapter has looked at the smuggling gangs from within and discovered a highly organised network of individuals and gangs straddling the mainstream community and an alternative culture. All that is left is an echo of smugglers' voices because the sources provide only reports of their activities, mediated by the authorities' preoccupations and understandings. However, an analysis of both the violent actions of the smugglers and the context surrounding them has revealed that whilst violence was certainly a way of life for these men, it was not their main purpose. This understanding leads us to question whether smugglers were using violence as a form of protest, or whether it was a by-product of their commercial activities. In fact, smugglers' use of violence was complex and had many motivations depending on personality, context and circumstance. The actions of both smugglers and authorities in Sussex and Kent were unique, and created by specific power relationships related to identity and local connections. Although elements of cohesion can be seen amongst smuggling gangs in the eighteenth century, it is not clear to what extent these can be considered elements of proto class consciousness. It is therefore possibly time to reassess the use of all-encompassing labels such as social crime when looking at events such as these.

What has emerged from both this chapter and chapter three is a mirroring of certain aspects of violence, culture and order between the gangs and the authorities. This raises issues of the legitimacy of violence on both sides. Both the smugglers and the authorities believed that their acts of violence were legitimate responses to the threats they suffered. This echoes the feelings of the individual complaining against violence in the quarter sessions or justices' parlour, that the violence they had suffered was unjustified. Much of

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[484] Warner and Ivis, '"Damn You, You Informing Bitch." Vox Populi and the Unmaking of the Gin Act of 1736', p.311

[485] *Whitehall Evening Post or London Intelligencer* , Tuesday, February 21, 1749; Issue 474; *General Advertiser* Friday, February 24, 1749; Issue 4473

the violence so far has appeared to be dominated by men, and that is particularly the case with these cases of smuggler violence. However, women were on the periphery of this world, and were involved because of their status as family members. The evidence of the involvement of women in this chapter has supported the suggestion in chapter one that families, and particularly women, were likely to fight together to preserve their lifestyles and livelihoods. The next chapter further explores the concepts of legitimacy and acceptability within violent interactions but looks at what is more traditionally the female sphere. The women in this chapter could be found within the tavern, but chapter five explores the concept of violence and gender relations more fully by situating women in a context in which they were prominent – that of the household.

Household violence

Introduction

So far, this thesis has explored the representations and experience of crime in Sussex and Kent at both small town and county level. This final chapter widens the analysis to the southern region, from London in the north, Somerset in the west and Kent in the east. At the same time, it narrows the focus to individual households. The first two chapters of this thesis concentrated on the legal definitions and forms of violence. This chapter takes the questions and insights gained from this into another context. By using pamphlet literature to supplement the previous material and examine in detail violence contained within the household, it addressed questions about the cultural settings that shape the patterns of action and language. Issues of the legitimacy of violence have been raised throughout the previous chapters and these will be explored further here. Furthermore, the study of smugglers revealed the importance of representations of violence and the interlinking of judicial action with individual behaviour. These issues are now considered with regards to household violence, a phenomenon which, unlike smuggling, can begin to inform us about violence within the country as a whole, rather than just within two counties.

The aim of this final chapter is to add detail to the study of violence within the domestic sphere. By exploring a wide range of sources it is possible to further anatomise the concept of violence to build a more complex picture of every-day experiences in the early eighteenth century. The preceding chapters have shown that the definition of violence was shaped by its context and circumstances. This also holds true for household settings where perpetrators, often alongside the courts, considered violence to be a legitimate response when social order was threatened. The paucity of qualitative evidence in court records for the study of domestic discord has meant that a comprehensive history of household violence has yet to be completed. While there have been extended studies of wife-beating and a call by Greg T Smith to widen 'our scope of sources for the examination of domestic violence', there is still room for further assessment of the dynamics of eighteenth century families, particularly with regards to both abusive women and the abuse of servants in provincial areas. [486]

During the long eighteenth century the notion of the household-family could include extended family, friends, lodgers and servants and it is for this reason that this chapter has used the term household violence as opposed to domestic violence.[487] This terminology fits with the debate over the organisation and nature of relations in the family in the eighteenth century and has considered the methodology of Naomi Tadmor by, exploring the terms and

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[486] Greg T Smith, 'Expanding the Compass of Domestic Violence in the Hanoverian Metropolis ', *Journal of Social History*, 41:1 (2007), pp. 31-54.

[487] Naomi Tadmor, *Family and Friends in Eighteenth-Century England: Household, Kinship, and Patronage* (Cambridge, 2001); Naomi Tadmor, 'The Concept of the Household-Family in Eighteenth-Century England', *Past & Present*, 151 (1996), pp. 111-140.

categories used by contemporaries.[488] The use of language in the pamphlets has therefore been observed in order to further illuminate the contemporary definition of violence in these contexts. The data collected from Sussex and Kent demonstrates that it was within the extended family that violence most commonly occurred, and this has also been found across Europe.[489] However violence, in terms of chastisement was often a legitimate part of social discourse, and not all cases of household violence were taken to court. This implies that there were boundaries between what was considered a legitimate level of violence in a household and what was illegitimate and involved court action. These boundaries, although seen in legal definitions, remained blurred and contested in practice. By analysing cases which contemporaries regarded as examples of illegitimate violence, it will be possible to gain a fuller understanding of where the border between the illicit and permissible lay.

The cases that will be considered here fall into two distinct types, which will be called subordinate violence and disciplinary violence. The category of subordinate violence involved a low-status perpetrator using violence on a higher-status victim whilst disciplinary violence is made up of cases in which a higher status perpetrator violently disciplined a lower-status victim. Subordinate violence was, unlike disciplinary violence, necessarily illicit and highlighted the unacceptability of attempts to resist patriarchal order. However, many of the cases considered in this chapter reveal a more nuanced contemporary reaction to it than might be expected. Disciplinary violence played an everyday role in policing patriarchal order within the household, therefore by examining cases in which such acts transgressed the boundary between the permissible and illicit, and considering the features of this transgression, it is possible to observe the limits of the legitimate policing of the patriarchal order.

All the cases studied resulted in convictions and therefore in each case the violence was considered to transgress acceptable boundaries of behaviour. However, commonly in the popular literature the subordinate perpetrators were also portrayed as victims of household disorder, often caused by those they murdered. Thus by exploring excessive disciplinary violence that provoked subordinate violence in the form of murder we may hope to understand better the domestic environment which led to such disordered households. This violence functioned as both an instrument of order and a symptom of disorder, serving alternative identities according to the context and authority of its perpetrators.

This chapter will study terms of legitimacy by firstly analysing the discourse surrounding household violence and its legality. It then examines in detail cases of subordinate violence,

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[488] Tadmor, *Family and Friends in Eighteenth-Century England: Household, Kinship, and Patronage*, p. 8 and p.112; Robert B Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres?* (London, 1998), p. 88; Lawrence Stone, *The Family, Sex and Marriage in England 1500-1800* (London, 1977); Randolph Trumbach, *The Rise of the Egalitarian Family: Aristocratic Kinship and Domestic Relations in Eighteenth-Century England* (San Diego, 1978); Keith Wrightson, *English Society: 1580-1680* (London, 1993); Peter Laslett, *Household and Family in Past Times* (Cambridge, 1972).

[489] See chapter one and Tadmor, 'The Concept of the Household-Family in Eighteenth-Century England'; Julius. R. Ruff, *Violence in Early Modern Europe 1500-1800* (Cambridge, 2001).

drawing out patterns in its reporting, treatment and the characters involved. Finally it considers disciplinary violence and the concepts of legitimacy and cruelty. Exploring household violence in this way allows us to investigate how the definition of violence in the early eighteenth century was far from simplistic, and reveals that within the household, contemporaries perceived violence, in contrast to chastisement, as transgressive. This in turn led to partial justification of subordinates' attempts to resist it.

Historiography

Historians have tended to approach the history of intimate violence within the household from the angle of domestic violence. They have also generally focused on spousal violence, particularly that perpetrated by men. This has come about in part due to the way historians have defined violence in physical terms, and partly through the subject's origins in women's history.[490] However, by defining violence as physical attacks, historians risk excluding cases which contemporaries considered violent, such as defamation, threats, and cases of physical chastisement. For instance, verbal violence was often perpetrated by women, and by excluding this it skews any gender analysis, removing women from the historical picture. As has been demonstrated in this thesis, the definition of violence is important when comparing cases. Secondly, the historiography of domestic violence developed with feminist historians seeking to uncover the hidden histories of the oppressed.[491] This has also led to a focus on female victims and a lack of research on female perpetrators or male victims of household violence. This chapter addresses these issues of definition and focus by considering the wider understanding of household violence gained from close analysis of the sources. Both marital violence and other instances of violence within the household are used to examine disciplinary and subordinate violence. As much of the historiographical work in this area has its roots in studies of spousal violence, it is necessary to explain this area further before considering studies of household violence.

Historiography of Spousal Violence

The earliest scholarly work on domestic violence tended to focus on either the pre-Civil War period or the mid to late nineteenth century.[492] This left a large gap in the historiography for the long eighteenth century which has been attended to in part by long surveys such as those of Anthony Fletcher and Elizabeth Foyster.[493] Discussions have tended to focus on whether there was a shift in cases of marital violence and on precisely dating any changes

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[490] E.g. T. Davidson, 'Wifebeating: A Recurring Phenomenon Throughout History', in M. Roy, ed., *Battered Women: A Psychosociological Study of Domestic Violence* (New York, 1977).

[491] See Amanda Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', *The Historical Journal*, 36:2 (1993), pp. 383-414.

[492] For example see: Susan Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England', *Journal of Women's History*, 6:2 (1994), pp. 70-90; J. Carter Wood, *Violence and Crime in Nineteenth Century England: The Shadow of Our Refinement* (Abingdon, 2004); A. James Hammerton, *Cruelty and Companionship: Conflict in Nineteenth-Century Married Life* (London, 2005).

[493] Anthony Fletcher, *Gender, Sex and Subordination* (New Haven, 1995); Elizabeth Foyster, *Marital Violence: An English Family History, 1660-1857* (Cambridge, 2005).

found. Fletcher claims that opinions about marriage and violence within it were fairly constant between 1500 and 1800.[494] Foyster argues that there was a change in attitudes to marital violence between 1660 and 1857 and that while marital violence was still a public affair in the eighteenth century, there was also the beginning of a decline in judicial toleration for, and the privatisation of male violence.[495] This work supports Margaret Hunt's assertion that wife-beating was a public spectacle although she adds the suggestion of a class element stating that there was a deliberate rhetorical displacement of family violence onto the lower classes.[496] Joanne Bailey provided further evidence of changing understandings of male violence when researching matrimonial difficulties between 1660 and 1800. She suggested that changing sensibilities towards the end of the century meant that women were portrayed as passive and men aggressive and this led to fewer men claiming violence at the hands of women.[497]

These debates are connected with the notion that there were separate public and private spheres associated with gender. Historians have constructed this according to a dominant eighteenth-century ideology of femininity, which associated women with a private sphere of domesticity and leisure in contrast to men's domain outside of the home.[498] In terms of violence, the separate spheres framework has been used to explore the idea that domestic violence continued into the nineteenth century, but from the eighteenth century onwards became hidden inside the private home. However there have been criticisms of the unquestioning use of this narrative, particularly when it is based on evidence from prescriptive sources which do not relate to practice.[499] Aside from this, another challenging area of the separate spheres framework is that it does not sufficiently take account of the lower classes, when the promotion of domestic femininity requiring the man to be the sole economic provider, becomes problematic. Therefore it is necessary to explore practice as well as prescription and to use terms employed by contemporaries. For this reason it is important not to focus exclusively on the dynamics between husband and wife when thinking about violence within the household. Therefore this study looks beyond marital strife.

Historiography of Household Violence

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[494] Fletcher, *Gender, Sex and Subordination*; Anthony Fletcher, 'Men's Dilemma: The Future of Patriarchy in England1560-1660', *Transactions of the Royal Historical Society, Sixth Series*, 4 (1994), pp. 61-81.

[495] Foyster, *Marital Violence: An English Family History, 1660-1857*.

[496] Margaret Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth Century London', *Gender & History*, 4:1 (1992), pp. 10-33.

[497] Joanne Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800* (Cambridge, 2003); Joanne Bailey, ''I Dye [Sic] by Inches': Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England.', *Social History*, 31:3 (2006), pp. 273-294.

[498] See Vivien Jones, *Women in the Eighteenth Century: Constructions of Femininity* (London, 2001); Joanne Bailey, 'English Marital Violence in Litigation, Literature and the Press', *Journal of Women's History*, 19:4 (2007).

[499] Vickery, 'Golden Age to Separate Spheres? A Review of the Categories and Chronology of English Women's History', p.389.

While there have been some attempts to close the historiographical gap with regards to marital violence in the eighteenth century, very little has been written concerning other members of the household. In addition any history of household violence has tended to focus on male perpetrators. These two omissions may be due to the sources used, and historiographical preoccupations which have narrowed the field of enquiry.[500] Firstly, the sources used by historians of the eighteenth century household may have obscured the ability to trace the development of household violence from the seventeenth century. For example, Kristina Straub explored violence between masters and servants in the eighteenth century and argued that complaints about servants intensified during the period, creating a 'servant problem' characterised by anxieties over their sexuality.[501] This gives some insight into the character of violence within the household but is based on eighteenth-century texts and uses literary analysis. The use of these sources and methodology which are not applicable to an earlier era mean that conclusions are unable to be considered within a wider cultural context. Additionally, the questions that historians ask of eighteenth-century sources are different to those applied to seventeenth- and nineteenth-century ones, making it more difficult to demonstrate a continuous line in the history of household violence.

Linked to the use of sources are the historiographical structures which have influenced studies of culture and society in the eighteenth century. Interpretations of masculinity have 'been shaped by the categories, models and narratives developed and deployed in historical work' and this has led to men being removed from accounts of the eighteenth century home.[502] Likewise, interpretations of both the household and violence have been shaped by wider structures and this has obscured the range of ways violence was experienced within the home. Ideas of separate spheres and politeness as well as the centrality of cultural history in the eighteenth century and the omission of the working man in literature have hindered any attempts to trace the meanings of violence from the seventeenth century.[503] A further factor has been the historical narrative which shapes a decline in men's engagement with the home in the eighteenth century.[504] These dominant narratives of masculine politeness and feminine constraint have meant that other types of violence within the

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[500] See: Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800*; Karen Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England', *Gender & History*, 21:3 (2009), pp. 520-540.

[501] Kristina Straub, *Domestic Affairs: Intimacy, Eroticism and Violence between Servants and Masters in Eighteenth Century Britain* (Baltimore, 2009).

[502] Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England', p.521.

[503] Karen Harvey, 'The History of Masculinity, Circa 1650-1800', *The Journal of British Studies*, 44:2 (2005), pp. 296-311, p.306-7; Philip Carter, *Men and the Emergence of Polite Society, Britain, 1660-1800* (Harlow, 1999); Michèle Cohen, '"Manners" Make the Man: Politeness, Chivalry, and the Construction of Masculinity, 1750–1830', *Journal of British Studies*, 44:2 (2005), pp. 312-329; Michèle Cohen, *Fashioning Masculinity: National Identity and Language in the Eighteenth Century* (London, 1996); John Brewer, *Pleasures of the Imagination: English Culture in the Eighteenth Century* (Chicago, 2000); Lawrence E. Klein, 'Politeness and the Interpretation of the British Eighteenth Century', *The Historical Journal*, 45:4 (2002); Lawrence E. Klein, *Shaftesbury and the Culture of Politeness: Moral Discourse and Cultural Politics in Early Eighteenth-Century England* (Cambridge, 1994); Shawn L. Maurer, *Proposing Men: Dialectics of Gender and Class in the Eighteenth-Century* (Stanford, 1998).

[504] Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England'.

household, particularly that perpetrated by women, have not been analysed to a great extent. In addition, these were essentially bourgeois urban concepts and so do not adequately take into account the lower classes or rural experience. In order to overcome these problems it is necessary to move beyond hegemonic models and consider the range of eighteenth-century experiences and identities available within the household, where they can be compared to their seventeenth-century counterparts. The historiographical trends discussed here become problematic when analysing household violence as they differentiate the eighteenth century from the seventeenth and nineteenth and skew any analysis between them. What is needed therefore is a method of analysis which is consistent between these periods.

Before the mid- seventeenth century, the household was critical to both men's status and constructions of masculinity, as well as being a key instrument of social order.[505] For example, early modern historians have shown how moderated violence in the form of chastisement, was used within the household as a tool for maintaining patriarchal authority.[506] Historians have generally agreed that manhood in the sixteenth and early seventeenth centuries was based on the household patriarch and notions of honour, but changed into ideas of masculinity based on politeness.[507] For example, Susan Kingsley Kent has suggested that in the earlier period masculinity was based on men's authority and women's obedience, which was a conscious enforcement of patriarchal ordering. She argued that this form of masculinity was produced by 'fears engendered by the civil war and interregnum that female disorder produced social disorder, and the need to eliminate the latter by curbing the former'.[508] Household violence was therefore considered a necessary part of this social control. Susan Amussen has suggested , that after the Restoration more subtle forms of discipline were used by a secure social elite, and that it was this which formed the roots of separate spheres.[509] Anthony Fletcher agreed with this analysis and argued that from 1700, men were attempting to encourage women to internalise female subordination which may have made violence less necessary as a practical tool of men's day-to-day control inside the home.[510] He has also suggested that in the earlier period, men felt threatened by women's power to shame and 'unman' them and thus 'continually shaped and reshaped' patriarchies, inventing new ways to maintain their dominant position in society.[511] Although Fletcher agrees with Amussen and Kingsley Kent that the practice of

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[505] Lena Cowan Orlin, *Private Matters and Public Culture in Post-Reformation England* (Ithaca New York, 1994).

[506] Alexandra Shepard, *Meanings of Manhood in Early Modern England* (Oxford, 2003).

[507] Shoemaker, *Gender in English Society 1650-1850: The Emergence of Separate Spheres*; Fletcher, *Gender, Sex and Subordination*; Paul Langford, *A Polite and Commercial People: England 1727-1783* (Oxford, 1998).

[508] Susan Kingsley Kent, *Gender and Power in Britain, 1640-1990* (London, 1999), p.27

[509] Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England'.

[510] Fletcher, *Gender, Sex and Subordination*.

[511] Fletcher, 'Men's Dilemma: The Future of Patriarchy in England1560-1660'.

patriarchy may have changed, his interpretation demonstrates continuities in the concept and system.

The continuing significance of men's domestic authority in the eighteenth century has also been demonstrated by Karen Harvey and Jenine Hurl-Eamon.[512] Hurl-Eamon has however, suggested that patriarchal authority existed in the eighteenth century but was mediated by women's and servants' ability to label acts as unacceptable and take men to court.[513] These findings are significant for this chapter as it attempts to explain the role of authority and household governance in cases of violence. The links that have been made by historians between household order and violence mean that it is necessary to define the term patriarchy in this study.[514]

Patriarchy is a problematic concept and has had conflicting usage chiefly within the fields of early modern history and feminist history.[515] Two poorly distinguished understandings have led to conflicting and imprecise definitions. In early modern terms, patriarchy is understood as an organising category of society. For feminists, the term patriarchy has become synonymous with men's domination of women in all areas of life; it is the mechanism ordering gender relations and gendered power in society as a whole, and is a theory which does not necessarily take account of contemporary practice. Patriarchy is used in this chapter in the early modern sense to refer to the order by which households were ruled, that is a system of gender and class relations based on the equation of fathers with kings. This is how contemporaries would have understood it, as the rule by the father over his 'subjects', rather than as a theoretical tool. Anthony Fletcher has therefore described patriarchy between 1500 and 1800 as 'the institutionalised dominance over women and children in the family and the subordination of women in society in general' albeit a type of patriarchy which depended on adaption for its survival.[516] However this description still privileges the subordination of women and makes no mention of the subordination of men within the system. The account of patriarchy given by Alexandra Shepard allows for this and so is one that is used in this chapter:

> The maintenance of three basic hierarchies was deemed essential to an ordered household – and, by implication, an ordered society: ideally, husbands should govern wives, masters and mistresses their servant; and parents their children. Such a system privileged male householders, but also accorded married women authority over their servants and children, and subordinated those men as well as women

[512] Harvey, 'Men Making Home: Masculinity and Domesticity in Eighteenth-Century England'; Harvey, 'The History of Masculinity, Circa 1650-1800'; Jennine Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720* (Columbus, 2005).

[513] Hurl-Eamon, *Gender and Petty Violence in London, 1680-1720*

[514] Jennine Hurl-Eamon, 'Domestic Violence Prosecuted: Women Binding over Their Husbands for Assault at Westminster Quarter Sessions, 1685-1720', *Journal of Family History*, 26 (2001), pp. 435-454.

[515] Sheila Rowbotham, 'The Trouble with Patriarchy', in Raphael Samuel, ed., *People's History and Socialist Theory* (London, 1981).

[516] Fletcher, *Gender, Sex and Subordination*, p. XV.

excluded from householding status. While there is no doubt that males were the primary beneficiaries of this model, women were not wholly or unilaterally subordinated by it, and men's gains were by no means uniform.[517]

Sources

A range of sources are available for the study of household violence in the long eighteenth century, some of which have been successfully examined by other historians. One of the most common sources to be mined for information has been court records. For example, Margaret Hunt has examined cases of spousal abuse in the London consistory court, and Susan Amussen researched assize court records of spousal murder and church court depositions from separation cases. Joanne Bailey has analysed breaches of the peace in the quarter sessions, separation cases in church courts, and spousal murder in the Old Bailey. Jennine Hurl-Eamon has looked at the Westminster quarter sessions and Elizabeth Foyster examined cases of separation or restitution from the Court of Arches, London consistory court, the High Court of Delegates, peculiars of the Archbishop of Canterbury, and the Judicial Committee of the Privy Council.[518] Whilst original court records have proved a fruitful source in the investigation of domestic violence, they are limited, particularly with regards to provincial areas, abusive women and abused servants.[519] This chapter aims to widen the scope of analysis by going beyond the individual participants in cases to the responses and attitudes towards intimate violence more generally. It therefore uses court records to augment and provide context to the information gained from popular literature such as pamphlets, contemporary printed court transcripts, and newspaper reports. The printed texts studied here include prescriptive literature which provided guidance on household governance, giving insights into social and legal convention, as well as pamphlets containing narratives and ballads of court cases. Sussex and Kent were rural counties with an underdeveloped print culture in the form of newspapers, therefore it is not possible to focus only on these counties. A survey of eight counties in the South East was completed for literature relating to household murders. Pamphlets relating to twenty-three different cases were found by searching ECCO online, the Access to Archives database and the local archives of Kent, Sussex, Surrey and Hampshire for the period 1700-1769. One of these cases has been excluded because the accused was acquitted. Two further cases were found in the Sussex archives but on examination they did not fit into the pattern of household violence. In total twenty cases have been examined quantitatively. These break down as seven cases of violence by subordinates and thirteen cases of violence by a dominant member of the household (disciplinary violence).

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[517] Shepard, *Meanings of Manhood in Early Modern England*, p.3.

[518] Dwyer Amussen, '"Being Stirred to Much Unquietness": Violence and Domestic Violence in Early Modern England'; Foyster, *Marital Violence: An English Family History, 1660-1857*; Hunt, 'Wife Beating, Domesticity and Women's Independence in Eighteenth Century London'; Bailey, ''I Dye [Sic] by Inches': Locating Wife Beating in the Concept of a Privatization of Marriage and Violence in Eighteenth-Century England.'; Hurl-Eamon, 'Domestic Violence Prosecuted: Women Binding over Their Husbands for Assault at Westminster Quarter Sessions, 1685-1720'.

[519] Smith, 'Expanding the Compass of Domestic Violence in the Hanoverian Metropolis '.

The focus of this chapter is literature describing cases from the rural south of England as much of the previous research on domestic violence has been based around London. While the literature here was probably created for a metropolitan audience, it describes cases from the south and is likely to have been of interest to the gentry there. These sources can be used in multiple ways. For example, they not only allow insight into an incident of household violence, but they also allow a glimpse into the perception of London audiences and those from the South East with access to the material, as well as suggesting the level of interest in a case. An awareness of these societal norms is useful for studying contemporary attitudes to the family and popular literature is important for 'understanding the mental world of our ancestors'.[520] This chapter looks at crimes which led to murder as these created the most printed material. Murders were rare, but it is important to study these cases with extreme outcomes because they created qualitative material not found in the quarter sessions which can be analysed for cultural attitudes to violence and which reveal household relations with particular clarity.

The quarter sessions, analysed in chapter one, provide only eighteen cases where some form of familial relationship can be ascertained. These include one assault on a brother, one on a father-in-law, two assaults on a child and twelve assaults on wives. There are also two cases where it is likely there is some family relationship due to surnames being the same, but this cannot be certain. It is possible that other cases contained violence against household members such as servants, however, these cannot be found as no information about this is given in the sessions records. None of these cases provide any qualitative information and so it is necessary to turn to pamphlet literature for clues about the meanings and contexts of household violence. When analysing the twenty cases for which some form of popular literature has survived, several themes emerged. The crimes detailed in the pamphlets were all legally classified as either murder or petty treason and, although the pictures of household life and the contexts of violence are complex, there are some similarities which provide questions for analysis.[521] The following table demonstrates some of these patterns:

Method of murder	Reason for murder	Status type	Gender of perpetrator	Gender of victim

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[520] J.A. Sharpe, 'Domestic Homicide in Early Modern England', *Historical Journal*, xxiv (1981), pp. 29-48, p. 40
[521] Petty treason is the murder by a subordinate of a husband or master.

Poison	5	Money	6	Disciplinary/ dominant violence[522]	13	Male	11	Male	5
Knife/ Stabbing	7	Money and love	4	Subordinate violence	7	Female	6	Female	10
Gun/ shooting	2	Unwanted pregnancy	4			Child		Child	3
Beating/ blunt object	4	Revenge	1			Both male and female	3	Both Male and female	2
Burning	1	Other/ Unknown	5						
Unknown	1								

Table 1: A breakdown of the crimes found in the pamphlets. Source: Pamphlets of Household murders

Seven cases (35%) involved subordinate violence which is explored in the second section of this chapter. A Sussex case, that of Anne Whale and Sarah Pledge is used to set out some of the themes which can be seen in other cases. There were four instances of a man murdering his pregnant wife or lover to conceal the pregnancy in the pamphlets, and similarities can be seen between these and the maid found drowned in a cistern in chapter two. Thirteen cases (65%) involved violence committed upon a subordinate member of the household such as a wife, servant or child. The trial of Elizabeth Branch contained the most detail and created several pamphlets, therefore it is used here as a case study to examine disciplinary violence.

	Weapons used by women (including all status relationships)	Weapons used by men (including all status relationships)	Weapons used by subordinates	Weapons used by dominants
Poison	5	1	5	1
Knife	1	5	2	5
Gun	1	1	1	1
Blunt object/ beating	1	3	0	4
Burning	1	0	0	1

Table 2: Weapons used in the murders.

It is interesting to compare the weapons used by those with a subordinate position in the household, with those associated with a dominant position, as well as the differences between men and women. Poison was most likely to be used by women and subordinates, with over 60% of cases involving a female perpetrator including it. The only case of a man using poison was to murder his infant son. Men were more likely to use weapons that involved physical strength such as knives or sticks. This type of murder was also easier to detect and more obvious, perhaps reflecting their safer status in society. However, the women also stabbed, cut, beat, shot and burnt their victims, with knives being the second most common weapon. The method of murder will be further considered in the sections that follow as more can be gained from a contextual analysis. In order to discover the

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[522] Dominant violence is that carried out by a dominant member of the household on a subordinate. These do not always refer explicitly to disciplinary measures, however, the power structure is the same.

meanings of eighteenth century household violence, the first area to be explored here will be what the law and conduct literature reveal about what was acceptable and unacceptable with regards to violence, a question previously examined in this thesis and a theme which continues throughout this chapter.

Legality of Household Violence

The first and arguably most important definition of household violence for contemporaries can be found within the law, as this is where ultimately perpetrators could be held to account. Several eighteenth-century legal commentators believed husbands had the right to chastise their wives physically. Matthew Bacon, an eighteenth-century legal commentator, wrote the *New Abridgement of Law and Equity* in which he set out in what cases assault and battery may be justified:

> So if a Parent in a reasonable Manner chastise his Child, or a Master his Servant, being actually in his service at the Time, or a Schoolmaster his Scholar, or a Gaoler his Prisoner, or even a Husband his Wife…or if a Man gently lay his Hands on another, and thereby stay him from inciting a Dog against a third Person… in these Cases it seems the Party may justify the Assault and Battery.[523]

The key points in Bacon's interpretation are that the assault and battery may be justified through the social context of an authority figure chastising a subordinate, although it appears from this passage that Bacon was less sure about the status of wives than servants and children. His use of the words reasonable and gently may seem to be oxymoronic with regard to the concept of assault, but they allow us to understand the important distinction made by people in the eighteenth century between violence as violation and violence as an acceptable way to maintain social order and authority. Likewise Bacon again uses the word reasonable when explaining how a master may punish his servant:

> A Master may correct and punish his Servant in a reasonable Manner for abusive Language, neglect of duty, &C and that in an Action of Assault and Battery brought against him, he may justify, that… (a) his Servant gave provoking Language, &C… (b)…that the Punishment was such as is usual from Masters to their Servants, the Master will be acquitted.[524]

It is also interesting to note the use of the word usual, suggesting an uncertain understanding of acceptable forms of violence in a household context. Chastising servants, wives and children were all dealt with by the law in a similar way, as they were 'subjects' in

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[523] Matthew Bacon, *A New Abridgment of the Law by a Gentleman of the Middle Temple Volume 1* (London, 1736), p.155 . This book was one of the earliest works in which he collected cases that would be of interest to lawyers looking for precedents and described them in abridge form. It was a standard law text that was reprinted 10 times between 1736 and 1832, and went through 7 editions.

[524]Ibid., p.566.

the kingdom of the father.[525] This type of violence had to be justified with reasonable cause and the punishment must be within the bounds of acceptability. Bacon went on to describe the power given to the husband by law and the wife's remedy for any injury done by him:

> The Husband hath by Law Power and Dominion over his Wife, and may keep her by Force within the Bounds of Duty, and may beat her, but not in a violent or cruel Manner; for in such Case, or if he but threaten to beat her outrageously, or use her barbarously, she may bind him to the Peace, by Suing out a Writ of *Supplicavit* out of Chancery, or may apply to the Spiritual Court for a Divorce *Propter Servitiam*.[526]

Bacon's *New Abridgment of the Law*, published in 1736, went through several editions until 1832 and so was likely a reliable indicator of legal procedure. His comments demonstrate how physical correction was condoned for wives, children and servants, but also stress that this must be reasonable and that a wife has rights too. Servants also had a legal right to seek redress for ill-treatment.[527] A wife or servant was able to claim that their husband or master's behaviour was unacceptable and take their complaint to the higher authority of a court. This provided the victim with the agency to restore the balance of social order when violence had got out of control.

The fact that Bacon writes that a man may beat his wife but not in a 'violent or cruel manner' also reveals how this correction was not necessarily seen as violence by eighteenth-century men and women. Violence was considered unacceptable and different to correction or chastisement in this context. The commentator Sir William Blackstone also agreed that moderate correction was allowed within the household and different to contemporary understanding of violence:

> The husband also … might give his wife moderate correction. For, as he is to answer for her misbehaviour, the law thought it reasonable to entrust him with this power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children; for whom the master or parent is also liable in some cases to answer. But this power of correction was confined within reasonable bounds; and the husband was prohibited to use any violence to his wife.[528]

Legally then, a man was allowed to use physical force to correct a wife, child or servant in his household in the maintenance of order. However, this correction must be reasonable

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[525] Fletcher, *Gender, Sex and Subordination*;Shepard, *Meanings of Manhood in Early Modern England*; Steven Ozment, *When Fathers Ruled: Family Life in Reformation Europe* (Cambridge, 1985).

[526] Bacon, *A New Abridgment of the Law by a Gentleman of the Middle Temple Volume 1*, p.285.

[527] Carole Pateman, *The Sexual Contract* (Cambridge, 1988).

[528] William Blackstone, *Commentaries on the Laws of England. … By William Blackstone, Esq. Vinerian Professor of Law, and Solicitor General to Her Majesty. Volume 1* (Oxford, 1765-9), p.432.

and was not allowed to be cruel or violent. Elizabeth Foyster has shown that in order to define cruelty, women claimed that violence had been life threatening and the available justices' notebooks demonstrate that the legal definition expressed by Bacon and Blackstone was understood by both local justices and their clients.[529] For example, in chapter two we saw how the justice of the peace negotiated with a woman over whether to bind her husband over for domestic violence and the notebooks of Henry Norris record many cases of 'She goes in danger of her life &c from him'.[530] Foyster, in her examination of domestic violence cases has found: 'It is significant that these women were not questioning the right of their husbands to exercise violence against them per se, rather they were disputing the extent or degree of the violence'.[531] Therefore whilst legally physical force was to some extent accepted as part of the maintenance of household order, it is important to remember that it remained a contested notion and was not considered violence until it overstepped the boundaries of acceptability. A point further confirmed by Matthew Bacon's use of the term 'usual' punishment.

Some commentators throughout the late seventeenth and early eighteenth centuries believed that patriarchal authority was absolute. For example, in 1747, the anonymous author of *The Art of Governing a Wife* wrote that the husband 'must govern with absolute power' echoing the sentiments of M. A. Vauts who wrote a tract in 1650 entitled *The Husband's Authority Unvail'd.* This defended a man's use of force in maintaining his authority, although he qualified it to some extent by stating 'That a knowing, spirituall, Godly Man, and he onely, may correct his bad Wife' and went on to state that 'He needs no minding either of Necessity, Seasonableness or Moderation'.[532] The hundred year gap between these sources demonstrates that there were some long term continuities in thoughts about marriage and chastisement. Others, however, believed that governance could be achieved by consensus rather than violence, as Samuel Cradock wrote in his *Knowledge and Practice* in 1702:

> For my part, I know no Law of God or Man, or any thing in Reason it self that allows the Husband a power to beat his Wife: He is indeed to govern her; but he is to do it by wise, loving amicable counsel, not by stripes…The Husband therefore should manage that authority and superiority which God hath given him over his Wife wisely, mildly amiably. He should remember that authority over others is a Talent instructed with us by God for the good of others, and not merely for the pleasure of the person so instructed.[533]

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[529] Foyster, *Marital Violence: An English Family History, 1660-1857*, p.41.

[530] Ruth Paley, *Justice in Eighteenth-Century Hackney : The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London, 1991), p.30.

[531] Foyster, *Marital Violence: An English Family History, 1660-1857*, p.41.

[532] Moses à Vauts, *The Husband's Authority Unvail'd….* (London, 1650), p.56.

[533] Samuel Cradock, *Knowledge and Practice, Together with the Supplement…* (London, 1702), p. 472 and p.165.

The majority of evidence, albeit limited, suggests that most men and women formed their beliefs somewhere in between these two. One of the few female conduct writers at the time, Mary Astell, argued in 1703 that a wife was restricted by the traditional views of marriage which stated that she must follow her husband's governance:

> She then who Marrys ought to lay it down for an indisputable Maxim, that her Husband must govern absolutely and intirely, and that she has nothing else to do but Please and Obey. She must not attempt to divide his Authority, or so much as dispute it, to struggle with her Yoke will only make it gall the more…She who can't do this is in no way fit to be a Wife.[534]

Astell's opinions on marriage were potentially radical, as she critiqued the institution of marriage arguing that women had little choice but to defer to men in order to prevent further unhappiness. Astell's response to what she felt was the overriding view of conduct between man and wife leads us to understand further the dominant contemporary ideals, and that there was discussion of the subject. The tensions between authority and love enabled authors and householders to negotiate their own views on household governance within this framework, leading to a range of opinions on how to conduct marital relations.

However, an affectionate but hierarchical relationship remained the dominant ideal. Physical chastisement had a legitimate role to play within the hierarchical relationship between husband and wife, master and servant, and parent and child in the household, although contemporaries did not see this as violence. Instead, they reserved the term violence for when those in authority overstepped the acceptable patriarchal boundaries causing violation of the body and unacceptable cruelty. Conduct literature demonstrates that within the home, as with the state, physical correction was used to maintain social order and that when this act itself became disordered through lack of reason or cruelty, the victim had the authority to make it ordered by turning to the courts or appealing to the community. It is to these violations that we must now turn in order to clarify what exactly contemporaries meant by violence and cruelty, what was acceptable and what was transgressive. This chapter will firstly explore cases in which the household order was turned upside down by a subordinate member perpetrating violence. These cases will begin to demonstrate the image of the disordered household. This theme will then be continued with an examination of cases of transgressive disciplinary violence, demonstrating the elements which pushed each case over the boundary between the permissible and the illicit. Finally by considering both these elements of violence within the household it will be possible to provide more evidence of the understandings surrounding household violence.

A case of subordinate violence: Whale and Pledge.

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[534] Mary Astell, *Some Reflections Upon Marriage. The Second Edition.* (London, 1703), p.60.

The confessions in 1752 of Anne Whale for petty treason and Sarah Pledge for assisting her contain various details of domestic life and reveal the experience of a violent act. Whale and Pledge were distantly-related cousins and both rented parts of a house in Horsham, a small town in Sussex. The closeness of their living arrangements caused frequent quarrels between Sarah Pledge and Anne Whale's husband James and eventually he forbade Pledge from entering his part of the house. Anne and Sarah then joined together in poisoning James Whale, thus ignoring his patriarchal authority and upsetting household order. This case is somewhat unusual as poisoners usually acted alone to avoid detection, but it does reveal the delicate relationships involved in extended households and the difficulty of living in close quarters.[535]

The narratives surrounding poisonings focus more on the incidental details of everyday life, than other cases therefore allowing a glimpse into the household through a violent act. This enables us to gain a clearer insight into attitudes to violence within the family and the boundaries between order and disorder, demonstrating how disorder allows violence to enter the home. There is currently no in-depth study of poisoning for the eighteenth century as aside from some work by Katherine Watson and Pieter Spierenburg, the majority of historians have focussed on the Victorian period.[536] The aim of this thesis is not to remedy this, but this section may provide some directions for further study. Spierenburg suggested that two thirds of poisoning victims in the middle ages were upper class, due to the expense and availability of poison.[537] In contrast, two recent studies of poisoning in the nineteenth century have found that it was primarily a crime of the poor and underprivileged and often occurred within marriage due to a lack of wealth and inability to dissolve unhappy unions.[538] There is no room to explore what came to pass in the intervening years here, but it is likely that many Victorian ideas about poisoning had their roots in this earlier period. The following explores how an examination of a case of poisoning can expand our understanding of domestic life, attitudes and experiences.

Anne and James Whale were married just ten days after first meeting in 1749; by August 1752, both were dead, as Anne was finally executed for the poisoning of her husband. It is hard to ascertain what led to such an extreme end for the couple, but clues contained within the court papers and pamphlets suggest a range of stresses on their marriage. Their speedy union was one of the reasons given by the pamphlet literature for the poisoning as 'it is often observ'd that these sudden and ill-digested Bargains are seldom productive of

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[535] Katherine Watson, *Poisoned Lives: English Poisoners and Their Victims.* (London and New York, 2004), p.50.

[536] Ibid; Pieter Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present* (Cambridge, 2008).

[537] Spierenburg, *A History of Murder: Personal Violence in Europe from the Middle Ages to the Present*, p.128.

[538] Watson, *Poisoned Lives: English Poisoners and Their Victims*;Karen Jane Merry, 'Murder by Poison in Scotland During the Nineteenth and Early Twentieth Centuries. ' (PhD thesis, University of Glasgow, 2010), p.7.

happy Events'.[539] In the eyes of the commentators, a union begun without serious consideration and due process was likely to become dangerous or disordered. A second difficulty with their relationship was that they lived in very close quarters with Sarah and James Pledge. The details of the accounts suggest little privacy for any of the inhabitants as they freely entered each other's apartments. For example, after a conversation, Sarah Pledge 'went to her own part of the House and went up Stairs, and this Examinant [Anne Whale] in a little time followed her'[540] James Whale may have had trouble maintaining his authority in the house with Pledge, an older woman, interfering in his life, particularly as Whale was considering renting another house from her and he often quarrelled with her.

In the pamphlet *A Genuine Account of Anne Whale and Sarah Pledge… (1752)*, Sarah Pledge is portrayed as very much the instigator of the poisoning and it is suggested that this was because she wanted to get hold of Anne Whale's inheritance from her father. This sum of £80 was held by James Whale while they were married, but with his death both Sarah and James Pledge could lay some claim to the money. Firstly, James Pledge told Anne Whale 'you shall live with me Rent free so long as you continue a widow'; secondly, Sarah Pledge made a bargain that should Anne Whale be hanged, she would look after her child for money.[541] The pamphlet saw money as the main cause of the poisoning, portraying Sarah Pledge as a 'wicked old woman' who knew that Anne Whale had some money, 'and she [Pledge] had a great inclination after some of this Money…but she also knew that James Whale the Husband was an unsurmountable Obstacle; that he was of a near and covetous Disposition, and that in case he once finger'd the Money, all her Hopes and Expectations would be entirely blasted'.[542] James Pledge is not mentioned much in the accounts, apart from one instance where he encourages Anne Whale in the same way as his wife. This again gives the impression of a household in which Sarah Pledge was in charge. In contrast to this, Anne Whale was portrayed as young and foolish, without the guidance of good parents. This image of the female perpetrator also being a victim of a disordered upbringing can be seen in other cases examined in this chapter. The two women provide an interesting comparison. As shall be demonstrated, Pledge was portrayed as a powerful older woman with knowledge of potions and sorcery and a direct threat to patriarchy.

Poison was a fairly easy household substance to come by in the eighteenth century as demonstrated by Pledge's assertion 'I have some over at my new House, and you and I will go over and look for it, and if that is not gone, it will do for him'.[543] It is likely that Pledge was talking about arsenic here. This was a readily available poison sold in druggists, doctors, chandlers and village shops. It was used as a rat poison but was also a common ingredient in

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[539] Anonymous, *A Genuine Account of Anne Whale and Sarah Pledge, Who Were Tried and Condemned at the Assizes…* (1752), p.10.

[540] Ibid., p.4.

[541] Ibid., p.6.

[542] Ibid., p.11.

[543] Ibid., p.3.

dye for foods, clothes and toys, and was used in industries such as glassmaking; mixed with porridge or gruel it had a lack of colour or taste with symptoms mimicking food poisoning.[544] Arsenic was cheap and accounted for approximately 45% of poison related crimes between 1750 and 1914.[545] In addition, a study by Karen Merry for the nineteenth century found that it was particularly favoured as a poison by women.[546] Arsenic was also likely to be well known as a poison used for murder from pamphlet literature.

The women were however, nervous of buying some more poison. The account of the Whale and Pledge trial states: 'accordingly she went to Darking, but there being a Person in the Shop who knew her, she was afraid to ask for it'.[547] Perhaps this was because they feared that the neighbours would become suspicious, as is demonstrated later in this chapter in the case of Elizabeth Branch.

The confessions suggest that there was some common knowledge about the use of poison to murder. When Anne Whale asked her cousin's husband, James Pledge how to get rid of a 'cross Devil' he replied:

> I'll tell you how: Get a Pennyworth of Poison which is white Mercury, it is very much like Loaf-Sugar, and put it into some Tea, or some Beer, and sweeten it well, and he won't taste it, for it has no ill Taste at all, for I have tasted it: It is only a little brackish.[548]

Here, James Pledge was talking about Arsenic, often known as white mercury. The cost of an ounce of arsenic was no more than 6d and it only took 3 grains to kill.[549] The father of another poisoner, Mary Blandy also apparently complained of his tea tasting brackish when she poisoned it, and so it may be that the general knowledge about poison came from the crime literature itself. Intriguingly, while the women were afraid of buying the poison it appears discussion of how to do away with someone may have felt safer. The use of the term 'cross Devil' may have had a specific meaning ensuring that Whale and Pledge could ask how to get rid of someone without incurring suspicion. It is also possible that they are referring to the behaviour of James Whale as being unacceptable or disordered by calling him a devil, particularly as many women accused of poisoning had suffered abusive relationships.[550]

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[544] Merry, 'Murder by Poison in Scotland During the Nineteenth and Early Twentieth Centuries. '; John Emsley, *The Elements of Murder: A History of Poison.* (Oxford, 2006).

[545] Watson, *Poisoned Lives: English Poisoners and Their Victims,* p. XII

[546] Merry, 'Murder by Poison in Scotland During the Nineteenth and Early Twentieth Centuries. '.

[547] Anonymous, *A Genuine Account of Anne Whale and Sarah Pledge, Who Were Tried and Condemned at the Assizes...,* p.3.

[548] Ibid., p.5.

[549] Watson, *Poisoned Lives: English Poisoners and Their Victims,* p.32-34.

[550] Ibid.

Poisoning cases reveal the most domestic detail in the actual act of preparing and administering the poison, highlighting the breach of trust involved in these cases and revealing a contemporary fear. According to research by Watson, 60% of poisonings were committed by family members and 70% took place in the home. It is therefore no surprise that descriptions of the means of poisoners would both fascinate and terrify audiences.[551] In the case of Anne Whale the act of poisoning her husband is clearly described:

> She took part of the Pudding out of the Pot, and put the Poison into the rest, her husband being looking intently at that time upon the Child; after which she eat what was first taken out, and her Husband eat part of the remainder, in which the Poison was put.[552]

This description portrays an ordered eighteenth-century domestic image but the reader knows that the wife has betrayed her husband in a manner that will soon be revealed. This description contrasts with the bold facts presented in the coroner's indictment:

> She the said Ann Whale…did mix and mingle a great quantity of mortal poison called arsenic with a certain quantity of fryed onion and that she the said Ann Whale then and there…did give and deliver the said fryed onions among which the said poison was so mixed…unto the said James Whale her said then husband to be eaten by him the said James Whale…By the perswasion and instigation of the said Ann[553]

Thus the domestic details portrayed in the poisoning pamphlets are used to narrative effect to portray poisoners as deceitful characters. This focus demonstrates the sharp distinction between an ordered house and one in which violence can erupt, a theme explored later in this chapter.

The pamphlets illustrate areas in which women had control over domestic life and therefore needed to be trusted partners with their husbands. Frances Dolan has revealed how poisoning could be seen as a 'violation of domesticity' as 'the dependent who should share the bed and table, and solace and nurture her husband's body, abuses intimacy to invade and destroy that body'.[554] Watson reports that a larger proportion of women than men were charged with murder by poison because the criminal justice system assumed an intention to murder.[555] This is reflected in the small sample of pamphlets in here.[556]

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[551] Ibid. ,p.48.

[552] Anonymous, *A Genuine Account of Anne Whale and Sarah Pledge, Who Were Tried and Condemned at the Assizes…* , p.5.

[553] National Archives, Records of Justices of Assize, ASSI 94/810

[554] Frances E. Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1500-1700* (Ithaca, 1994), p.30.

[555] Watson, *Poisoned Lives: English Poisoners and Their Victims,* p.46.

[556] See Table 1.

Poisoning involved tampering with food or drink, a vital part of life and therefore went to the heart of familial relations which involved trust. That the poison was dissolved into life giving food and medicine but had the opposite effect was a horrifying paradox for readers. For example, Mary Blandy placed poison in her father's gruel:

> When the Gruel was made, Miss BLANDY was some time in the pantry stirring it, and then coming into the Kitchen, she said, *I have been stirring the Gruel, and eating some of the Oatmeal out of it, for I have taken a great Fancy to it, and believe I shall often eat it out of my Father's Gruel.* [557]

And another pamphlet claimed she had also tampered with his medicine:

> Her Father at that time labouring under the Disorders of old Age, had recourse to such simple Medicines as his Complaints required. His Daughter usually administer'd them to him…Being troubled with the Gravel he took some Powders from which he reap'd some Benefit, and in these Powders she mingled the Poison.[558]

This paradox aligns with the duplicity of the perpetrator in these cases of 'unnaturally' transgressing the social order to produce a violent crime that was considered:

> the most dangerous, so it was the most detested of all others; that it was generally contrived and executed in so secret a Manner, that in some Cases, it would, humanly speaking, be impossible to find it out, did not the Finger of God evidently point it out to us [559]

Here it is possible to see a cultural preoccupation of the nineteenth century evident in the earlier period of the eighteenth century.[560] Margaret Hallissy has studied literature across three periods of time: the Middle Ages, the Elizabethan and Jacobean period, and the nineteenth century. She has shown how images of poisoning were consistently linked to a gendered understanding of women's attributes, and believes that the character of the female poisoner as secretive and dangerous from the sixteenth to the nineteenth centuries was an expression of masculine fear.[561] The actions of the women, highlighted in the popular literature, demonstrate the deviousness of this violent crime as opposed to those crimes involving physical attacks. In the confession of Anne Whale, she talks of Sarah Pledge mixing up a potion to kill her husband James Whale:

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[557] Mary. Blandy, *The Genuine Trial at Large of Mary Blandy, Spinster....* (Belfast, 1752), pp.16-17.
[558] Anonymous, *An Authentick Narrative of That Most Horrid Parracide [Sic]...* (London, 1752?), p.12.
[559] Blandy, *The Genuine Trial at Large of Mary Blandy, Spinster....,* p.4.
[560] Ian Burney, *Poison, Detection and the Victorian Imagination* (Manchester, 2006), p. 224 and p.17.
[561] Margaret Hallissy, *Venomous Woman: Fear of the Female in Literature* (New York, 1987).

> She beat off the paper from the Top of a Cup, in which Pledge's Wife had put three Spiders…and said to her, Good God! What do you get them for? To which Pledge replied…that she would get some more, for that when she had got enough they would do for him, and no-body know but that he died a natural Death, and then…got some more Spiders, and put them into a Cup with some Beer and baked them, and after they were baked she squeez'd them, and put them into a Bottle of Beer[562]

The use of a venomous animal to mix a potion has been found by Hallissy in narratives throughout the periods and places she studied. The potion makers in the literature used their secret knowledge and supernatural power to manipulate men as in the case of Whale and Pledge.[563] This story of the women mixing a poison that would not be detected was advertised to readers in the *General Advertiser* thus:

> This pamphlet is worthy the Perusal of Persons of all Ranks and Denominations, as it contains a Series of uncommon Events, and more particularly the remarkable Contrivance of Sarah Pledge, in endeavouring to poison the said James Whale, by putting Spiders in his Beer.[564]

The potion, which is not mentioned in the coroner's inquest, suggests echoes of sorcery or witchcraft further to that of the average tale of poisoning with arsenic, and the image of a woman with extensive knowledge of potions and therefore power was concerning to contemporaries. For the home-made remedy of Whale and Pledge to have been made such a focus shows there was still an element of anxious patriarchy, as suggested by Antony Fletcher, even though some perpetrators of violent crime were beginning to be looked upon with an air of sympathy, such as Elizabeth Jeffryes, and to some extent, poisoners like Anne Whale and Mary Blandy who were considered weak and under the influence of more powerful characters.

The case of Whale and Pledge demonstrates how the difficulties of domestic life could lead to a disordered household which was thought to lead to a disordered society. The inability of James Whale to master his wife left space for Pledge to influence her. The justification of violence was an important tenet of the defence in trials for murder by subordinates and the discussion of this principle features as a subtext in several of the pamphlets. The Whale and Pledge case used only the perpetrators' personalities as justification, however in other cases it is suggested that household authority went too far.

Further evidence of subordinate violence within the pamphlet literature.

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[562] Anonymous, *A Genuine Account of Anne Whale and Sarah Pledge, Who Were Tried and Condemned at the Assizes...,* p.4.

[563] Hallissy, *Venomous Woman: Fear of the Female in Literature*.

[564] *General Advertiser* Thursday, August 20, 1752; Issue 5566.

The following section continues to focus on challenges to patriarchal and social order from below. The murder of a husband or master in early eighteenth century England constituted a challenge to the state, and thus was defined differently from other murders, being regarded as petty treason. As has been indicated in the introduction to this chapter, chastisement was acceptable in the eighteenth-century household as long as it was measured, reasonable and had a justifiable cause, that of upholding the delicate balance of household order and therefore social order. Frances Dolan has asserted that: 'In early modern England the common place analogy between the household and the commonwealth, and the fluid boundaries between domestic and political life that this analogy revealed, found their most vivid manifestation in the legal definition of petty treason'.[565] Therefore the analysis of cases of subordinate violence allows a unique insight into the meaning of violence, the hidden transcripts of power which occurred and the cultural patterns within which these crimes were situated.

Petty treason, as a crime involving breach of duty to a superior, was punished more harshly than murder as it posed a greater threat to social, political and domestic order than many other crimes. Several contemporary legal commentators such as Sir Matthew Hale, a late-seventeenth century jurist whose work was published posthumously in 1713, and William Hawkins, who published his *Treatise of the Pleas of the Crown* in 1716, suggested that murder of a father by a child (parricide) was also considered petty treason by the late seventeenth and early eighteenth centuries, as it too upset the patriarchal state, even though it had not been included in the 1351 Statute of Treasons.[566] This further infers a shift in sensibilities in the eighteenth century.

This section examines 6 further cases of subordinate violence. In the first case of Elizabeth Jeffryes and servant John Swan (1752) from Essex, they were convicted of murdering her uncle, having first tried to convince another servant, Thomas Matthews, to commit the crime. Jeffryes had become pregnant by her uncle twice and decided to murder him after he forbade her from having a relationship with John Swann. A second case is also examined in detail here. Mary Blandy of Oxfordshire was convicted of murdering her father in 1752. She had fallen in love with Captain Cranstoun and was again forbidden by her father to see him. Her case is connected with that of Jeffryes, not only because of the similarities of the crime of murdering a patriarch, but through the pamphlets which connected the two at the time by creating letters between the women. The cases of Lady Kirk (1760, Hampshire) and

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[565] Frances E. Dolan, 'The Subordinate('S) Plot: Petty Treason and the Forms of Domestic Rebellion', *Shakespeare Quarterly*, 43:3 (1992), pp. 317-340, p.317.

[566] Shelley A.M. Gavigan, 'Petit Treason in Eighteenth Century England: Women's Inequality before the Law', *Canadian Journal of Women and the Law*, 3 (1989-1990), pp. 335-374, p. 345-6; Steve Hindle, *The State and Social Change in Early Modern England, 1550-1640* (Basingstoke, 2002); Laura Gowing, *Common Bodies: Women, Touch and Power in Seventeenth-Century England* (London, 2003); Matthew Hale, *Historia Placitorum Coronæ. = the History of the Pleas of the Crown,* (London, 1736).

Susannah Lott (1769, Kent) are also mentioned in this analysis. A fifth case of subordinate violence was the murder by Mary Edmondson of her aunt Susannah Walker.[567] This was distinct from the other cases in the sample of twenty as Edmondson protested her innocence throughout the trial and execution and the narrative had less detail compared with the other cases. The final case of subordinate violence discussed was the murder of Mrs Dalrymple by her servant Matthew Henderson. In one pamphlet account of the case, Henderson mentions he was angry with his mistress, Dalrymple, so decided to kill her, and in another it is suspected that he was trying to rob her.[568]

The narratives of petty treason are complex in their treatment of gender and order. Whilst the victim is usually the male householder and the perpetrator is socially subordinate and often female, the causes of the murder are often attributed to several parties. Each participant has a duel role. The women are often portrayed as both murderers and victims, whilst the men are shown as having some responsibility for their demise. Martin Wiener has claimed that the Jeffryes case was transitional as 'By the time of her trial in 1752, a note of sympathy …entered press coverage'.[569] Evidence of a cultural shift towards sensibility during the eighteenth century has also been shown by Janet Todd and G. J. Barker Benfield.[570] Wiener argues that the shift in the portrayal of female murderers began after 1750 when 'sympathy for a wronged woman was balanced with moral denunciation, [but] sympathy gained the upper hand…in 1775' and has suggested that this was due to a reduction of fear of insubordinate women and a rise in a "culture of sensibility".[571] There are too few surviving pamphlets of rural cases from before the 1750s to be able to accurately assess whether Wiener is correct in his assertion. The two that do survive *A full and true account of the trial and condemnation, and execution of Francis Parker* (1705) and *The whole Tryal, life and conversation, birth, parentage and education, of the Lady Aberganey* (1712) have no suggestion of sympathy in them although they involved the murder of a child, and so are not cases of subordinate murder. The case of Matthew Henderson (1746) however, does also have some elements of sympathy, as Henderson was portrayed as young, in need of guidance and unable to control his emotions.

Narratives of disorder and notions of sympathy towards the accused can be seen in some of the coverage of the parricide committed by Mary Blandy and the murder by Elizabeth

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[567] Unknown Author, *A Genuine Narrative of the Trial and Condemnation of Mary Edmondson, for the Murder of Mrs. Susannah Walker, Her Aunt. At the Assizes Held At …* (1759).

[568] Anonymous, *A Serious and Affectionate Warning to Servants, … Occasioned by the Shameful and Untimely Death of Matthew Henderson: … For the Murder of His …* (1746); Anonymous, *Solemn Declaration of Matthew Henderson, Now under Sentence of Death in Newgate, for the Inhuman Murder of His Lady, Elizabeth Dalrymple, Wife Of …* (1746).

[569] Martin J. Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869', *The Journal of British Studies*, 40:2 (2001), pp. 184-212, p.191.

[570] G J Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* (Chicago, 1996); Janet Todd, *Sensibility: An Introduction.* (London and New York, 1986).

[571] Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869', p.194.

Jeffryes of her uncle, both occurring, like the Whale and Pledge case, in 1752. This date is significant; as it is when the Murder Act was passed. This Act was a response to a perceived break down in law and order on the part of the authorities and determined that criminals convicted of murder should be dissected and denied burial. The aim was to deter criminals by providing a draconian punishment which would continue into the afterlife.[572] The large number of pamphlets surviving from this date would suggest that these high profile cases were being used to set examples, although as shall be demonstrated, evidence of sympathetic treatment in press coverage confirms Wiener's suggestion that this is a transitional date.

A letter to the *Covent Garden Journal,* about the poisoner Mary Blandy, in March 1752 suggests that the public did have some sympathy for women accused of murdering a superior. As newspapers are not available for the rural south during this period, coverage is found in the London papers, which would likely have been accessed by the southern gentry:

> I know not in what Light this miserable Wretch may appear to others; but to me there is a circumstance of some Compassion in her Case; and tho' no Man living can more abhor her Crime, yet I am not altogether without Pity for the most wretched at this Day of all human Race. [573]

Mary Blandy was pitied not because the victim of her crime had treated her badly, as shall be shown in the case of Jeffryes, but because it was felt that she was led astray by a fortune hunter, portraying Mary as another victim rather than an agent in the crime:

> She was an affectionate, dutiful, respectful Child… 'Till that damned Villain Cranston, as the poor Father so justly called him, returned the kindest Offices of Hospitality by the Ruin of a poor Love-sick Girl; by bringing the Father to the Grave, and the daughter to the Gallows.[574]

Blandy's own account, written in prison, portrayed herself as a victim of love, and debates raged over whether this was the case.[575] Here Blandy, the unmarried daughter, was represented as the perpetual child even though she was 33 at the time of her arrest. The account portrays her feminine deficiency as due to her unworldliness, in contrast to the portrayal, shown earlier, of the older Sarah Pledge as knowing too much of the world. Contemporaries saw similarities between Blandy and Jeffryes as is evidenced by the pamphlet *Genuine Letters That Pass'd Between Miss Blandy and Miss Jeffries* published in 1752, in which the two women supposedly seek comfort by describing their crimes and

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[572] Jonathan Sawday, *The Body Emblazoned: Dissection and the Human Body in Renaissance Culture* (London, 1996).

[573] *Covent-Garden Journal* Tuesday March 10 1752 Issue 20

[574] *Covent-Garden Journal* Tuesday March 10 1752 Issue 20

[575] Susan Sage Heinzelman, *Riding the Black Ram: Law, Literature, and Gender* (Stanford, 2010), chapter 4.

exclaiming their innocence. The case of Blandy and the compassion shown by contemporaries also fits with the idea of a cultural shift towards sympathy and sensibility.[576] The narratives in the pamphlets about Blandy and Jeffryes were using ideas of femininity to position the accused women as in need of masculine protection and authority, as both Jeffryes and Blandy were let down by the male figures in their lives. These appeal memoirs show that 'the author's injuries result from the ways in which women were particularly vulnerable', for example reputation and laws which benefitted men.[577] Mary Blandy demonstrates this when she cries in her narrative 'Think what Power Man has over our Sex, when we truly love! – and what Woman, let her have what Sense she will, can stand the Arguments and Persuasions Men will make use of'.[578] Jeffryes was abused by her uncle and Blandy was not protected from Cranstoun by her father. In the case of violence committed by the subordinates Jeffryes and Blandy, we can see that these representations of them as victims are attempting to justify their actions; this is in contrast to the justifications given in the case of disciplinary violence perpetrated by Elizabeth Branch. As shall be demonstrated, the powerful Mrs Branch attempted to justify her actions using legal terms within the courts, rather than appealing to notions of femininity.

A disordered house sets the scene in one particular version of the case of Elizabeth Jeffryes in 1752. At first glance in the *Newgate Calendar*, this case seems much like the other versions of the story in which Jeffryes was portrayed as killing for financial gain. Joseph Jeffryes had amassed a fortune and, having no children of his own, adopted his niece making a will in her favour which would bequeath his estate worth over £1000.[579] Whilst living with Joseph, his niece, Elizabeth, became acquainted with servant John Swan 'and the manner of life that passed between him and Miss Jeffryes seem'd by no means honourable'.[580] Joseph Jeffryes disapproved of the liaison and threatened to cut Elizabeth from his will, leading to Swan and Elizabeth Jeffryes plotting murder. [581] This version of the narrative told through transcripts of the trials and the *Newgate Calendar* demonstrates contemporary anxieties about social order and money in a similar way to those shown in Whale and Pledge. However, another narrative of the case presents an even more disturbing picture.

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[576] Barker-Benfield, *The Culture of Sensibility: Sex and Society in Eighteenth-Century Britain* ; Todd, *Sensibility: An Introduction*; V. A. C. Gatrell, *The Hanging Tree: Execution and the English People 1770-1868* (Oxford, 1994); Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869'; Caroline Breashears, 'The Female Appeal Memoir: Genre and Female Literary Tradition in Eighteenth-Century England.', *Modern Philology*, 107:4 (2010), p.608.

[577] Breashears, 'The Female Appeal Memoir: Genre and Female Literary Tradition in Eighteenth-Century England.', p612.

[578] Mary Blandy, *A Letter from a Clergyman...As Also Miss Blandy's Own Narrative of the Crime for Which She Is Condemned to Die.* (London, 1752), p.13.

[579]Rayner, John L., *The Complete Newgate Calendar,* (London, 1926), p. 215.

[580] Anonymous, *The Authentick Trylas [Sic] at Large of John Swan and Elizabeth Jeffryes...* (London, 1752). p2

[581] Ibid., p.2.; Rayner, John L., *The Complete Newgate Calendar,* (London, 1926), p. 215.

The *Authentick Memoirs of the Wicked Life and Transactions of Elizabeth Jeffryes* (1752) show a household of escalating violence and disorder. Elizabeth went to live with her uncle from the age of five but it was not until she was fifteen that the tales of violence began. The pamphlet records that her uncle:

> debauched her, as she solemnly declared, and destroyed her Honour in its Bud, and laid the Foundation of all her after misspent Life: And here we may admire the Dispensations of Providence, in permitting this unhappy, this ruin'd Creature, to be the Means of destroying that Man, that had before destroyed her Virtue.[582]

Invoking Providence and assuming that the smallest sin naturally led to crime were common moral strategies in criminal biography pamphlet literature. Interestingly, although the pamphlet in no way condones murder and at other points is critical of Miss Jeffryes's character, this section suggests that readers would have had some understanding of how murder could arise when the correct social mores were not upheld. Breashears has suggested that women in pamphlets emphasize 'that their distress is never relieved because the legal and social systems have not aided them'.[583] This is in contrast to the women in chapters 1 and 2 who were able to find legal redress for their injuries. For example, in chapter 2, Mary Hunt was mistreated by her master John Clendon. However, she was able to go to the magistrate and was to some extent listened to. This semi-formal settlement and acknowledgement of Hunt's complaint meant that she was not in the same situation as Blandy and Jeffries. As a result of the failure of legal and social systems to recognise the complaints of women such as Blandy and Jeffryes, they were situated outside of these systems, which led to their own version of redress, in these cases, murder. Their appeals for understanding place the reader as the juror in this parallel community as the memoir 'exposes how the flaws in larger institutions and mores promote injustice'.[584]

The memoirs of Elizabeth Jeffryes recorded how Elizabeth became pregnant by Mr Jeffryes and was sent away to have the baby but suffered a miscarriage. She then became pregnant again, but this time Mr Jeffryes helped her to have an abortion.[585] Thus the first murder took place in the house as it moved further into misrule. The pamphlet itself implies that Mr Jeffryes had some part to play in his own murder by instigating this:

> Here we may observe the Uncle who had brought her to be Partaker with him in one Degree of Iniquity, now drew her into another, by teaching her the first Practice of Murder. [586]

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[582] Anonymous, *Authentick Memoirs of the Wicked Life and Transactions of Elisabeth Jeffryes, Spinster.* (London, 1752), p.5.

[583] Breashears, 'The Female Appeal Memoir: Genre and Female Literary Tradition in Eighteenth-Century England.', p.612.

[584] Ibid. P615

[585] Anonymous, *Authentick Memoirs of the Wicked Life and Transactions of Elisabeth Jeffryes, Spinster.* , p.6.

[586] Ibid., p.6.

It then shows further evidence that Mr Jeffryes could not control his household and was inappropriately close to his servants. Elizabeth was worried that Mr Jeffryes would alter his will 'In Favour of another Woman, which was the Servant Maid, that he had taken a Liking to, and whom as she said, she had catch'd in Bed with her Uncle'.[587] Elizabeth was reportedly particularly concerned about the status conferred on the servant by her uncle:

> her uncle was so indiscreet as to take the Keys from her, and give them to his Servant, and made her not only Mistress of his Niece, but of his House also, which he had done for some Time before he was murdered.[588]

This pamphlet clearly presents the view that violence can be seen as an inevitable consequence of a mismanaged disordered household. At several points in the text, the author has shown how Mr Jeffryes was in some part responsible for his own violent death. The large amount of prescriptive literature on the importance of household governance meant that, whether this account is true or not, it is likely that readers would have read both the pamphlet and prescriptive literature and would have assumed a causal link between a bad patriarch and an ensuing death. Further evidence of this can be seen in a ballad of another case from 1760 in which the Hampshire based Lady Kirk was burnt for poisoning her husband, two sons and a daughter. However, it later appeared that it was a second daughter who had committed the murders, once again for love and money. In this case, like that of Mary Blandy, it was the father's lack of governance and discipline towards his child that led to his death.

> Yet it was his unhappy fate,
>
> His youngest child to doat upon,
>
> As also did his wife indeed,
>
> And that their ruin did begin.[589]

The pamphlets here clearly warn that extreme violence was the result of household mismanagement and specifically in this case the overindulgence of girls. This ballad ends with the confession and moral message:

> Let this be published as a warning to all others, not to prove false in love for the sake of gold, which has been my ruin; for one James Parker, whom I prized above my soul, to get my father's estate into my own hands that I might have him for my husband, I poisoned my father, two brothers, and a sister, and to save myself I swore

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[587] Ibid., p.7.
[588] Ibid., p.12.
[589] Anonymous, *A True and Genuine Account of Lady Kirk...* (London, 1760), p.3.

against my mother falsly, and have taken her life wrongfully, a sure way to the utter destruction of my soul.[590]

As has been shown here, a common tale in the pamphlets is that in which a girl falls in love with a man who persuades her to join with him in killing for an inheritance. The weapon of choice in these murders is usually poison although there are also cases in which guns are used such as that of John Swan and Elizabeth Jeffryes, whose original attempt with poison failed.[591] As has been discussed in the previous section, poison fits the seditious nature of such a murder, and was less likely to be detected than murder using weapons.

The tales of petty treason demonstrate common narratives. These patterns are not exclusively found in trial pamphlets and occur in a range of genres such as ballads and court transcripts. Within all of the literature, women very rarely seem to have committed murder on their own. Rather, women were accused alongside more powerful females as in Whale and Pledge, or with men, often of a lower social order, who encouraged, aided and abetted the women. One example of this is contained within *A True and Genuine Account of Lady Kirk (1760):*

> This maid had suitors far and near,
>
> But none could then obtain her love;
>
> At last a grocer's son did steer,
>
> A courting to this maiden fair....
>
>
> He with a treacherous heart did say.
>
> Do get your friends estate for me,
>
> With tears she said I can't presume,
>
> Then fare thee well, replied he.[592]

These narratives evidence a double threat to wealthy householders. The heirs threatened from within the household, whilst outside the household, those of a lower status wishing to climb the social ladder challenged order through marriage to a wealthy heiress. The sample here is of course limited, but the finding that men and women worked together to poison contrasts with Watson's research, which suggests that most poisoners acted alone.[593] The case of Whale and Pledge had the smallest amount of male involvement, but James Pledge

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[590] Ibid.
[591] Watson, *Poisoned Lives: English Poisoners and Their Victims.*
[592] Anonymous, *A True and Genuine Account of Lady Kirk...*, p.3.
[593] Watson, *Poisoned Lives: English Poisoners and Their Victims.*

still advised on how to procure poison. Mary Blandy was sent the poison by Cranstoun and Lady Kirk's daughter was told to commit murder by her fiancée. In the case of Swan and Jeffryes, too, they worked together with her procuring the poison and him administering it: 'and for that purpose some Arsenic was actually bought by her, and put into a Pint Bottle by Swan, in some Liquor Mr. Jeffreyes used to take a Dram of sometimes.'[594] It is of course possible that both parties were considered responsible as each had blamed the other in court which evolved into a narrative of joint venture.

A further case demonstrating male and female co-operation, involved Benjamin Buss and Susannah Lott (1769). Mr John Lott was fond of his servant Susannah and asked her to marry him. However, the pamphlet states that he did not want neighbours to say he had married a servant so sent her away to the country before the wedding. Whilst in the country, Susannah met Benjamin Buss who suggested murdering Mr Lott after the marriage 'in hopes of fingering his money'.[595] Once again both the woman and her lover were involved in poisoning as 'Buss was supposed by the court, to have been the person who bought two ounces of Corrosive Sublimate at Mr Gibbs's shop'.[596] Buss also gave Susannah's husband the first dose before providing her with a phial and 'insisted on her repeating the dose, telling her it would never be discovered'.[597]

Cases of subordinate violence then often follow similar patterns. The subordinate perpetrators are most likely to be women, often working alongside their lover. The prime motive given in the pamphlet literature is often avarice, and the women are generally portrayed as being weak and in need of guidance. The most common weapon used by subordinate murderers is poison, and their act is often one of desperation encouraged by the disorder in their household. This disorder often takes the form of over indulgence and lax governance. In contrast to these households with minimal control, the last section will demonstrate that sometimes masters or mistresses went beyond what was deemed acceptable, but that these cases were portrayed as individual aberrations caused by personal deviance rather than a fault with the patriarchal system of order.

Disciplinary violence in the case of Elizabeth Branch.

In the spring of 1740, a number of pamphlets were printed detailing the trial of Mrs Elizabeth Branch and her daughter for the murder of their servant Jane Butterworth in the small village of Phillips Norton (now known as Norton St Phillip) in Somerset. The fact that this case attracted so much attention is interesting as the chastisement of servants by their mistresses was in itself neither considered wrong or uncommon. This case however illustrates the border between what was considered acceptable violence in the eighteenth century household, and what overstepped the line into intolerable cruelty and suffering. As

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[594] Anonymous, *Authentick Memoirs of the Wicked Life and Transactions of Elisabeth Jeffryes, Spinster. .*, p.5.

[595] Anonymous, *A Collection of Tracts, Relating to the Crimes, Examination, Trial, Sentence, and Execution, of Susannah Lott and Benjamin Buss...* (Canterbury, 1769), p.12.

[596] Ibid., p.13.

[597] Ibid., p.16.

has been shown in previous chapters, servants were vulnerable to both physical and sexual assaults by their masters, and sometimes took the opportunity to seek redress through the courts. Chapter 1 demonstrated how female servants were often uneasy with privacy due to the risk of sexual attacks. However, some servants had the support of more powerful members of community and could take their masters to court.[598] The masters in each of these cases overstepped the boundary in terms of chastisement, but their actions were mediated by others. The case of Elizabeth Branch demonstrates what happens when the social structures that constrain the servant-master relationship break down. By using the case study of Branch to map the limits of discourse, the section will demonstrate the elements which pushed each case over the boundary from permitted patriarchal violence as demonstrated above to illicit and illegal violence. Although, in the case of Jeffryes, it was her uncle, the perpetrator of household mismanagement and violence who was eventually murdered, the narratives of Jeffryes and Branch have similarities. In both cases, the heads of the household mistreated young girls under their authority, this led to an escalation of violence and eventually murder. The comparison of these cases allows us to see what circumstances led to the different outcomes in each case, that of the murder of a servant in the case of Branch, and the murder of a master in the case of Jeffryes.

The use of sticks to beat servants is one element which may have caused this case to exceed the limits of patriarchal order. In the pamphlet *The trial of Mrs Branch and her Daughter for the murder of Jane Buttersworth* (1740), the witnesses' talk of two sticks used to beat Jane. These are frequently mentioned in *The trial of Mrs Branch*, and while this could be due to the eighteenth-century coroners' rules of valuing the weapon as the instrument of murder, it is also possible that the witnesses felt the punishment of Jane too harsh and so continuously mentioned the weapons.[599]

It is difficult to define unnecessary cruelty however, the pamphlets suggest the significance of weapons and the term 'rule of thumb'. This phrase, often used in the later eighteenth century, is indicative of the attempts to define at what point violence was no longer legitimate. There is no proof to support the myth that in 1778 judge Sir Francis Buller said that a husband could beat his wife with a stick no thicker than his thumb, but the rule was repeated in popular ballads and cartoons.[600] Branch's defence in the pamphlet *The Cruel Mistress* confirms the close association between cruelty and using weapons or instruments to chastise. The defence counsel claimed Buttersworth was carrying some water when she fell down 'upon which one of the prisoners gave her a Box upon the Ear', a defence that appealed to contemporary ideas about reasonable chastisement. [601] Mrs Branch went

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[598] See the cases of Elizabeth Bishop, Berthia Bunting and William Russell in chapter one.

[599] R F Hunnisett, *East Sussex Coroners' Records 1688-1838* (Lewes, 2005).

[600] H A Kelly, 'Rule of Thumb and the Folklaw of the Husband's Stick.', *Journal of Legal Education*, 44:3 (1994), pp. 341-365.

[601] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...* (London, 1740), p.15.

straight to the heart of the accusation about excessive violence when she denied any exacerbating factors:

> Gentlemen, I am innocent of the Crime laid to my Charge; I did strike her indeed, but neither with Sticks nor Twigs, but I did it with my Hand, and if I did hurt her, it was not done desgnedly [sic], but accidentally.[602]

Here it is possible to see the fine line between chastisement and cruelty at play, as like 'judge thumb', Branch attempted to negotiate the point at which her authority over her servant ended.[603] The comment that she only hurt the servant by accident also fits with the definitions of chastisement seen in the first part of this chapter, that the intention should be to correct, not to hurt.

Using weapons was not the only way in which the level and type of violence could become unacceptable. Cruelty had a wide definition in the Branch case, and others like it, and included the inadequate supply of food and clothing, physical harm and threats. Two of the pamphlets, *The Trial of Mrs Branch* and *Inhumanity and Barbarity,* contain accusations that Mrs Branch was well known for cruelty to her servants and that common fame suggested she had murdered her husband.[604] The third pamphlet, *The Cruel Mistress,* appears to be a transcript of the trial, although it is impossible to say how accurate this is, and the counsel for the king again set the context by describing her reputation: 'Upon the Account of her ill and cruel Treatment of her Servants, after the Decease of her Husband, she was obliged to continue for a long Time without any Servant'.[605] These accusations set the background for the trial as does the statement in *Inhumanity and Barbarity*:

> During the late Frost, her [Jane's] Cloaths consisted of a *single Coat,* - her *Legs and Feet bare*. In this Plight she was forced to fetch up the cows, and do her other Business; and tho the Cold at that Time was enough to perish one *well cloathed*, yet she durst not approach the Fire in their Sight. As for the Servants Food in general, *Bread and Cheese and Water* were their sumptuous Fare; and hard Usage and Disquietude were their other Comforts.[606]

The failure to supply food and clothing was considered cruelty in marriage trials for divorce and separation, partly due to the hierarchical chain of authority between a man and his

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[602] Ibid., p.26.

[603] Foyster, *Marital Violence: An English Family History, 1660-1857;*Henry Ansgar Kelly, 'Rule of Thumb and the Folklaw of the Husband's Stick', *Journal of Legal Education*, 44 (1994), p.12.

[604] Anonymous, *The Trial of Mrs. Branch, and Her Daughter, for the Murder of Jane Buttersworth...* (London, 1740?). P.IV; Elizabeth Branch, *Inhumanity and Barbarity Not to Be Equal'd...* (London, 1740), pp.4-6.

[605] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...,* p.7.

[606] Branch, *Inhumanity and Barbarity Not to Be Equal'd... ,* p. 7.

wife.[607] Likewise, masters were expected to provide for their servants and apprentices.[608] As Jane was an apprentice or live-in servant to Mrs Branch, it was Branch's patriarchal duty as her mistress to provide for her as a parent would a child, as well as to chastise her when she did wrong. The accounts in the pamphlets remind the reader that Branch has failed in this duty and set up the context for cruelty. Branch's failure to perform her part of the patriarchal bargain here negates her authority to legitimately chastise her servant and posits her as one who does not follow the conventional limits of order.

Physical constraint was another area of cruelty demonstrated in the Branch case. All three pamphlets tell of the Branches holding Jane down whilst beating her and two, *Inhumanity and Barbarity* and *The Trial of Mrs Branch* tell of the maid refusing to assist suggesting that restraining someone whilst beating them was unacceptable:

> The said Elizabeth the Mother bid this Informant lay the girl down on the Floor, which she refused…whereupon the said Elizabeth Branch the Mother, and Elizabeth the Daughter, flung her upon her Face upon the Floor…Elizabeth the Daughter then kneeled upon her Neck to keep her down and both whipp'd her upon her Skin for a considerable Time.[609]

This paragraph demonstrates that it is not just Mrs Branch who is disordered, but her daughter too. The complexities of relationships within this house are revealed as the younger Elizabeth Branch is in the position of being subordinate to her mother and therefore must follow her disordered example. In another incident later that day, Jane is restrained again to have salt rubbed into her wounds demonstrating another component of the Branch's cruelty, that of excess, as well as a hint of lasciviousness: 'my young mistress went into the Kitchen and fetched the salt Box, and turning up my Lord, the Deceased's Coats she rubbed the Breech of the Deceased with Salt, which was bloody with Whipping'.[610] Although painful, this may have been an attempt by Mrs Branch to apply some form of antiseptic to the wounds as two of the pamphlets make no comment on this. However, *Inhumanity and Barbarity* suggests less mercy 'Madam pull'd the Deceased forward upon her Face, and Miss took up her Coat and rubb'd her Backside and Loins with the Salt so hard, that the Blood work'd up betwixt her Fingers'.[611] The definition of cruelty, like that of violence in the previous chapters, can be seen to be based on context and the context provided in the pamphlets surrounding the trial of the Branch's would lead

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[607] Foyster, *Marital Violence: An English Family History, 1660-1857*;Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800*.
[608]Karen Harvey and Alexandra Shepard, 'What Have Historians Done with Masculinity? Reflections on Five Centuries of British History, Circa 1500–1950', *Journal of British Studies*, 44:2 (2005), pp. 274-280, p.402.

[609] Anonymous, *The Trial of Mrs. Branch, and Her Daughter, for the Murder of Jane Buttersworth…*, p.5.
[610] Ibid., p.20.
[611]Branch, *Inhumanity and Barbarity Not to Be Equal'd…* , p.14.

contemporaries to suspect unnecessary cruelty. Further contextual evidence is given by the account of another servant, Henry Butler who described a shocking incident:

> But once in particular, upon my letting fall a Plate at Dinner, the Prisoners, Mother and Daughter arose from the Table and beat me in such a Manner, that what with the Fright and Blows together my Lord, craving your Lordship's Pardon, I beshit myself, and then the Prisoners took up my Turd, thrust it into my Mouth, and made me eat it.[612]

The Cruel Mistress contains a plate of this event suggesting that it would have been of particular interest to readers and ensuring that news of it reached as wide an audience as possible thus demonstrating the excessive and unusual violence used by the Branch's against their servants. In her analysis of the trial of Elizabeth Brownrigg, a woman accused of similar crimes to Branch in 1767, Christina Straub has suggested that 'the shock of these descriptions lies in their fusion of violence with pleasure'.[613] The women are portrayed as 'the demonic counterpart of the ideal mistress, the maternal but firm disciplinarian' in order to displace the economic motives of needing to secure as much work from servants for as little cost as possible, that may have been too close to reality for readers. The depiction of the women as excessive or perverse renders economic motives redundant, as does the notion explained previously that authority should be for the good of others not for the pleasure of those who exercise it.

The examples and definitions of cruelty seen in the Branch case have interesting parallels with those found by Elizabeth Foyster in her study of marital violence. Her work has shown how definitions of cruelty given by wives encompassed physical harm, threats, inadequate supply of food or clothing, physical constraint and confinement. Foyster argued that 'throughout our period, in both lay and legal terms, the definition of cruel violence was one that was circumstantial and contextual'. [614] The same circumstances which provided for women to be treated with unnecessary violence and cruelty, also allowed them to become perpetrators against those of lower social standing within the patriarchal system.

Another way in which violence crossed the line and could be considered cruel and unacceptable was when it caused prolonged suffering, either over a period of weeks, or hours. Again the case of Mrs Branch provides evidence of eighteenth-century definitions of long term suffering or cruelty. The pamphlet *Inhumanity and Barbarity Not to be Equal'd* points out to readers 'that the *Murder* was a *continued series of Action* for SEVEN HOURS'

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[612] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...* , p.25.

[613] Straub, *Domestic Affairs: Intimacy, Eroticism and Violence between Servants and Masters in Eighteenth Century Britain*, p.102.

[614] Foyster, *Marital Violence: An English Family History, 1660-1857*, pp.42-44.

whilst *The Trial of Mrs Branch* claims that Jane languished 'by the space of ten Hours'.[615] Other trials for murder such as that of Mary Blandy in 1752, also appear to put emphasis on the length of time a person suffered before death suggesting that this was an important consideration for contemporaries when deciding the nature of violence. This may have been due to the fact, as has been shown above, that many believed violence to be that which endangered life, and so a prolonged period of suffering in which a life could possibly have been saved demonstrated violent intent. Prolongation of suffering also, once again, went beyond the prescribed limits of patriarchal order that violence was a reasonable chastisement for a particular misdeed.

A further feature that marked out instances of unacceptable disciplinary violence was the intervention of others. In her examination of marital violence, Elizabeth Foyster has argued that 'historians could define cruel violence in this period as violence that provoked a response or intervention by individuals outside the conjugal unit. An overview of the available evidence tells us that in this period a response was most likely when violence amounted to an abuse of authority'.[616] Therefore we can see that the line between acceptable and unacceptable violence was drawn through social interactions. This has also been demonstrated in chapter two, when neighbours called for the investigation of the death of a maid who was found in her master's cistern. The neighbours in the Branch case did not physically intervene to stop the violence but they did discuss her behaviour and reputation. Therefore we can see that Foyster's argument also stands for other patriarchal relationships such as that between a master or mistress and servant.

Another way in which the violence in the Branch case was deemed unacceptable and transgressed the rules of order was that it was considered unjustified. The pamphlet *Inhumanity and Barbarity* stated that the murder arose 'from a small provocation' and the information given by servant Ann James in *The Trial of Mrs Branch* demonstrated how she had seen the accused 'beat the said *Buttersworth* several Times upon very slight Occasions'.[617] In *The Cruel Mistress*, Butler the servant also describes how the violence was in his eyes disproportionate to the offence: 'she and her Daughter would for every trivial Offence lay on me in the most barbarous Manner'.[618]

The prisoners' defence gives some detail about when violence was considered justified for maintaining household order in the eighteenth century:

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[615] Branch, *Inhumanity and Barbarity Not to Be Equal'd...*; Anonymous, *The Trial of Mrs. Branch, and Her Daughter, for the Murder of Jane Buttersworth...* , p.2.

[616] Foyster, *Marital Violence: An English Family History, 1660-1857.*, p.45.

[617] Branch, *Inhumanity and Barbarity Not to Be Equal'd...* , p.34. Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...* ,p.3-4.

[618] Ibid., p.24.

> At length she [Buttersworth] grew pert, would stay of an Errand, and tell Lies. This, my Lord, I used often to admonish her about, and sometimes, indeed, I would give her a Blow to make her remember, but they were but slight Ones. [619]

Here we can see that some level of physical chastisement was considered acceptable by the defendant and therefore likely to be seen by the jury as a response to unacceptable behaviour. The use of the term 'pert' contrasts with the previous descriptions of Buttersworth as a childlike innocent, demonstrating the different ways female servants could be portrayed according to circumstance. This passage also suggests some knowledge of the law regarding chastisement as it echoes the legal frameworks set out at the beginning of this chapter. However, Ann James' position was that the violence was not justified as a reasonable response to what she considered trivial offences. It is impossible to know the truth behind the levels of provocation needed before Mrs Branch responded with violence, but the argument that violent acts were justified can be found elsewhere in narratives of household murders.

The pamphlets heighten the sense that this was an abuse of authority by referring to Buttersworth as a child. There is no record of her age in the trial transcript, but the pamphlet text hints that she was a young parish apprentice. By describing her as a child in the pamphlets, further contextual information about attitudes towards the case can be found. Kristina Straub has written of the 'servant problem' in the eighteenth century. This incorporates confusion over the sexual identity of female servants and whether they should be seen as childlike innocents or wily manipulators.[620] These pamphlets firmly position Buttersworth as a child, who was taken advantage of in prurient ways by her unnatural mistress and her daughter.

All three of the pamphlets note that the Branches were known by 'common fame' to be cruel and therefore found it hard to hire servants. In two of the pamphlets, *The Trial of Mrs Branch* and *Inhumanity and Barbarity*, the maid is said to have tried to intervene on Jane Buttersworth's behalf stating 'that she desired them to forbear and let the Child alone'.[621]This statement demonstrates a conflict of loyalty for the maid between her mistress and fellow servant as well as further evidence of disorder within the household as, in a reversal of roles; the servant is supervising the behaviour of her mistress. It is also possible to see here the complexities of household relations, riven with the potential for conflict and unresolvable tensions. The maid has a moral duty to obey her mistress but this is opposed by her own moral judgement of the treatment of Buttersworth.

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[619] Ibid., p.25.

[620] Straub, *Domestic Affairs: Intimacy, Eroticism and Violence between Servants and Masters in Eighteenth Century Britain*.

[621] Anonymous, *The Trial of Mrs. Branch, and Her Daughter, for the Murder of Jane Buttersworth…*, p.5; Branch, *Inhumanity and Barbarity Not to Be Equal'd…*, p.13.

In *The Cruel Mistress*, the maid Anne Somers is asked 'When you saw what was done, did you take no Notice of it.' Somers reply suggests that she may have felt unable to intervene due to fear for herself:

> My Lord, I said to my old Mistress, that I believed the Girl was dead. Upon which she call'd me Welch Bitch. Soon after this, the Deceased was put into a Bed, and I was order'd to lie with her, but I did not touch her, knowing her to be dead.[622]

Later on in this transcript Anne Somers describes that it was due to fear that she did not tell anyone of the murder until three days later:

> I was kept within Doors till the Deceased was buried, and not suffer'd to go abroad. I did not dare to speak lest the prisoners should have used me in the like barbarous Manner. But as soon as it was possible I left their Service.[623]

Somers' testimony shows that she did have some autonomy. She could leave her employment. However economic difficulties, the need of a good reference, and the age of many servants apprenticed as parish paupers meant that leaving was not an easy option. This testimony also suggests that she believed the treatment of Jane was cruel but either her intervention was ignored or she could not intervene due to her status as a servant and fear for herself. Although abuse was often secretive, it appears the neighbours were aware of what went on at the Branch house as Martha Sproson reported in *The Cruel Mistress* 'My Lord, I lived sometime near to the prisoners House, and I have often seen one or other of them beat their Servants, and I could very often hear them cry tho' I could not see them'.[624]

Susan Amussen has argued that in cases of marital violence, men's violence was subject to community control and limitation.[625] However, Laura Gowing has suggested that not all members of the community felt the same necessity to complain and intervene about violence. She found it was women more often than men who intervened in domestic violence.[626] Although none of the neighbours intervened physically or legally to stop the violence at the Branch household, by spreading 'common fame' of their treatment towards servants they were able to ensure that the Branches found it hard to recruit and therefore did offer some protection and warning to the young women looking for work in the area. Joanne Bailey found no female solidarity among female witnesses at court, however, in this

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[622] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...*, p.20.
[623] Ibid., p.22.
[624] Ibid., p.28.
[625] Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (London, 1988)., pp.128-9.
[626] L Gowing, *Domestic Dangers: Women, Words and Sex in Early Modern London* (Oxford, 2005), p.217.

case it was the women, neighbour Martha Sproson and servant Anne Somers who intervened, not physically, but by testifying in court.[627]

Details of the reaction of neighbours to the trial and execution can also provide information about contemporary attitudes towards household violence. Two of the pamphlets, *The Cruel Mistress* and *Inhumanity and Barbarity* provide evidence of public response to the trial:

> The People in general cried vehemently against *Mrs Branch,* and when she was brought to her Trial, the whole Country all around rose, so that the Sheriffs Officers were obliged to convey them back to *Ivelchester…*under a very strong Guard in the Dead of the Night. For Fear lest the People should seize the Prisoners and tear them to Pieces.[628]

> When the Judge was going out of Town, the People hung about his Coach, crying out *My Lord, Hang 'em! Hang the old B-h!* And their Condemnation gave great Satisfaction to the Country all about.[629]

It is intriguing that this particular case provoked such local interest in the Mendips area, as well as strong feeling and this could be for several reasons. The degree of suffering and cruelty extended to Butterworth as shown above was likely to offend many, as was the transgression of household or patriarchal duty towards a vulnerable victim. The fact that the abusers were women in a matriarchal household may also have held fears for contemporaries. As Kristina Straub has suggested for the case of Elizabeth Brownrigg, each of these contraventions of the social order went towards portraying the accused as 'the other' in response to conventional social and moral codes. They allowed for the demonising of the individual rather than forcing the reader to critique their own actions or the social structures which allowed such crimes to occur.[630]

 Although Mrs Branch had a son living at home, he does not feature in the narrative and appears to have little to do with the household. This is especially interesting as Branch's daughter was given license to mistreat Butterworth, mirroring her mother's actions. In addition, Mrs Branch's life story portrays her as overbearing and controlling towards her husband. Once again, this portrayal of a petticoat government distances Branch from the norm, particularly as it is a pattern that is repeated in her daughter, and is also seen in the similar case of Brownrigg later in the century. Similar narratives can also be found in stories prior to the eighteenth century. For example, in 1602, witnesses told how Susanna Wilson

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[627] Bailey, *Unquiet Lives: Marriage and Marriage Breakdown in England, 1660–1800*.
[628] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter…* pp.34-5.
[629] Branch, *Inhumanity and Barbarity Not to Be Equal'd…,*p.34.
[630] Straub, *Domestic Affairs: Intimacy, Eroticism and Violence between Servants and Masters in Eighteenth Century Britain*.

of Arundel, West Sussex, disordered her household through adultery. She controlled all aspects of the home, making her husband pay for food and deciding where he should sit. This influence over the household gave her a reputation locally for malevolent power with rumours and accusations about servant-beating, abortions, defamation and murder.[631] These same allegations occur time and again against women considered to have transgressed the natural hierarchy, and are shown in this chapter in the cases of Jeffryes, Pledge and Whale, demonstrating the continuity of these ideas. The reaction of the public to the Branch case could then be seen as part of the wider crisis of authority described by Peter Lake and Francis Dolan in the seventeenth century. While this is not an aspect emphasised by historians of the eighteenth century, the concept can also be found in the early nineteenth century by Martin Wiener, suggesting some form of continuation.[632]

In *The Cruel Mistress* the prosecution counsel discussed the vulnerability of the victim, stating that it was a stranger who decided to exhume the body 'for, Gentlemen, the Deceased had no Friends or Relations'[633]. This observation gives an insight into wider social structures that are revealed by violent episodes. The pamphlets represented Jane Butterworth as almost disposable in the eyes of Mrs Branch due to the fact that she was as a poor servant without any relations. In the pamphlet, the King's Counsel makes the point:

> The Prisoner was oblig'd to put up with unhappy Orphans, &c. from the Parish, on whom she exercised her cruel Temper, well-knowing they had no Body to complain to but Churchwardens, Overseers, and Committee-Men, who seldom listen to their Complaints.[634]

In fact the Counsel was concerned that Mrs Branch may have murdered other servants in undetected crimes. The above statement suggests that the early eighteenth-century practice of communities policing themselves through networks of gossip was not always successful and complaints to parish officers were often not heard.[635]

Servants could of course also appeal to the Justice of the Peace to get their masters bound over to keep the peace. Anne Somers claimed in *The Cruel Mistress* that she threatened this*:*

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[631] Shani D'Cruze, *A Pleasing Prospect: Social Change and Urban Culture in Eighteenth-Century Colchester* (Hatfield, 2008), p.197.

[632] Peter Lake, 'Deeds against Nature: Cheep Print, Protestantism and Murder in Early Seventeenth Century England. ', in Kevin Sharpe and Peter Lake, eds., *Culture and Politics in Early Stuart England* (Stanford, 1993), pp.263-5; Dolan, *Dangerous Familiars: Representations of Domestic Crime in England 1500-1700.*; Wiener, 'Alice Arden to Bill Sikes: Changing Nightmares of Intimate Violence in England, 1558-1869', pp.189-191.

[633] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...* ,p.8.

[634] Ibid. ,p.7.

[635] Ingrid Tague, 'Aristocratic Women and Ideas of Family in the Early Eighteenth Century', in Helen Berry and Elizabeth Foyster, eds., *The Family in Early Modern England* (Cambridge, 2007).

> *Abraham Hyson.* My Lord, the Evidence *Somers* said to me, that if ever the Prisoners should beat and use her ill, she would be up with them.
> *Court.* What did you mean *Somers* by those words?
> *Somers.* My Lord, that I would complain to a Justice.[636]

In theory at least, the English legal system gave servants legal status as the frequently reprinted *The Laws Relating to Masters and Servants* stated: 'Servants of the lowest Class, being under the protection of the Laws, if mal-treated, have the same Remedy and Redress as their Masters'.[637] However, it would have been extremely difficult in practice for Somers to bind over her mistress as she would have needed witnesses, and to prove that she believed her life was in danger.

Having considered the Branch case, in which disciplinary violence overstepped the boundary into violation, it is clear that several factors were important in the eighteenth century for negotiating the point at which authority ended. These included the use of weapons which were considered too harsh, failure to supply food or wages which consisted of a failed patriarchal duty, causing prolonged suffering or outside intervention which suggested unreasonable chastisement, and beating for small provocation. These social rules were fluid and were portrayed within literature by creating the image of a nightmare household in which disorder ruled. Images of disorder were created by portraying the victim as an innocent child in relation to the matriarchal mistress who was the opposite of the motherly mentor portrayed in the conduct books.

Conclusion

This chapter has examined cases of intimate household violence which crossed the contested boundary between violence and violation, legitimacy and illegitimacy in order to clarify where those limits lay. Through looking at contemporary responses to transgressive cases of disciplinary violence it is possible to see that there are common features, which, if present in a case, caused actions to be viewed as illicit rather than permissible. These include the use of weapons, prolonged suffering, little provocation and the failure to provide food or wages. These features of violence follow those set out in the conduct literature for the good management of a household, and have also been found by historians such as Elizabeth Foyster to define the limits of cruelty within marriage.

However, there are further conclusions that can be drawn from exploring the literature surrounding the case. This literature reveals much about the concerns of contemporaries and discloses that negotiating the point at which chastisement became violence was fluid, contested and therefore likely a concern for readers. This is demonstrated by the portrayal of Mrs Branch as an extreme character, the opposite of a mentor mistress, in contrast to the victim. Prurience is also used to highlight the extreme behaviour of the perpetrator, and

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[636] Anonymous, *The Cruel Mistress; Being, the Genuine Trial of Elizabeth Branch, and Her Own Daughter...*, p.27.
[637] Pateman, *The Sexual Contract.*

ensure that she is conceived of as 'the other'. Cases of subordinate violence were not simply reversals of the cases of disciplinary violence. They have their own common features which can include disordered households with elements such as educated women, marrying outside of class boundaries, and subversions of marriage such as incest, hidden marriage or sex before marriage. These narratives began to demonstrate a sympathy for the women accused of serious violence against authority figures, suggesting a shift in the way femininity was considered. These women are portrayed as childlike and in need of guidance, similar to the victims of the cases of disciplinary violence. Common tales place a male behind the female criminal as instigator or cause and portray their violence as an inevitable consequence of disordered male governance. The significant exception to this is the case of Whale and Pledge. Here the women themselves were portrayed as deceitful and having knowledge of unnatural potions. Whale and Pledge's status as married women was crucial in the way these women were portrayed. Therefore they could not be seen as 'innocent' or 'childlike 'as their married status allowed them into the world of sexual knowledge as seen in the rape cases in chapter one.

An analysis of the literature in this chapter has shown how the line between legitimate and illegitimate, acceptable and unacceptable violence was fluid but imaginable. The written narratives revealed events surrounding cases but also informed the oral stories to be told in court. Images of disorder were used to demonstrate how violence rather than chastisement could be a reality in any household. As has been seen in the previous chapters, experience of violence was not necessarily random or uncontrolled. There were rules surrounding its use, which were understood in both legal and cultural terms and by anatomising case of violence we are closer to understanding these rules and boundaries.

Conclusion

This thesis has given an account of the patterns, contexts and functions of violence in the South East of England, particularly East Sussex and West Kent, from c.1690-c.1760. To date, the historiography of crime and violence in Britain during the long eighteenth century has emphasised large urban areas, particularly London. Therefore it is time for rural areas to be considered. Furthermore, much of the research has focused on the later eighteenth century, in part due to ideas about changing social and cultural behaviours since the early modern period. This means that the early part of the eighteenth century is also ripe for study as a bridge between these two historiographical eras. This thesis has also used violence as its main focus. The majority of studies that have concentrated specifically on violence have tended to be wide ranging in terms of period or location. However focussing on a specific geography and period has allowed a more in-depth analysis of the culture surrounding the concept of violence within society as well as crime in general. With this in mind, two main research strands have been considered in this thesis. The first was to gain a more thorough understanding of the eighteenth century concept of violence, the second was to reveal the boundaries of violence. As a result this thesis has added to the wider study of eighteenth-century culture and society by using violence as a lens through which to explore them.

Concept of violence

The examination of violence in a range of specific situations, from pub brawls and gangs to domestic murder, has allowed its various meanings to be captured. The thesis has discussed how there was not one concept of violence; rather there were cultures of violence, shaped by the interactions of participants and influenced by their wider understandings and communities. It has also challenged the view that acts of interpersonal violence reduced during the eighteenth century due to violence increasingly being seen as transgressive. It is possible to some extent to quantify levels of violence, and this has been done in this thesis by following the legal categories set out by the courts. Chapter one particularly has shown how a quantitative analysis of court records can reveal patterns of gender and status. These records are useful as a starting point but by considering these incidents in their wider context it has been possible to gain a more thorough understanding. For example, an analysis of the quarter session records in chapter one suggested that simple assault was the most common violent crime. However, the following chapters demonstrated that although assault was a legal category, it could in fact mean many different things. Chapter two further contextualised this by demonstrating that violent crime was only a small part of the justice's business and showed how cases of violence that resulted in arbitration could be missed in a study which focused solely on legal terms or specific legal arenas.

The quarter session records provided an introduction to the types of violence that could be found in Sussex and Kent in this period. However, more fruitful analysis has been gained by moving beyond these sources and the definitions that constrain them. This has allowed

connections to be made between what at first appears to be very different types of violence. The case of Bowden and Cheeseman in chapter one introduced us to the idea that violence was being used to maintain control and this was paralleled in the actions of both the authorities and smugglers in chapters three and four. The idea that violence could be justified was first explored in chapter one with incidents such as that of Joseph Tuppany forcing Elizabeth Harris to wear a badge and was also found in the way that masters chastised their servants in chapter five.

Throughout each chapter the definition of what constituted violence was found to depend on subjective criteria which had various and shifting meanings. For that reason, it is necessary to think in terms of plurality, as only then can we see how violence within the household, such as that perpetrated by Pledge and Whale have shared connections with smugglers attacking revenue officers. Viewing violence from a cultural perspective enables us to see how it could be justified and normalised through custom, ritual and ideology. For example the smugglers echoed the rituals of the state in capturing and displaying their enemies, whilst masters and husbands used the ideology of an ordered household to justify disciplining their servants and wives. In addition we saw the ritual of 'making up' within the justice's parlour bring order to the incidents of violence. In the eighteenth century, social commentators often depicted violence as meaningless, irrational or senseless, a definition applied to household cruelty, rapes of women and murders by gangs. By considering violence as the antithesis of civilisation, commentators were able to create a distance between this concept and their own lives. However, if we explore these acts in detail and attempt to get at the views of the participants, we can see that violent practices were rarely meaningless or senseless and instead were often the product of dynamic tensions between beliefs and action.

Everyday understandings were nuanced and context dependant. There were of course legal concepts of violence used by the courts to define and label criminal acts, and the testimony of victims and witnesses strongly indicates that local communities had a well-grounded concept of the legal definitions of violence. For example, common narratives such as those used by victims of sexual violence demonstrated clear understanding of a specific language used to describe violent incidents in court. However, we have seen in chapters one and two that even the legal categories were not always clearly defined and relied somewhat on the individuals involved. The variety of definitions of violence in eighteenth-century Sussex and Kent were often dependent on the participants, their sex, social status and their view of the outcome. Chapter two showed how an outcome of serious injury for example, was more likely to be described as violence. Additionally, it showed that when violence occurred between unequal participants, such as a man and woman or master and servant, it was more likely to be considered a violation, and therefore unacceptable. However, it also revealed that the resolution of violence reflected the unequal status of participants in society and in cases such as that of John Clendon and Mary Hunt was not necessarily without partiality.

Boundaries of violence

By considering violence as a behaviour, rather than a crime, it has been possible to break down the usual barriers of definition. This has indicated patterns and order within eighteenth-century meanings of violence. These patterns have allowed an increased understanding of the boundaries between legitimate and illegitimate violence and the meanings of different forms of violence to authorities, communities and households. These boundaries could be dependent on the individuals involved. For example, we have seen that the personality of an individual justice could affect whether a case was considered sufficient violence to be taken to court or an act to be reconciled. In addition, the personality of the Duke of Richmond was vital to the acts of violence perpetrated by both the state and smugglers.

Whilst some levels of violence were accepted within society, there were unwritten codes which set the point at which violence became violation.   Violence could be considered legitimate or acceptable in a range of ways, for example, in response to perceived threats or within certain contexts such as household discipline. The concept of acceptable violence also provided contradictions, for example when subordinates murdered their superiors there were often attempts to justify the acts and suggestions of sympathy can be seen. In turn, there was also the concept of illegitimate or unacceptable violence, when the violent response was considered not legally or culturally appropriate. Illegitimate violence included extremity, cruelty and a lack of reason. throughout this study, contemporaries applied a test of reason to acts of violence whether that be in response to the acts of the smugglers or violent masters such as the Branches.

The boundary of violence depended on context such as sex and status. Commentators generally considered it socially unacceptable for women to be violent, but we have seen throughout this thesis that women themselves considered violence necessary in circumstances such as protecting their families. For men, the situation was even more complex. Brawls between men of the same status, particularly in taverns were generally accepted. Men were also able to chastise inferiors using violence, as long as this was reasonable. However, violence against women or those of a lower social status outside of the home was unacceptable. The court records, notebooks, letters and pamphlet literature have all shown how plaintiffs and defendants used a range of narratives to negotiate these boundaries of acceptability.

What does the thesis add to the wider study of eighteenth century society and culture?

A range of cultures of violence have been explored in this thesis. Culture involves both what people think and what they do. It is a collection of beliefs and practices shared by a group of individuals. These cultures become evident through both accounts of behaviour such as court records, and literary representations, such as pamphlets and handbooks. Connections and disjunctions can be found throughout this thesis between practice and discourse. That is to say, between evidence of actions in the court records and notebooks, and normative

structures demonstrated in pamphlet literature. The point at which discourse and practice in violent interactions meet allows us to understand some of the cultural preoccupations of the eighteenth century. It is impossible to get a true understanding of violent incidents, but a detailed examination of, for example, the identity and portrayal of smugglers allows a glimpse into the mind-set of the characters involved. Historiographically, this thesis is situated between early modern and eighteenth-century scholarship. Sussex and Kent were predominantly rural counties with little urbanisation or industrialisation and therefore many of the findings have been similar to those of an earlier period. For example, the findings here suggest that many cultural ideas and beliefs were rooted in ideas from the seventeenth century and did not dramatically change. This adds to suggestions that ideas about gender such as patriarchy had more continuities than contrasts and that historical method and historiographical narratives may have exaggerated any differences found.

This work can be located alongside recent histories of riot and protest. Historians studying this aspect of society have repositioned crowd action to demonstrate rational and organised protest. In much the same way, this thesis has shown how a contextual analysis of violence can demonstrate the rationality and order within it. It has looked at how representations of violence were connected with the acts themselves. This links with work by Steve Hindle which has shown how representations of protesters in the Midland Rising of 1607 also shaped collective action. Furthermore, the examination of smuggler violence contributes to revision of concepts of class and has added to our understandings of social crime. The study of smuggling gangs provides further evidence that that grand narratives of class need to be re-thought, and that overarching structures should not dictate our understanding of events. The thesis has explored how action, language and identity are relational and context dependent. This allows us to think about class and social relations in contemporary terms rather than as precursors to later evidence of class consciousness. In common with new histories of class action, the analysis here has shown that violent events are locationally and temporally specific. For example, the actions of the smugglers in Sussex relied on local circumstances. This approach allows us to move away from binary power relations and reveals a society in which mediation, negotiation and participation are key words.

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