CRIMINALS AND THE LAW IN THE REIGN OF RICHARD II

MT 1976



ABSTRACT

The materials for studying the nature, incidence, and distribution of crime in later medieval England are copious, but they present very serious difficulties of interpretation. Much work has been done on legal and administrative records as such, and a few tentative studies of crime have been published, but no one has hitherto attempted the detailed account of the machinery of criminal justice, and of the possibilities and limitations of the available records, which should precede any wider investigation of the criminal in society. This thesis is intended to contribute such an account. Its sources, and its relevance, are not by any means confined to the given period and county, but it was necessary to focus on a manageable proportion of the records in order to study them in adequate depth, and Hampshire at the end of the fourteenth century offered a substantial and apparently representative selection of surviving materials.

A preliminary note describes, briefly and broadly, the way in which a modern notion of serious crime has been related to the less conceptual, more procedural distinctions of medieval law. This is followed by a chapter describing in detail the procedures whereby criminals were accused, detained, tried, and punished. The analysis of local first instance courts - coroners' inquests, law hundreds, tourns, peace sessions - is

especially revealing; a disproportionate amount of work on the peace rolls has previously led to the assumption that, by the period of the Black Death and its aftermath, peace sessions were the most important source of criminal prosecutions, whereas the case of Hampshire shows that private courts were still of prime importance until 1400 and beyond, with coroners also making a large contribution. In general, indictment and trial procedures were far more openly flexible and less punctilious at the end of the fourteenth century than they had been a hundred years earlier, and this was reflected particularly in procedures whereby many suspects were acquitted without trial, by disavowal of mainour or by proclamation. In these as in other cases, the nature and status of evidence heard in court remains obscure.

The second main chapter examines the social status of the various officials and jurors whose decisions affected the criminal. As with procedure, the simplest means of analysis is court by court, taking the officials and specimen juries and identifying them in poll tax returns and other available records. The results bear out what is already known about coroners, justices of the peace, and professional justices, suggesting also that variations in the personnel of peace commissions had less effect in practice than has been supposed. Officials holding private law hundreds seem to have been a very

heterogeneous group, ranging from county magnates to obscure and minor clerks. The juries at these sessions seem to have been genuinely local and humble; coroners' juries were also demonstrably local in most cases, although there are signs of special recruitment when an adverse verdict was required. Presenting juries at peace sessions were mainly local men of substance, and openly self-interested. Trial juries, although evidently empanelled with difficulty and some improvisation, were usually as local as possible to the offence.

After this discussion of procedures and the personnel who implemented them, there is a detailed consideration of the resultant documents and their evidential value. The relatively careless compilation of coroners' and peace rolls provides one problem, while the failure of many records to survive is another. While some basic information from lost documents can be reconstructed from related materials, there is no means of restoring all the lost data. Even were this possible, it would not obviate the great circumspection which the records require, since it is possible to find many examples of major and minor inaccuracies - sometimes the product of rather summary procedures, sometimes of careless transcription or redaction, sometimes of an intention to produce a particular judicial outcome. In general the local first instance records seem most nearly reliable; the trial courts, especially king's bench,

provide a definitive view only of the law as it was applied.

It has often been argued that the common law was peculiarly sterile on the criminal side. Chapter V attempts a defence of the medieval criminal law, on grounds of its flexibility and practicability in what was normally a limited range of contingencies, and shows, in a review of the law on particular offences, the degree to which practical considerations could be and were accommodated. The law of treason, for example, rested very largely on political expediency, with a fairly generous attitude towards petty counterfeitors. The law of homicide showed unexpected simplicity; on the other hand, the historian cannot wholly disentangle the contortions into which the law of rape threw the practice of prosecuting it.

When all the foregoing points have been examined, it remains to consider the extent to which we can know about medieval crime. A chapter on criminal justice outlines those areas in which we can and cannot rely upon the available information. It is clear that some indictments were accepted despite doubtful legality or veracity, and it is also clear that many verdicts are unreliable - particularly in king's bench, where verdicts seem always to have favoured the party who brought the case to court. There is, moreover, seldom any indication of motive by which the historian can assess an accusation. As for the professional criminal, the ease of

reference to persons of prominent family or substance has meant that the gentry has received more attention in this matter than has the true professional underworld; a careful scrutiny of approver's appeals, however, shows that much can be learned about the routine activities of professional petty thieves, rustlers, and highwaymen. Further discussion of varying criminal jurisdictions argues the difficulty of knowing how effectively and systematically crime was attacked and punished; but a postscript allows that crude statistical analysis, and minute scrutiny of particular topics, may allow something to be known of the nature and incidence of crime in later medieval England.

Criminals and the Law in the Reign of Richard II

with special reference to Hampshire

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A thesis submitted for the degree of Doctor of Philosophy in the University of Oxford

1976

PREFACE

I am deeply grateful to my parents for the many years of encouragement and support which made it possible for me to undertake this thesis. I am also heavily indebted to four present and former colleagues at the Public Record Office: to Dr R. F. Hunnisett, who as supervisor has been endlessly generous with his hospitality, guidance, and exacting scholarship; to Mr C. A. F. Meekings, for valuable discussions of many points of detail; to Dr P. A. Brand, for innumerable fruitful conversations over a wide range of medieval records; and to Mrs M. J. Post, for vigorous criticism, constant enthusiasm, and a friendship beyond words.

J.B.P.

The Public Record Office

Hilary, 1976

CONTENTS

		Page
	Abstract	2
	Preface	8
	Abbreviations	10
	Map: The Hundreds of Hampshire	11
I	A Definition of Crime	12
II	Procedure	15
	Arrest and first instance, 15 ; detention, 50 ; trial, 60 ; sentence, 92 .	
III	The Personnel of Justice	102
	Coroners' inquests, 102 ; local courts, 114 ; peace sessions, 133 ; trial courts, 149.	
IV	The Documentary Evidence	156
V	The Criminal Law	204
	Treason, 210 ; suicide, 218 ; homicide, 224 ; mayhem, 243 ; rape, 244 ; robbery, 253 ; larceny, 253 ; prison breach, 257; accessories, 258; extortion, 260; unspecific and noncriminal trespasses, 261 ; pardon, 265.	
VI	Criminal Justice	268
	Doubtful procedures and verdicts, 269 ; evidence of motives, 281 ; professional criminals, 291 ; approvers, 295 ; criminal jurisdictions, 311 .	
VII	Epilogue: Looking for Patterns	318
	Bibliography	325

ABBREVIATIONS

Bull. Inst. Hist. Res.	Bulletin of the Institute of Historical Research
Dict. Nat. Biog.	Dictionary of National Biography
Econ. Hist. Rev.	Economic History Review
Eng. Hist. Rev.	English Historical Review
H.M.S.O.	Her Majesty's Stationery Office
O.E.D.	The Oxford English Dictionary
P.R.O.	Public Record Office
Rec. Comm.	The Record Commission
Rolls Series	Chronicles and Memorials of Great Britain and Ireland
Trans. Royal Hist. Soc.	Transactions of the Royal Historical Society
V.C.H.	The Victoria History of the Counties of England

All manuscripts cited are in the P.R.O. unless otherwise specified.

Medieval statutes cited by regnal years are to be found in chronological place in Statutes of the Realm (Rec. Comm., 1810-28).



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THE HUNDREDS OF HAMPSHIRE

I

A Definition of Crime

In fourteenth-century law, crime was not the integral notion it is today. By 'crime' we normally denote a wilful infringement of public order, offending against person or property, and incurring prosecution by the state. No fourteenth-century category of plea fulfils these conditions.[1] Public order may be equated, roughly, with 'the king's peace', the breach of which was originally supposed to incur royal prosecution, and many serious offences were said to have been committed contra pacem domini Regis. On the other hand, the phrase was omitted from indictments in many cases where the king's peace clearly had been broken, and yet was included as verbal seasoning in cases where it clearly had not - actions for debt and the like. By Richard II's time the king's peace had little effective meaning in the definition of offences.[2] Similarly, the specific offence against person or property had no clear status. In the thirteenth century the emergent concept of felony offered a means of stressing the gravity of certain offences, which would accordingly incur capital punishment, but

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[1] For the relationship between crime and tort, see T.F.T.Plucknett, A Concise History of the Common Law (5th edn., London, 1956), 421-3, 458-9.

[2] F.Pollock and F.W.Maitland, The History of English Law before the time of Edward I (2nd edn., reissued with addenda by S.F.C.Milsom, Cambridge, 1965), II, 463-4.

'we ... define felony by its legal effects; any definition that would turn on the quality of the crime is unattainable'.[1] The erratic application of words of felony in the fourteenth and fifteenth centuries is amply illustrated by the indictments before justices of the peace.[2] Even the involvement of the death penalty - by this period overwhelmingly a crown prerogative - does not define the areas in which the crown monopolised prosecution, since appeal for robbery or homicide, by the victim or the next-of-kin, could still be the only means by which a particular case reached the courts. Conversely, the criteria which placed a given case among the crown pleas rather than among the common (that is, private)pleas were flexible: the common pleas section of a Coram Rege roll may contain many cases alleging larceny, assault, wilful damage, and abduction, sued privately for damages, together with the occasional appeal for felony; the crown pleas section will include indictments and appeals for felony, as well as indictments for a wide range of trespasses against the crown, varying from breaches of public order to peccadilloes against the regulation of wages and prices. Obviously one criterion was public order, but the exaction of crown dues was

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[1] ibid., 467; see in general 464-78.

[2] See T.F.T.Plucknett, 'A commentary on the indictments', in Proceedings before the Justices of the Peace in the Fourteenth and Fifteenth Centuries, ed. B.H.Putnam (Ames Foundation, 1938), cxxxiii-clxi.

plainly another, and sundry political or fiscal factors brought into the crown pleas section many advowson and inheritance cases far removed from questions of public order.[1]

It has thus been necessary to impose a modern definition of crime in considering the available records of the relationship between criminals and the law. All designated felonies are included within this definition, together with offences against the person; property offences are included when prosecuted as wrongs. The purely private litigation in the court of common pleas has not been used.

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[1]The development of crown interest in actions is surveyed in F.Pollock, 'The King's Peace in the Middle Ages', Harvard Law Review, XLII (1900), reprinted as chapter 32 of Select Essays in Anglo-American Legal History, II (Cambridge, 1908).

II

Procedure

The typical medieval criminal was never caught. There is no means of guessing how much crime went undetected, and only the coroners, working from victims rather than suspects, recorded offences by persons unknown. Apart from such instances, accounting (roughly speaking) for five per cent of homicide cases, all recorded crimes were attributed to identified persons, of whom only a minority was ever traced and prosecuted. In king's bench cases, lists of wanted men and women, the subjects of writs of capias and of exigi facias, were entered on the Coram Rege rolls and on the Controlment rolls, and annotations upon the latter indicate how few of the accused appeared to answer. In Hampshire homicide cases nearly forty per cent of defendants reached court; for peace sessions indictments the proportion was around thirty per cent.[1] The procedures for arresting and detaining identified persons were therefore effective for perhaps one case in three.

The simplest procedure for arresting a criminal was catching him in the act. There was (and still is) a legal obligation upon the individual to arrest

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[1] Calculated very crudely from the figures in the 'addenda to the text' in Putnam, Proceedings, after each roll. I have ignored economic offences, but felonies and trespasses each showed a trial rate of 31%. For examples of the sizes of sample, see below, 165-172.

anyone discovered committing a felony;[1] the victim or witness was supposed to raise the hue and cry, which summoned every man of the locality to pursue the felon.[2] If the alarm was not raised, or not raised promptly, the integrity of the complainant might be suspected;[3] if the hue was not followed, judicial inquiry and a communal fine might be imposed.[4] Unfortunately, the records of particular cases seldom give much indication of the delay, if any, between the offence and the arrest. Many of the people committed to the county gaol were said to have been 'taken with the mainour', that is, taken in possession of their booty,[5] but this could mean either that they were caught in the act, or merely that they were caught before they had managed to dispose of the evidence.[6]

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[1] Cf. Rotuli Parliamentorum (London, 1783-1832), III, 290, no.27; J.F.Stephen, A History of the Criminal Law of England (London, 1883), I, 193.

[2] Statute of Westminster I (3 Edward I), c.9; Statute of Winchester (13 Edward I), c.1.

[3] F.W.Maitland, Select Pleas of the Crown 1200-1225 (Selden Soc., I, 1887), 166; C.E.H.Chadwyck Healey, Somersetshire Pleas (Somerset Rec. Soc. XI, 1897), no.963.

[4] Articles of the Eyre (Statutes of the Realm, I, 233); Statute of Winchester, cc.2-3.

[5] e.g. JUST 3/174, m.1 (Thomas Pinchbeck, Geoffrey Draper); JUST 3/179, m.7d (John Kirkby, John Elsing, Thomas Brawghyng, Nicholas Cory).

[6] Thomas Puttock was taken with mainour worth 3s.4d., the residue of his haul from three separate thefts: JUST 3/179, m.5d. But cf. William Repe and Edmund Hughes, and John Thorne, said to have been taken with the mainour 'super burgaria' in the latter case 'at the suit of Roger the bailiff', in 1340: JUST 3/130, m.106.

It seems likely that in cases of culpable homicide, the statement that the suspect was attached by the tithingman or tithing within whose jurisdiction the death took place indicates a successful hue and cry; far from having 'little to lose by surrendering', as in cases of accident and self-defence,[1] those whose attachment was recorded at the inquest were those who had most to fear from the due process of the law.[2] The scarcity of such arrests probably reflects the common attitude towards an irksome and possibly dangerous undertaking. Apart from physical risks, the legal standing of the hue was not wholly safe from repercussions: William Turner and Simon Shepherd were indicted for felony when they killed a robber who resisted arrest for attacking a woman,[3] and some Lancashire men who beheaded an outlawed felon were indicted for felony and compelled to seek pardons.[4]

A more orthodox and more frequent procedure was arrest by a local official. At the lowest level, the tithingmen acted, as in the homicide cases, but beyond their mention in the coroners' records, and their occasional responsibility for forfeited chattels,[5] their

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[1] R.F.Hunnisett, The Medieval Coroner (Cambridge, 1961), 22.

[2] JUST 2/155, mm.2d (William Fetebien; Agnes Haynes), 3d (Alan Frith and Geoffrey Tirvage), 10 (Henry Combe), 12 (Agatha Russell; John French), 13 (Richard Godwin), and 16 (William Ringwood): all felony cases.

[3] JUST 2/155, m.8.

[4] KB 27/543, Rex mm.1-1d; Calendar of Patent Rolls 1396-9, 92.

[5] Hunnisett, Medieval Coroner, 30, 32.

role was seldom recorded.[1] Since, in the first half of the fourteenth century, their office had been decreasingly distinguishable from that of the township constable,[2] the police work of both must have been subsumed in the references to the township. Certainly the Hampshire tithing, by this date, was a geographical area,[3] and the terms 'tithing' and 'vill' could be interchangeable.[4] The township was the normal custodian of forfeited chattels, pending their escheat to the crown,[5] and the large number of prisoners who were 'taken on suspicion' were probably, except when other circumstances are specified, arrested by the township officials doing their public duty.[6] Sometimes a defendant was said to have been taken on the authority

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[1] George Compton was expressly taken with the mainour by the tithingman of Sheffield (Berks) in 1338: JUST 3/130, m.9.

[2] H.M.Cam, in The English Government at Work 1327-1336, ed. W.A.Morris and others (Cambridge, Mass., 1940-50), III, 169-70.

[3] Cf. Pollock and Maitland, I, 568-9.

[4] For places called both, within single inquests, see JUST 2/155, mm.13 (Sandford), and 16d (Hambledon).

[5] See the note on a gaol delivery roll of 5 Edward I: 'It was ordered that four men and the reeve come from each vill to answer for felons' chattels': JUST 3/61/2, m.1d; a similar injunction can be found for 11 Henry IV: JUST 3/61/8, m.2.

[6] R.B.Pugh, Imprisonment in Medieval England (Cambridge, 1968), 194. For example, in 1338, John Ingram 'taken by the bailiffs of Oxford Town on suspicion of larceny mainly because goods belonging to the Carmelites ... were found on him': JUST 3/130, m.4.

of a higher official, without reference to any indictment before a local court; direct apprehension by a responsible officer was sufficient authority for detaining a man until gaol delivery. Such arrests were made by John Munden, bailiff to the prior of St. Swithun's, Winchester, and by Walter Haywood, a justice of the peace;[1] by William Ringbourne, none of his various capacities being stated;[2] by William Audeley, sheriff, by John Deacon, steward to the abbess of Romsey, and by William Porter, bailiff of Wherwell hundred;[3] by William Hornby, another justice of the peace;[4] and by the bailiff of Odiham.[5] Such exercise of authority by justices of the peace was strongly resented when sanctioned for the Marches,[6] but at a local level it was a routine aspect of police work. There is no indication that the bailiff errant, whose office in Hampshire at this period is well attested,[7] operated in this way.

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[1] JUST 3/174, m.1d.

[2] JUST 3/179, m.7. He was a J.P. and the steward of several liberties: below, 127-8.

[3] ibid., m.13.

[4] ibid., m.13d.

[5] JUST 2/155, m.7 (abjuration of John Holt). In 5 Henry VI the tithingman of Liss Sturmy and one of the constables of Odiham hundred were fined for the escape of a man they had arrested on suspicion: JUST 3/61/11, m.3.

[6] Rot. Parl., III, 43, 65.

[7] Cal. Pat. Rolls 1377-81, 383; Cam, English Government at Work, III, 172.

The majority of defendants, however, were arrested as a result of indictments before local and inferior courts. These courts were of two kinds: some were held by officials, private or royal, as part of their routine functions in administration at, or below, county level, while others were held by crown officials appointed for the purpose. The county court had no powers to determine crown pleas,[1] which were accordingly not presented there as a court of first instance, with the exception of appeals of felony; these still had to be initiated before the full county court, in the presence of the sheriff and the coroners.[2] Appeal procedure was little used - only seven Hampshire cases occur in the period - and might duplicate public indictment on the same charges;[3] where indictment was not the case, the reaction of the determining court sometimes suggests that the appeal was based on resentment or spite rather than on just cause.[4] The local courts which saw most crown pleas business were the various hundred courts. In theory the sheriff, in addition to having more frequent hundreds held in the king's

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[1] Plucknett, Common Law, 93; W.A.Morris, The Early English County Court (Cambridge, 1926), 112-15.

[2] For the customary procedure, see Placita Corone, 1; cf. a case from 1375 in Select Cases in the Court of King's Bench, ed. G.O.Sayles (Selden Soc., 1936-71), VI, 118.

[3] JUST 3/179, m.5 (William King et al.).

[4] JUST 3/179, mm.5 (John Colville), 11 (Peter Kingsett), 12d (Walter Pettifer).

name,[1] visited each hundred twice a year, to hold view of frankpledge,[2] and to hear indictments presented.[3] In practice these 'tourns' were only held, generally speaking, in hundreds whose jurisdictions in this respect had not been granted out of the king's hands,[4] a factor which narrowed considerably the role of the sheriff in taking indictments. In Hampshire, by the late fourteenth century, only sixteen of the forty-one hundreds still pertained directly to the crown, and one of these sixteen, the New Forest, seems to have been subject to the warden of the Forest as a quasi-hundredal franchise.[5] In consequence the number of known indictments deriving from tourns in Richard II's reign - seven - was relatively small; there were six times as many brought before the stewards or bailiffs of private hundreds.

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[1] W.A.Morris, The Medieval English Sheriff to 1300 (Manchester, 1927), 202; Cam, English Government at Work, iii, 180.

[2] On frankpledge, whereby tithings (as groups of men) provided mutual surety to keep the peace, and were obliged to present offenders at the hundred, see Plucknett, Common Law, 97-8. The systematic character had broken down by the fourteenth century (W.A. Morris, The Frankpledge System (London, 1910), 152-6) and 'view of frankpledge' subsequently denoted a review of indictments elicited from representative suitors at the twice-yearly 'law hundred': ibid., 132-3.

[3] Pollock and Maitland, I, 558-60; Morris, Sheriff, 202-3, 221.

[4] Morris, Frankpledge, 132-47. For royal and private hundreds in 1274, see H.M.Cam, The Hundred and the Hundred Rolls (London, 1930), map after p.296.

[5] In 1348 the jurisdiction of the warden was described as covering 'the New Forest and Redbridge': JUST 3/130, m.37d.

There are, indeed, indications that administrative convenience reduced the number of tourns still further, to a basic few which might be supplemented on occasion, although tracing this decline presents considerable problems. While the predominance of private hundreds in Hampshire was well established by the fourteenth century, it was still possible for tourn indictments to outnumber others at a Winchester gaol delivery in 1358.[1] Even then, however, very few tourn venues were mentioned, and some clearly applied to more than one hundred. Despite the grant of the hundred to the men of Basingstoke, who accordingly held view of frankpledge,[2] the tourn at Hackwood seems to have comprehended the ancient 'six hundreds of Basingstoke',[3] at least from the mid-fourteenth century to the early fifteenth.[4] Swaythling tourn apparently included both Mansbridge and Buddlesgate hundreds, although the latter pertained to the prior of St Swithun's.[5] The tourns at 'Daggesole',[6] said to be a mill in Barton Stacey hundred,[7] concerned

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[1] JUST 3/61/3.

[2] JUST 3/174, m.1d; JUST 3/179, m.3.

[3] See O.S.Anderson, The English Hundred-Names: The South-Western Counties (Lund, 1939), sub. art.

[4] JUST 3/61/3, m.1; JUST 3/194, m.2.

[5] Cf. V.C.H. Hants, III, 462, 484.

[6] JUST 3/130, m.10.

[7] Calendar of Close Rolls 1339-41, 153.

cases in Priors Dean, and they were probably at the Windmill Farm site there.[1] A tourn at Andover produced an indictment from the adjacent royal hundred of Pastrow.[2] A tourn at 'Thorngate' (presumably the old hundred site at Buckholt Hill)[3] heard a Thorngate hundred case. The 'Rowebergh' tourn mentioned in a case from Fordingbridge hundred would hardly have been held at Rowborough on the Isle of Wight,[4] and may have been at the earthworks (i.e. 'barrow'?) at Roe Inclosure near Ellingham. The antiquity of the 'Roe' element remains to be established, although the earthworks were known as 'Castle Reaw' to a mapmaker in 1700.[5] The tourn was also known as 'Roghedich' in 1345,[6] suggesting that it was the head of the Domesday hundred of 'Rodedic';[7] Roe is in a fairly small area within both 'Rodedic' and the later Fordingbridge hundreds. The most comprehensive tourns, however, were at 'Grenefeld' and 'Baldredesly'. 'Grenefeld' was probably not the site of the inn at Cosham where Bosmere and Portsdown hundreds later met,[8]

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[1] V.C.H. Hants, IV, 136.

[2] KB 27/527, Rex m.1.

[3] V.C.H. Hants, IV, 490.

[4] JUST 3/194, m.1.

[5] MPB 45/1.

[6] JUST 3/130, m.95d.

[7] V.C.H. Hants, I, 509-10, 512-3, 515-6.

[8] ibid., III, 128, 141.

since the tourn also included cases from Fareham and Waltham (both hundreds of the bishop of Winchester), Titchfield, Finchdean, Hambledon, Fawley, and Meonstoke.[1] Lands in Fawley and Meonstoke hundreds were said, in Richard II's reign, to be held for suit twice yearly at the 'Grenefeld' tourn and three-weekly at Meonstoke hundred.[2] 'Grenefeld' and Meonstoke hundreds were apparently distinct at this time.[3] Geography and the Meonstoke connection suggests that Grenville Hall, near Soberton, may perpetuate the name, although, again, the antiquity of the element may be suspect. This single tourn virtually covered the south-eastern part of the shire.[4] 'Baldredesly' (otherwise 'Baldardesle', 'Bakeredesle') tourn dealt mainly with cases from Barton Stacey and Micheldever hundreds, or culprits therefrom;[5] North Baddesley, most plausible etymologically, was in Mansbridge hundred, and therefore followed Swaythling tourn;[6] the true site may be that of Baizeley or Bazeley Copse,

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[1] JUST 3/61/3, m.1; JUST 3/174, m.1; JUST 3/179, mm.2, 10, 11d.

[2] C 143/418, no.23, m.2.

[3] Calendar of Inquisitions Post Mortem ... (Rec. Comm., 1806-28), III, 162 no.143.

[4] The south-eastern hundreds, particularly Bosmere, Portsdown, Titchfield, and Meonstoke, were commonly grouped together in thirteenth-century eyre proceedings. (From the notes of Mr. C.A.F.Meekings.)

[5] JUST 3/61/3, m.1; JUST 3/179, m.9d; JUST 3/194, m.3. The earl of Cornwall's villeins from Sutton Scotney owed suit there: Placita de Quo Warranto (Rec. Comm., 1818), 772.

[6] V.C.H. Hants, III, 462.

formerly known as Bablysley, near Micheldever.[1] The grant of a private hundred, therefore, did not necessarily prevent the sheriff from hearing indictments, although the spread of such grants substantially diminished his business. The decline after the mid-fourteenth century may have been a feature of plague depopulation. Thus, perhaps, the tourn, or other sources of indictment, seems to have supplanted the roles of the constable and bailiff in the royal hundreds.[2] In Edward III's time cases were brought before the constables of the peace for the royal hundreds of Mansbridge and Meonstoke,[3] the king's bailiff for Bermondspit hundred,[4] and the bailiffs of the king's hundreds of Holdshott and Chuteley, and Titchfield;[5] no such indictments are apparent under Richard II.

In contrast with this decline, by the late fourteenth century the private hundred court accounted for nearly half the total of indictments of gaol delivery. There is a trace of the fluid status of these courts in an indictment from 1348 'before Andrew Canterton, lieutenant to John Beauchamp, warden of the New Forest,

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[1] ibid., III, 390, and V, 558.

[2] For these roles, see Cam, English Government at Work, III, 168-9, 180.

[3] JUST 3/130, m.58; JUST 3/61/3, m.1d.

[4] JUST 3/61/6, m.1 (bis).

[5] JUST 3/130, mm.37, 58.

at the sheriff's tourn of Langley held at Rumbridge',[1] and other private courts were described as tourns, both around this date,[2] and occasionally later.[3] Overwhelmingly, however, a clear vocabulary had emerged. A minority of indictments made before private officials was said to have been taken at hundreds, by which the ordinary three-weekly sessions were indicated.[4] The majority were stated, explicitly and fairly consistently, to have been taken at 'view of frankpledge', which by this time denoted the more important twice-yearly sessions, the tourns or law-hundreds. Among these, liberties of the greater county magnates predominated; stewards held views for the warden of the New Forest - Thomas Holand, earl of Kent;[5] the prior of St Swithun's, Winchester, for Barton Stacey hundred;[6] the earl of Salisbury, for Christchurch,[7] Ringwood,[8] and the Isle of Wight;[9]

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[1] ibid., m.77d.

[2] JUST 3/130, mm.11 (Waltham hundred) and 57 (East Meon liberty).

[3] JUST 3/179, m.4 (Fareham hundred).

[4] JUST 3/172, m.2 (Finchdean); JUST 3/179, mm.8 and 11 (Christchurch), 10 (King's Sombourne), 11 (Evingar), 11d (Ringwood), 13 (Wherewell).

[5] JUST 3/174, m.1d (bis); JUST 3/179, mm.8 (bis), 9d, 11.

[6] JUST 3/174, m.1d (bis); JUST 3/179, m.2d.

[7] ibid., mm.2, 8, 11.

[8] ibid., mm.11, 11d.

[9] ibid., m.8d. This jurisdiction was sometimes associated with the custody of Carisbrooke castle (JUST

the bishop of Winchester, although less frequently than might have been expected;[1] John of Gaunt, for King's Sombourne (in right of his wife);[2] the dowager countess of Kent, for Alton;[3] the abbess of Romsey, for Romsey.[4] Some of the views were not strictly hundredal, but derived from liberties over more limited areas. The steward of Sir Bernard Brocas held a view for Odiham castle, which may or may not have included the hundred;[5] that held by the steward of Basing certainly excluded jurisdiction over Basingstoke hundred at large,[6] and the earl of Devon's liberty of New Lymington was quite independent of its parent hundred of Christchurch.[7] A separate court for the 'two liberties of Vernham' seems to have operated within Pastrow hundred.[8]

3/130, m.98d), but more often with East Medine hundred (JUST 3/194, m.4d; JUST 3/179, m.12d). In either case the usual venue was 'The Hat' on Standen Down (V.C.H. Hants, V, 138), although Freshwater (JUST 3/194, m.8) and 'The Pit' at Shide (V.C.H. Hants, V, 210) are found for West Medine.

[1] JUST 3/179, mm.4 (Fareham), 7d (East Meon). The bishop held seven hundreds in the county, but some were represented by tourn indictments.

[2] ibid., m.10.

[3] ibid., m.8d.

[4] ibid., m.9d.

[5] JUST 3/174, m.1d.

[6] JUST 3/179, m.3.

[7] JUST 3/174, m.1d; JUST 3/179, m.10d.

[8] JUST 3/179, m.2.

Similar jurisdictions for the hearing of indictments may be attributed to the city of Winchester and to the town of Southampton, but the evidence is not definitive. The city court of Winchester was hearing, and occasionally determining, felonies in the time of Edward I,[1] but 'by the end of the fourteenth century even presentment for felony has disappeared from the Court rolls'.[2] This suggests either that the city, being in decline,[3] had relinquished its felony jurisdiction, or that this business was transferred to another court, or at least to another set of records, of which all trace is now lost. The first of these is improbable; quite apart from the marked civic independence of the city, there is no evidence in the gaol delivery records that Winchester offenders were subject to county jurisdiction. There is much in favour of the alternative. In the first place, the city gaol was to be delivered independently, although under the same commission as the county gaol in the Castle, in 1382,[4] which suggests an independent

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[1] J.S.F[urley], Town Life in the Fourteenth Century as seen in the Court Rolls of Winchester City (Winchester, n.d.), 22.

[2] J.S.Furley, City Government of Winchester from the Records of the Fourteenth and Fifteenth Centuries (Oxford, 1923), 126.

[3] Described in the preamble to the charter of 20 Henry VI: Cal. Pat. Rolls 1441-6, 84.

[4] P.R.O., Search Room, Calendar of the General and Special Assize and General Gaol Delivery Commissions on the dorses of the Patent Rolls, Richard II (1377-1399), 194. The records of this delivery do not survive.

committal procedure; the rarity of such a delivery may reflect the special circumstances consequent upon the peasant's revolt, any prisoners being delivered in normal times by a city court. Secondly, subsequent charters imply that such jurisdiction was customary in Winchester. Henry VI, in the 1441 grant, constituted the mayor and four elected aldermen justices to hear and determine all pleas; the novelty of this is doubtful in view of the explicit royal exemption of the city from the jurisdiction of the justices of the peace in 5 Richard II.[1] A charter of Elizabeth implied a distinction 'between the work of the Court of Mayor and Bailiffs meeting twice a week as a Court of Record, and its work as having View of Frank-pledge',[2] and the keeping of separate records might explain the disappearance of felonies from the court rolls.[3] All this is paralleled by the evidence for Southampton. In 1401 Henry IV granted the town its own peace sessions, with determining powers,[4] but this was really a formal confirmation of the customary practice of the town court.[5] Like Winchester,

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[1] Furley, Winchester Records, 136.

[2] ibid., 127.

[3] If, as at Southampton, the coroner participated in town court hearings of felony (below, 30), he may well have kept the records (in two senses), as he did for some county court proceedings.

[4] H.W.Gidden, The Charters of the Borough of Southampton, I (Southampton Rec. Soc., 1909), 40-51.

[5] A.B.Wallis Chapman, The Black Book of Southampton, I (Soton Rec. Soc., 1912), vii-ix.

Southampton was subjected to an isolated gaol delivery in 1382,[1] and the single prisoner then delivered had been indicted (for rustling) before a town bailiff and the town coroner.[2] The inference must be that such a prisoner would normally have been tried by a competent session of the town court before the mayor,[3] the indictment having been taken at an inferior session of the same court. In both towns, the preliminary hearings of felonies were administered by the same body that held the determining trial; despite the dearth of evidence, a similar constitution was probably operative in Portsmouth at this time.[4]

These hearings of felony cases by sheriffs, bailiffs, or borough officials were an aspect of the local administrative functions which such persons exercised; in contrast, there were offices directly in the crown service, specifically designed for, among other judicial matters, hearing local indictments of felony. Of these the coroner had, broadly speaking, simple terms of reference and continuous exercise of office;

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[1] Assize and Gaol Delivery Commissions, 195.

[2] JUST 2/171, m.5d.

[3] This does not always seem to have applied to indictments before the coroner in his normal capacity; James Dingley was indicted for homicide before the Winchester coroners, and Nicholas Carpenter similarly before the coroner for Southampton, but both were committed to the county gaol and tried when it was delivered: JUST 3/179, mm.12d, 13d. It is significant that neither dwelt within the town where he was indicted.

[4] The scanty evidence is reviewed in V.C.H. Hants, III, 176-7, 181-2.

the justices of the peace fulfilled a wider role, but their appointment and the terms of their commissions were liable to amendment or revocation, and even an outline of their functions is, accordingly, less well defined.

The coroner was appointed originally to have 'custody of crown pleas' within a shire or liberty, but the scope of the office was normally much more limited than this term implies.[1] By the late fourteenth century the coroner's routine duties comprised

> holding inquests upon the bodies of those who died unnaturally, suddenly, or in prison; receiving abjurations of the realm from felons in sanctuary; hearing ordinary appeals, appeals of approvers and confessions of felons; and attending the county court to legalise and record the exactions and outlawries promulgated there.[2]

His powers of arrest and indictment were correspondingly restricted. If an inquest jury returned a verdict of culpable homicide against an identified person, the coroner was entitled to make an arrest and send the defendant to the appropriate gaol pending delivery, but this rarely happened. Firstly, the majority of felons fled, at least temporarily, and were not immediately

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[1] In general, see Hunnisett, Medieval Coroner; on details, see the same author's 'The Origins of the Office of Coroner', Trans. Royal Hist. Soc., 5th series, VIII (1958), 85-104, and 'Pleas of the Crown and the Coroner', Bull. Inst. Hist. Res., XXXII (1959), 117-37.

[2] ibid., 117.

available; secondly, it seems that in cases where the jurors attached minimal blame to the defendant, the coroner did not bother to make an arrest, even though his record makes no mention of flight.[1] In the few cases when an arrest was effected,[2] the tithing acted, usually in anticipation of the inquest;[3] once a verdict had been returned, the prisoner would be forwarded to the sheriff, under a letter from the coroner.[4] Although a suspected felon could be arrested at any time on the indictment of a coroner in the county, it is unlikely that this ever happened outside the immediate circumstances of the death and inquest. The normal procedure on coroners' records, after 1337, followed their review by the court of king's bench, which took place whenever the court sat within the county.[5] All accused felons whose cases had not been heard already then became subject to

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[1] e.g. JUST 2/155, mm.9 (Richard Clarke), 10 (John Malin), 11 (John Hakeneys), 12 (Peter Underwood), 16 (Alexander Clarke), 21 (William Somer). The mention of flight made forfeiture of the fugitive's chattels inevitable: below, 100.

[2] See above, 17-19.

[3] JUST 2/155, m.2 specifies that Thomas, servant of Roger Galian, was attached by the coroner and the tithing, apparently acting together.

[4] Such a letter is printed by R.F.Hunnisett in Sussex Archaeological Collections, XCVI, 33-4.

[5] Hunnisett, Medieval Coroner, 113-5, and 'The Medieval Coroners' Rolls', American Journal of Legal History, III (1959), 211ff.

capias and exigend;[1] any who were taken as a result of this process were tried in king's bench. Since more of the persons indicted before coroners were taken under capias - even after a lapse of many years - than were taken at or around the time of the inquest, the procedures for acting on the inquest verdict alone cannot have been applied very strenuously. The coroner was not compelled to declare his findings except at a king's bench visitation, and there was, accordingly, no regular machinery for enlisting the prompt attention of the sheriff;[2] hence, evidently, the lack of an arrest in many cases.

It was part of a coroner's duties to record the confessions of felons, which in practice consisted of abjurations of the realm and approvers' appeals. Abjurations outnumber arrests among the Hampshire coroners' rolls, and amounted to a relatively safe form of giving oneself up.[3] A felon could take sanctuary in a church for forty days, during which he had to give himself up for trial in due course, or abjure the realm. The latter, which was a standard resort, involved a confession to particular felonies, after which the coroner assigned the felon a port of departure, to which he must proceed without delay or

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[1] See below, 48-9.

[2] There is no trace in Hampshire of the procedure found in some other counties whereby the coroner issued a capias to the sheriff.

[3] In general see Hunnisett, Medieval Coroner, chapter iii.

deviation. Flight to sanctuary was sometimes the first instinct of a guilty man,[1] but in other instances there was some delay, and the reasons for the abjuration are unclear. Stephen Catell of County Meath took sanctuary at Whitchurch, and then confessed to a felony in Surrey;[2] John Bowyer took sanctuary at East Tisted, but cited a felony in Devonshire;[3] John Kirkby of 'Ruston' [Long Riston?] in Holderness fled to St Alphege's in Winchester, and confessed to felonies in Devonshire and Norfolk.[4] Possibly these men had subsequently fallen under suspicion and wished to safeguard themselves. This must have been the case with John Holt of Bentworth; he was put in irons by the bailiff of Odiham, but later escaped to Sherfield church and confessed to a felony at Caversham in Berkshire.[5] The safeguards which abjuration provided, both for felons and for law enforcement, were far from foolproof. One abjuror in particular, who had robbed his master, pointed out that if he left sanctuary his master - who was waiting outside the church with a friend - might take revenge; the coroner

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[1] JUST 2/155, mm.1d (William Bond), 2 (Thomas, servant of Roger Galian), 8 (Walter Tynneby, John Crowe).

[2] ibid., m.8.

[3] ibid., m.16.

[4] JUST 2/157, m.4.

[5] JUST 2/155, m.7.

proceeded to attach him and send him to Winchester in the usual way.[1] On the other hand, several of those fleeing to sanctuary do not seem to have abjured at all; in one case the coroner did not even know which church was involved,[2] while the Winchester coroners reported that John Kirkby left St Alphege's, 'but it is not known how'.[3] The felon's departure was not necessarily voluntary; William Wickham, as bishop of Winchester, took canonical proceedings in the case of a man tricked out of Overton church and bundled out of the churchyard,[4] as well as in less ambiguous instances of arrest within sanctuary.[5] The status of a sanctuary was sometimes in doubt, as when constables removed a felon from an outhouse belonging to the hospitallers; such matters were decided by a local jury rather than by papal bull.[6] It is unlikely that many abjurors actually left the country; if found

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[1] ibid., m.2.

[2] ibid., m.8 (Walter Tynneby).

[3] JUST 2/157, m.4.

[4] Register of William of Wykeham 1366-1404, ed. T.F. Kirby (Hants Rec. Soc., 1896-9), II, 429.

[5] ibid., II, 84-6, 454. Persons denying food to those in sanctuary at Southwark were excommunicated: ibid., II, 271-2. Respect for sanctuary seems, in view of assaults on officiating clergy, to have been unreliable: ibid., II, 484, 492; cf. Hunnisett, Medieval Coroner, 37-8; Rot. Parl., II, 358 no.208, 373 no.84; 50 Edward III, c.5.

[6] JUST 3/194, m.6d; JUST 3/218/1, mm.201-2.

(and identified)[1] subsequently, however, they were liable to sentence of death.

Approvers' appeals were not necessarily likely to result in the apprehension of hitherto untraced felons.[2] While, in theory, a coroner could hear the confession of a man who gave himself up voluntarily, such cases seldom feature in the records, because confession was an irrebuttable proof of guilt.[3] Any confession, therefore, tended to be made by a prisoner facing capital charges, in an attempt to save his own skin.[4] Normally the privilege of turning approver was limited to persons taken on indictment,[5] but it was sometimes allowed also to those who were themselves appealed by an approver; in all cases, approvement could only be made prior to conviction. Under the standard procedure a prisoner awaiting trial, or actually in court, would confess to the felonies of which he was accused and ask for a coroner to hear his testimony. He would then be

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[1] An inquest might be taken on the question of identity if a suspect challenged the suggestion that he had ever abjured: KB 27/475, Rex m.21.

[2] See below, 304-5.

[3] Hunnisett, Medieval Coroner, 68-9.

[4] In general, see ibid., 68-74; F.C.Hamil, 'The King's Approvers', Speculum, XI (1936), 232-58.

[5] ibid., 240; Hunnisett, Medieval Coroner, 70.

assigned a coroner and certain days, usually three consecutively,[1] during which to make his confession and appeals;[2] these would be recorded by the coroner, who could then institute proceedings to arrest appellees who were accessible locally. These proceedings seem to have been effective in a few cases at least;[3] more frequently, however, appellees were not taken until a capias had emanated from king's bench on review of the coroner's rolls.[4] Under either procedure there was little chance that the approver would achieve enough convictions to save his own life,[5] and there is no evidence that such clemency was ever invoked successfully.

During this period Hampshire seems to have maintained the quota of two county coroners which had

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[1] ibid., 73. The three-day rule was not rigid; one approver who began confessing to the Winchester coroner was subsequently allowed a further three days before the county coroner: JUST 1/797.

[2] An approver was supposed to acknowledge his complicity in every offence of which he accused another, so that, if his appeal failed, he could be convicted on his own confession. This was not always enforced.

[3] JUST 3/179, mm.6 (William Suddon), 7d (Richard Fruiter), 10d (John Spicer). But cf. a similar entry concerning William Rose (ibid., m.9) which fails to mention that he was, in fact, already in custody before the charge was made: JUST 1/797.

[4] See below, 47-50.

[5] Fleta, ed. H.G.Richardson and G.O.Sayles, I (Selden Society, LXXII, 1953), 93, allows life and member to the approver who secures conviction of all his alleged confederates; Placita Corone, ed. J.M.Kaye (Selden Soc. Supplementary Series, IV, 1966), 24, allows the same after nine convictions without reversal.

existed there from the thirteenth century onwards;[1] in addition to the county at large, however, there were separate jurisdictions for Winchester city, Southampton borough, and the Isle of Wight. Nicholas Spencer held office for the Isle of Wight from the beginning of the reign until the 1393 'eyre' at least,[2] and there is nothing to suggest that he did not continue until the end of the reign. Southampton is less clear; two coroners presented a roll at the previous 'eyre',[3] but only one of them, Henry Goseberd, is mentioned in the recitals of two inquests from the town in this period.[4] He may thus have been in office from the previous reign until August, 1388, but whether solely or jointly is not apparent. In 1398 Richard Castle was in office, also apparently alone,[5] although he had acquired a colleague ten years later.[6] Winchester certainly kept two coroners,[7] and appointments seem to have been made in rotation.[8] Thus

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[1] Hunnisett, Medieval Coroner, 134.

[2] Hunnisett, 'Coroners' Rolls', 332; JUST 2/156.

[3] Hunnisett, 'Coroners' Rolls', 331.

[4] KB 27/530, Rex mm.3d, 4d. With the town bailiff, he also heard indictments for felony in 1382: JUST 3/171, m.5d.

[5] JUST 3/179, m.13d.

[6] JUST 3/218/1, m.228.

[7] Cf. article 8 of The Ancient Usages of the City of Winchester, ed. J.S.Furley (Oxford, 1927).

[8] The succession of the Winchester coroners is epitomised in a jury return of 1393: KB 37/2/16/2, unnumbered.

William Eastleigh and John Beauworth[1] held office 1378-1380; they were succeeded by RichardCory (who had been coroner in the previous reign)[2] and John Hanywell for 1380-1381; Hanywell served with John Peverell in the following year;[3] then Henry Jordan with John Munden, in 1383-7. Henry Jordan served with John Haywood the younger in 1387-8, and then with John Bailey in 1388-9, to be followed by Bailey and Richard Boshampton in 1390-93, while a gaol delivery hearing shows Nicholas Tanner and John Denyton holding an inquest in 1397.[4] This indicates the circulation of the offices amongst a limited number of local magnates,[5] probably the 'Twenty-Four',[6] on an irregular two-year cycle. There is also the problem of Portsmouth, which was said in the fifteenth century to have a single coroner, elected annually;[7] although

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[1] 'Beoworth', presumably from Beauworth in Hampshire; the forms 'Bedworth' and 'Besworth' are corrupt.

[2] Hunnisett, 'Coroners' Rolls', 331.

[3] Peverell heard an inquest at Mottisfont, in the absence of either county coroner, in October, 1383: JUST 2/155, m.10.

[4] JUST 3/179, m.12d.

[5] Cory, Jordan, Hanywell, Peverell, Tanner, and Denyton were bailiffs of the city in this period, and Eastleigh was mayor, although none acted as coroner while in such office: H.Chitty, Mayors and Bailiffs of Winchester during the Fourteenth Century (Winchester, 1930), 3-4.

[6] Ancient Usages, 9.

[7] V.C.H. Hants, III, 181.

Portsmouth borough certainly had a coroner - William Alresford - for most of Richard II's reign, no trace survives of his records or of cases before him.[1]

In the county at large, Hampshire had a normal complement of two coroners.[2] From the beginning of the reign until shortly before the 1393 'eyre' Thomas Chantsinger executed continuously the bulk of coroner's business in the county;[3] his replacement on grounds of age and infirmity had been ordered over two years before his last known inquest,[4] by which time he had been a county figure for at least twenty-five years,[5] and an official for twenty.[6] He died in office just before the 1393 'eyre', and was succeeded by Richard Eastney,[7] but by 1396 Raymond Ive or Ivot, said in 1399 to be insufficiently qualified to act as county coroner,[8] held this post.[9] Chantsinger's colleague

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[1] ibid., 176-7; KB 37/2/16/2, unnumbered.

[2] For the devolution of all these offices since 51 Edward III, see KB 37/2/16/2, unnumbered.

[3] JUST 1/797 and JUST 2/155 are his extant rolls. He had held at least one inquest at the close of the previous reign: KB 27/470, Rex m.1.

[4] Cal. Close Rolls 1389-92, 223.

[5] Cal. Close Rolls 1364-8, 485.

[6] e.g. as collector of subsidies: Calendar of Fine Rolls (H.M.S.O.), VIII, 230.

[7] Eastney was coroner by 30 Dec. 1392: KB 37/2/16/2, unnumbered. He was said to be insufficiently qualified: Cal. Close Rolls 1392-6, 26.

[8] Cal. Close Rolls 1396-9, 506.

[9] Ive held an inquest at Over Wallop in 1396 (JUST 3/179, m.11d); he was steward of Andover at about

at the beginning of the reign was John Warren, who had already served since 1366,[1] and who resisted attempts to replace him, on grounds of insufficient qualification,[2] until his death in 1388.[3] He was succeeded by Richard Hanger, who was promptly declared to be too old and debilitated;[4] the result of the final instruction is recorded in the sheriff's endorsement to the only writ de coronatore eligendo to survive for the county in this reign, which states that John Tauke was chosen with the consent of the county at the county court on 5 December, 1390.[5] Tauke's term of office outlasted the reign, despite an attempt to remove him for insufficient qualification;[6] he was removed early in the next because imprisonment in the Fleet was impairing his efficiency.[7]

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this time: KB 27/536, Rex m.21d; and was described as 'of Andover' when indicted earlier for wounding: KB 27/470, Rex m.17.

[1] Hunnisett, 'Coroners' Rolls', 331.

[2] Cal. Close Rolls 1369-74, 395; Cal. Close Rolls 1377-81, 174, 194.

[3] Cal. Close Rolls 1385-9, 562.

[4] Cal. Close Rolls 1389-92, 111, 142, 223. He seems to have died between May and September 1397: Descriptive Catalogue of Ancient Deeds (H.M.S.O.), II, B.2543; Cal. Pat. Rolls 1396-9, 357.

[5] C 242/7, no.21.

[6] Cal. Close Rolls 1392-6, 26.

[7] Cal. Close Rolls 1399-1402, 214. This was not Tauke's only lapse; he was fined for accepting a bribe at a homicide inquest: KB 9/108, m.5.

The geographical division of responsibility between the county coroners was imprecise, as was the case in many counties,[1] and the absence of rolls for Warren, Hanger, and Tauke makes reconstruction difficult. Chantsinger covered most of the county, but none of his inquests was held south of the southern river Blackwater, which runs from the Test estuary at Totton to the county boundary at Plaiford, dividing the main area of the county from the New Forest region. For much of its length the Blackwater divides Redbridge hundred from its northern neighbours, and Chantsinger's district may have observed the hundredal limit. His name associates him with the manor of Chauntsingers in Alton,[2] and he clearly lived within his district. The same is true of his colleagues. They seem generally to have operated in the south-western part of the county, without keeping altogether outside Chantsinger's area; one of Tauke's inquests went as far north as Stoke, in Evingar hundred, and they all heard inquests in the Romsey area. This accords with the slight local information available. A John Warren held land at Over Burgate and Fordingbridge;[3] Richard Hanger was the name of successive holders of the manor

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[1] Hunnisett, Medieval Coroner, 135-7.

[2] V.C.H. Hants, II, 479. He was described as 'of Alton': Cal. Pat. Rolls 1377-81, 129.

[3] ibid., IV, 507, 570. There is record of an inquest at Ringwood held jointly by Warren and the sheriff in 1379: KB 145/3/2/1, unnumbered.

of Dibden Hanger in the fourteenth century;[1] the Tauke family, although based on a manor in Basingstoke,[2] had connections in Romsey;[3] Ive came from Andover.[4] Division between districts was a matter of convenience rather than of rigid protocol, as when the hearing of an approver's appeal at Winchester was begun before Henry Jordan, a city coroner, and Henry Popham, the sheriff, but continued before Chantsinger, perhaps because one of the confessions related to an unsolved case on the latter's records.[5] This was not regarded as a single hearing, however, since the approver had his three allotted days before Chantsinger, regardless of the earlier day before Jordan.

In contrast with the coroners, the justices of the peace had a chequered history.[6] Originally a survivor of the peace-keeping experiments of the thirteenth century, the keeper of the peace increased in importance with the lapse of the general eyre, and,

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[1] ibid., IV, 656.

[2] ibid., IV, 134; J.B.Post, 'The Tauke family in the fourteenth and fifteenth centuries', Sussex Archaological Collections, CXI (1973), 93-4.

[3] V.C.H. Hants, IV, 459n.

[4] Below, 106.

[5] The murder of John Bincombe of Taunton: JUST 2/155, m.15; JUST 1/797, m.2.

[6] In general, see Putnam, Proceedings, Introduction, passim; for the earlier fourteenth century, see Putnam's chapter in The English Government at Work, III, 185-217; for a brief survey, see Plucknett, Common Law, 167-9.

despite neglect of his office in the early years of Edward III, emerged in the mid-fourteenth century as the justice of the peace.[1] This position was strengthened by the economic legislation following the Black Death, which was administered initially under independent commissions, but soon fell within the competence of the peace sessions.[2] From this period onwards the justices of the peace had wide terms of reference, varied from commission to commission but probably interpreted loosely by the justices anyway,[3] which always, save briefly in 1364-8, included the power to determine felonies. The pattern of the peace sessions was that of their descendant quarter sessions:[4] a grand jury

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[1] B.H.Putnam, 'The Transformation of the Keepers of the Peace into Justices of the Peace, 1327-1380', Trans. Royal Hist. Soc., 4th series, XII (1939). The term 'justice of the peace' was a fourteenth-century conflation of the terms 'keeper of the peace' and 'justice of oyer and terminer' as they appeared in conjunction in peace commissions.

[2] See B.H.Putnam, The Enforcement of the Statutes of Labourers 1349-1359 (New York, 1908).

[3] R.Sillem, 'Commissions of the Peace 1380-1485', Bull. Inst. Hist. Res., X, (1932) 97; Yorkshire Sessions of the Peace 1361-1364, ed. B.H.Putnam (Yorks. Arch. Soc., Record Series, C, 1939), xlvii; Putnam, Proceedings, cxiv; Rolls of the Coventry and Warwickshire Sessions of the Peace 1377-1397, ed. E.G.Kimball (Dugdale Soc., XVI, 1939), xv-xxii; J.B.Post, 'The peace commissions of 1382', Eng. Hist. Rev., XCI (1976), 98-101.

[4] Putnam, Proceedings, xcvii-cvii. Comparison should also be made with the procedures of justices of trailbaston in the early fourteenth century: 'Early trailbaston proceedings from the Lincoln roll of 1305', ed. A.Harding in Medieval Legal Records ... (H.M.S.O., forthcoming).

from the shire, or grand juries from each hundred, was sworn, and proceeded to make presentments[1] of felonies, trespasses, and economic offences, according to the charge administered to them under the terms of the justices' commission;[2] then, as far as they were currently competent to determine, the justices tried with petty juries such of the accused as were in custody. Some might have been taken already, by another agency; some others were taken as a result of process issuing from the sessions.[3] This process took the standard form of writs to the sheriff, attested in the king's name by one of the justices: in felony cases a capias, in trespass cases a venire facias. In a few cases the sheriff might succeed in producing indicted persons at the same sessions; more commonly, the delay would entail their production at the next sessions, or at a gaol delivery held in the mean time. The surviving Hampshire peace roll for the period, covering 1385-6 and 1390-2, shows only a tiny proportion of determined cases,[4] whereas the gaol delivery rolls (incomplete for the period before 1388) have twenty-six cases

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[1] By Lambard's day there was a clear distinction between presentment (by the grand jury of its own knowledge) and indictment (a plaint by a third party, approved and endorsed as a true bill by the grand jury): ibid., xcix-cii. In the fourteenth century such procedures are distinguishable (e.g. KB 9/176, m.95), but had little or no effect on the subsequent procedure.

[2] ibid., xxxii-xxxv.

[3] ibid., ciii-cv.

[4] ibid., 233.

heard on peace sessions indictments - exactly a quarter of all indictments heard. When king's bench reviewed the peace rolls, either during a 'superior eyre' or by special writ, appropriate process issued thence on all untraced offenders, regardless of any process the justices had initiated locally.

The court of king's bench was superior to all these local agencies for criminal prosecutions. It exercised such jurisdiction in two principal ways. Firstly, indictments brought before inferior courts could be called into king's bench by writ, normally of certiorari or terminari. Both the details of procedure and the forms of the writ varied in the late thirteenth century,[1] but before 1300 the wording had crystallised whereby the king, 'volentes certis de causis certiorari super tenore indictamenti [or super indictamento]', requested the records of a case for scrutiny;[2] by the late fourteenth century, however, it had become usual for such records to be called into chancery and only subsequently sent into king's bench,[3] although the more direct summons was also used.[4] Secondly, king's bench

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[1] The general procedure is in evidence from the beginning of Edward I's reign (e.g. Sayles, King's Bench, I, nos 1, 10, 27); for various forms of the writ at this date, see references in Early Registers of Writs, ed. E. de Haas and G.D.G.Hall (Selden Soc., LXXXVII, 1970), Analytical Index V-1-B-i-a, pp.380-1.

[2] e.g. Sayles, King's Bench, VII, nos 1-2; cf. ibid., II, no.4.

[3] ibid., V, lxxii.

[4] Putnam, Proceedings, lxiv, lxxii-lxxvi.

was frequently itinerant, although it settled at Westminster, its residual venue, during the declining years of Edward III, and then from the accession of Henry IV onwards, with an isolated restlessness in the early years of Henry V.[1] When it visited a county, it had the effect of suspending peace sessions, gaol deliveries, and proceedings on oyer and terminer commissions,[2] and taking their duties to itself. Such 'superior eyres' normally involved a delivery of the county gaol,[3] paralleling the delivery of Middlesex prisoners when the court was sitting at Westminster.[4] More significantly, in terms of apprehending suspects, the court handled three types of indictment from the county. Any outstanding coroners' rolls and peace rolls were collected for review,[5] while fresh indictments were heard in king's bench from

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[1] Dr Sayles and Miss Putnam have both treated this subject extensively, with divergent conclusions both in explaining the itineraries and in tracing them: Sayles, King's Bench, II, lxxiii-lxxviii; IV, xxxiv-xlvi and Appendix III; VI, ix-xii and Appendix I; VII, xxvii-xxviii and Appendixes I-III; Putnam, Proceedings, lvii-lxxvi and Table V.

[2] Proceedings on these commissions, as a court of first instance, followed the pattern of grand jury presentment, but sessions and scope varied very widely: see below, 60-61.

[3] e.g. the delivery of Winchester castle gaol in 1393 (KB 27/527, Rex m.1).

[4] e.g. KB 27/468, Rex mm.24, 24d.

[5] See above, 32-33; 46, and references there.

hundred juries and a presenting grand jury;[1] all absent suspects were then subject to process for their apprehension. This process took the form of writs addressed to the sheriff. The milder form of summons, used in some (but by no means all) trespass cases, was the venire facias; if the sheriff returned that the subject 'non est inventus', a distringas was issued; if there were no goods or lands to be distrained within the county, more serious process was issued. This, the customary tool of king's bench and other courts in all felony and many trespass cases, was the capias; if the sheriff returned a negative answer to two (though occasionally one or three) writs of capias, the exigi facias or exigend was issued.[2] The sheriff was then to 'exact' or summons the principal at four successive county courts, and, if there was still no response, to declare him outlaw.[3] Strictly speaking, outlawry entailed forfeiture of lands and chattels, together with a notional death sentence in absence, but the process was so

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[1] Putnam, Proceedings, lxi-lxiii; e.g. KB 9/108. The function of the grand jury is unclear from evidence at present available since the hundred jurors not only made presentments but (where necessary) found bills true or otherwise: KB 9/108, mm.10, 17.

[2] For this process at peace sessions, see Putnam, Proceedings, ciii-civ.

[3] Hunnisett, Medieval Coroner, 61-8; Rot. Parl., II, 240.

common and instituted so indiscriminately on defaulters that, by the mid-fourteenth century, the death of an outlaw was accountable as a culpable homicide, requiring acquittal or pardon.[1] A full study of medieval outlawry is still wanting; it seems unlikely, however, that the procedure proved inconvenient to the subject unless he wished to safeguard his legal status in court.[2]

The efficacy of such process for arrest varied. In the King's Bench rolls the long collective capias and exigi facias entries testify the volume of suspects undetained; the parallel entries in the Controlment rolls of the king's attorney, with pricking and underlining of those whose cases were settled,[3] give a clue to the ultimate success rate. Of the appellees of William Rose, for example, the king's attorney reckoned to have closed proceedings in fourteen out of forty-seven cases,[4] or about thirty per cent - close

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[1] Hunnisett, Medieval Coroner, 67; KB 27/543, Rex mm.1, 1d, with pardons in Cal. Pat. Rolls 1396-9, 62, stating that the slayers had believed it lawful to behead an outlaw.

[2] W.S.Holdsworth, A History of English Law (17 vols., London, 1922-72, of which vol. I is 7th edn., 1956, and vols. II-III are 3rd edn., 1923), III, 604-7.

[3] KB 29/39, m.18 records the outlawry of all those cited in the capias except those names 'punctati et tracti', whose cases can be found concluded elsewhere. Cf. the fifteenth-century jury's 'points et prickes': A.Fitzherbert, La Graunde Abridgement (London, 1577), Peyne 6.

[4] KB 29/39, m.18.

to the average for peace sessions indictments.[1] This proportion was a most favourable one, relating to charges brought, in most cases, within a year or two of the alleged offence; if king's bench visited a county rarely, and then issued process on all surviving crown pleas records, the detection rate was bound to be low. Indeed, a crop of Nottinghamshire indictments determined in 1393 was remarkable for the apprehension and trial of four principals some half a century after the offences were committed.[2] As might have been expected, the central court, even when operating in the shires, was less successful in effecting the capture of suspects than were its localised agencies.

Once a suspect had been taken, he had to be kept in custody until his trial.[3] The normal place of custody (except with the burghal franchises) was the county gaol - Winchester castle,[4] for Hampshire - but it was not always practicable to use this immediately upon arrest. There must have been numerous

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[1] Above, 15 and n.1. See also below, 304-5.

[2] KB 27/529, Rex mm.2d (William Oliver, for rustling in 1345), 4 (John Saillard, for larceny in 1345); KB 27/530, Rex mm.2 (Roger son of Richard, for robbery in 1343), 2d (William Kyllum, for felony in 1331). The last two obtained pardons after their cases had come up: C 67/29, m.2.

[3] In general, see Pugh, Imprisonment, c.ix.

[4] For its history see ibid., 79-81.

local lock-ups, where township and other officials kept minor offenders, which could be used temporarily for suspected felons, but traces of such places are few. The bailiff of Odiham put one suspect in irons overnight,[1] and the plenitude of such individual restraints in medieval gaols suggests that it was found easier to restrict the person than to guard premises.[2] Most of the officials who might expect to make arrests would have kept some means of detention at their disposal. Crown custody was held to have begun at the arrest. Agatha Russell was attached by Hound tithing when her husband's body was discovered, but the coroner recorded that 'she was in the king's custody for the next two days, until John Freke of Waltham collected some unknown men and forcibly removed her from prison, against the king's peace'.[3] It is unlikely that anything but a tithing lock-up was thus broken, since the inquest had yet to take place. Similarly Thomas Frank, sent to the county gaol by the earl of Kent acting as justice for the New Forest, was probably detained initially in a forest gaol (there was a fairly new one at Lyndhurst);[4] William Slout,

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[1]JUST 2/155, m.7 (John Holt).

[2]Pugh, Imprisonment, 369-73.

[3]JUST 2/155, m.12.

[4]Pugh, Imprisonment, 132.

apparently keeper of this gaol, had the job of escorting Frank to Winchester.[1] John Langley, bailiff to the abbess at Romsey, shirked the problem of custody by operating his own system of bail. He caught a stranger with some stolen horses, and detained the horses; he let the man go free with a warrant (presumably a local safe-conduct), 'because he claimed convincingly that he had not stolen the horses', after which neither the stranger nor his warrant was seen again.[2]

Custody in the county gaol is at least better documented. The Hampshire gaol may have been in the gatehouse of Winchester castle;[3] it had a fair capacity, as the gaol delivery records suggest - as many as twenty-eight prisoners were delivered in July 1390, although the average was nearer a dozen. The quality of the custody is difficult to gauge. On one hand, there is no surviving evidence of the pestilential and harsh conditions so often apparent in medieval gaols;[4] on the other hand, escape does not seem to have been difficult. One optimist tried to

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[1] Frank was allowed a drink en route, from the river Itchen, but 'because of bodily weakness' fell in and was drowned: JUST 2/155, m.11d.

[2] E 136/195/12A, m.11; the companion account has a slightly different text: E 136/195/12B, m.11.

[3] Pugh, Imprisonment, 141-2.

[4] Pugh, Imprisonment, 177-84, 331-3; Hunnisett, Medieval Coroner, 35-6. Colchester gaol had a consistently bad record: JUST 2/33A, mm.7, 7d, 8, 10, 10d, 11, 11d, 13.

burn his way out; he suffocated in the resultant smoke, but the attempt suggests that he was confronted with a vulnerable wooden structure, or at least a combustible door.[1] Other prisoners were more successful. In 1372 John Marshall, who in 1367 had obtained the manor of Woodcote with its serjeanty of ward of the gaol,[2] was fined five pounds a head for escaped prisoners, and seven and sixpence for neglecting repairs to the gaol.[3] In February 1387 a similar situation was exposed by the justices of gaol delivery, who had before them six indictments without the prisoners. Edmund Marshall, described as 'custos' of the gaol, denied all liability, claiming that John Marshall was really warden, in fee, and that he, Edmund, was merely the latter's servant. The justices held an inquest on the matter, and the jurors found that John Marshall was warden; they also found that the missing prisoners had escaped in Lent 1386, while a further two had escaped at different times in the previous eighteen months.[4] Accordingly, the sheriff was ordered to distrain John Marshall, which he did, taking distraints worth half a mark and releasing Marshall to mainpernors, one of whom was Edmund Marshall.[5] Further

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[1] JUST 2/157, m.2.

[2] The descent of ward of the gaol is traced in Pugh, Imprisonment, 141-5; for the descent of Woodcote with the serjeanty, see V.C.H. Hants, III, 47-8.

[3] ibid., 48.

[4] JUST 3/174, m.1d.

[5] JUST 3/179, m.2d.

distraint, yielding twenty shillings, followed John Marshall's continued nonappearance,[1] but by this time he had obtained a pardon, on the grounds of blindness and poverty.[2] His name and that of Edmund nevertheless appeared interchangeably at subsequent gaol deliveries,[3] although Edmund's supersedes altogether by July 1397;[4] in fact John died in 1391-2, and Edmund succeeded him as son and heir.[5] Such inefficient custody was not peculiar to Winchester; John Butler, bailiff of Southampton, was fined 100s. for an escape in 1395.[6]

The county gaol catered only for prisoners awaiting routine delivery; if a case was removed into king's bench, or appropriated during a 'superior eyre', the prisoner was transferred to the custody of the marshal of king's bench.[7] Since the court was

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[1] JUST 3/179, m.5d.

[2] Cal. Pat. Rolls 1388-92, 182.

[3] JUST 3/179, mm.7, 9d, 10, 10d, 11d.

[4] The change registered tardily; no less than four entries referring to Edmund Marshall show erasures under his forename (ibid., mm.12, 12d ter) before it was entered correctly in the first place: ibid., m.13.

[5] E 136/195/10, m.1, and E 136/195/11, m.2 (escheator's account for Woodcote manor).

[6] JUST 3/179, m.11.

[7] The medieval history of the king's bench marshalsea is sketched in Pugh, Imprisonment, 119-21 and 158-60, and with greater detail in Sayles, King's Bench, I, lxxxix-xc; V, xxi-xxviii; VI, xlii-xlv; VII, xix-xxii.

peripatetic, the responsibilities of the marshal - or of his deputy - included that of transporting prisoners from venue to venue, and it was not until the last decade of Edward III's reign, when the discrete marshalsea prison of the royal household was built at Southwark, that the king's bench marshalsea found a permanent London home on an adjacent site.[1] Predictably, in view of the need for mobility, corporal restraints played a large part in the security measures;[2] the Whaddon folio, from the third quarter of the fifteenth century (when the court no longer travelled), shows the defendant with his ankles shackled, while prisoners awaiting attention are similarly fettered, as well as being linked in chain-gang to a staple.[3] Even more predictably, escapes were persistently common, although the fines imposed on the marshal were often far greater than those on county gaolers.[4] Since many of the marshal's

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[1] ibid., VII, xxi; Pugh, Imprisonment, 120.

[2] ibid., 371-3.

[3] The Folio, now in the Inner Temple, is reproduced in the catalogue to Legal London: An Exhibition in the Great Hall of the Royal Courts of Justice (London, 1971), with king's bench as item no.2; a highly coloured version of the latter appears in F.R.H. Du Boulay, An Age of Ambition (London, 1970), pl.6. Exchequer prisoners were provided with a wooden cage (Legal London, cover). The Folio is discussed by G.R.Corner in Archaeologia, xxxix (1863), 357-72.

[4] Sayles, King's Bench, V, xxvi-xxvii; VI, xlv; VII, xxi; but see also VII, 184.

detainees were in the process of buying themselves out of trouble, it is more than likely that informal releases provided one of the marshal's customary financial perquisites.[1] It is also likely that he followed the common practices of extortion and ill-treatment,[2] which the insurgent labourers, and a sympathetic civil servant,[3] plainly attributed to Richard Imworth when he held that office.

Under some circumstances it was lawful for a suspect to be released pending his trial.[4] In theory there may have been a distinction between bail and mainprise: the man who was mainprised, by main-pernors responsible under pain of amercement, was set at large, whereas the man who was bailed was delivered to the custody of his pledges, who could be answerable for his private or royal liabilities and were entitled to imprison or release him at their discretion.[5] This

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[1] ibid., VI, xlv.

[2] For approvers' allegations of torture under the auspices of the sheriffs of London, see below, 296-7.

[3] The interpolated account of the 1381 revolt, including the decollation of Imworth, in the Anonimalle Chronicle, ed. V.H.Galbraith (Manchester 1926), 146, probably derived from a royal clerk (ibid., xlii). The related account by the monk of Westminster is altogether stuffier: Polychronicon Ranulphi Higden, IX, ed. J.R.Lumby (Rolls Series, 1886), 4.

[4] Pugh, Imprisonment, 204-10.

[5] Pollock and Maitland, II, 589; J.Manwood, A Treatise of the Laws of the Forest (3rd edn., London, 1665), 504.

distinction seems to have been invoked at least once in the fourteenth century.[1] Alternatively, it is possible that mainprise originally referred to cases under the writ de manucaptione, for offences technically irrepleviable,[2] in contrast with the normal bail writ of course de homine replegiando,[3] but this restriction of de manucaptione had fallen into abeyance by the end of the fourteenth century,[4] by which time the terms 'mainprise' and 'bail' had long appeared within single writs.[5] The use of writs for obtaining bail was most common in the thirteenth century,[6] especially before the first statute of Westminster defined the categories of repleviable offences;[7] the grant of bail at the discretion of the sheriff, or occasionally of the gaoler, was widespread during the same period. The system was a practical one, given the effectiveness of typical custody - 'the mainprise of substantial men was about as good a security as a gaol'.[8] Nevertheless, the incidence of bail or mainprise at the first instance seems to

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[1] Fitzherbert, Abridgement, Mainprise 12.

[2] For these offences, see E. de Haas, Antiquities of Bail (New York, 1940), 71.

[3] ibid., 68.

[4] ibid., 87.

[5] Early Registers of Writs, 'R' 239, 240, 358, 359.

[6] Pugh, Imprisonment, 205-7.

[7] 3 Edward I, c.15.

[8] Pollock and Maitland, II, 584.

have declined in the fourteenth century. Fewer bail writs were issued, newly defined offences were made irrepleviable, and officials were markedly disinclined to cooperate.[1] In the sequence of deliveries of Winchester castle in the last decade of the century, the only defendant bailed by the sheriff was John Marshall, the defaulting gaoler;[2] all others made their first appearances from custody.

Contrastingly, mainprise before justices, pending subsequent trial, was exceedingly common, and there seems to have been little attention to the irrepleviable offence. At gaol delivery mainprise was allowed for larceny,[3] and for capture with mainour,[4] as well as for arrest on suspicion,[5] and for excusable homicide;[6] the mainpernors in such cases, where they can be identified, seem to have been local men of substance.[7] In king's bench the situation was even more marked, with mainprise allowed for all sorts of

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[1] Pugh, Imprisonment, 208.

[2] JUST 3/179, m.2d.

[3] JUST 3/170, m.2 (Joan Howes).

[4] JUST 3/174, m.1 (Thomas Pinchbeck).

[5] JUST 3/179, mm.7d (Robert Hancock), 10 (Nicholas Gibbs).

[6] ibid., mm.3 (William Bush), 5 (John Colville), 8 (Ingram Carpenter).

[7] In the instances cited, some mainpernors can be traced as peace sessions jurors in Putnam, Proceedings: Nicholas Husee (228 no.68) for Joan Howes; Humfrey Gilot (217 no.22) for Robert Hancock; John Fivemark (213 no.3) and John Lovell (219 no.31) for Ingram Carpenter.

homicide and other felonies.[1] It is noteworthy that, while mainpernors in king's bench were often the same sort of local persons that appear at gaol delivery,[2] it was also very common for defendants whose resources or influence presupposed acquittal or pardon to be mainprised by clerks of the court. Thus Richard Chike was mainprised by Stephen Fall and John Whatton, clerks,[3] and by Nicholas Spencer the coroner;[4] John Smith by Fall, Robert Hore, and Thomas Holme, clerks;[5] John Blanchard by Hore and Brian Huscarle.[6] John New, however, at his second trial for a single homicide,[7] was mainprised by John Saverey, John Souter, Richard Neil, and Robert Gilbert - all of whom were severally indicted for homicides in Hampshire, and acquitted in king's bench, two in the term before this hearing and two in the current one.[8] Saverey was also a mainpernor for Neil and Gilbert. It is uncertain whether

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[1] e.g. KB 27/527, Rex m.7 (William Marshall); KB 27/530, Rex m.1 (John Saverey); KB 27/529, Rex m.2d (John Maleyn).

[2] e.g. John Sturmy (Putnam, Proceedings, 227 no.62), Roger Upham (213 no.3), and Richard Frye (224 no.55) for William Marshall.

[3] For lists of clerks at this date, see Sayles, King's Bench, VII, Appendix VII; for their private legal practices, see J.B.Post, 'King's Bench clerks in the reign of Richard II', Bull. Inst. Hist. Res., XLVII (1974), 150-63.

[4] KB 27/527, Rex m.4d.

[5] KB 27/529, Rex m.3d.

[6] KB 27/542, Rex m.1.

[7] KB 27/531, Rex m.1d; the first trial was at gaol delivery: JUST 3/179, m.4d.

[8] KB 27/530, Rex mm.1, 5d, 4d, 5.

clerks retained in this fashion could affect the course of events,[1] or bailed only promising clients; if the latter, they were sometimes disappointed.[2] Insignificant mainpernors might be replaced by clerks as a case progressed.[3]

The promptness with which a detainee appeared for trial varied according to the incidence of the appropriate sessions. Most erratic in this respect were proceedings on oyer and terminer commissions. Such commissions were nominally limited to cases of 'great hurt or horrible trespasses', and issued only 'of the king's special grace',[4] but their frequency and their extraordinary powers, brought them great unpopularity,[5] especially when individual cases were assigned under special oyer and terminer commissions to partisan or incompetent justices,[6] and by the end of the fourteenth century the general oyer and terminer commission had relapsed into the role of an

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[1] For their opportunities, see Post, 'King's bench clerks'.

[2] e.g. KB 27/538, Rex m.4, where the mainpernors of John Wotton, including an attorney and two criers, came under capias on their principal's default.

[3] e.g. KB 27/530, Rex m.3 (John Sutton).

[4] 2 Edward III (Statute of Northampton), c.2.

[5] Harding, 'Trailbaston commissions'.

[6] Holdsworth, History of English Law, I, 277-8; Putnam, Proceedings, xl, xlvii. For apparent grounds for such complaints, see Sayles, King's Bench, V, no.57 (pp.115, 120); VI, nos. 9 and 17.

exceptional expedient.[1] When such sessions were held, their competence could be very general,[2] including the review of undetermined peace sessions indictments,[3] as well as the holding of original inquisitions, but they played no regular or significant part in the conduct of routine criminal proceedings. Far more important, and more consistent, were the peace sessions. In 1362 their regularity was stipulated at four times a year, at given periods;[4] while this was not observed strictly, as was sometimes pointed out,[5] the surviving peace rolls show that sessions were held fairly frequently,[6] and the terms and personnel of commissions were constantly under revision.[7] This revision did not include the suspension of the justices' power to determine (even,

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[1] Putnam, Proceedings, l-li.

[2] For a typical list of offences covered, see ibid., xlvii.

[3] ibid., 84.

[4] 36 Edward III.1, c.12.

[5] Putnam, Proceedings, xc and n.2.

[6] ibid., xcvi; cf. the tabulations in 'addenda to the text', especially that for Hampshire, 1390-2 (ibid., 231), and the relatively long runs for Staffordshire, 1409-14 (333-4) and for Worcestershire, 1394-8 (147).

[7] There were twenty-one peace commissions for Hampshire under Richard II: Cal. Pat. Rolls 1377-1381, 45, 512, 572; 1381-5, 85, 142, 249, 253, 347, 502; 1385-9, 81, 82-3; 1388-92, 137, 138, 342, 344; 1391-6, 438, 728, 729; 1396-9, 95, 99, 233.

as is commonly held, between December 1382 and November 1389),[1] but, in view of their normal determining ratio,[2] their effectiveness is unlikely to have varied much. Their scope was limited by the duration of their sessions; the ten days indicated by the statute of 1351 had shrunk to three by 1388,[3] and the rolls seldom refer to the hearings of more than a single day.

A large proportion of peace sessions cases, as of other local indictments, were tried at gaol deliveries, which were also reasonably regular and frequent.[4] During Richard II's reign there were fifteen commissions for delivery of the county gaol in Winchester castle,[5] one of them specifying Winchester city gaol as well;[6] the rarity of this distinction is emphasised by a further commission simply for 'Winchester'.[7] There was also an isolated example for Southampton.[8] The imperfect survival of

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[1] Putnam, Proceedings, xxiv-xxv; but see Post, 'Peace commissions', 98-9.

[2] Above, ·45.

[3] Kimball, Warwicks Sessions, xliii n.1. Putnam (Proceedings, xcvi) mistakenly regarded the provisions of 12 Richard II, c.10 as providing a minimum period of session.

[4] Pugh, Imprisonment, 292-3, and chapters XII-XIV passim.

[5] Cal. of G.D. Commissions, nos 51, 86, 111, 125, 194, 224, 228, 248, 339, 342, 388, 403A, 430, 454, 478.

[6] no.194.

[7] no.650.

[8] no.195.

the records makes it difficult to tabulate every session held. A single session is found under the Southampton commission of 1382;[1] the Winchester city delivery, if held, has left no trace. County gaol deliveries, on the other hand, are more easily followed, and the close relationship between gaol delivery and assize justices is clearly illustrated.[2] Bealknap, Clopton, and William Cary, commissioned on assize circuit in 1380, delivered in 1381.[3] Bealknap, Rickhill, and Charlton delivered thrice between February 1386 and July 1387, although Rickhill seems to have given up during the middle session;[4] Charlton's commission for this has not been found, despite his appointment to both previous and subsequent deliveries,[5] but Bealknap and Rickhill had parallel commissions for gaol delivery and assize duties.[6] In July 1388 and February 1389 Rickhill and Cassy delivered, being under joint commissions in both capacities,[7] and

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[1] JUST 3/171, m.5d.

[2] Pugh, Imprisonment, 280-2.

[3] Cal. of G.D. Commissions, no.159; JUST 3/170, m.2.

[4] JUST 3/174, mm.1-2.

[5] Cal. of G.D. Commissions, nos 224 and 342. The latter was effectively an association, rather than a superseding commission.

[6] ibid., nos 339 and 293; by the date of the former (1386), a commission of association (no.297) had substituted Rickhill for Pinchbeck on the assize circuit.

[7] ibid., nos 402A and 403A; JUST 3/179, mm.2-3d.

when Brenchley replaced Cassy on the assize circuit in 1389,[1] Rickhill and Brenchley received joint gaol delivery commissions under which, despite 'associations',[2] they operated unchanged for the rest of the reign.[3] The incidence of deliveries was apparently intended to be twice yearly.[4] The 1381 delivery was in February; Bealknap's deliveries were in February 1386, February and July 1387; Rickhill's roll shows deliveries twice yearly from July 1388 to July 1392 (excepting July 1389), then yearly in July until February 1396, when the former pattern was resumed. There is no reason to suppose that Rickhill's roll is unrepresentative of the number of sessions held.[5] Because the prisoners and their indictments were ready for trial, deliveries seem normally to have occupied one day only.[6]

Of all the courts determining felonies, king's bench was the most regular in sessions. The four law terms of Hilary, Easter, Trinity and Michaelmas

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[1] Cal. of G.D. Commissions, no.420.

[2] 'Associations' were supplementary commissions adding or substituting names to a previous commission.

[3] ibid., nos 430, 454, 478; JUST 3/179, mm.4-13d.

[4] Cf. Pugh, Imprisonment, 285-6.

[5] A similar pattern emerges, for example, from JUST 3/194, mm.1-8d (Winchester castle, 1406-1411).

[6] Pugh, Imprisonment, 274-5.

were observed in this as (with necessary variations) in other central courts, giving uneven terms of four to eight weeks,[1] and the consistency of routine throughout the fourteenth century was faultless, excepting only three terms abandoned because of plague and one because of the Peasants' Revolt.[2] This court also provides the evidence (such as it is) for the length of daily sittings. Fortescue, in a typically sanguine chapter, claimed that fifteenth-century justices sat from eight until eleven in the morning,[3] and a formal working day of this order is compatible with other evidence;[4] peace sessions and gaol deliveries, however, may have sat longer in order to clear business during a short visit.[5]

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[1] The length of term depended on the number of return days for process, at weekly intervals. These were the octave of Michaelmas and seven following, the octave of Hilary and three following, the quindene of Easter and four following, and the octave of Trinity and four following. The practice under Edward I is analysed by Sayles, King's Bench, II, lxxv-lxxvi, and epitomised (with much related information from other periods) in C.R.Cheney, Handbook of Dates for Students of English History (Royal Hist. Soc., Guides and Handbooks no.4, 1961), 65-9.

[2] List of Plea Rolls (P.R.O. Lists and Indexes no.4, revised edn., New York, 1963), 6-8.

[3] J.Fortescue, De Laudibus Legum Anglie, ed. S.B. Chrimes (Cambridge, 1942), c.51.

[4] Sayles, King's Bench, II, lxvii-lxviii; cf. remarks in M.Hastings, The Court of Common Pleas in Fifteenth-Century England (New York, 1947), 28, 35 and n.

[5] Wide variations in business completed in a day at peace sessions were common: Putnam, Proceedings, ciii.

The number of justices holding sessions was only partly controlled by availability or by terms of a commission. King's Bench was as erratic as any other court in this respect. A comparison of the Whaddon Folio with evidence from the early years of Edward III suggests a consistent bench of five justices,[1] but these are misleading instances. In the middle and late fourteenth century two or three justices were usually in office, rising to four under Henry V.[2] During Richard II's reign there can hardly be said to have been a normal complement.[3] The reign began with two justices of king's bench, but when Cavendish was murdered in 1381, Tresilian sat as chief and only justice until the appointment of Hanmer in 1383, and again after Hanmer's death until his own dismissal and execution in 1388. The succeeding chief justice, Clopton, initially sat alone, but was joined by one puisne judge in 1389 and a second in 1391, after which a bench of three was maintained into the following reign. Since these justices were salaried rather than wage-earning, it is not possible to know how many sat at a normal session; while the interpolated opinion of Littleton, a justice of common pleas 'coming from Westminster', in the report of a hearing before

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[1] Legal London, no.2; Sayles, King's Bench, IV, Appendix I.

[2] ibid., VI, Appendixes II-V.

[3] See ibid., VII, ix-xiii.

Neale, the junior justice in king's bench, perhaps suggests that the latter was sitting alone,[1] there are clear instances of the whole king's bench sitting together,[2] and a variable practice is quite probable.

In subsidiary courts the effective size of the bench was supposedly governed by the terms of its commission. The issue of oyer and terminer, gaol delivery, and peace commissions to local laymen as well as to professional lawyers necessitated some safeguard that a lawyer should be among those actually sitting, and commissions began to specify subsidiary lists of justices 'quorum' one or two, named, were to sit at all times.[3] By the last quarter of the fourteenth century such a precaution in gaol delivery commissions, as in the related assize commissions, was usually superfluous; commonly, the two or three justices appointed were all professional lawyers, if not actually professional justices of the common law courts.[4] In these and in the occasional larger

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[1] Year Book 10 Edward IV and 49 Henry VI, ed. N. Neilson (Selden Soc., XLVII, 1930), 122; the reporter intended Littleton's opinion to be parenthetical.

[2] Fitzherbert, Abridgement, Coron 86 and 466 (Hulse, Tyrwhitt, and Gascoigne sitting temp. Henry IV).

[3] Holdsworth, History of English Law, I, 280-1, 290. The term is found from 1344: Putnam, Proceedings, xli.

[4] The professional qualifications of justices mentioned in this paragraph can be found below, c.III.

commissions, only a couple of justices actually sat. Tresilian and the mayor of Southampton sat in 1382, without John and William Cary, both lawyers;[1] Rickhill and Brenchley sat for several years as though the association with them of two more lawyers and two magnates had never been made.[2] If a quorum was named, it might well prefer lawyers to any laymen on the commission - Clopton or Hankford in one instance,[3] Percehay, Clopton, or Michael Skilling in another[4] - but Walter Haywood, an administrator and dignitary but not a lawyer, was named with Charlton in one quorum clause,[5] and an isolated commission in 1387 included no lawyers at all.[6] The use of laymen was far less rare among peace commissions. The selection of justices of the peace frequently came under criticism, and later fourteenth-century commissions were usually based on the skeletal requirements of the statute of 1361 - one lord, three or four local magnates, and some others learned in the law - although in time the total appointed in each county gradually rose.[7] Of a

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[1] JUST 3/171, m.5d.

[2] Cal. of G.D. Commissions, no.478; JUST 3/179, mm.4-13d.

[3] Cal. of G.D. Commissions, no.650.

[4] ibid., no.125.

[5] ibid., no.224.

[6] ibid., no.388.

[7] Putnam, Proceedings, lxxviii-lxxxi. See also below, 133-4. Except in times of crisis, a peace commission before 1400 would seldom exceed 10 or 12 members.

large commission very few members would take an active part; Miss Putnam estimated one in three on the rolls she analysed.[1] These working justices were not by any means the professional lawyers required in 1361 (and again in 1393-4).[2] It is not always possible to be sure which justices were sitting, but it is clear that only local magnates - amateur lawyers - were regularly involved in the Hampshire sessions whose rolls survive from Richard II's reign, and the same is true of some other counties.[3] Even when lawyers were specified in the quorum they did not necessarily sit.[4]

The procedure for determining criminal charges varied little from court to court, but rather more between the different forms of accusation. At the beginning of the trial the accusation was recited before the court.[5] In a case of presentment or indictment from an inferior court, this entailed a reading of the record. In the case of an appeal, the injured person (the next-of-kin in homicide cases)

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[1] ibid., xci.

[2] 17 Richard II, c.10.

[3] Working from the 'addenda to the text' in Putnam, Proceedings, this seems to have been true of Norfolk and Yorkshire, but not of Nottinghamshire, Wiltshire, or Worcestershire. Kimball, Warwicks Sessions, xliv-xlv, found only lay justices in that county.

[4] ibid., xlv-xlvii.

[5] Except where otherwise noted, the procedures described here were common to all determining courts and can be checked, for example, by comparison with Sayles, King's Bench, passim.

had to appear in person to prosecute the appeal; in default of the appellor, the defendant was automatically acquitted on the private suit, but was tried instead at the king's suit, using the appeal in the inferior court as an indictment.[1] At this stage the defendant was brought forward by the sheriff or in king's bench by the marshal, and asked how he wished to acquit himself. The response to this could be of considerable importance, and some defendants showed sound legal knowledge or advice, despite the fact that no counsel was allowed to those indicted of treason or felony.[2] If a pardon had already been granted, it could be produced at once;[3] otherwise the safest course, if plausible, was to plead some exception to the form of the charges. The business of pleading exceptions to an appeal of felony was one of considerable nicety,[4] and the detailed consistency required of an appellor was formidable.[5] A few examples will suffice. Since a woman was allowed

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[1] e.g. Peter Kingett: JUST 3/179, m.11.

[2] Appeals in this context counted as private actions: Plucknett, Common Law, 434-5; Fitzherbert, Abridgement, Coron 31. For a rare instance of counsel allowed for strictly legal argument on a felony charge, see Year Book 9 Edward IV, cited by S.F.C. Milsom, Historical Foundations of the Common Law (London, 1969), note to p.361.

[3] See below, 98-99.

[4] Pollock and Maitland, II, 611-8.

[5] The classic procedure for appeals is described elaborately in Placita Corone, especially 1-5, 8-9, 10-11.

to appeal only upon the death of her husband, appeals of the death of parent or child were inadmissible;[1] so were appeals made by minors.[2] In a famous case an appeal of rape was quashed because of a discrepancy in dates, the exception being that a girl could only lose her maidenhead once;[3] an earlier defloration of the victim was an alternative ground for nonsuit.[4] The same sort of objection could be made to indictments. Imprecision was a standard point, either because an accusation was merely general - 'a moneyer of false coin',[5] 'a common obstructor of the peace'[6] - or because some information was lacking, as when a charge of reset was made in connection with felony by an unidentified principal.[7] Another indictment for reset was quashed because a feme covert was held to be incapable of deciding to harbour a felon.[8] Lastly,

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[1] Sayles, King's Bench, I, nos 30 and 65.

[2] ibid., VI, no.36.

[3] The Eyre of London, 14 Edward II, ed. H.M.Cam (Seldon Soc., LXXXV, 1968), 90.

[4] Bracton, On the Laws and Customs of England, ed. G.E.Woodbine, trans. and rev. S.E.Thorne (Cambridge, Mass., 1968-), f.148, p.417.

[5] KB 27/530, Rex m.26d (John Saddler).

[6] Sayles, King's Bench, IV, no.2; cf. Fitzherbert, Abridgement, Enditement 5.

[7] Sayles, King's Bench, VII, 5. Cf. KB 27/530, Rex m.2d, where an indictment for reset was quashed because it mentioned no year, day, or place.

[8] ibid., VI, no.91.

a coiner was discharged after objections that the indictment omitted to state whether groats or pence were involved.[1] In addition to pleading exceptions, it was possible to plead clergy at this stage, although it was perhaps more optimistic to postpone such a claim until a verdict had been brought;[2] defendants accused of larceny were at liberty to disavow any mainour attributed to them.[3] Now, too, it was decided to adjourn a case if the defendant was considered unfit to plead, as was Richard Godwin, 'since it is clear to the court that he is an idiot and not in his right mind'.[4]

If the indictment or the jurisdiction of the court could not be faulted at this point, there were still several options open to the defendant. He could, if he wished, refuse to plead. The advantage of this course was that without a plea he could not be tried, and without a conviction his heirs would be free to inherit his estates and chattels.[5] Such a

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[1] Fitzherbert, Abridgement, Enditement 10. The objections were allowed after the man had been convicted.

[2] See below, 90-92. The choice of timing was not allowed in the early fourteenth century, when clergy had to be pleaded now or not at all: Holdsworth, History of English Law, III, 298.

[3] See below, 86-87, 257.

[4] JUST 3/179, m.3d. Cf. KB 27/296, Rex m.13d (1334), where an idiot accused of homicide failed to plead intelligently; the jurors returned that his condition antedated the offence, and he was discharged to the custody of his family.

[5] The courts honoured this principle: Fitzherbert, Abridgement, Eschete 10; Cal. Inq. P.M., VIII, no.537.

choice, however, required a steadfast intention. In the thirteenth century the defendant who refused to plead was remanded to prison [or peine] forte et dure, which meant close confinement and a starvation diet of bread one day and water the next.[1] This alone was enough to kill a man who refused to give in,[2] and survival for a long period was viewed variously as miraculous or as indicative of defective enforcement;[3] but at some stage the further provision was added, that the prisoner should be laden with weights until he died or agreed to plead. An early reference to pressing occurs in the Year Book for 1302,[4] but it is not clear - especially in the persistence of the term dieta[5] - that the use of starvation alone had been wholly superseded by the late fourteenth century.[6] The full

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[1] Pugh, Imprisonment, 25; Pollock and Maitland, II, 651-2; Placita Corone, 18.

[2] Hunnisett, Medieval Coroner, 36.

[3] In Edward I's day a sheriff was summoned coram Rege to explain the survival of a prisoner: Sayles, King's Bench, II, clv; Edward III pardoned a woman for surviving for forty days 'miraculously': Cal. Pat. Rolls 1354-8, 529. If an appellee refused to plead and was remanded ad dietam, his accuser was allowed repossession of stolen chattels, as though the defendant had been convicted: JUST 3/142, m.19 (1369).

[4] Year Books 30-31 Edward I, ed. A.J.Horwood (Rolls Series, 1863), 511.

[5] e.g. at JUST 2/218, m.56.

[6] The case in 1360 (Fitzherbert, Abridgement, Eschete 10) refers to the defendant 'mort par jenuesse', which may relate to genouiller, to strike or press with the knee.

procedure of pressing,[1] by now always known as peine forte et dure (the penaunce of the Year Books),[2] seems to have been standard in the fifteenth century (and, indeed, until 1772),[3] and figures from the time of James I suggest that it was a remarkably popular option.[4]

Most defendants, however, chose to plead. A plea of guilty, like any confession before officials, amounted to an irrebuttable proof of guilt - 'the best and surest answer our law accepts', according to Staunford,[5] 'to acquit the conscience of the judge and to bring good and firm sentence'. If this plea was made, or (more usually) a confession was proved by record or by official testimony,[6] the court treated

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[1] Described graphically in W.Staunford, Les Plees del Coron (1557/1560 editions, reprinted London, 1971), 150v-151r.

[2] Penaunce could, however, indicate merely a short punitive imprisonment: Fitzherbert, Abridgement, Coron 451.

[3] J.B.Thayer, A Preliminary Treatise on Evidence at the Common Law, Part I (Boston, Mass., 1896), 74-81; J.F.Stephen, A History of the Criminal Law of England (London, 1883), I, 297-300; L.Radzinowicz, A History of English Criminal Law, I (London, 1948), 26 n.82, and 141 n.15.

[4] J.C.Jeaffreson, Middlesex County Records, II (1887), xvii-xx, shows that in 1608-18 some thirty-two Middlesex prisoners accepted death by pressing - more than four per cent of the total of judicial deaths.

[5] Plees del Coron, 142r.

[6] For confession testified by local officials, see Maitland, Pleas of the Crown (e.g.) nos 111, 140, 194. The last of these includes mention of the record.

the defendant 'as convict and condemned',[1] and confirmed sentence accordingly, unless the defendant wished to turn approver.[2] Very occasionally grounds for ignoring a confession were upheld: a man who admitted to a homicide but denied felonious intent, and a woman who admitted larceny but pleaded coercion by her husband, were allowed to have admitted to facts rather than to felonies, but it was emphasised that these were special instances;[3] confessions under duress were also not acceptable in law.[4] In general, however, the principle was applied implacably throughout the medieval period. It was therefore normal for the defendant to plead not guilty.[5] If he was being appealed of felony, he was then given the choice of defending himself with his body, in single combat with his accuser, or placing himself upon his country, to be

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[1] Bracton, fol.152, p.430.

[2] This had to be done before a verdict had been found: ibid., Coron 8, 37, 50; see also below, 303.

[3] Fitzherbert, Abridgement, Coron 180 (allowed 'of grace'); Staunford, Plees del Coron, 142v (allowed 'for pity').

[4] ibid. The 'spontaneous' confession to treason by John Sparrowhawk in 1402 (Sayles, King's Bench, VII, 123-4) arouses suspicions, the more so since the Lancastrians seem to have kept thumbscrews in the royal household for use on dissidents (see below, 296-7).

[5] This applies, of course, only to felony charges, under which most criminal matters came. Quasi-criminal matters such as petty corruption and economic offences could be prosecuted as trespasses, and the defendant could plead guilty and suffer a fine: e.g. John Tauke, at KB 9/108, m.5.

tried by inquest of twelve jurors. The judicial combat, although invoked sporadically (and less often prosecuted) in private litigation until the nineteenth century, was already obsolescent by 1300;[1] it survived into the fourteenth and fifteenth centuries principally as a defence in felony appeals. Defendants in appeals by victims and next-of-kin seldom chose it, quite possibly due to discouragement by the bench, and also because such appeals were often brought by women, or by other persons incapacitated by age or infirmity, who were exempt from accepting the duel;[2] similar exceptions were commonly incorporated in burghal franchises.[3] Battles in such cases were correspondingly rare in this period,[4] and their only common incidence was in appeals by approvers. A great many approvers' appeals were against their confederates,[5]

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[1] Pollock and Maitland, II, 632-4; Holdsworth, History of English Law, I, 308-10; G.Neilson, Trial By Combat (Glasgow, 1890), passim.

[2] ibid., 46-7; Hamil, 'Approvers', 239. Fifteenth-century German sources indicate a duel between victim and accused in suit for rape: H.Fehr, Das Recht im Bilde (Munich and Leipzig, 1923), 53-5 and pl.42-51. The man stood waist-high in a pit at the sort of disadvantage forced on some English approvers: Borough Customs, ed. M.Bateson, I (Selden Soc., XVIII, 1906), 33. In 1401 an appellatrix was required to fight an elderly friar, who was to have one hand bound, but the woman withdrew her suit: Eulogium Historiarum sive Temporis, ed. F.S.Haydon (Rolls Series, 1858-63), III, 389.

[3] Borough Customs, I, 32-6; Fitzherbert, Abridgement, Coron, 125, 157.

[4] For examples, see Sayles, King's Bench, VI, no.81 (1358); Fitzherbert, Abridgement, Coron 12 (1442).

[5] See below, 295-310.

and the professional criminal in most cases must have had more to hope from a duel than from a jury; the judges were happy to allow a procedure which promised to eliminate a new suspect as often as not. The battles, when they were fought, were supervised closely by the sheriff or the marshal,[1] and were conducted according to a detailed and traditional code.[2] Duels held away from the capital were fought wherever a suitable site could be found, but the usual venue for cases in king's bench was Tothill, the nearest piece of open ground to the courts in Westminster Hall.[3] The outcome of trials by battle followed the same pattern as jury trial. If the appellee lost, he was sentenced forthwith; if the appellor lost, he was amerced for false appeal or, if he was an approver, sentenced on

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[1] In 1459 it was stated that the justices were to leave such supervision to the constable and the marshal: Fitzherbert, Abridgement, Coron 23. This was not the custom temp. Elizabeth I: Neilson, Trial By Combat 159; and cf. Hamil, 'Approvers', 245.

[2] ibid., 245-6; Neilson, Trial By Combat, 154-7.

[3] Tothill Street is the northern limit of what used to be Tothill (or 'Tuttle') Fields, extending thence to the Thames. The area was used for chivalric and private, as well as judicial, duels, and for sporting and military activities: its last vestiges are the Westminster School playing fields in Vincent Square. The exact site (if there was one) of the judicial combats is unknown; a fifteenth-century reference to 'the Tothill' suggests that the eponymous hill, postulated as a traditional meeting-place and apparent on seventeenth-century maps, may have marked it. See H.B.Wheatley, London Past and Present (London, 1891), III, 385-9; J.E.B.Gover and others, The Place-Names of Middlesex (English Place-Name Soc., XVIII, 1942), 174; J.Sargeaunt, Annals of Westminster School (London, 1898), 186, 232.

the basis of his own confession. The battles although inevitably quite earnest, were not expected to continue to the death.

The appellee was entitled to the alternative of a jury inquest, which was also the standard procedure for persons taken on indictment. The function of this, the petty jury,[1] was to return a verdict on the particular charge before the court. The basis upon which they did this is, at this date, difficult to ascertain, and it is possible that a degree of flexibility existed in practice. On one hand, the trial jury was at one time expected to return a verdict on the basis of their personal knowledge, in much the same way as the grand jury made presentment; on the other hand, by the mid-fifteenth century Fortescue 'is able to regard the jury as a body of impartial men who come into court with an open mind'.[2] The lapse of one element and the development of the other are indistinct processes. The likelihood of personal knowledge, upon which the grand jury and the coroner's jury of their essence depended, was responsible for the early and abiding requirement that trial jurors should be drawn from the 'visne', the neighbourhood of the offence (in private actions, of the property at issue).[3] The practical and jurisprudential

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[1] For its composition, see below, 151-5.

[2] Plucknett, Common Law, 129; cf. Fortescue, De Laudibus, c.25.

[3] Thayer, Evidence, 90-1; Plucknett, Common Law, 127-8.

factors which explain the decline of the juror as witness have been analysed brilliantly by Maitland,[1] but there are severe limits to the precision with which any sort of chronology can be established. The right of a defendant to object to the empanelling of his personal enemies had been acknowledged by 1300,[2] and in 1352 it was accepted that a defendant might object to a trial juror who had been on the grand jury bringing the indictment.[3] It was nevertheless maintained that the local element should be retained; for administrative purposes it was convenient anyway that jurors should be drawn from the relevant county, and the further requirement that some jurors should come from the appropriate hundred outlasted the medieval period.[4] This persistence related, however, to the notion of representation rather than that of testimony,[5] the more so because, 'sometime between Bracton and Fortescue', the defendant acquired the right to challenge up to thirty-five jurors - a proceeding inconsistent with their supposed role as witnesses.[6]

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[1] Pollock and Maitland, II, 622-7.

[2] Holdsworth, History of English Law, I, 324-5.

[3] 25 Edward III.5, 3. In 1393 Cassy and Gascoigne respited their sentence of death as 'erroneous and revocable' for this reason: Cal. Pat. Rolls 1391-6, 338.

[4] Thayer, Evidence, 91.

[5] Plucknett, Common Law, 433.

[6] ibid.; cf. Fitzherbert, Abridgement, Coron 56.

Even if the jurors were not returning verdicts on the basis of their personal knowledge, the evidence on which they based their opinions was of miscellaneous derivation. The admission of a fact, like a confession, was irrebuttable, and if the jury exculpated a defendant by denying a fact to which he had pleaded, their verdict was ignored.[1] The defendant was thus in a position to testify against himself, as has already been shown; there are, also, some indications that his testimony could be accepted in his favour. These are curious, for they fly in the face of the very ancient and persistent principle of the common law that the hand-having thief, the thief caught with the mainour (manuopus), was liable to the most summary and merciless of procedures.[2] While the formalities of crown prosecution in the fourteenth century seem to have superseded the brisk justice of the thirteenth, the effect was commonly much the same: in a typical case, Thomas Puttock was taken with the mainour, which corresponded closely with a list of stolen goods attributed to him by a peace sessions jury; on examination, he admitted that the goods did not belong to him, and appropriate verdict and sentence followed.[3] Nonetheless, the courts often took a

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[1] Sayles, King's Bench, VI, no.95.

[2] Pollock and Maitland, II, 495-7; Thayer, Evidence, 71-2 n.3.

[3] JUST 3/179, m.5d.

different attitude; in a number of cases, the defendants disavowed the mainour and were promptly acquitted.[1] It had always been allowed in defence that the mainour rightfully belonged to the defend-dant,[2] but disavowal was clearly a different sort of claim; Nicholas Cory distinguished between a ham and a tunic, which he claimed as his own, and two brass bowls, which he disavowed.[3] The point of objection does not seem to have been the proof of unlawful possession, because it was possible to dis-avow successfully mainour whose rightful owner had been identified;[4] a deliberate 'plant' by an ill-wisher or an official seems unlikely, since stolen goods were forfeit to the crown unless an appeal was brought by the rightful owner. Pending firmer evi-dence, it seems probable that disavowal meant denying all knowledge of mainour which was no longer - perhaps had never been - in evidence, but which remained part of a generalised accusation of suspicious behaviour.

The defendant's word, and any goods with which he was taken, were not the only evidence upon which the jury based their verdict. In private actions for debt and the like, documentary evidence was frequently

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[1] e.g. ibid., m.13 (Richard Huggin).

[2] Placita Corone, 24.

[3] JUST 3/179, m.7.

[4] JUST 3/174, m.1 (Thomas Pinchbeck).

admitted,[1] and witnesses to a charter might be produced (although no procedure existed for their compulsion) to confirm or deny its provenance and content.[2] This use of documents as records of transactions was a natural extension of the use of witnesses and participants; the sort of lawful dealings which might provide a defence to an accusation of theft were seldom likely to have been recorded, and it was therefore reasonable for the courts to admit verbal evidence, as they did.[3] Other sorts of document could also be used: the trial on a peace sessions indictment for false imprisonment was adjourned to allow the defendant to produce the venire facias on which he claimed to have been acting.[4] Of a different order was the examination of witnesses to events. This was, again, a feature of many private actions,[5] but in criminal prosecutions there is no evidence of a regular procedure. It is clear that justices felt at liberty to interrogate defendants and their accusers to elicit claims and statements

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[1]Thayer, Evidence, 104ff.

[2]Sayles, King's Bench, IV, no.32; V, no.9, where the distinction of function between jurors and witnesses is blurred by the statement that the defendants 'Posuerunt se super iuratam patrie et super testes in scripto predicto nominatos'.

[3]Plucknett, Common Law, 436. The example given in Placita Corone, 25 shows the acceptance of such testimony from an abjured felon, but he was only produced because he was spotted by the defendant while passing the window of the courthouse.

[4]JUST 3/170, m.2.

[5]Sayles, King's Bench, I, no.114; V, xcv.

well outside the formal requirements of appeal and exception,[1] and the justices of gaol delivery could allow a peace sessions indictment to be supported by the sworn testimony of the alleged victim.[2] Otherwise it seems that it was up to the jurors, guided perhaps by the bench, to use their discretion and initiative. In the mid-fifteenth century Fortescue emphasised in his treatise that jurors were from the neighbourhood of the facts at issue and were therefore well able to assess the credibility of the circumstances alleged by either side,[3] and he further declared from the bench, in a private action, that 'if the jurors come to a man where he lives, in the country, to have knowledge of the truth of the matter, and he informs them, that is justifiable; but if he comes to the jurors or labors to inform them of the truth, it is maintenance, and he will be punished for it'.[4] Notwithstanding such a vigorous attitude, it is clear from Fortescue's account of procedure that testimony in court by witnesses in private actions was commonplace,[5] and the chancery was then already

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[1] Placita Corone, 8-9, 15-22.

[2] JUST 3/179, m.2 (Philip Bullingdon). The defendants were nevertheless acquitted; their accuser, by acting as witness and not as appellor, seems to have avoided the amercement consequent upon a failed appeal.

[3] Fortescue, De Laudibus, c.28.

[4] Year Book 28 Henry VI, quoted in Thayer, Evidence, 128-9.

[5] Fortescue, De Laudibus, c.26.

developing the modern use of the subpoena.[1] It is probable, despite the relatively slow development of procedural modifications in the criminal sphere, that by the end of the fourteenth century witnesses were an accepted feature of criminal trials, while having no formal or essential part in the procedure.

A further use of witness testimony is implicit in the obscure manner of acquittal without a jury inquest. This occurred quite frequently at gaol delivery, most commonly in cases of persons arrested on suspicion. After mention of the cause of imprisonment (there is rarely, in these cases, any suggestion of a specific accusation in indictment form),[2] the record states that 'because it is testified in this court by many trustworthy persons (fidedignes) that N. is of good repute (de bona fame)', he is acquitted and released; sometimes this discharge is preceded by judgment of 'not guilty'.[3] In the following reign the procedure is clearer: many suspects are 'delivered after proclamation', in default of accusers;[4] some of them

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[1] Thayer, Evidence, 129.

[2] Entries usually take the form 'taken at A. on suspicion' (e.g. JUST 3/179, m.5d); occasionally the suggestion is amplified to 'suspicion of larceny' (e.g. John Jardevyle: ibid., m.12), and the arresting officer may be mentioned: e.g. the case of Giles Zelond: ibid., m.13d.

[3] e.g. John Boys: ibid., m.5d.

[4] e.g. JUST 3/218/1, mm.198, 206, 231-2, 242.

are said to have taken oaths of good behaviour (occasionally in respect of specific persons), and to have found sufficient security. The cases are noted on the sheriff's Kalendar of prisoners, but do not always find their way to the enrolment.[1] The additional note of '40d.' over several names suggests some sort of security or perhaps an amercement. The form of acquittal without an inquest presumably had its origins as a procedural corollary of the terms upon which persons were arrested, as being of ill repute; this would certainly explain the use of such forms with persons arrested by justices of the peace,[2] pursuant to the statute of 1361.[3] The bulk of the arrests on suspicion, however, were not attributed to justices or to any specific official; the invariable mention of the place of arrest suggests that arrests without indictment were part of the routine duties of local officials, under the broad terms issued in 1331.[4] This strengthens the

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[1] For the previous reference to a file, cf. the roll at JUST 3/194; JUST 3/205, m.6d.

[2] e.g. Robert Webbe: JUST 3/174, m.1d; Giles Zelond, JUST 3/179, m.13d.

[3] 34 Edward III, c.1 gave the justices generalised authority over 'mesfesours, riotours, et toutz autres barettours', wandering 'pilours et robeours', and 'touz ceux qi ne sont de bone fame'. For the possible interpretations of this statute, to cover (for example) nightwalkers, whoremasters, drunkards, and eavesdroppers, see W.Blackstone, Commentaries on the Laws of England (8th edn., Oxford, 1778), IV, 256.

[4] 5 Edward III, c.14.

supposition that 'good repute' was established by witnesses; officials who might have conducted the arrest could hardly be expected to provide a favourable local testimonial. No responsibility attached to anyone speaking for the defendant; mainpernors were not required. The procedure of acquittal in this fashion was nevertheless far from automatic, as its converse shows: two men charged severally with homicides, and a third with larceny, were acquitted by jury, notwithstanding which they were remanded in custody because they were not of good repute. Whether objections to the verdict were raised by the indicting officials, or discretion was exercised by the justices, is not clear.[1] If the former, the objections lapsed with time, since one of them was found to be of good repute at the next gaol delivery;[2] in this type of case, as in other non-capital cases, the justices may have felt entitled to use or count remand in custody as a punitive sentence.[3] If concrete suspicions were entertained, the remand could be genuine: two men disavowed the mainour with which they were said to have been taken, and, when proclamation failed to produce any accuser, they

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[1] JUST 3/179, mm.8 (John Skit), 9d (Richard Reyenes), 10 (John Sibley).

[2] ibid., m.10d.

[3] At the Winchester delivery in February 1409, three defendants complained that they had already been in prison for six, six, and one years respectively: JUST 3/218/1, m.218.

were mainprised pending the next delivery; the next defendant, also disavowing the mainour, was remanded in custody so that further enquiries could be made.[1] The discharge on 'good repute' of three men supposedly taken with the mainour emphasises the flexibility which procedures on vaguely specified delinquencies had attained.[2]

Unless a jury inquest had been omitted in this fashion, the jurors proceeded to give their verdict upon oath.[3] In the majority of cases this was a general verdict of 'guilty' or 'not guilty' as charged, but there were a good many special verdicts on various circumstances. By far the most common of these was the verdict of self-defence, in which the jury answered an indictment of felonious homicide with a circumstantial rigmarole, often of remarkable pedantry to leave no loopholes, giving a specious account of the situation in which the defendant had been placed. The usual story was that the defendant was attacked and in some way was prevented from flight - by stumbling, or by encountering a wall or a river - and that he drew a knife, either stabbing his assailant or causing him to impale himself, with fatal

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[1] JUST 3/174, mm.1 (Thomas Pinchbeck), 1d (Walter Tyler).

[2] JUST 3/179, m.13.

[3] In king's bench this could be respited nisi prius in default of sufficient jurors from the visne, e.g. KB 27/536, Rex m.20d (William Miller).

consequences. This was a standard verdict at gaol delivery,[1] and appeared even more frequently at coroners' inquests,[2] although such a verdict at the latter did not presuppose a similar finding at the former. When a trial jury returned this verdict, the defendant was remanded, usually on mainprise 'pending the king's grace' in the form of a pardon;[3] if the verdict was sufficiently exculpatory, there might be a straightforward entering of 'not guilty', without apparent need for further discharge.[4] A similar procedure was adopted in cases of insanity. If the defendant had been allowed to plead,[5] it was still open to the jury to find that the offence was committed during a bout of mania. It was returned that Ingram Carpenter 'is sadly troubled with a frenzy many times a year', as a result of which he killed his wife.[6] The jurors were then asked whether or not he killed her 'from preconceived malice and

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[1] e.g. JUST 3/179, mm.3 (William Bush), 6d (Maurice Hastell); cf. N.D.Hurnard, The King's Pardon for Homicide before A.D. 1307 (Oxford, 1969), 95.

[2] e.g. JUST 2/155, mm.9, 10, 11, 12, 16, 21.

[3] 'Ad gratiam domini Regis expectandum': e.g. JUST 3/179, mm.3 (William Bush), 5 (John Colville).

[4] e.g. ibid., mm.4d (Walter Upcote), 6d (Maurice Hastell).

[5] Above, 72.

[6] JUST 3/179, m.8: 'multociens in anno morbo furiositatis nequiter vexatur'.

felony',[1] and when they replied in the negative he was acquitted, although mainprise pending pardon was required both at gaol delivery and subsequently in king's bench.[2] An even more generous verdict was returned in a similar case from the following reign, when the finding was 'misfortune'.[3] The same sort of attitude could prevail in king's bench: there as elsewhere, the finding is only apparent in cases of homicide.[4] The benevolence of the jury could also be expressed in a third way - more common in the inflationary seventeenth and eighteenth centuries - whereby a non-capital verdict was returned on a capital indictment. This operated upon the ancient distinction between grand and petty larceny, the former applying above a twelvepenny limit,[5] over

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[1] 'Ex malicia et felonia precognatis'. This sort of question was commonly put to exculpating jurors: cf. Fitzherbert, Abridgement, Coron 284 ('per feloniam aut maliciam precogitatas') and 286 ('per feloniam aliquam seu maliciose excogitatam') - both cases from 1329.

[2] KB 27/530, Rex m.3. The judgment in king's bench is nevertheless marked sine die.

[3] JUST 3/194, m.1d: Agnes Noake 'nuper insanivit' and was 'bona et sua mente privata', so that she killed her son 'dum non fuit compos mentis sue ... nesciente'; the death was therefore 'ex infortunio'.

[4] Two cases show particularly humanitarian attitudes: one lunatic was mainprised conditionally on being 'safely guarded so that no harm can in any wise come to any subject of the king' (KB 27/475, Rex m.33), while another, remanded for unfitness to plead, later 'devenit sane memorie' and was allowed mainprise pending pardon: KB 27/471, Rex m.13d.

[5] See Statute of Westminster I (3 Edward I), c.15; but in 1348 Thorp held that grand larceny applied to twelve pence and over: Fitzherbert, Abridgement, Coron 178.

which, even as late as Blackstone's day, 'the mercy of juries' was needed to 'strain a point'.[1] Blackstone blamed the declining value of money, but as early as 1389 a jury halved the stated value of a stolen sheep to save a man from the gallows.[2]

If the jury returned a verdict of 'not guilty' the defendant was released at once unless he was a notorious suspect or had other indictments pending; if the verdict was 'guilty', the only means of forestalling sentence was a plea of clergy. A defendant who claimed successfully that he was a clerk was not subject to the judgment of a secular court, and was therefore handed over to the ecclesiastical authorities.[3] The advantage was clear: the ultimate sanction of the Church was imprisonment, and that only for the time it took to escape or obtain 'purgation', the canonical procedure for trying a suspected clerk by credible evidences of his innocence.[4] By the time of Wickham's accession to the see of Winchester the procedure was not, in most cases, a trial at all: purgations were ordered after the lapse of some years had given the clerk, whether convict or merely

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[1] Blackstone, Commentaries, IV, 237-8.

[2] JUST 3/179, m.3 (William Laver); they also denied that he was a common thief. The case is exactly similar to an earlier one: Fitzherbert, Abridgement, Coron 451.

[3] Plucknett, Common Law, 439-41; Pollock and Maitland, I, 441-457.

[4] For the late fourteenth century, see Wykeham's Register, II, 5 and n.

indicted, an effective prison sentence.[1] Eligibility for this reprieve was interpreted very widely. The defendant was handed 'a book' - perhaps already, and certainly by c.1450,[2] a bible open at the 'neck-verse'[3] - and if he 'read like a clerk' he was allowed benefit of clergy, and could be claimed by the ordinary or his representative.[4] The ordinary was entitled to disclaim anyone who, in his opinion, failed to read like a clerk or was otherwise disqualified for the Church's protection,[5] but there was little attempt to maintain the fiction of clerical status; a man could be accepted on the simple basis of being 'literatus'.[6] In Richard II's reign clergy could

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[1] e.g. ibid., II, 83 (William Dyket, six years), 84 (Thomas Lybaud, nine years), 95 (Robert Bode, twelve years), 113 (John Bowker, six years), 122 (Nicholas Shorte, two years), 128 (Robert Eyre, seventeen years, and Henry Middleton, fourteen years), 184 (Richard Brandon, twenty years), and 443-4 (four men, after sixteen, two, fifteen, and eighteen years respectively). John Wardecorps was remanded again, after four years, because the charges were grave and well supported by evidence (92).

[2] O.E.D., s.v. 'neck-verse'.

[3] Psalm 50 (Authorised Version 51), 1: 'Miserere mei Deus secundum magnam misericordiam tuam: et secundum multitudinem miserationum tuarum dele iniquitatem meam'.

[4] e.g. Sayles, King's Bench, VII, 55.

[5] Staunford, Plees del Coron, 123v-124r.

[6] Wykeham's Register, II, 453. A Cambridge approver 'erat laicus' when arrested, but was coached in letters while in prison, by a priest who was consequently charged with felony: Sayles, King's Bench, VII, 31-3.

still be claimed in any case except high treason.[1] Justices used their discretion; a man convicted by a jury of what they described as a particularly brutal rape was nonetheless compelled to claim clergy against his will,[2] while in 1395 the justices successfully discouraged the ordinary from claiming a prisoner even though the man read like a clerk.[3]

Sentence upon conviction varied with the offence. For trespasses against the peace - assaults, pilfering, vandalism - both peace sessions and king's bench in 'eyre' levied unspecified fines upon offenders, just as for economic offences. Such fines were imposed (for example) upon two Hampshire men for maiming;[4] in four Coventry cases of assault, one including house-breaking;[5] in a Warwickshire case of stealing shrubs;[6] and, at the Hampshire sitting of king's bench in 1393, upon a miscellany of poachers, rustlers, brawlers, and even jewel thieves, as well as on a man who attacked a subsidy collector, a coroner who accepted a bribe; and a dean who blackmailed members of his

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[1] ibid., VII, 19-21.

[2] JUST 3/35B, m.38.

[3] JUST 3/177, m.20d.

[4] Putnam, Proceedings, 220 no.37.

[5] Kimball, Warwicks Sessions, 57 nos 216, 218-20.

[6] ibid., 86 no.41.

flock.[1] The scale of such fines is never specified in the record, the interlineation finem fecit usually sufficing, but the fines and forfeitures section of each Coram Rege roll gives precise information. In the aftermath of the 1393 Winchester 'eyre' three men paid two shillings each for forcible disseisin, as did an overcharging tanner, while an unspecified trespass cost the culprit half a mark.[2] Entries for the following term show another tanner paying one mark, two brothers paying twenty shillings each for a trespass, and an extortionate dean paying forty pence.[3] Long sequences of Yorkshire fines in the latter term illustrate the wide range of amounts, from a few shillings to several pounds, which the court felt able to inflict. Despite the early discovery that the royal discretion of mercy could be purchased,[4] fines and amercements were for a long time regarded primarily as reparation for administrative and judicial misfeasance or nonfeasance,[5] and the use of monetary

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[1] KB 9/108, mm.4 (John Bastard, John Garston, Richard Warner), 6 (John Wakeforth), 4 (John and Richard Bastard), 4 (Robert Smith, John Norris the elder), 32 (Robert Woolridge), 5 (John Tauke), 9 (William Knott).

[2] KB 27/527, fines m.1d.

[3] KB 27/528, fines m.2d.

[4] Pollock and Maitland, II, 513-5, 517-8.

[5] Notionally at least, fines were offered and amercements were imposed, but the practical distinction in criminal proceedings was minimal.

penalties for offences was left without a formal structure;[1] hence the rather loose stipulation of 1361 that 'fines, which are to be made before justices for a trespass done by any person, be reasonable and just, having regard to the quantity of the trespass, and the causes for which they may be made',[2] and subsequent efforts to inhibit the award of excessive penalties,[3] first promised in 1215.[4]

The financial penalty was closely related to the use of imprisonment as a punishment, either in joint or in alternative terms.[5] The development of this use has been scrutinised closely from the evidence of statutory and related provisions,[6] and it is enough to state that by the late fourteenth century imprisonment could be provided in a wide range of cases, and for very specific terms.[7] Nevertheless, imprisonment as a sentence for noncapital offences is almost wholly absent from the records of this period. A rare specific instance was the case of petty larceny returned on a grand larceny indictment, when the court

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[1] Cf. Crown Pleas of the Wiltshire Eyre 1249, ed. C.A.F. Meekings (Wilts Arch. Soc., Rec. Branch, XVI, 1960), 106-15.

[2] 34 Edward III, c.1.

[3] 38 Edward III.1, c.3; cf. 7 Henry IV, c.3.

[4] Magna Carta (1215), 20-22.

[5] Pollock and Maitland, II, 516-7.

[6] Pugh, Imprisonment, c.ii, and cf. c.i.

[7] ibid., 29-30; for the rate, c.1300, of a week's imprisonment for petty larceny per pennyworth stolen, see Plucknett, Common Law, 457.

remanded the convict to gaol by way of sentence.[1] It is reasonable to infer an unofficial policy from the frequency with which suspects, and occasionally persons actually indicted, were remanded at one gaol delivery and acquitted at the next;[2] it is possible that justices of the peace sometimes adopted the same principle. Prison sentences, especially for economic offences, may have resulted from indictments determined at peace sessions and not preserved. Otherwise it seems that imprisonment in general, and the offences for which it was the sole provision, had little place in the repertoire of the royal courts.

For felony and for treason the punishment was death. Some burghal franchises claimed the right to eccentric modes of execution - drowning on the foreshore at Portsmouth and Southampton, precipitation from the cliffs at Dover - but there seems to be little evidence for or against the possibility of their perpetuation into the later fourteenth century.[3] In general, certainly, the punishments were standard.

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[1] JUST 3/179, m.3 (William Laver): 'pro pena sustinenda occasione predicta usque proximam deliberacionem gaole'. Cf. JUST 3/185, m.12 where two men, convicted separately of 'felonious' thefts worth 6d. and 10d., were discharged because of the time they had spent in prison on remand.

[2] See below, 271.

[3] See Pollock and Maitland, II, 496 and n.; J.Y. Akerman, 'Furca et Fossa', Archaeologia, XXXVIII (1860), 54ff; Bateson, Borough Customs, I, 74-7. At Hastings, throwing convicts from cliffs was the custom in 1356 and perhaps only superseded by hanging temp. Edward IV: ibid., 76; Sussex Archaeological Collections, XIV, 72-3.

For felony, men and women alike were simply hanged; for treason, the situation was more complicated. For petty treason, women were burned, while men were drawn to the place of execution at the tail of a horse, before being hanged. Such drawing was an adequate torture in itself, particularly if the victim was not placed on a hurdle,[1] and prisoners sometimes made strenuous efforts to be spared that part of the sentence.[2] The full horrors of the judicial imagination were reserved for men convicted of high treason, for which a standard punishment was evolved fitfully during the thirteenth century,[3] and seems to have crystallised under Edward II. Traitors were drawn and hanged, as for petty treason, but they were cut down from the gallows while yet living and disembowelled; the entrails and genitalia were then burned before the victim's eyes, after which he was beheaded and his body quartered, the pieces being set up publicly as a warning to others. There may have been some notion of punishing manifold capital crimes with 'four or five different deaths',[4] and there were

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[1] After sentencing a man for petty treason in 1359, Shareshill 'forbade on pain of imprisonment that friars or anyone else should carry him when he was being drawn, or give him any relief, but that, without a hurdle or any other sort of protection, he should be drawn by horses to the gallows from the room where he was sentenced': Fitzherbert, Abridgement, Coron 210.

[2] KB 27/546, Rex m.11 (Adam Hasting).

[3] Pollock and Maitland, II, 500-1.

[4] ibid., 501.

half-hearted attempts to relate some of the butchery to contemporary ideas of the physiological seat of motivation,[1] but revenge and deterrence must have constituted sufficient justification; even so obscure a traitor as Henry Talbot, in 1417, was considered worth the expense of advertising his fate.[2] For petty and for high treason women were accorded the supposedly decorous fate of burning at the stake, although the sentence was rare enough to rank as news when it was carried out.[3] In all death sentences upon women, respite of execution was granted by the court if the defendant was pregnant; a jury of matrons was required to confirm or deny the condition, after which the mother was remanded in custody until she gave birth, when sentence was finally carried out.[4]

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[1] e.g. the verdicts on Gilbert Middleton in 1318, Andrew Harclay in 1325, and William Wallace in 1337: Sayles, King's Bench, IV, no.29; L.O.Pike, A History of Crime in England, I (London, 1873), 226, 470-1; Year Books 11 and 12 Edward III, ed. A.J.Horwood (Rolls Series, 1883), 171-2. Cf. J.G.Bellamy, The Law of Treason in England in the Later Middle Ages (Cambridge, 1970), 26, 46.

[2] E 101/571/35 is the account for his execution expenses, rendered by the sheriffs of London; items totalling £7 10s. included pickling and packing the quarters and sending them by special messengers for display at four strategic strongholds in the north.

[3] See the case of Elizabeth Walton, below, 284-7.

[4] ibid.; Fitzherbert, Abridgement, Coron 180, 240. Several entries from c.1360 show the rejection of the plea that a woman allowed one respite might obtain another if she became pregnant again (ibid., Coron 130, 168, 188, 253); two of these mention that the gaoler was not punished for carelessness, as perhaps he should have been: Staunford, Plees del Coron, 198v. For pardon after such a respite, see Cal. Pat. Rolls 1391-6, 317.

There is some doubt as to the promptness with which the death penalty was executed. In some instances it is quite clear that sentence was carried out on the same day, and even in the presence of the sentencing justices;[1] in others it is equally clear that execution was delayed for months or even years. Since this latter evidence arises mostly in the preambles to pardons in which it is stated that the grantee has already been sentenced to death,[2] an informal stay of execution may have depended on the probability of obtaining a permanent discharge. The procedural position of the pardon was variable. In some cases defendants obtained pardons before they came up for trial, and produced them when asked to answer the charges;[3] the remand of some of these prisoners on their first appearance suggests that they were given time in which to arrange their defences.[4] It is difficult to judge whether this would have been on extrinsic grounds - principally, the ability of the defendant to raise enough money or influence to command a reprieve - or on the merits of the case at first glance. The latter possibility

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[1] Pugh, Imprisonment, 210-1; Putnam, Proceedings, civ-cv. In treason cases there were political reasons for expedition: Rot. Parl., III, 238, 243.

[2] e.g. Cal. Pat. Rolls 1388-92, 85, 317, 328, 333, 463, 464, 497.

[3] e.g. JUST 3/194, mm.1d (John Bayley), 7 (Peter Houghe).

[4] e.g. JUST 3/179, mm.11d (Joan Howes), 12 d. (James Dingley).

is supported by the instances in which defendants, exculpated by the jury on grounds of self-defence or lunacy, were not sentenced but merely mainprised 'in anticipation of the king's grace';[1] it looks as though the discretion of the judges in this situation was commonly invoked.[2] The latitude of discretion in worthy cases was absolute; Ingram Carpenter's remand on mainprise for homicide, pending a pardon, was written off without day in king's bench, despite his nominal answerability in default.[3] In the light of these instances, an informal recommendation for delay in the execution of potentially pardonable convicts may reasonably be postulated, where delays can be detected; otherwise it was the job of the sheriff or the marshal to dispose of his charges as quickly as possible.[4]

A further condition which attached to sentences for treason and felony was that of forfeiture. In case of treason the convict's lands escheated permanently to the crown; in case of felony the escheat was to the lord, saving the king's 'year, day, and waste', giving the crown total discretion for that

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[1] e.g. ibid., mm.3 (William Bush), 5 (John Colville).

[2] Cf. the case of a procedural anomaly which led the justices to respite their sentence of death: Cal. Pat. Rolls 1391-6, 338. The gaol delivery roll (JUST 3/182) lacks the records of this session.

[3] KB 27/530, Rex m.3.

[4] There could, however, be opportunities for escape before sentence was executed: Cal. Pat. Rolls 1391-6, 729.

period with the single liability to surrender the land to its lord thereafter. In either case, the chattels of the convict were forfeit to the crown, as were those of anyone outlawed for felony, and anyone who, when accused or suspected of an offence for which he was later acquitted, fled.[1] It was usual for the coroner's jury to state whether or not a fled felon had any chattels, while the petty juries at the determining session were expected to make similar assessments for anyone convicted, as well as a statement of their lands, if any;[2] conversely, an acquittal might incorporate a rider stating that the defendant did not flee.[3] The details of all such forfeitures of chattels, and the individuals, officials, or communities responsible for their custody, were listed or 'estreated', for each session of the court concerned, together with other fines, amercements, and deodands, and the estreats sent into the exchequer, so that process could issue thence for the collection of dues by the sheriff.[4] In some cases, particularly if

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[1] e.g. Richard Sybald of Norfolk: JUST 3/182, m.7. In 1412 it was ruled that the indictee at a coroner's inquest should forfeit chattels, subsequent acquittal notwithstanding: Fitzherbert, Abridgement, Forfeiture 29, and cf. 32.

[2] Cf. Sayles, King's Bench, VII, 55-6, where a jury makes a detailed (though incomplete) analysis of the convict's property; also below,

[3] e.g. JUST 3/218/1, m.231.

[4] This procedure is analysed briefly, for the fourteenth century, by W.A.Morris in English Government at Work, II, 80; and extensively, for an earlier period, by Meekings in Wilts Eyre 1249, 106-15.

lands were involved, the escheators accounted for the forfeitures or specified who was responsible; except in special circumstances, such as the aftermaths of the Peasants' Revolt and the attainders of 1387-8,[1] this procedure was only spasmodically effective. When fiscal efficiency was a high priority, the collection of forfeitures was vested in special commissions.[2]

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[1] For these forfeitures in Hampshire, see the escheators' accounts at E 136/195/1, mm.4-7 (chattels of the Winchester rebels), and E 136/195/7, mm.10-11, and E 136/195/7A, mm.1-2 (lands of attainted justices).

[2] The parliament of Easter 1357 granted forfeit chattels as a contribution towards a subsidy - not for the first time; the returns remain among the lay subsidy records, e.g. E 179/161/31-32, for Oxfordshire.

III

The Personnel of Justice

In practice the efficiency and the fairness of the procedures of criminal justice were dependent upon the interests - personal, social, material, political - affecting the personnel of the judicial administration. Inevitably, much of the evidence for such interests has been lost irretrievably; even with complete record survival, attention would hardly have been drawn explicitly to the more heinous forms of partiality. It is nonetheless possible, by tracing biographical details, to infer the likely sympathies of particular individuals, and the ways in which these sympathies might have impinged upon their judicial duties. No simple pattern can be found; too many individuals occur in contexts which cut across single judicial functions - the coroner who served on a petty jury, the steward of a liberty who was also a justice of the peace - and display commitments and loyalties which cut across discrete social strata. Thus analysis cannot be straightforwardly 'horizontal' along social homologues, not 'vertical' through analogous functions as juror, executive, or justice; it is most readily followed, like procedure in the foregoing chapter, from court to court.

At a coroner's inquest the major participants were the coroner and the jurors. The Hampshire

county coroners in Richard II's reign, like the generality of county coroners at this date,[1] came from modest positions within the 'knightly and near-knightly' class which provided a large proportion of county administrators, and six of the seven neither rose to higher office nor came from families which did so. The seventh, John Tauke, was the only one who seems to have been in any way well-connected. Unfortunately the precise connections are difficult to establish, because of problematical references to several contemporary namesakes within the same family. The coroner's career in that office from 1390 to 1400 is clearly defined,[2] and, despite the complexity of the evidence,[3] he seems to have been one of a family based on one manor at Basingstoke and another at Westhampnett in Sussex; it is overwhelmingly probable that his elder brother was Sir William Tauke, chief baron of the exchequer and founder of the family fortunes, and that he is identical with John Tauke of Sussex, whose professional career embraced several roles in local crown administration (including the escheatorship of Hampshire and Wiltshire), as well as long service to the house of Arundel, one of the richest and most influential families in the land. This coroner,

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[1] Hunnisett, Medieval Coroner, 170-1.

[2] Above, 41.

[3] The problems are discussed in Post, 'The Tauke family'.

therefore, was of greater status and wider importance than was to be expected of a man in his position.

Apart from Tauke, the Hampshire coroners showed little connection or aspiration beyond their own level in local administration, and thus remain relatively obscure. Nicholas Spencer, who seems to have been coroner for the Isle of Wight throughout Richard II's reign, also acted at various times as a commissioner of array,[1] a subsidy collector,[2] and a crown agent for sundry business,[3] all on the Isle of Wight. In his private capacity he seems to have been very prosperous; he and his wife acquired various properties on the Isle, mainly from the priors of Carisbrook and Appledurcombe,[4] and he also partnered his neighbour, Walter Burton, in land dealing and in the wool trade.[5] In the subsidy of 1378 (of which Spencer and Burton were local collectors) Spencer appears as a franklin, assessed at forty pence, in Fairlee township, and his household included five servants; Burton was assessed similarly.[6] This may or may not reflect accurately Spencer's standing at the time;[7] by the end of the

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[1] e.g. Cal. Pat. Rolls 1381-5, 292; 1385-9, 387.

[2] e.g. Cal. Fine Rolls 1383-91, 217, 267; 1391-9, 26.

[3] Cal. Pat. Rolls 1385-9, 390.

[4] Cal. Pat. Rolls 1388-92, 507; 1396-9, 420.

[5] Cal. Pat. Rolls 1381-5, 442; 1396-9, 73.

[6] E 179/173/41, m.1.

[7] For the unreliability of tax returns at this time, see M.McKisack, The Fourteenth Century (Oxford, 1959), 406-7.

reign he was able to undertake a rent of a hundred marks a year on a single transaction.[1] Rather less information is forthcoming about the other coroners. One of them, Richard Eastney, is only a name, save the fact that he, like Chantsinger, came from Alton.[2] Three others - Chantsinger, Warren, and Hanger - served frequently as subsidy collectors,[3] and occasionally on other small commissions on crown business;[4] Hanger also held a crown appointment as riding forester in the New Forest,[5] and Warren was for a short time lieutenant or steward to the earl of Kent in the same bailliwick.[6] Chantsinger's wife held a small estate for life with reversion to Sir Ralph Norton,[7] but this may well have been a commercial rather than a hereditary relationship. Hanger was for a long time involved in litigation with Sir Thomas West, and later with his widow, for several holdings in the Christchurch and Lymington areas.[8]

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[1] Cal. Pat. Rolls 1396-9, 420.

[2] V.C.H. Hants, II, 479.

[3] e.g. Cal. Fine Rolls 1377-83, 188, 339; 1383-91, 70, 267.

[4] e.g. Chantsinger's appointment to enquire of waste at Andwell: Cal. Pat. Rolls 1377-81, 129.

[5] Cal. Pat. Rolls 1396-9, 357.

[6] JUST 3/174, m.1d.

[7] Cal. Pat. Rolls 1377-81, 486, 491, 508.

[8] ibid., 493; Calendar of G.D. Commissions, no.498.

Ive does not for the most part seem to have received crown appointments, perhaps because of youthful misdemeanours;[1] he was,however, steward of Andover in 1395,[2] and returned the names of the bailiffs of the town in response to a patent of 1408.[3] Between these dates he served an isolated turn as subsidy collector.[4] The coroners were thus men of substance, but of essentially local importance within the county; the circulation of the Winchester coronerships suggests a roughly parallel hierarchical position in the boroughs.[5]

The jurors with whom the coroner conducted the inquest was recruited in the locality, normally by the hundred bailiff.[6] The relative roles of the jurors of the hundred and the representatives of the four nearest townships was never clarified uniformly, and two or more verdicts were sometimes returned, but by the later fourteenth century a single verdict was usually taken from jurors of the neighbourhood of

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[1]He was indicted for wounding in 1378: KB 27/470, Rex m.17.

[2]KB 27/536, Rex m.21d.

[3]Cal. Pat. Rolls 1405-8, 415; SC 1/43, no.114.

[4]Cal. Fine Rolls 1399-1405, 144.

[5]Above, 38-9.

[6]Hunnisett, Medieval Coroner, 13.

the death.[1] Accordingly, it is sometimes possible to establish the identity and status of coroners' jurors by comparison with contemporary poll tax returns for the proximate townships. The survival of these returns is patchy, and their assessments of townships and (where given) individuals require circumspect acceptance.[2] For present purposes, however, it is enough to find a given person in a given place; his occupation and his socio-economic status, as given, are at least useful in assessing roughly his relative position within his community, even if more exact and definitive conclusions cannot be drawn as yet.[3] On this limited basis there are still problems. Firstly, the poll taxes were only levied at the beginning of the reign - in 1378, 1379, and 1380 - and the tracing of jurors from inquests fifteen and twenty years later is bound to suffer from the ordinary processes of mortality and migration. Secondly, the survival of returns from Hampshire is particularly poor; very little of the county is covered at all (except for a perfect 1378 return for the Isle of Wight), and many of the fragments cannot easily be

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[1] ibid., 14-16; cf. R.F.Hunnisett, 'The Reliability of inquisitions as historical evidence', in The Study of Medieval Records: Essays in Honour of Kathleen Major (Oxford, 1971), 224.

[2] Cf. above, 104 n.7.

[3] There is, surprisingly, no authoritative treatment of the subsidy returns under Richard II.

dated. Thirdly, burgeoning resentment at heavy taxation in an economic crisis apparently resulted in substantial under-enumeration in 1379 and 1380,[1] due partly, perhaps, to falsified returns and partly to widespread absenteeism when the assessors and collectors were in the district.[2] All these factors reduce drastically the number of inquests with potentially identifiable jurors, but some fifteen juries have proved susceptible of correlation.

As might have been expected of coroners' inquests, where proceedings were frequently on straightforwardly accidental circumstances with few fiscal or personal repercussions, the recruitment of jurors tended to follow the most convenient course, including people from a fairly restricted area and extending in terms of status to the lowest of taxable classes, the peasant cultor, agricola, or tilman. It would be dangerous

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[1] The terms of these taxes, in Rot. Parl., III, 57, 90, are translated in English Historical Documents, IV, ed. A.R.Myers (London, 1969), nos 50-1. The elaborate statistical critique of the returns by J.C.Russell, English Medieval Population (Albuquerque, 1948), c.v, suggests that certain suspicions are justified, but pays too little attention, in enumerating the 'terminal groats', to the use of the mark and the half-mark as standard accounting units.

[2] E.Powell, The Rising in East Anglia in 1381 (Cambridge, 1896), 5-7. Nonetheless it has yet to be proven that the intrinsic financial severity of the subsidies was sufficient to warrant extensive domestic disruption and the risk of reprisals. The same over-hasty assumption is made by J.R.Maddicott, The English Peasantry and the Demands of the Crown 1294-1341 (Past and Present Supplement I, 1975), 14-15, in relation to earlier subsidies.

to underestimate the status thus indicated - one such juror kept two servants, and paid excessive wages to a couple and their servant[1] - but it is as low on the social scale as this means of observation allows. In some inquests almost all the identifiable jurors (of a total of twelve) came into this category: the jury on Joan Dean shows four agricole, at fourpence each, and one carpenter at twelvepence, all from Soberton, while the overlapping jury on William Taylor included five agricole at fourpence and a cooper at sixpence, from Soberton, with another agricola from Burwell in Hambledon.[2] Most juries, however, show some extension up the scale. Four of the jurors on William Westerfield were cultores assessed at four-pence, two from Gatcombe and two from West Standen, but a third Gatcombe man, although assessed at four-pence, was the son of a farmer, and a fourth was a labourer assessed at eightpence.[3] The jurors on Alice Osborne, all from Northney, were also variously assessed, although the flexibility of the 1380 tax, and its heavier demands, make direct comparisons difficult: one agricola at two shillings and another

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[1] Thomas Dopping of Soberton, juror on William Taylor (JUST 2/155, m.10d), was, like his servants, assessed at fourpence (E 179/173/54, m.2); at peace sessions a man was indicted because Dopping paid fourpence a day 'pro se, uxore sua, et famulo suo': Putnam, Proceedings, 213 no.3.

[2] JUST 2/155, mm.5, 10d; E 179/173/54, m.2.

[3] JUST 2/156, m.2d; E 179/173/41, mm.1, 4.

at 3s.6d., and one fisherman and two of unspecified occupation, each at four shillings.[1] The tracing of other juries falls foul of the same assessment, but the variety of status is clear. On the death of William Grove the only jurors of specified occupation were a carpenter (one shilling) and an agricola (three shillings), both of Denmead; two others from Denmead paid two and three shillings respectively, a fifth, from Chidden, four shillings, and a sixth, from Hambledon, eightpence.[2] Similarly the three Portsea jurors on John Abingdon paid 2s.4d., three shillings, and four shillings.[3] Equally various were the jurors on William Lock: a thresher (one shilling), a carpenter (two shillings), and one of unspecified occupation (four shillings), from Pokesole, an agricola (three shillings) from Crockerhill, and an artifex (three shillings) from North Fareham.[4] In a few cases the variety makes it quite clear that at least one person of superior standing in the township was on the jury. Of two Havant jurors on William Mott, one was assessed at three shillings and the other, a draper, at six;[5] of the jury on Richard Brickville, one Yaverland cultor paid (on the lower and finer assessment) four-

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[1] JUST 2/155, m.11; E 179/173/37, m.2d.

[2] JUST 2/155, m.16d; E 179/173/37, m.3d.

[3] JUST 2/155, m.15; E 179/173/37, m.2.

[4] JUST 2/155, m.17; E 179/173/37, mm.1, 3.

[5] JUST 2/155, m.13; E 179/173/37, m.2d.

pence, and a chapman and an undescribed man with four servants paid sixpence each, but a colleague from Brading, a farmer, paid forty pence.[1] The same farmer served, together with a similarly assessed smith from Brading, on the jury on Isabel Base, which otherwise consisted of five fourpenny cultores from Yaverland, Sandham, and Kern, and the undescribed sixpenny man with four servants.[2]

This marked disparity among the jurors is also indicated by those who, although not traced in subsidy returns, appear as presenting jurors at peace sessions. Presenting juries tended to consist of men in the lower reaches of the 'official' class and others of consequence in the locality, and were sometimes given to a class attitude towards the performance of their duties;[3] the presence of such persons on coroners' juries may accordingly count as a further indication of the participation, and presumably influence, of the neighbourhood aristocracy in this role. John Emmory, a frequent peace sessions juror,[4] served at the inquest on Agnes Sheet, where his only traceable fellows, from Boarhunt Herberd, paid two

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[1] JUST 2/156, m.2d; E 179/173/41, m.2d.

[2] JUST 2/156, m.2d; E 179/173/41, mm.2 and 2d.

[3] J.B.Post, 'Some limitations of the medieval peace rolls', Journal of the Society of Archivists, IV (1973), 635-7.

[4] Putnam, Proceedings, 226 no.61, 227 no.65, 228 nos 69 and 70.

shillings and a half a crown respectively, on the 1380 assessment.[1] Hugh Freeman similarly served at the inquest on William Harper with a labourer (fourpence), a poor merchant (sixpence), a fisherman and a carpenter (one shilling each), all from Broughton.[2] These isolated instances are consistent with the foregoing evidence on the routine recruitment of coroners' juries, and even two peace sessions jurors at the same inquest - John Whiston and William Smith serving with two cultores, a boatman, and a smith, on the death of John Pinchbeck[3] - correspond reasonably with this. One further case, however, arouses suspicions. None of the inquest jury on the death of William Daniels is to be found in the subsidy returns for the relevant townships. Two points argue that this is not accidental: firstly, the inquest and the subsidy were almost exactly contemporary, so that discrepancies due to the lapse of time should be minimal; secondly, in confirmation of the first point, the four next neighbours named in the record of the inquest not only occur in the subsidy return, under Boarhunt Herberd as expected, but they occur there

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[1] JUST 2/155, m.10; E 179/173/37, m.2.

[2] JUST 2/155, m.7d; E 179/173/40, mm.1, 1d; Putnam, Proceedings, 229 no.76.

[3] JUST 2/156, m.2d; E 179/173/41, mm.1, 3, 3d; Putnam, Proceedings, 229 no.75.

consecutively.[1] In view of this, the occurrence of three of these jurors as presenting jurors at peace sessions seems to indicate that the inquest jury must have been extraordinary in composition.[2] There is no overriding explanation for this, but the circumstances are suggestive. Of all the cases whose inquest jury has been traced, the death of William Daniels was, superficially at least, the most heinous of the culpable homicides, being - according to the jurors - a planned and secret murder, plotted by the victim's own servant and carried out with the help of others of the servant class, one of whom was given to violence anyway.[3] Since the defensive posture of the 'employer' and 'official' classes in this period generally can be detected in their attitudes as presenting jurors, particularly towards servants attacking their masters,[4] it is hardly surprising to find that, in the ominous atmosphere of social revolution following the 1379 poll tax, a coroner's jury in such a case was seemingly selected on an unusually strong basis of class representation.

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[1] JUST 2/155, m.3d; E 179/173/37, m.2.

[2] Putnam, Proceedings, 213 no.3 (Roger Upham), 217 no.22 (Richard Vaux), 230 no.77 (William Hall).

[3] Agnes, servant of William Frith, amerced for wounding a few months previously: Hampshire Record Office, 5.M.50/184.

[4] Post, 'Peace rolls', 636.

In contrast with the general homogeneity of the coroners, the officials who heard indictments in private local courts show a remarkably wide range in status. Even their formal status varied. In most hundreds the bailiff was essentially local to his bailiwick, carrying out the duties of summons and arrest, and holding the three-weekly hundred court, in contrast with his superior the steward, whose court-holding functions were limited to view of frank-pledge twice a year, and who represented more widely the interests of his patron; in royal hundreds this stewardship was held by the sheriff. There were exceptions to this broad convention. John Cotesmore seems to have been both bailiff and steward of Finchdean, for the honor of Arundel;[1] Andrew Eling, although bailiff of Mansbridge hundred, was also bailiff errant for the New Forest and the Isle of Wight.[2] These, however, emphasise the range of the group, which at its humbler extremity is represented by the obscure officers responsible for arrests on suspicion - John Munden for the prior of St Swithun's,[3] John Minors for the abbot of Hyde and William Porter for the abbess of Wherwell.[4] Scarcely more exalted than these bailiffs are some of the lesser stewards.

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[1] JUST 3/172, m.2; KB 37/2/16/2, unnumbered (schedules of county officials, returned by the sheriff).

[2] ibid.

[3] JUST 3/174, m.1d.

[4] JUST 3/179, m.13.

Robert More, steward in Evingar hundred for the prior of St Swithun's,[1] was a verderer of Pamber forest until his death early in Henry IV's reign;[2] Thomas Bealage, steward to Elizabeth Simeon for her moiety of Vernham liberty,[3] also acted as feoffee for Sir Walter Romsey in his disposition of the other moiety,[4] and his association in this with Lawrence Drew, king's attorney in the common bench,[5] may suggest legal affairs on a wider basis.[6] The identification of other undistinguished stewards suffer from namesakes. John Clerk of Lymington, who was exempted from offices and juries on the grounds of age in 1393,[7] was presumably the steward who held Lymington view of frankpledge for the earl of Devon a few years later,[8] but it is otherwise impossible to trace him distinctively. Similarly John Butler, steward of Basing for the Poynings family,[9] defies identification elsewhere,[10]

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[1] JUST 3/179, m.11.

[2] Cal. Close Rolls 1405-9, 208.

[3] JUST 3/179, m.2.

[4] Cal. Pat. Rolls 1381-5, 61; 1385-9, 300.

[5] Sayles, King's Bench, VI, Appendix XI.

[6] Drew's sister, however, was Sir Walter's daughter-in-law: H.G.D.Liveing, Records of Romsey Abbey (Winchester, 1906), 310.

[7] Cal. Pat. Rolls 1391-6, 317, 319.

[8] JUST 3/179, m.10d.

[9] JUST 3/179, m.3.

[10] Cf. a Hampshire juror in King's Bench: Cal. Pat. Rolls 1381-5, 586; a landholder in Lockerley and

and the ambivalent John Cotesmore may or may not have been connected with the more notable Cotesmores of Basingstoke and of Yaverland in the fifteenth century.[1]

Not all the stewards were by any means as obscure as this, and the greater information about many of them serves to strengthen the suspicion that the generality of these officials, great and petty, was dominated at all levels by the professional administrator rather than by the representatives of established landed and mercantile families. Thomas Aspale, steward to the Poynings family at Bramley,[2] may have come from an already successful family,[3] but his description as 'apprentice' in the household of Isabel Poynings suggests that he was trained, and probably retained, as a lawyer.[4] Retention in some such private capacity was sometimes coupled with crown appointments. John Deakin acted as steward, apparently concurrently, for

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Titherley: Calendar of Inquisitions Post Mortem (H.M.S.O., 1904-), XV, no.316; Cal. Inq. P.M. (Rec. Comm.), III, 107 no.112; Cal. Pat. Rolls 1391-6, 409, 582; and a bailiff of Southampton: ibid., 707.

[1] F.J.Baigent and J.E.Millard, A History of the Ancient Town and Manor of Basingstoke (London & Basingstoke, 1889), 264, 378; V.C.H.Hants, V, 207. A Sir John Cotesmore, justice of common pleas temp. Henry VI (E.Foss, Lives of the Judges of England (London, 1848-51), IV, 304-5), delivered Winchester gaol in 1424: JUST 3/205, m.1.

[2] JUST 3/179, m.13.

[3] A Thomas Aspale was sheriff and escheator of Hampshire, 1343-7 (List of Escheators for England and Wales, ed. A.C.Wood (List and Index Soc., LXXII, 1971), 147) and held lands in Romsey: V.C.H. Hants, IV, 455.

[4] He was assessed at half a mark: E 179/173/54, m.1d.

the earl of Kent in the New Forest,[1] for the earl of Salisbury in Christchurch and Ringwood hundreds,[2] and for the abbess of Romsey;[3] during the same period he was a riding forester in the New Forest (appointed as 'the king's servant'),[4] perhaps a yeoman of the chamber,[5] and a royal commissioner on various matters.[6] Similarly, Henry Holt's attachment to the Brocas family, as steward of Odiham castle for Sir Bernard and as agent under Arnold in Aliceholt forest,[7] arose partly from crown appointment, and private dealings,[8] in the forest, and he served on other crown commissions as well.[9] William Marshal also held crown appointments in Hampshire and Wiltshire,[10] latterly as constable

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[1] JUST 3/179, mm.8 bis, 9d, 11.

[2] ibid., mm.8, 10, 11 bis, 11d; he was also attorney for the next earl: Cal. Pat. Rolls 1396-9, 519.

[3] JUST 3/179, m.13.

[4] Cal. Pat. Rolls 1377-81, 228.

[5] Cal. Pat. Rolls 1391-6, 289.

[6] Cal. Pat. Rolls 1377-81, 423; 1388-92, 518; 1396-9, 363.

[7] JUST 3/174, m.1d; Cal. Pat. Rolls 1381-5, 525, and 1385-9, 127.

[8] He acted as feoffee in transactions there and elsewhere: Cal. Pat. Rolls 1381-5, 275, 282, 385, 441, 526.

[9] Cal. Pat. Rolls 1377-81, 568; 1381-5, 195. He was dead by 1396: Cal. Pat. Rolls 1391-6, 700.

[10] Cal. Pat. Rolls 1385-9, 179; 1388-92, 516 (as J.P.).

of Winchester castle;[1] his main attention, however, was clearly devoted to the duchy of Lancaster, which he served for most of Richard II's reign, notably as steward for the South Parts and in particular for Sombourne hundred.[2] The duchy, after uniting with the crown, claimed the service of Thomas Bonham, as duchy steward in Hampshire and Wiltshire;[3] his escheatorships in these counties during the same period,[4] likewise, were a natural part of his administrative career, which was partly in the crown service, as a local agent and justice of the peace,[5] and partly as an attorney and feoffee,[6] as well as steward to the Romsey family for Vernham liberty.[7] All these were men with diverse local interests in what were evidently professional careers.

This is not to say that professionals monopolised such stewardships; the established families also

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[1] Cal. Close Rolls 1409-13, 136.

[2] R.Somerville, History of the Duchy of Lancaster, I (London, 1953), 379; JUST 3/179, mm.5d, 10. Since his son was steward of the South Parts in 1409 (Somerville, I, 621), it was probably also the son who was bailiff of Sombourne in 1408 (ibid., 628, and cf. 629).

[3] 1401-?1409: Somerville, I, 621 and 629.

[4] 1402-3 (did not account) and 1406-7: List of Escheators, 148.

[5] Cal. Pat. Rolls 1388-92, 501; 1391-6, 89, 587; 1396-9, 95-6.

[6] Cal. Pat. Rolls 1385-9, 481; 1391-6, 475, 517; 1396-99, 520.

[7] JUST 3/179, m.2. His alienation of land to Edington priory was probably also family business, since Edington was closely connected with Romsey abbey: Liveing, Romsey Abbey, ch.ix, especially 150.

filled these positions. The most substantial of these stewards - perhaps the most 'county' - was Henry Popham. He and his ancestors had been lords of Popham since the early twelfth century,[1] and this remained his principal seat,[2] although his holdings in the county were numerous.[3] Despite the connections of members of his family with the duchy of Lancaster,[4] he served no notable interests exclusively: he was among the witnesses to the settlement of the episcopal estates when Wickham succeeded to the Winchester see;[5] he administered the goods of an intestate member of the Brocas family;[6] and he was steward to Elizabeth Julers, dowager countess of Kent, for her manor and hundred of Alton,[7] where he also claimed some lands for himself.[8] He was, occasionally, a justice of the peace;[9] very frequently he was

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[1] Cal. Pat. Rolls 1377-81, 110; cf. J.H.Round, 'The Rise of the Pophams', The Ancestor, VII (1903).

[2] Wykeham's Register, II, 467.

[3] V.C.H. Hants, II, 484; III, 20, 398; IV, 521-2, 588, 646; V, 228.

[4] John Popham was bailiff of Sombourne until 1408 (Somerville, Duchy of Lancaster, I, 628); Philip Popham was esquire to Henry, the first duke (SC 1/40, no.109), and Thomas Popham to John of Gaunt: Cal. Pat. Rolls 1396-9, 549.

[5] Wykeham's Register, II, 155.

[6] ibid., 279.

[7] JUST 3/179, m.8d.

[8] SC 8/212, nos 10593-4.

[9] Cal. Pat. Rolls 1381-5, 85, 142, 249; 1391-6, 728; 1399-1401, 210, 212.

knight of the shire;[1] in 1388-9 he was sheriff.[2] His prosperity is suggested by his loan of a hundred marks to the king in 1397.[3] In general, he was impressively self-sufficient in his role as a county magnate. This sort of independence can be traced for less weighty men. John Forster of Romsey seems to have come from a county family of modest substance; a Gilbert Forster was mayor, bailiff, and parliamentary burgess for Winchester in this period,[4] and Humfrey Forster married into the Pophams.[5] John himself at one time served as steward to the earl of Devon at Lymington;[6] he was also a justice of the peace and a tax assessor in the county at large.[7] His principal involvement was with the abbey at Romsey, whose tenant and benefactor he was, and whose sisterhood ultimately included his widow and perhaps his daughter.[8] Nearer to the Popham status was John

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[1] Members of Parliament, I: Parliaments of England 1213-1702 (London, 1878), 215, 226, 232, 235, 240, 248, 267.

[2] List of Sheriffs for England and Wales (P.R.O. Lists and Indexes, IX), 54.

[3] Cal. Pat. Rolls 1396-9, 178.

[4] Chitty, Mayors and bailiffs of Winchester, 3-4; Parliaments of England, 232, 242.

[5] SC 8/16101.

[6] JUST 3/174, m.1d.

[7] Cal. Pat. Rolls 1388-92, 137, 138, 342; 1391-6, 438; Cal. Fine Rolls 1377-83, 54, 144, 229.

[8] Liveing, Romsey Abbey, 166, 170-1. The John Forster who, as steward of the abbey, plundered it at the Dissolution and succeeded to the lordship of the

Bisterne. His family held Bisterne manor from the early thirteenth century,[1] and his own holdings extended elsewhere in Hampshire and in other counties.[2] The status of his family, and his own support of this, are suggested by his purchase, on two occasions, of exemption from distraint of knighthood, under the name 'John son of Margaret Bisterne';[3] he was also able to lend the crown a hundred marks in 1397.[4] His only appearance as a liberty steward was as lieutenant to the warden of the New Forest, at Lyndhurst;[5] otherwise his activities seem to have been at the higher level of justice of the peace, knight of the shire, and sheriff.[6] He was dead by March, 1399.[7]

The tenure of stewardships by these 'county' figures was nevertheless the exception which underline the general rule that the function belonged to

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manor, was probably a descendant: ibid.,ch.xiv; V.C.H. Hants, IV, 452, 468n.

[1] ibid., IV, 609, 635-6.

[2] ibid., IV, 388, 580; Cal. Inq. P.M. (Rec. Comm.), III, 213 no.2, 255 no.99; Cal. Close Rolls 1396-9, 461, 467.

[3] Cal. Pat. Rolls 1377-81, 449, confirming a patent of 1360.

[4] Cal. Pat. Rolls 1396-9, 181.

[5] JUST 3/174, m.1d.

[6] J.P. for Hampshire and Wiltshire, e.g. Cal. Pat. Rolls 1381-5, 71, 74; Parliaments of England, 238; sheriff 1378-9: List of Sheriffs, 54.

[7] Cal. Close Rolls 1396-9, 461.

the professional administrator. Edmund Spircock came from a family with some local standing in Andover,[1] and they had held lands at Clatford from the thirteenth century.[2] Edmund's first appearance in the records was in a pardon for killing a relative,[3] soon after the violent death of another member of the family,[4] but this seems to have had no effect on his career: he maintained a household with a private oratory in Andover,[5] held lands in the area,[6] and as steward of Andover held the view of frankpledge there.[7] This last post reflected his professional interests, for he was assessed for subsidy purposes as an apprentice at law;[8] in this capacity he was steward to the prior of St Swithun's at Burton Priors and Manydown.[9] He is also to be found as an attorney,[10] as a commissioner on various inquisitions,[11]

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[1] John Spircock was constable of Andover in 1346: JUST 3/130, m.77.

[2] V.C.H. Hants, IV, 362.

[3] Cal. Pat. Rolls 1350-4, 200.

[4] V.C.H. Hants, IV, 338.

[5] Wykeham's Register, II, 214.

[6] V.C.H. Hants, IV, 338.

[7] JUST 3/179, m.2.

[8] E 179/173/35.

[9] JUST 3/179, mm.2d, 4d.

[10] Cal. Pat. Rolls 1377-81, 34.

[11] ibid., 419; 1385-9, 320.

as a justice of gaol delivery in Wiltshire,[1] and - briefly - as a justice of the peace in Hampshire.[2] From transactions by his widow Julia it is clear that he was dead by 1391;[3] although the Clatford lands seem to have descended in a male line,[4] his professional career does not seem to have been emulated within his family.

The same appears to have been true of Thomas Brading. His beginnings were relatively humble; in the poll tax of 1378 he was described as clerk to William Ringbourne, and assessed at fourpence.[5] His connection with Ringbourne, however, served him in good stead. He came to have substantial holdings on the Isle of Wight, including the manor of Whitefield in Brading, which he held jointly with his second wife, Margaret.[6] He was steward on the Isle of Wight both for the earl of Salisbury and later for the duke of Aumale, holding view of frankpledge in this capacity;[7] he was a commissioner of array there,[8] as

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[1] Cal. G.D. Commissions, no.320.

[2] Cal. Pat. Rolls 1385-9, 81, 82-3.

[3] V.C.H. Hants, IV, 528n.

[4] Cal. Inq. P.M. (Rec. Comm.), III, 236 no.34.

[5] E 179/173/41, m.4. As clerk to one of the assessors, he may have assessed his own rate.

[6] Wykeham's Register, II, 559; V.C.H. Hants, V, 191. For his first wife, Joan, see Cal. Pat. Rolls 1388-92, 65.

[7] JUST 3/179, mm.8d, 12d.

[8] Cal. Pat. Rolls 1381-5, 292.

well as serving on sundry other commissions at various times.[1] He crowned his career with the escheatry of Hampshire and Wiltshire in 1408-9,[2] after which he and his family return to relative obscurity, despite the importance which he had enjoyed.

Another Hampshire administrator at the same sort of level came from a professional background. John Skilling occurs in the present context as steward to the abbess of Romsey;[3] he was escheator in 1390-1,[4] carried out royal business in Hampshire and Wiltshire,[5] and operated further afield as occupator of alien priories in Kent under Henry IV.[6] But he was not the first, or the last, of his family to pursue a professional career. Michael Skilling was a Hampshire justice of the peace,[7] and a local agent in the county both for Wickham and for Michael de la Pole;[8] he can reasonably be identified with the king's attorney in

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[1] ibid., 420; 1385-9, 390; 1396-9, 511.

[2] List of Escheators, 148.

[3] JUST 3/179, m.9d.

[4] List of Escheators, 144.

[5] Cal. Pat. Rolls 1385-9, 179; 1396-9, 363.

[6] Proceedings and Ordinances of the Privy Council of England, ed. N.H.Nicolas (Rec. Comm., 1834), I, 196.

[7] Cal. Pat. Rolls 1377-81, 512.

[8] Wykeham's Register, II, 252; SC 1/46, no.27, printed in Stonor Letters and Papers, ed. C.L.Kingsford (Camden 3rd Ser., XXIX-XXX, 1919), I, 35.

the court of common pleas from 1362 to 1380.[1] The family retained connections with Hampshire and with the legal profession well into the second half of the fifteenth century,[2] and two prioresses of Romsey maintained the status of the family into the sixteenth.[3]

In the nature of the distribution of local power in the late medieval period, only a few stewards from among the professional administrators could acquire the status of county magnates, and it is hardly surprising that the Hampshire trio who did so in Richard II's time were all local ministers to men of standing in the country at large, as well as acting for the bishop of Winchester. Walter Haywood was first and foremost a servant of John of Gaunt, whose Hampshire interests rested upon his hundred of Sombourne, held in right of his wife. Haywood's early career is obscure; by the time he was appointed Lancaster steward in the South Parts, in 1365,[4] he had already served as sheriff of Hampshire for a four-year spell,[5] acting as escheator for part of the same period.[6] It is possible that

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[1] Sayles, King's Bench, VI, Appendixes X-XI.

[2] Cal. Inq. P.M. (Rec. Comm.), III, 130 no.116; V.C.H. Hants, III, 445, and IV, 374; Baigent and Millard, History of Basingstoke, 116 and n.

[3] Liveing, Romsey Abbey, 236-7.

[4] Somerville, Duchy of Lancaster, I, 379.

[5] List of Sheriffs, 54.

[6] List of Escheators, 143.

he had already taken some part in Lancastrian administration;[1] he was certainly executing business for Winchester during Edendon's episcopate.[2] After his appointment as Gaunt's steward his career is more conspicuous: he was elected knight of the shire for Hampshire at once and on a later occasion;[3] he served as sheriff of Wiltshire from 1366 to 1371.[4] Although his role in the affairs of the bishopric was largely a formal one once the temporalities had been settled after Edendon's death,[5] he was active in Gaunt's service for some twenty years;[6] if his place on peace commissions is indicative,[7] his active career ended in 1384.[8] His numerous family holdings in Hampshire, including the ancient Haywoods Farm at Stratfieldsaye, were sold to John Fromond by Walter the younger in 1403.[9]

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[1] He was guardian of Lancastrian lands in Hampshire on the death of Henry of Lancaster in 1361: Cal. Close Rolls 1360-4, 211.

[2] ibid., 211; 1354-60, 619.

[3] Parliaments of England, 175, 180.

[4] List of Sheriffs, 153.

[5] Wykeham's Register, II, 152, 155, 173; cf. 323, where Walter Haywood the younger figures as a witness in 1381.

[6] Somerville, Duchy of Lancaster, I, 379; John of Gaunt's Register, ed. S.Armitage-Smith (Camden 3rd Ser., XX-XXI, 1911), I, 1119; II, 434, 435, 451, 457, 677, 872; SC 1/42, no.51.

[7] He was named in every Hampshire peace commission from 1361 to 1384: Cal.Pat. Rolls 1361-4, 63; 1381-5, 347.

[8] He was alive in June of that year, when an oratory was licensed for his soul and that of his wife; ibid., 438.

[9] V.C.H. Hants, III, 250; IV, 60, where Walter the elder and the younger are confounded.

The others of this trio were not merely connected professionally with the bishopric of Winchester; they were related to Wickham himself. William Ringbourne the elder was descended from the bishop's aunt,[1] and achieved the status of knight of the shire in 1376 and 1383,[2] sheriff in 1380,[3] and justice of the peace many times.[4] There is some possibility of confusion between William the elder and his son; since the father died in 1400,[5] the son must have been the escheator named, but never accounting, in 1403,[6] but it seems likely that it was the father who held office widely in Hampshire during the last three decades of the fourteenth century. His royal appointments included the joint guardianship of the Isle of Wight in 1372 and 1378,[7] and the stewardship of the king's lands there from the latter date onwards.[8] The connection with the Isle arose from his tenure of Afton and Bouldnor,[9] but his principal holdings were Forton

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[1] G.H.Moberly, Life of William of Wykeham (Winchester and London, 1887), facing 272; cf. R.Lowth, Life of William of Wykeham (London, 1758), Appendix II.

[2] Parliaments of England, 194, 218.

[3] List of Sheriffs, 54.

[4] e.g. Cal. Pat. Rolls 1377-81, 45, 512, 572.

[5] C 137/6, no.36.

[6] List of Escheators, 144.

[7] Catalogue des Rolles Gascons ..., ed. T.Carte (London, 1743), II, 127.

[8] Cal. Pat. Rolls 1377-81, 121.

[9] V.C.H. Hants, V, 242, 275.

vill and Barton Stacey manor,[1] although he inherited Liss Sturmy from his mother, Agnes Sturmy,[2] and acquired East Parley from Maurice Bruyn in 1382.[3] He was appointed steward of the estates of the bishopric of Winchester in 1386,[4] and as such held view of frankpledge in the bishop's name;[5] he also performed this function on behalf of the earl of Salisbury, at Milford.[6]

Thomas Warner, the third of the trio, was involved in the affairs of the bishopric less formally, but none the less intimately. His second wife, Joan, was descended from Wickham's aunt Agnes, and two sons of this marriage can be traced at the bishop's foundations of Winchester College, and New College, Oxford.[7] Warner himself can be traced as an agent in various of Wickham's transactions;[8] he was granted the bishop's manor of Preston Candover,[9] and was correspondingly party to an endowment for Winchester College.[10] It

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[1] V.C.H. Hants, IV, 407, 419.

[2] ibid., 84.

[3] ibid., v, 100.

[4] Wykeham's Register, II, 386.

[5] JUST 3/179, mm.4 (Fareham), 7d (East Meon).

[6] ibid., m.2.

[7] Post, 'Tauke Family', 97-8.

[8] Wykeham's Register, II, 252, 328-9.

[9] V.C.H.Hants, IV, 372.

[10] Cal. Pat. Rolls 1385-9, 368.

was presumably as a result of his connection with the bishopric that he was an officer for the abbey of Hyde, whose decline Wickham was currently trying to check.[1] As steward of the abbey's lands Warner held view of frankpledge for its hundred of Micheldever,[2] and he acted on its behalf in alienations of lands in mortmain.[3] He was himself no mean landowner, and, in addition to tenures by courtesy of England and in his own right,[4] he held a moiety of 'Greenfield' and Meonstoke hundreds.[5] In accordance with the status thus indicated, he was sometimes a justice of the peace,[6] and twice had to seek exemption from distraint of knighthood.[7] He died in 1407.[8]

It is thus possible to learn a good deal about the sorts of men who held the local courts which acted so widely as courts of first instance. The jurors who made the presentments there, however, are doubly obscure; they are rarely mentioned in the records, and when they are they prove difficult to

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[1] V.C.H. Hants, II, 119.

[2] JUST 3/179, m.13.

[3] Cal. Pat. Rolls 1391-6, 75, 311.

[4] V.C.H. Hants, III, 225, 226, 229, 250-1; IV, 610.

[5] Cal. Inq. P.M. (Rec. Comm.), III, 162 no.143.

[6] e.g. Cal. Pat. Rolls 1391-6, 728, 729; 1396-9, 99, 233.

[7] Cal. Pat. Rolls 1391-6, 155, 223.

[8] V.C.H. Hants, IV, 610.

identify. Despite the numerous rolls of private, institutional, and royal stewards which survive, relatively little work has been done on the structures and procedures of law-hundreds or views of frankpledge,[1] and extensive collation of local records with those of royal courts will be necessary before a detailed account can be given. The court-holding steward had no reason to record on his own rolls any information beyond that required for administrative or financial purposes; it was only the statutory requirements which led him to record the names of the jurors on indictments forwarded to the sheriff, and append their authenticating seals.[2] Tracing the composition of a jury at view of frankpledge therefore depends upon the survival of a gaol delivery file in which its indictments were kept. No such file survives for Hampshire in Richard II's time, but for present purposes it is worth examining a similar file which includes the records of Hampshire gaol deliveries from 1406 to 1411,[3] whose enrolment also survives.[4]

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[1]The notable exceptions being The Rolls of Highworth Hundred 1275-1287, ed. B.Farr (Wilts Arch. Soc. Records Branch, XXI-XXII, 1965-6); G.D.G.Hall, 'Three courts of the hundred of Penwith, 1333', in Medieval Legal Records ... (H.M.S.O., forthcoming); D.A.Crowley, 'Frankpledge and leet jurisdiction in later medieval Essex' (Sheffield Univ. Ph.D., 1971).

[2]13 Edward I (Statute of Westminster II), c.13. Some such indictment still bear either seals (JUST 3/218/1, mm.192, 233) or clear signs of having borne seals at one time: ibid., mm.158, 190, 211, 248.

[3]JUST 3/218/1.

[4]JUST 3/194.

The possibility of tracing any of the jurors is slight, since the nearest poll tax returns were some thirty years earlier, but by using the complete 1378 return for the Isle of Wight, and by admitting - cautiously - as supportive evidence the status of persons of the same surname as jurors, some estimates of the social composition of such juries is possible. Four juries are susceptible of this treatment, one at view of frankpledge for Freshwater liberty and three at views for East Medine hundred, at the Hat; all were held by Thomas Brading as steward to the duke of York. The Freshwater jury, in 1410, included six men, one described as a cultor, who were assessed at 4d.in Freshwater in 1378, and another fourpenny cultor from South Shorewell; in addition the surnames of the remaining five - Lee, Arnewood, Orchard, Hall, and Tressant - are to be found among payers of fourpence in Freshwater, Yarmouth, and (perhaps rather far afield) Chillerton.[1] The three East Medine juries, from two views in 1406 and one in 1408, show a considerable overlap in their composition: five of the first jury appear in the second, while three of these five and a further three appear in the third; three more are common to the second and third juries. The first jury included two men assessed at 4d. - one a cultor - and a sixpenny merchant, from Sandham and

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[1] JUST 3/218/1, m.158; for all four juries cf. E 179/173/41.

Penn; surname parallels include two fourpenny cultores and a sixpenny labourer, from Niton and St Helens, and one juror with two possible parallels, a franklin (40d.) and a boatman (6d.), again at St Helens.[1] The second jury included this doubtful choice in person, one of the fourpenny and one of the sixpenny jurors from the first list, and three fourpenny cultores - one with a servant - from Knighton and Whippingham; surnames provide one dilemma between a cultor (4d.) and a franklin (40d.) of St Helens.[2] The third jury included two fourpenny cultores and a sixpenny labourer, already met, and two surname parallels with payers of 4d.[3] This meagre evidence is very far from being definitive, but it invites as a tentative hypothesis the supposition that frankpledge jurors were recruited largely from the lowest taxable level within the community, lower on average than coroners' juries. It is possible that a jury presenting a felony with serious social overtones would have been afforced with more substantial persons;[4] the last jury, presenting a theft from Brading the steward, included one man who may have been a peace sessions grand juror and two more

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[1] JUST 3/218/1, m.263.

[2] ibid., m.246.

[3] ibid., m.224.

[4] This might, however, present problems regarding suit at view of frankpledge by free men.

with suggestive surname parallels in that role.[1]

In contrast with the local court-holding officials, the justices of the peace are very far from being obscure, because their personal status, their royal appointment and their answerability to the court of king's bench produced more copious and more definitive record evidence; the subject has been illuminated by the work of Professor Putnam and her successors. Commissions of the peace were entered on the Patent Rolls, and twenty-two such entries occur for Hampshire during this reign. Eighteen of these can be regarded as routine commissions;[2] one was a special commission to the current justices,[3] and three were especially ponderous appointments, part of the panic measures taken by the government in response to the rising of 1381.[4] These three extraordinary commissions included twenty-two justices in the first instance, subsequently increased to twenty-

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[1] John Daniels, John Grim, and John Wait: cf. Putnam, Proceedings, 226 no.62, 227 no.65, 229 no.76, 218 no.27. For the trial and acquittal, see JUST 3/194, m.4d.

[2] Cal. Pat. Rolls 1377-81, 45, 512, 572; 1381-5, 253, 347, 502 (with an association at 1385-9, 87); 1385-9, 81, 82-3; 1388-92, 137 bis, 138, 342, 344; 1391-6, 438, 728, 729; 1396-9, 99, 233.

[3] Cal. Pat. Rolls 1396-9, 95.

[4] Cal. Pat. Rolls 1381-5, 85, 142, 249; cf. Post, 'Peace Commissions', 99-101.

six or twenty-seven; the routine commissions were occasionally addressed to eight or eleven individuals, more commonly to nine or ten.

The basis upon which justices were selected for appointment on peace commissions is unclear. Dr Storey has analysed the regulation of justices of the peace in the middle years of Richard II's reign,[1] finding that changes were made immediately after Wickham's resumption of his old post as chancellor in 1389, largely because the Commons were increasingly and vociferously critical of lawless noble retinues, and prompted the king to show 'his awareness that an appeal to the defence of law and order might win a political dividend'.[2] The nature of these changes, in detail, was, firstly, a reduction in the numbers of justices (as compared with the previous general review of 1382), mainly at the expense of the county magnates; secondly, a widespread dismissal of persons serving under the 1382 (or, in some counties, subsequent) commissions; thirdly, the total exclusion of lords and their stewards. Further amendments, on a small scale, were made in November, providing 'convincing evidence of the care being taken by the king's council in keeping itself informed about the availability or

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[1] R.L.Storey, 'Liveries and commissions of the peace 1388-90', in The Reign of Richard II: Essays in Honour of Mary McKisack, ed. F.R.H. Du Boulay and Caroline M. Barron (London, 1971).

[2] ibid., 140.

suitability of justices'.[1] It proved impossible, however, to maintain this policy in the face of objections from the lords: in June 1390 a fresh batch of commissions realised the concession that stewards might be appointed, and in December the relaxation extended to the lords themselves. At both stages the retrogression bore heavy traces of Lancastrian interest. Since the Commons prompted the changes, Dr Storey argues 'that those shire-knights who were justices had found from experience that it was an impossible task to carry out their duties without the moral and practical support of the most influential men in their shires, of those "who had the power" to have the law enforced'.[2]

The Hampshire commissions provide a partial comfirmation of this analysis. The commission of July 1389 was actually superseding one of May 1386[3] (the fourth amendment of the 1382 appointments) and the changes were not wholesale. John lord Montagu and Thomas Holand, earl of Kent were both removed; so was William Ringbourne, steward of the chancellor's estates. Two had already gone: Robert Bealknap was among the judges disgraced in 1388,[4] while Thomas Illeston was dead or dying.[5] A further three who were removed - William Purchas, Edmund Spircock, and

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[1] ibid., 137-141.

[2] ibid., 147-150.

[3] Cal. Pat. Rolls 1385-9, 82-3.

[4] Foss, Lives of the Judges, IV, 33-4.

[5] Cal. Close Rolls 1389-92, 401.

John Tremayn - were not regular members of the Hampshire commission anyway. This left three survivors: Sir Bernard Brocas, a favourite of the king and a justice on every Hampshire commission from 1380 until his death in 1395; Sir John Sands, like Brocas an old soldier, but of rather more limited political horizons; and William Rickhill, who had only recently joined the Hampshire justices in his capacity as justice of assize. Sands served on every commission but one between December 1381 and June 1394; Rickhill on every commission from May 1386 into the following reign. These survivors were joined by a mixed bag of half-a-dozen. Two of these were hardly newcomers: Maurice Bruin and Sir Thomas Worting had been justices in 1381-2. William Brenchley and John Skilling were lawyers of considerable experience: Brenchley had been a commissioner against the rebels in Kent,[1] and was shortly to become king's serjeant and then justice in the court of common pleas,[2] while Skilling, as has been seen, was one of a distinguished family of lawyers and administrators.[3] Only two of the appointments were of new and local men: John Forster of Romsey, who served for the next five years, and Nicholas Bray of Andover, who was promptly replaced by the ousted Tremayn, but returned to the position in 1396-7.

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[1] Cal. Pat. Rolls 1381-5, 77, 78.

[2] Foss, Lives of the Judges, IV, 153-4.

[3] Above, 124-5.

Superficially, therefore, Dr Storey's thesis holds good: the lords and their men were out, professional and local men were in. The reality of this position, however, was less of a departure than it seems. Montagu and Holand had gone, and so had Wickham's steward, but the lords were still effectively represented. Forster was, among other connections, steward to the earl of Devon,[1] and like Skilling, he was closely involved with the affairs of Romsey Abbey. The Skilling family also acted on occasion for Michael de la Pole, the disgraced earl of Suffolk,[2] and perhaps for John of Gaunt.[3] Brocas, Worting, and Bruin were themselves of quasi-lordly status, although never personally summoned by parliamentary writ. Brocas was a professional soldier, whose career under the Black Prince included appointment as constable of Aquitaine;[4] under Richard II, who favoured him greatly, he led the life of a busy but ageing courtier, maintaining good relations with John of Gaunt,[5] and accepting the office of chief parker in the administration of Wickham's

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[1] JUST 3/174, m.1d.

[2] SC 1/46, no.27, printed in Stonor Letters and Papers, I, 35.

[3] Gaunt's Register, 1661.

[4] For Sir Bernard Brocas, see M.Burrows, The Family of Brocas of Beaurepaire and Roche Court (London, 1886), II, cc.ii-iii.

[5] John of Gaunt's Register 1379-1388, ed. E.C.Lodge and R.Somerville (Camden 3rd Ser., LVI-LVII, 1937), 252, 645.

episcopal estates.[1] Ringbourne's lapse from the 1389 commissions thus only partly diminished the chancellor's representation. Sir Thomas Worting was similarly high in the knightly class: his attachment to Thomas Holand may have been purely military,[2] but he served in the household of Isabel Poynings, baroness St John,[3] whom he later married,[4] and he was discernibly if distantly related to Wickham.[5] The connections of Maurice Bruin are more obscure, but it is clear he was one of a family with extensive interests in Hampshire and Essex; it seems very probable that he was the younger grandson of that William Bruin who received a personal summons to parliament, and brother of Ingram Bruin, who married the daughter of Edmund de la Pole, captain of Calais and brother of Suffolk.[6] Brocas, Worting, Bruin, and Sands acted as knights of the shire many times during this reign, although Worting was partnered by Henry Popham in the important Cambridge parliament

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[1] Wykeham's Register, II, 280-1. Several references show him to have been on good terms with Wickham: ibid., II, 3, 155, 173, 364-5, 412-3, 477.

[2] Gascon Rolls, II, 149.

[3] E 179/173/54, m.1d.

[4] Wykeham's Register, I, 160.

[5] See the Tauke pedigree in Post, 'Tauke Family', 104-5.

[6] The Complete Peerage, ed. G.E.C[ockayne] (new edn., London, 1910-40), s.v. 'Brun'; cf. Wykeham's Register, II, 336-7.

of 1388,[1] and it seems that the interests served by the 1389 commission were, as usual, those of the higher knightly class, with a strong bias upwards in the social and political scale. This is underlined by the changes which the policy of retrogression instituted in 1390. Tremayn had replaced Bray in October 1389, and William Hankford, already king's serjeant and later to become chief justice in king's bench,[2] had replaced John Skilling a month later. The political changes of 1390, however, were minimal. Worting died in that year,[3] and was not in either commission; in June, when stewards were readmitted,

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[1]Brocas, Worting, Bruin, and Sands were knights of the shire far more frequently than anyone else in this reign: Bruin and Ralph Norton (October 1377); Bruin and Philip Popham (October 1378); Bruin and Norton (April 1379); Brocas and Bruin (January 1380); Brocas and John Hay (November 1380); Worting and Sands (September 1381, and again in May 1382); Bruin and Sands (October 1382); Bruin and Henry Popham (February 1383); Bruin and Ringbourne (October 1383); Sands and William Sturmy (April 1384); Bruin and Philip Popham (November 1384); John Uvedale and Henry Popham (October 1385); Brocas and Sands (October 1386); Worting and Henry Popham (February and September 1388); Sands and John Bisterne (January 1390); Sturmy and Henry Popham (November 1390); Sands and Robert Cholmeley (November 1391); [unknown] (October 1392); Brocas and Sands (January 1393); Henry Popham and John Hampton (January 1394); Brocas and Cholmeley (January 1395); John Popham and Cholmeley (January 1397); Cholmeley and Robert More (January 1398). Only Cholmeley and Henry Popham rival any of the four for individual appearances, and the four totalled more appearances than the rest combined. Parliaments of England, 198-256.

[2]Foss, Lives of the Judges, IV, 323-6.

[3]Wykeham's Register, II, 430.

Ringbourne resumed his appointment, and in December, with the readmission of lords, Holand did likewise. Policy, both in change and in reversion, was implemented with as little practical alteration as might be consistent, superficially, with statutory requirements and parliamentary concessions.

This political manipulation and counter manipulation of appointments to peace commissions begs an equally important but more difficult question: what purpose was served by an appointment as justice of the peace? Legally and administratively a commission empowered its addressees to hear and (normally, by the late fourteenth century) determine a specified range of felony and trespass presentments, and these incipient quarter sessions were indeed held. The relationship between the commissions and the sessions, however, was less direct than might be supposed. Two main points are conspicuous: firstly, that only a minority of the commissioned justices ever sat in session, and secondly, that the issue of a commission from chancery was no guarantee that its provisions, either in powers or in personnel, would govern ensuing proceedings.[1] As has been mentioned earlier, it is not always possible to establish which justices actually sat; the headings of surviving rolls are sometimes, but not invariably, helpful, and the disbursements of wages (which were only instituted in 1388 and 1390)

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[1] Post, 'Peace rolls', 638 and references.

are at best erratically entered on the pipe rolls and exclude unpaid lords.[1] Nevertheless, the Hampshire evidence is suggestive. From the roll headings Putnam concluded that in the periods covered (1385-6 and 1390-2) the working justices were the earl of Kent 'and his fellows', and Forster, Ringbourne, and Sands.[2] Clearly, if pairs of names - Ringbourne and Forster, or Sands and Ringbourne[3] - were selected individually for the headings of different sessions under the same commission, the names may well indicate which justices actually sat, but the argument is less applicable in cases where the roll cites the first name on the commission. It is not intrinsically unlikely that a magnate would sit at peace sessions; there is plenty of reason for supposing that (for example) John of Gaunt, Thomas earl of Warwick, and John earl of Huntingdon sat occasionally in Warwickshire.[4] On the other hand, Putnam doubted that the earl of Suffolk sat as often in Norfolk as the rolls imply, and the headings of some sessions for Lincolnshire and Shropshire are demonstrably misleading.[5]

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[1] Putnam, Proceedings, xc-xci.

[2] ibid., 236.

[3] Putnam, Proceedings, 218, 212: both sessions (nominally at least) under the commission of December 1390: Cal. Pat. Rolls 1388-92, 344.

[4] Kimball, Warwicks Sessions, xxx-xxxi.

[5] Some Sessions of the Peace for Lincolnshire 1381-1396, I, ed. E.G.Kimball (Lincs Rec. Soc., XLIX, 1955), xxxiv-xxxvi.

For Hampshire the pipe roll evidence of working justices is limited to four regnal years.[1] The indications are that a major part of the responsibility lay with those justices who were drawn from the ranks of the professional administrators. William Ringbourne attended punctiliously, as the clerk's attendances show, supported piecemeal by three or four colleagues, the professionals more often than the gentry; when he retired, presumably in failing health, his central function was taken over by Thomas Warner, but with a broader sharing of the work, among John Uvedale, Thomas Skelton, William Hornby, and Nicholas Bray. Of these four, Hornby was a lawyer of some consequence,[2] whose landed interest in the country may have been simply that of a professional agent.[3]

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[1]For 18 Richard II (E 372/240, m.39), 20 Richard II (E 372/242, m.38d), 21 Richard II (E 372/243, m.19d), and 22 Richard II (E 372/245, m.37d). Figures indicate the number of working days for which wages were disbursed.

	1394-5	1396-7	1397-8	1398-9
John Sands	4	5		
Bernard Brocas	2	2		
William Ringbourne	8	12	15	
Maurice Bruin	1			
John Forster	6			
John Uvedale		7	8	
Thomas Skelton			3	8
Henry Popham			2	
Thomas Warner			10	9
William Hornby			9	3
Nicholas Bray			8	
John Dean (clerk)	8	12	?	9

[2]He was king's attorney in the common bench: Sayles, King's Bench, VI, Appendix XI.

[3]V.C.H. Hants, IV, 224n.

The others were gentry, as far as can be told: Bray, from Andover, was of some local consequence,[1] and served as escheator in 1401-2;[2] Skelton, possibly identical with the Cambridgeshire M.P. of 1397,[3] married the widow of Sir John Sands and acquired Hampshire interests thereby,[4] subsequently being knight of that shire;[5] while Uvedale represented a Surrey family of wide importance there and in Hampshire,[6] and his own connections included the families of Bernard Brocas and William Wickham.[7] The gentry thus had some direct influence at the peace sessions, but the experience and the interest clearly lay with the professional men of affairs.

The presenting juries at peace sessions, as mentioned already, were likely to represent interests very similar to those of the justices. Analyses of peace rolls from various counties have shown that the typical presenting jury might include coroners,

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[1] V.C.H. Hants, IV, 352; SC 1/43, no.114.

[2] List of Escheators, 144.

[3] Parliaments of England, 252.

[4] V.C.H. Hants, IV, 317, 362.

[5] Parliaments of England, 269.

[6] G.Leveson Gower, 'Notices of the Family of Uvedale of Titsey, Surrey, and Wickham, Hants', Surrey Archaeological Collections, III (1865), esp. 83-5.

[7] Burrows, Brocas Family, 106; Wykeham's Register, II, 329n.

burgesses, town officials, collectors of subsidies, substantial landowners, or perhaps future sheriffs or justices of the peace, and that they used the peace sessions quite openly to pursue their individual interests as well as those of their class.[1] Both the opportunity and the practice can be illustrated from the surviving Hampshire peace rolls. Each session received presentments from a number of juries; possibly the intention, as with the king's bench at trailbaston, was to hear a jury from each hundred, but this was clearly not practicable in a country of forty-one hundreds, and there are signs that the same jury lists, or even the same juries, were used for more than one hundred.[2] A couple of juries will illustrate both the status and the distribution of the jurors who can be identified. A jury in 1392 included several prominent local family names;[3] the identifiable individuals are John Tauke, the coroner, John Marsh, perhaps a former bailiff of Winchester,[4] John Fismark, of a leading mercantile family based at Southampton,[5] and John Keblewhite, bailiff of Pastrow and Clere in 1393.[6] Two years earlier,[7] a jury included Richard

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[1] Post, 'Peace rolls', 635-7 and references.

[2] Putnam, Proceedings, 215n2.

[3] Putnam, Proceedings, 213 no.3.

[4] V.C.H. Hants, V, 42.

[5] C.Platt, Medieval Southampton (London, 1973), 241.

[6] KB 37/2/16/2, unnumbered.

[7] Putnam, Proceedings, 228 no.68.

Eastney and Thomas Chantsinger, both coroners; William Sturmy, presumably kin to Henry Sturmy, the Hampshire and Wiltshire magnate,[1] and himself to become a justice of the peace in Hampshire and sheriff of Wiltshire;[2] and four minor landowners or landholders - Richard Westcott of Colemore manor,[3] Nicholas Hussey of Hussey's manor in Froyle,[4] John Rotherfield of Rotherfield,[5] and Eastney's investment partner, Nicholas Wyard.[6] The pursuit of private ends by these minor gentry can also be detected.[7]

The presenting juries at peace sessions may be compared with the grand juries which made presentments in king's bench when that court sat at trail-baston in the county. Fortunately, both the crown side file and the indictment file survive from the Winchester session of Hilary 1393, and some collation is possible.[8] The haphazard reduction in the number of juries can be seen in detail: twelve men were summoned from Micheldever hundred, and twelve from

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[1] ibid., 212.

[2] e.g. Cal. Pat. Rolls 1399-1401, 211; List of Sheriffs, 153.

[3] V.C.H. Hants, IV, 425.

[4] V.C.H. Hants, II, 504.

[5] V.C.H. Hants, III, 32-3.

[6] V.C.H. Hants, II, 479, and IV, 508.

[7] Below, 196-8.

[8] Crown side file KB 37/2/16/2, membranes unnumbered; indictment file KB 9/108.

Andover hundred, but marginal prickings suggest that only seven of these, all from Andover, actually turned up, and they acted as a jury for both hundreds. Of their five presentments, three were partisan: two complained of extortion from the servants of Henry Romsey and John Symond, both on the Andover jury, and a third of excessive prices charged to John Franklin, who had been on the Micheldever panel.[1] The surviving fragment of Titchfield presentments includes commercial offences committed against John Croucher, one of the attending jurors.[2] Two of the five offences presented by Pastrow and Clere hundreds were against Richard Young, again one of the jurors.[3] And these are not by any means the only instances.

It is not possible to examine, for Hampshire at least, the different interests displayed by the hundred juries and the true grand jury, the magna inquisicio; if presentments were made by the grand jury at Winchester in 1393, they have not survived on the file, nor do they appear on the roll. It is possible, however, to compare their composition. The hundred juries, more distinctively juries from each hundred than was the case at peace sessions, were similar in composition to their peace sessions counterparts -

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[1] KB 9/108, mm.9, 9d.

[2] ibid., m.25.

[3] ibid., m.27.

many individuals occuring in both - with the reservation that, being so many more juries, the identifiable proportions in each are rather less. There is in many cases the additional if rather crude guide to status provided by the amounts of distrainders noted against the names of jurors who failed to appear at the first summons. Thus the two dozen jurors empanelled for the liberty of St Swithun's priory were nominally distrained for various amounts: John Hampton, knight of the shire in the following year,[1] was marked at 40d., as was John Fromond, bailiff of two episcopal hundreds, steward of Winchester College estates, and ultimately benefactor of the school;[2] John Harris, Richard Mere, Thomas Clive, and Ralph Greyshank, all veteran presenting jurors,[3] were marked at 2s., with several others, and the scale went down to 8d. The magna inquisicio, in contrast, was quite probably 'supposed to produce especially drastic results'.[4] The first eight persons on the panel, all chivalers, were of wide landed and political interests. Edward St John, though clearly not the better-known landowner from this noble family,[5] was probably a scion

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[1] Parliaments of England, 248.

[2] Wykeham's Register, II, 427-8 and n.

[3] e.g. Putnam, Proceedings, 215 no.13, 218 no.27.

[4] Putnam, Proceedings, xcix.

[5] Cal. Inq. P.M., XVI, nos 150-2; Complete Peerage, sub art. St John of Basing.

of it; John Bohun of Midhurst, and Maurice and Ingram Bruin, headed their branches of landowning connections scattered widely over southern England;[1] John Lillebon was a Berkshire landowner;[2] Edmund Missenden a knight of the shire for Buckinghamshire;[3] Walter Romsey had been a justice of the peace and sheriff;[4] Philip Popham was knight of the shire and a Lancastrian.[5] Nor were the knights the only notables. Thomas Warner, William Ringbourne, and John Uvedale were included; John Lisle of Wootton, justice of the peace,[6] principal resident landowner on the Isle of Wight,[7] and relative of the Bohuns;[8] John Hampton, the knight of the shire; a clutch of minor landowners - John and Richard Wayte, John Tichborne, Ralph Wolverton, John Burgh, Thomas Wintershill;[9] Richard Hanger, the coroner; Oliver Punchardon, of an old county family and related to the Lillebons;[10] and a

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[1] G.W.Watson, 'The Bohuns of Midhurst', The Genealogist, new series, XXVIII (1911), 13; Complete Peerage, sub art. Brun.

[2] V.C.H. Berks, IV, 231.

[3] Parliaments of England, 244.

[4] Cal. Pat. Rolls 1381-5, 84, 142, 249; List of Sheriffs, 54.

[5] Above, 119.

[6] Cal. Pat. Rolls 1391-6, 729; 1396-9, 95, 99.

[7] Complete Peerage, sub art. Lisle of the Isle of Wight.

[8] Watson, 'Bohuns', 8.

[9] See, respectively, V.C.H. Hants, III, 392; ibid., III, 167; ibid., III, 337; ibid., V, 194, 231, 250, 282; ibid., IV, 73; ibid., II, 106, 486.

[10] V.C.H. Berks, IV, 231.

number of experienced peace sessions jurors.[1] The function of this jury may be slightly obscure, but its representation of the landed interests is not in doubt.

The trial of alleged offenders was effected by much more limited permutations of folk. Although the justices of the peace were, by this period, legally competent to determine felonies, it seems unlikely that they tried more than a tiny proportion of the felons indicted before them. Hence the trial was normally carried out at gaol delivery or in king's bench, in either of which the justices were likely to be outside the structure of local politics and social relationships which more evidently characterised indicting courts; these were men at or near the peak of an exacting - and rewarding - profession, and their several backgrounds, achievements, and (where perceptible) character are well enough established to need little mention here.[2] Very occasionally a gaol delivery commission included or consisted of county magnates;[3] most frequently it consisted

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[1] Cf. Putnam, Proceedings, 218 no.27 (John Norton, John Harris, Nicholas Valence), 228 no.69 (Roger Melbury, Henry Partridge), 221 no.41 (Thomas Ken).

[2] See in general Foss, Lives of the Judges; also Sayles, King's Bench, VII, ix-xii (for king's bench in Richard II's reign) and VI, xvi-xxvii (for the duties and perquisites of judicial office).

[3] Winchester castle was to be delivered in 1387 by Ringbourn, William Purchas, and Thomas Illeston: Cal. G.D. Commissions, 388; for Purchas and Illeston, see Putnam, Proceedings, 236.

essentially of professional justices, following the increasingly normal pattern of giving gaol delivery commissions to the justices of assize in the county.[1] Not all the justices commissioned actually sat, and, even for commissions which resulted in rolls still extant, relatively few justices can be traced as active: seven in all, including a stint by Rickhill and Brenchley covering nearly half the reign. None of the seven was notably connected with Hampshire, although sundry interests there were unremarkable for men of this status. Walter Clopton, who was chief justice in king's bench from 1388 to 1400, came from a Suffolk family, having but a life interest in one Hampshire manor.[2] William Cary's career is mainly obscure, but an isolated administrative commission in Devonshire[3] indicates his membership of the old county family whose other judicial scion, John, had a distinguished career until his impeachment in the political troubles of 1387.[4] William, like John Cassy,[5] Robert Bealknap,[6] Brenchley,[7] and

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[1] Pugh, Imprisonment, 278-85; above, 63-4.

[2] Foss, IV, 157-9; V.C.H. Hants, IV, 564 and n.

[3] Foedera, Conventiones, Literae, etc.; or Rymer's Foedera 1066-1383 (Rec. Comm.), III. 2, 976.

[4] Foss, IV, 41; Putnam, Proceedings, 401.

[5] Foss, IV, 156.

[6] Putnam, Proceedings, 235; Foss, IV, 32-4.

[7] Putnam, Proceedings, 235; Foss, IV, 153-4.

Rickhill,[1] had no perceptible Hampshire interests. Robert Charlton's family probably came from Shropshire,[2] although he prosecuted a small claim, jointly with Rinbourne and others, to lands in Drayton in Hampshire.[3] Of these seven only Clopton rose to the king's bench, and he was the only justice in that court to have any apparent connection with Hampshire at all, saving a doubtful claim to a manor there by the wife of the Cornish John Penrose;[4] all the others had clear interests elsewhere - John Cavendish in Suffolk, Thomas Ingleby and John Lockton in Yorkshire, David Hanmer in Flintshire, John Hull in Devonshire, Hugh Huls in Cheshire and Hertfordshire, and Robert Tresilian in Cornwall and Oxfordshire.[5]

Petty jurors, on the other hand, should in theory have had very close local connections not merely with the court in which they were serving, but with the case or cases they were trying.[6] The difficulties of empanelling a sufficient number of qualified persons assisted the decline of this requirement in practice,

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[1] Putnam, Proceedings, 235-6; Foss, IV, 174-6.

[2] Foss, IV, 48.

[3] Cal. G.D. Commissions, no.422.

[4] Foss, IV, 66; V.C.H. Hants, IV, 420.

[5] See entries in Foss, IV, 42-7, 61-2, 64-5, 56-7, 170-1, 204-5; for Tresilian, see Dict. Nat. Biog., sub art.

[6] Above, 78-79.

but the restriction of county was maintained, even when - in default of some or all of the empanelled jurors - tales were enlisted from the officials and public present at the session.[1] The king's bench crown side file for Hilary 1393 shows, for example, the provision of a jury from Thorngate hundred to try two men accused of robbery at Faringdon in Nether Wallop, but in the case of Richard Chike (who had anyway the benefits of his own status as bailiff of Ringwood hundred, an inquest verdict of self defence, and a pardon)[2] a panel of men bearing Isle of Wight surnames failed to appear, and tales including the bailiff of Christchurch hundred were appointed instead. The function of the jury when successfully assembled was a further problem, since in king's bench it was normal for all cases called or sent into the court by writ to end in acquittal, the only convictions resulting from cases which had come into king's bench under its residual local powers of trailbaston and gaol delivery, or an appeal by victims. The inference must be that acquittal in king's bench was a procedure available to any defendant with enough material status or personal influence to procure a certiorari from chancery, and that gaol delivery verdicts alone can reflect any reasoned opinion or particular partiality

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[1] Cf. Holdworth, History of English Law, I, 323-7, and 332 and n.

[2] KB 37/2/16/2; JUST 2/155, m.1; KB 27/527, Rex m.1.

on the part of the jurors.[1] Unfortunately, the jurors at gaol delivery can only be identified if the file survives, which is not the case for any of the Hampshire proceedings in Richard II's reign. There is, however, a file for part of the following reign, and comparison of a few cases from the Isle of Wight with the poll tax return of thirty years previously gives, at least by association of the rarer surnames, some idea of the status of the jurors.[2] Walter Castle, for example, himself assessed at 4d., had been indicted at view of frankpledge by a jury including seven people of the same rank and five from families with members assessed thus;[3] at gaol delivery a panel was drawn up, including two members of franklins' families and two prosperous farmers, but consisting in the main of people bearing the names of humbler families whose 1378 representatives were assessed at 4d.[4] Castle was acquitted.[5] William Burton was less lucky. He was indicted for stealing from Sir Maurice Russell, and the original panel to try him included a member of the Russell family, who failed in the event to turn up. The actual jurors included a weaver, and the two sons of

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[1] See below, 269-281.

[2] Cf. E 179/173/41.

[3] JUST 3/218/1, m.158.

[4] ibid., m.162.

[5] JUST 3/194, m.8.

a 1378 farmer assessed at 12d., together with three or four men from families of cultor status; they convicted, and Burton claimed clergy.[1] Comparison of these samples with others shows that there was a fairly narrow practical limit on the permutations of jurors. Six petty juries in Isle of Wight cases show seven jurors serving twice, two serving thrice and one man four times, and this takes no account of those empanelled and not sworn, nor of those many instances in which potential petty jurors, apparently present at a session, were precluded from trying a particular case because they had been on the indicting jury in the first place.[2] This latter circumstance further shows (in the cases where indictment was at view of frankpledge) that the petty jury was commonly drawn if possible from the hundred, if not from the immediate visne of the alleged offence, although one jury did have a Clatford man added to an insufficient number from the Isle of Wight.[3] Impromptu arrangements evinced by a Warwickshire gaol file seem more cavalier; when empanelled jurors failed to appear, others were enlisted regardless of their service

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[1] JUST 3/218/1, m.187; JUST 3/194, m.7d.

[2] JUST 3/218/1, mm.158 and 162, 187, 214, 246 and 247, 223 and 224, 262 and 263.

[3] ibid., m.247.

at the same session as jurors for other hundreds,[1] and regardless, again, of the current provision that indicting jurors should not determine the same case.[2] Until a widespread collation of satisfactory poll tax returns with gaol files from the early 1380s is possible, this crude assessment of petty jury status is the nicest that can be made.

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[1] e.g. Edward Compton and William Garsington for Hemlingford and Coventry: JUST 3/67/4, mm.2 and 14.

[2] JUST 3/67/4, mm.7-9; JUST 3/167, m.49; Kimball, Warwicks Sessions, 103 no.37, 104 no.39. Cf. Holdsworth, History of English Law, I, 325, and Plucknett, Common Law, 126-7. The jury was especially strong, including five present or future coroners (cf. Hunnisett, 'Coroners' Rolls', 345), of whom two had presented the case; and yet an acquittal resulted. In 1393 a Norfolk sentence was revoked, and the convict pardoned, because the trial and indicting juries had four persons in common: Cal. Pat. Rolls 1391-6, 338.

IV

The Documentary Evidence

Although much interesting and significant information about crime in the fourteenth century can be gleaned from incidental sources - chronicles, social commentators, the preambles to statutes - the only consistent documentation is in the records of the common-law courts and their satellites. These documents survive in bulk, though imperfectly, and knowledge of their origins and structure is a necessary prerequisite for understanding their possibilities and their limitations.

The preparation and preservation of adequate records was obligatory for all court-holding royal officials, and in addition there was a good deal of background paperwork which came to be preserved as permanent means of reference. Nevertheless, the keeping of these records was in many ways, particularly at the lower levels, a matter for private arrangement; except for king's bench itself, with its great volume of business, the courts gave their records into crown custody in tardy and haphazard order.[1] Least formal, perhaps, were the procedures governing coroners' rolls.[2] At an inquest the

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[1] For peace rolls said to be in the hands of an executor, after six years, see KB 27/472, Rex m.14.

[2] Hunnisett, 'Coroners' Rolls', passim.

coroner would jot down the details he required, often incompletely and on scrappy fragments of parchment (or perhaps paper); he would then file these roughly, leaving the enrolment of a fair copy until the end of his term of office or until the advent in his county of king's bench at trailbaston. The result was the piecemeal survival of coroners' rolls apparent today. Counties like Sussex, which never saw king's bench, are entirely unrepresented; those with more than one visitation - Hampshire and Warwickshire among them - are well represented. Even if a visitation elicited coroners' rolls in bulk, there were still two hazards limiting completeness. The trouble involved in preparing fair copies meant that the documents actually produced varied from a fine engrossment, like Chantsinger's, through less impressive and hastier attempts which prompt doubts about the care and completeness of transcription, down to raw scraps of rough which were proffered if the coroner was too busy or too idle to have fair copies made. These last, in the few examples which survive, are splendidly pristine as records of the coroners' basic information, but show, by comparison with transcripts made in error, that the redaction of rough notes into a formal engrossment could lead to a good deal of omission, embroidery, and corruption of detail.[1] The second

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[1]Hunnisett, 'Inquisitions', passim.

hazard was that of document survival; a coroner would be expected to produce his own records in king's bench, but often the lapse of time since the previous review of records was considerable. Hence the officials summoned to produce coroners' rolls included the heirs or executors of coroners long since dead, and, despite the production of several rolls in this way, it is clear that this summons was sometimes in vain, and the rolls never entered crown custody.[1]

To a lesser extent the same problems beset the peace rolls. The procedure was much the same: any indictments heard at peace sessions which the justices had been noncompetent or unable to determine were to be delivered into king's bench in 'eyre', for the due process to ensue. The spread of responsibility among all the justices named in a commission must have led to serious negligence in record-keeping,[2] for by the third quarter of the fourteenth century one of the working justices was usually designated custos rotulorum,[3] while from 1393 onwards the appointment of a permanent clerk of the peace in each county may have led to better clerical standards, particularly since some of the clerks can be identified as professionals of high proficiency.[4] Unfortunately the king's bench

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[1] KB 37/2/16/2, unnumbered membrane.

[2] Putnam, Proceedings, xxvi-xxvii.

[3] Putnam, Proceedings, xxvi-xxvii.

[4] Post, 'King's bench clerks', passim.

'eyres', which had all but died out during the dotage of Edward III, perished altogether at the Lancastrian revolution,[1] and the central survival of peace rolls was finally precluded. The proportion now extant is comparable in its paucity with the coroners' rolls.[2] Even the survivors are, for the most part, incomplete records of their sessions, since the justices were not required to produce indictments which they had determined themselves. These rolls which are demonstrably complete in this respect illustrate, by their wide variations from each other, the complete impossibility of estimating the proportion of a session represented by an incomplete roll.

Gaol delivery records are in every way more satisfactory. Persons taken on suspicion by local officials, and thieves taken with the mainour, seem to have needed no documentary justification for their presence in gaol, but for everyone else whom the sheriff produced before the justices there was supposed to be a corresponding document of indictment. Since the coroners and the justices of the peace were required to be present, they were supposed to testify personally to the nature of the accusation, and thus retained their independent documentation, but the prisoners indicted in tourns, hundreds, or franchise courts had separate written indictments, which had

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[1] Isolated 'eyres' early in Henry V's reign hardly gainsay the generalisation.

[2] Putnam, Proceedings, Appendix to Introduction.

been sent with them into custody; in practice, coroners might do this too. The sheriff, moreover, prepared a kalendar, giving a conspectus of all prisoners and the charges against them. This file of records was handed to the justices' clerk, who then annotated the kalendar with details of process, verdict, or other memorabilia. The file went with the clerk - who was employed essentially by one justice - to his residual headquarters at the conclusion of the circuit, to be engrossed formally at leisure. The lapse of months and years before the rolls were finally prepared and handed in is revealed in the process following the destruction of unfinished rolls in the revolt of 1381.[1] In the case of gaol delivery rolls, however, this delay has its compensations, for the concentration of the professional judiciary at Westminster meant that many of the extant rolls are accompanied by their corresponding file, which enables details to be checked, procedures traced, and many aspects of private court activity perceived as nowhere else.

In comparison with these courts of record the professionalism of king's bench staff was remarkable. The ultimate record towards which this court worked was the Coram Rege roll, carefully prepared at the end of the relevant term from a mass of background material, and there was a large staff of professionals responsible for it. General responsibility seems to have rested with the king's attorney in king's bench;

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[1] Cal. Pat. Rolls 1381-5, 394.

he supervised personally the issue and recording of process and hearing in all matters of crown suit, which was collected in the third - 'crown' or 'Rex' - section of the roll, and probably allocated the task of drawing up the second section, listing the amercements, forfeitures, and deodands resulting from the term's business.[1] The bulk of the court's business, however, was private litigation, and a team of filacers under a chief clerk or prothonotary dealt with the paperwork, including the first - 'pleas' or 'justices' - section of the roll, continuing the private litigation, and the fourth section, listing principals and their attorneys. The number of clerks varied, settling at thirteen by the end of the fourteenth century, each clerk specialising (though not yet exclusively) in the process arising from cases in a particular county or group of counties.[2] The prothonotary dealt with the more exacting business of recording pleadings and judgments. The actual engrossing may in some or all cases have been delegated to scribes. Both the prothonotary and the king's attorney kept their own finding aids to the rolls: the prothonotary kept (as probably did the filacers) an index of the whereabouts of his various entries within each roll,[3] while the king's attorney

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[1]This was apparently prepared by filacers.

[2]Post, 'King's bench clerks', 154-5.

[3]Now called Docket Rolls; few survive, e.g. IND 1322-1323.

kept a full copy of entries of crown business, adding to it cross-references to previous and subsequent terms in which relevant process or pleading was transacted.[1] Behind these final records lay a mass of other materials - writs of process with the replies of sheriffs and coroners, records called in from subsidiary courts, records referred to king's bench from chancery on original writs, and lists of grand juries, petty juries, hundred juries, and officers - all maintained in relative neatness in series of files which have only recently returned from obscurity. The files are for the most part in need of repair, and full use cannot be made of them as yet, but a detailed study will, it is hoped, give before long a definitive perspective to the king's bench rolls.[2]

The clerical and archival standards in king's bench were high. Legal formulae are consistent, writing is generally neat, materials are good, custody has been continuous and careful. The clerks were very often men of standing; some appear as clerks of the peace in their native counties, but others - especially prothonotaries - served as justices of the peace, and one at least is termed 'gentleman' early in the fifteenth century.[3] All the clerks maintained

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[1] Now called Controlment Rolls (KB 29).

[2] My Calendar of Proceedings in King's Bench and Subsidiary Courts: Warwickshire 1377-1399, to be published for the P.R.O. by H.M.S.O., is in active preparation; see R.F.Hunnisett, 'The future of plea roll publication', Archives, XI (1974), 207-9.

[3] Sayles, King's Bench, VII, 246.

private practices as attorneys,[1] but there were also official payments; those clerks who were made responsible for transporting the records on a king's bench 'eyre' were rewarded from the fines and forfeitures, while in civil litigation there were the damages cleer (dampna clericorum), a proportionate share of the damages payable by the successful litigant to the relevant clerks and other officers of the court.

The first serious limitation of the legal records, then, is their incomplete survival. The most tantalising class in this case is that of coroners' records; while the number of coroners is known, their execution of official duties was by definition ad hoc, and the division of responsibilities between one and another was informal and haphazard, so that the assessment of the volume and content of documentation now missing can only be partly successful. Four documents survive which were presented by coroners at the Winchester 'eyre' of Hilary, 1393, comprising eight rolls, five from Winchester being bound together.[2] This is not the full complement viewed at the 'eyre'; a comparison with the estreats shows that the rolls of Richard Hanger and John Tauke are now missing.[3] These

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[1] Post, 'King's bench clerks', passim.

[2] Listed in Hunnisett, 'Coroners' Rolls', 332.

[3] KB 27/529, fines mm.8-10.

lacunae can be remedied in part by the information in the estreats and by subsequent process in king's bench - notably the first collective entry of exigi facias,[1] which, like the estreats, allows an estimate of the size of the missing rolls. But some rolls which may have existed failed to survive even until 1393. The Winchester city group leaves five regnal years unaccounted for, including a sequence of three years; although the years represented show an average of only one inquest apiece, it is probable that other records were lost. A further possibility is that there was a roll belonging to John Warren. He presented a roll at the previous 'eyre',[2] and probably remained in office in the early years of Richard II, when efforts were made to replace him;[3] he heard the inquest on a death in September, 1386.[4] This solitary sequel to his presumed activities since the 'eyre' of Trinity 1371, and the loss of his records before they could be estreated, suggests that a file of indictments, rather than a full roll, was presented in king's bench; the defendant in this case appears among the exigends between some that derived from Hanger's roll and some that derived from Spencer's,[5] so that few of the cases

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[1] KB 27/527, Rex m.13.

[2] Hunnisett, 'Coroners' Rolls', 331.

[3] Cal. Close Rolls 1377-81, 174, 194.

[4] KB 27/530, Rex m.5d.

[5] Some of the defendants under exigend are fled felons whose chattels are accounted among the estreats.

can have been heard by Warren. Although Portsmouth constituted a separate coroner's jurisdiction, no trace of its records appears in king's bench. Lastly, there is no roll for Southampton borough. The town was represented by its own roll at the previous 'eyre',[1] and one of the coroners who presented that roll also heard inquests in 1378 and 1388.[2] Further examination of the list of exigends shows that the eleven untraced names preceding the first of Hanger's fled felons can be attributed plausibly to a Southampton coroner, the first being a resident of Milbrook in Southampton, the fifth and eleventh those of the defendants in the Goseberd inquests.[3] There must therefore have been a roll or file of some sort which was lost between the Winchester 'eyre' and the entering of the estreats two terms later.

Chantsinger's main roll, which contains two hundred and eight cases, is one of 'the most handsomely engrossed rolls', having 'a new title at the head of a new membrane for each new regnal year',[4] except one instance where the new title heads the dorse.[5] It is engrossed in a round, consistent

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[1]Hunnisett, 'Coroners' Rolls', 331.

[2]KB 27/530, Rex mm.3d and 4d.

[3]Cf. above,

[4]Hunnisett, 'Coroners' Rolls', 100.

[5]JUST 2/155, m.20d.

hand, on roughly uniform membranes of good quality and cut (now impaired at the feet by stain and decay),[1] neatly spaced and in regular format. The binding has been carried out with less care, both originally and subsequently; the first order of binding, which can be ascertained by comparison with the estreats,[2] has put m.4 after m.3, instead of before as chronological order requires, while a subsequent rebinding has bound m.8 in reverse and misplaced the original fifteenth membrane as the present m.21.[3] Each case is marginated in the engrossing hand, with the venue and the value of chattels forfeit or deodand. In contrast with this exemplary roll is a much inferior one,[4] also belonging to Chantsinger, and also presented at the 1393 'eyre', although not represented among the estreats.[5] The roll consists of four irregular membranes, badly rubbed and faded in places. The principal matter of the document is a series of appeals made by a single approver, William Rose, in February 1389;

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[1] Some eight membranes are now partly illegible.

[2] KB 27/529, fines mm.8d-10.

[3] This may have been done shortly after the 1393 'eyre'; one case alone from m.21, a suicide marginated 'Mors naturalis', is estreated in the present order of membranes, while the rest are in the order of the original roman numeration; for this case, see below, 221-2.

[4] JUST 1/797.

[5] Small sums from the main roll were occasionally ignored by the estreating clerk.

entered on the dorses are two inquests, of 13 and 14 Richard II, and an exaction from the latter year.[1] The inquests establish that the roll was essentially Chantsinger's, although it is in fact composite, as well as being incomplete and misbound. The first membrane begins 'Item'; mm.2 and 3 are properly headed, as appeals made before Chantsinger on Thursday after St Matthias, 12 Richard II, and two days following, while m.4 is similarly headed as appeals made by Rose before Henry Popham, sheriff, and Henry Jordan, coroner of Winchester city, on 16 February in the same year - more than a week previously. The original numbering places m.4 at the beginning and the rest in sequence; this order is confirmed by the statement elsewhere that William Miller, appealed here on m.1, was appealed before Henry Jordan.[2] Even this does not restore the roll to its pristine state; Richard Fruiter of Northleach is not mentioned here, although he was remanded at gaol delivery on appeal of William Rose, on charges similar to many on this roll.[3] The main text of m.4 is in a neat, round hand, quite distinct from the straggling hand which furnishes interlineations, the last entry on the dorse, and the entire text of the remaining membranes; this

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[1] mm.1d, 3d, and 2d, respectively.

[2] KB 27/530, Rex m.15.

[3] JUST 3/179, m.7d.

crabbed hand is to be associated with Chantsinger, and the authoritative corrections and the signs of age suggest that it may be in his own. The cryptic addition 'in libro coronatoris' after this final entry may be a cross-reference to a lost file which, together with this part of the roll, Chantsinger took over from Jordan when the approver's case changed hands, and which was intended for presentation in king's bench once the imminence of the 'eyre' had precluded further engrossment.[1]

This evidence for incompleteness in Chantsinger's rolls invites suspicion that there may have been other records of his which were overlooked. In fact it seems unlikely that more than a very few cases were missing from the main roll.[2] There are two reasons for this supposition: firstly, the regularity of incidence among the inquests recorded, and secondly, the area they seem to have covered. The number of inquests he held varied from nine in 14 Richard II to twenty-one in the eleventh year, averaging slightly over one a month during the sixteen-year period; for the most part they are spaced chronologically with plausible regularity, and the longest gap is four

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[1]For an example of similar confusion, see Hunnisett, 'Inquisitions', 209-10.

[2]There is evidence for two inquests held by him which do not appear on his rolls: JUST 3/179, m.7; KB 27/470, Rex m.1. The latter of these refers to an inquest probably held temp. Edward III. Both cases had been determined before the roll would have been compiled.

months, March to June 1387, although there are five gaps of three months. Allowing for the activities of the other coroner and the generally low incidence of inquests in the months of bad travelling weather, the records which survive are credibly those of all the inquests of a county coroner. Similarly, the geographical distribution of inquests does not vary unusually in the years of fewest entries; the ninth year, with ten inquests, includes cases as far south as Hound and as far west as King's Sombourne. The sparsest year, the fourteenth, with nine inquests, has a concentration in eastern and northern parts which may reflect the beginnings of John Tauke's activities in the south-west; but any such effect was probably slight, since Chantsinger officiated at Nursling in the following year.

Of the remaining rolls, Nicholas Spencer's bears comparison with Chantsinger's main roll, being engrossed neatly on three fairly regular membranes; on the other hand the relative fewness of inquests made continuous enrolment without separate annual headings convenient, there are at least two hands in evidence, and corrections and interlineations are more frequent. The roll is probably complete; while there are only forty-two cases over nearly sixteen years, their chronological and geographical incidences do not suggest any lacunae. On the other hand the roll for Winchester city lacks any entry for the years 9-11 Richard II, which as a reflection of the rate of

inquests is inherently less probable than the single-year gaps of the first and fourteenth years. The roll itself supports this suspicion; six fairly small membranes of varying length, each membrane the record of one term of office, constitute in appearance a file rather than a roll. The headings vary from a full title to the simple Wynton; since the record of a single inquest bears a full heading as rotulus, and the engrossments bear a degree of uniformity (although there is more than one hand, and the engrossing was spread over more than one occasion), it seems that the Winchester practice was to enrol at the end of a term of office, and that one or more of these constituent rolls did not survive.[1] The ten years extant account for seventeen cases, suggesting that the balance of five years may have yielded between five and ten inquests.

It remains to estimate the volume of cases on those rolls no longer extant; this can be done, very crudely, from the exigends and the estreats. The extant rolls show that roughly five-sixths of felony inquests are represented in the list of exigends; and that roughly two fifths of such cases, and a third of

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[1] Winchester inquests were few in the years represented, so that the absence from the estreats and exigends of cases from rolls now missing does not necessarily indicate that they were not presented at the king's bench 'eyre'.

accidental and natural deaths, are estreated.[1] With these crude constants can be mixed such data as there are from the lost rolls. There are eleven exigends which can be associated with the Southampton coroner, but no estreats. On the basis of the multiplier this indicates perhaps thirteen felonies, which in turn suggests some two dozen cases altogether. John Tauke's roll yielded four exigends; it was also estreated, showing six felonies (including two suicides) and one accidental death. Making allowance for the undue proportion of suicides, it seems likely that Tauke's roll contained eight to ten felonies, and three or four other deaths. This is not an average felonies/accidents ratio, but this is the most fickle of the constants; moreover, the proportion of eight to four was exactly that of Chantsinger in 2 Richard II. Hanger's roll produced one felony and two accidents in the estreats, suggesting two or three felonies and half-a-dozen accidents altogether. This helps a little with the rest of the exigends, where a section of twenty names remains unattributed. The first name tallies with Hanger's single felony

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[1] The figures are, for exigends in felony cases: Chantsinger, 77 out of 87; Spencer, 20:23; Winchester coroners, 5:9. For felonies estreated: Chantsinger, 37:87; Spencer, 11:23; Winchester coroners, 6:9. For other deaths estreated: Chantsinger, 40:121; Spencer, 7:20; Winchester coroners, 4:8. The ratio of felonies to accidents is rather lower in Chantsinger's roll (roughly 2:3) than in the others (slightly over 1:1).

estreat; the last but one, with an indictment before Warren. The estreats thus imply that no more than a quarter of these persons relate to Hanger's inquests. Correspondingly, some fifteen may then relate to Warren, which in turn suggests slightly more felony cases and a total between thirty and three dozen for all inquests. All these figures, and the Winchester figures above, are artificial and hypothetical; they may help, however, to give a better idea of the volume of coroners' business conducted overall.

Reconstruction even on this modest scale is not possible for the peace rolls or for the gaol delivery rolls. While individual indictments survive in subsequent proceedings at gaol delivery or in king's bench, there is no way of estimating the volume of business which was transacted at peace sessions, save the capias entries on the Coram Rege roll when peace rolls were reviewed, which merely list the indictees, without indicating the number or nature of the offences. The quarterly incidence of the sessions at least indicates the demands made of the justices. Similarly, the proportion of indictments determined at peace sessions and thus never forwarded to other courts is quite unknown; the evidence of apparently complete rolls suggests that a fair proportion of trespasses and a tiny fraction of felonies were tried,[1] but no statistical estimate can be hazarded.

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[1] e.g. Kimball, Warwicks Sessions, xviii and references.

Gaol delivery records suffer from the same intractability. The average number of Hampshire prisoners delivered at each session - normally held twice a year - was a dozen, but since as many as twenty-eight were produced on one occasion, a firm extrapolation from the surviving rolls to those which have perished might easily exaggerate by more than one hundred per cent. All that can be said is that those gaol delivery rolls which are not manifestly fragmentary seem to be complete records of their proceedings. Only king's bench provides an unbroken and apparently complete record of its proceedings throughout the reign.[1]

Even among the types of legal record which survive, therefore, there are serious and irremediable gaps. But taking a county for which, over a given period, the records of all coroners and justices survived, it would still be impossible to make a plausible guess at the incidence of criminal activities which came before all courts of first instance. The most readily perceptible omissions are the urban franchises: Winchester had its own judicial structure, whose surviving records are imperfect - a hypothetical 'felonies roll' now lost may account for business not

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[1]The only lacuna in the series resulted from an adjournment of proceedings in Trinity 1381 until the following term owing to the revolt.

recorded - and the boroughs of Southampton and Portsmouth probably had similar privileges on a more restricted scale.[1] A more important imponderable is the contribution to criminal justice made by the private franchise courts. It is difficult to be sure of the number of private hundredal and quasi-hundredal franchises in the county, since oddities like Odiham castle and the two liberties of Vernham operated within particular hundreds, but only fifteen of the forty-one Hampshire hundreds pertained to the crown at this date, and the remainder would each have followed old-established private courts.[2] Some of these at least are discerned through the indictments which accompanied prisoners at gaol delivery, but the characters of the others must remain quite unknown; as it is, the surviving indictments relate only to defendants who had been arrested, and (if peace sessions indictments are any guide) there will have been a great number of indictments against defendants still at large. This limitation may have been remedied in part by the hundredal presentments at peace sessions and in king's bench - the imperfect summoning of juries from each hundred on each occasion accounting for the long delays sometimes apparent between an alleged offence and its subsequent presentment[3] - but there is no way of

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[1] Above, 28-30.

[2] Above, 20-21.

[3] e.g. Kimball, Warwicks Sessions, 101 no.26, 114 no.68.

correlating such cases: if a hundredal jury knew a man to be in custody on a previous hundredal indictment, they would have no reason for presenting the matter again. The problems are proportionately less in a county such as Warwickshire, with a mere four hundreds, all of them royal, and few major franchises, but, nevertheless, these factors put the volume of indictments in all courts of first instance beyond any reasonable guess.

There is thus plenteous evidence of private franchise courts hearing indictments, but that evidence arises from cases which proceeded further elsewhere; it is more difficult to decide whether or not these courts ever determined such cases. The immediate inference, on the basis of extant indictments, is that they did not; if thieves taken with the mainour were sent from franchise courts to the king's gaol pending delivery,[1] it is unlikely that they or anyone else was tried otherwise. The matter might have turned on the right of infangenthief or the interpretation of it,[2] but definitions of such liberties were

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[1] e.g. Thomas Tapener, taken by the steward of Bromley, and Richard Berant, taken by the abbot of Hyde's bailiff: JUST 3/179, mm.12d, 13.

[2] A judicial ruling of 1230 held that 'distinguitur quod utfangenethef est latro extraneus captus in terra alicuius et infangenethef est de homine nostro capto in terra &c. alicuius' (Curia Regis Rolls (H.M.S.O.), XIV, 135), but a royal charter of 1258 defined infangenthief as 'judicium latronum captorum infra libertates suas cum furtis': Calendar of Charter Rolls (H.M.S.O.), I, 447.

apparently unfashionable. Since the jurisdictional powers of the sheriff were steadily declining,[1] it seems reasonable to postulate a similar decline in the corresponding private courts. The evidence is as yet largely lacking, but the problem can be illustrated by a disquieting presentment, at the Warwickshire trailbaston session of king's bench in 1387, which seems to be concerned principally with a dispute over the restitution of stolen goods, but which also indicted a liberty steward who bungled the execution of a handhaving thief appealed, and tried by jury, before him.[2] The indictment is careful to mention that the lord of the manor - John Beauchamp of Powick - enjoyed infangenthief within the demesne where the theft took place. The crown reaction to this is not recorded, and the rarity or otherwise of such private judgment remains in doubt; if the entire procedure of arrest, appeal, and trial are known in one case only because the hangman's noose broke, it is hopeless to speculate on the number of felons who perished in this way without incident.[3]

Although nothing can compensate wholesale for the loss of particular judicial records, there are one or two sources which supply, piecemeal, information which such records would have included. As

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[1] Putnam, Proceedings, xxxvi-xxxviii.

[2] JUST 1/977, m.3.

[3] See further below, 310-317.

has been shown, the fines and forfeitures entered on the Coram Rege rolls can be used for the skeletal reconstruction of coroners' rolls, and here, as well as in the case of the peace rolls, collective capias entries provide the names of indictees and (in somewhat arbitrary sortation) separate listings of those indicted for felony from those indicted for trespass. These, however, only apply when king's bench was reviewing the local judicial records. The Patent Rolls include commissions to local justices or other worthies to deal with specific outbreaks of lawlessness, and also specify in individual pardons the offences in respect of which they were granted. A far larger volume of names, but no information on the offences, is found on the Pardon Rolls, where enrolments were made of larger-scale pardons and those who claimed benefit of them. Records more obliquely relevant sometimes provide fuller information, notably, among exchequer sources, the sheriffs' and the escheators' accounts. Although details only appear in the subsidiary documents offered by the officials in the compilation of the main exchequer enrolments, much can be gleaned. The sheriffs' accounts for Hampshire in this reign are sparse, but they include a petition from the sheriff in 17 Richard II for allowance of the value of the goods forfeit from an otherwise unknown felon, which were the responsibility of the countess of Kent,[1] and claims from the bishop

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[1] E 199/16/5, m.1d.

of Winchester, in 1399, that judicial distraints levied on particular tenants of his estates at peace sessions in the previous year should be paid to him, under the terms of a charter, and also that he should have a share in the chattels of the vicar of Warnborough, who had fled on felony charges.[1] The escheators' accounts survive rather better, and their content is more useful. The accounts of Thomas Illeston, for example, escheator in 1381,[2] list the forfeitures following indictment on charges of insurrection in the revolt of that year, providing the names, and some indications of the relative status, of seven men beheaded, and a further fifteen who fled;[3] an interesting titbit is the statement that there were no such rebels in Wiltshire.[4] Less spectacular entries from time to time give the names, offences, and forfeitures of several felons, few of whom are known from the extant judicial records,[5] together with an unexpected description of the private bail system operated by the abbess of Romsey's bailiff.[6] For earlier periods, too,

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[1] E 199/16/10.

[2] Illeston was escheator of Hampshire and Wiltshire from 26 November 1377 to 25 October 1381 (List of Escheators, 143), although this account ostensibly runs from November 4 Richard II to November 5 Richard II.

[3] E 136/195/1, mm.4-7, 12.

[4] ibid., m.13.

[5] ibid., m.1; E 136/195/4, mm.1, 7; E 136/195/6, m.8; E 136/195/7, mm.9-11 (including returns on attainted politicians); E 136/195/7A, mm.1-2 (ditto); E 136/195/8, m.7; E 136/195/11, m.7.

[6] Above, 52.

there are subsidy returns following the parliamentary grant to the king of felon's chattels over a given period.[1] In much smaller quantities, occasional information is to be found in other fiscal records,[2] and incidental mentions are common to many types of record.

Clearly, therefore, the haphazard survival of records, and the difficulty or impossibility of reconstructing even their general content, preclude any but the sketchiest and most tentative quantitative conclusions about crime and its prosecution in this period. The extent to which the records compiled, whether surviving or not, were effective in their coverage provides such an enterprise with a further stumbling-block. The records of Chantsinger's inquests are, in all probability, substantially complete, and may be taken to represent his activities as a county coroner. He was evidently conscientious in the execution of his duties, but certain limitations in his coverage can be detected. The geographical distribution of his inquests shows, as one might have expected, concentrations at the important

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[1] e.g. E 179/113/23-24 (Gloucestershire) and E 179/122/21-22 and 50 (Huntingdonshire), both 31 Edward III; above, 101.

[2] e.g. in Exchequer Accounts Miscellaneous (above, 97 n. 2) and in the Calendar of Inquisitions Miscellaneous (H.M.S.O.)

townships - Alresford, Basingstoke, Andover - which also represented junctions of busy highways, and some of the sparser patches - Micheldever Forest, and Fawley Downs, for example - undoubtedly represent areas of low population. Nevertheless, other concentrations - at Odiham, some way from the busier highways, and a great many in the neighbourhood of Alton - suggest that the distribution was at best partly affected by his residence at Alton.[1] The chronological distribution of his inquests is also suspect: over the whole period covered by his roll, fewer inquests were heard in late autumn and winter months, with January as the lowest point, whereas three or four times as many were held in the months of high summer.[2] While it is conceivable that men and women strayed abroad into wells and fights less often in the darker months than at other times, it is at least arguable that this distribution reflects a seasonal reluctance of neighbours to travel to fetch the coroner, and the corresponding reluctance of the coroner to attend the corpse. Both season and distance, then, may have determined whether or not an inquest was held; since, too, the coroner, as an unwelcome figure of officialdom, was by no means necessarily informed of every corpse within

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[1] Above, 105.

[2] 7 in January, 13 in February, 15 in March, 20 in April, 18 in May, 24 in June, 24 in July, 27 in August, 21 in September, 11 in October, 13 in November, and 14 in December.

his jurisdiction, 'it is therefore impossible to assess the incidence of sudden and unnatural deaths in any county during any period from the surviving coroners' rolls',[1] or from supplementary materials. A fortiori, juries of presentment at law-hundreds, tourns, peace sessions, and trailbaston sessions, whose coverage was not theoretically defined, as was the coroners' by corpses, were even more likely to overlook or ignore cases which were obscure or inconvenient. The difficulty of assembling juries representative of each neighbourhood meant that county sessions, especially, were likely to hear presentments from a limited number of jurors who could hardly expect to cover all offences in a large and administratively fragmented county. Comparison of homicide presentments with coroners' rolls, where possible, highlights the lacunae to which the former were inevitably susceptible.[2] It is possible that suspects at gaol delivery reflect, by their places of arrest, the proportions of general criminality by area, but their appearance and their supposed offences were so ill documented at the time as to minimise their significance to the historian except as crude indexes of local police efficiency.

The incompleteness of the records, therefore, supported by the possibly uneven coverage of known

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[1] Hunnisett, Medieval Coroner, 13.

[2] Post, 'Peace Rolls', 635-6.

jurisdictions, makes it unrealistic to develop definitive criminological judgments from the extant remains of the contemporary documents. This is the first serious limitation of the sources. The second is the factual unreliability of those records which we have. There is no need to emphasise the susceptibility of these, like all written materials, to clerical errors which incidentally affect the substance of the text, but more seriously and fundamentally misleading faults can be found. The easiest targets for this - as for so many other - criticisms are the coroners' rolls, partly because of their accessibility to exploitation and partly because both drafts and fair copies survive from several inquests. Recently six Warwickshire drafts and their corresponding enrolments, and discrepant enrolments of the same Lincoln inquest, have been subjected to minute scrutiny.[1] The main source of discrepancies in these cases was probably the process of redaction from jottings made at the inquest into a fair copy, a procedure which may have had as many as four stages.[2] More material differences - the provision in later stages of circumstantial detail not found in the extant draft - are attributable to the fact that these cases were enrolled from the extant drafts in

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[1] Hunnisett, 'Inquisitions', passim.

[2] ibid., 221-3.

conjunction with other (lost) contemporary versions: that is, from both the verdicts of the jury and the verdicts of the tithingmen of the proximate townships.[1] Similar considerations probably account for another set of variations, apparent for twenty Coventry inquests which were, mistakenly, engrossed twice.[2] Here the parallel texts are - orthography and grammar apart - often remarkably close, despite minor variations in formulae and the structure of the narrative.[3] Material discrepancies are few, and tend to be confined to a closer topographical location in the first version than in the second;[4] one pair has a fortnight's discrepancy in the date of death,[5] the fuller procedural formulae of the second version extends, in one instance, to mention of an arrest omitted from the first,[6] and in two cases the first version reduces drastically the value of forfeit chattels given in the second.[7] Despite these details the clerical and editorial standards in Coventry were evidently higher

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[1] ibid., 223-5.

[2] JUST 2/180, mm.1-3 (King's Bench Cal., nos 1-40).

[3] e.g. King's Bench Cal., nos 2 and 22, 10 and 30.

[4] e.g. King's Bench Cal., nos 6 and 26, 12-14 and 32-34, 16 and 36, 18 and 38.

[5] King's Bench Cal., nos 7 and 27.

[6] King's Bench Cal., nos 33 and 13.

[7] King's Bench Cal., nos 4 (12d.) and 24 (10s.), 16 (13s. 8d.) and 36 (100s.).

than in the other Warwickshire instance. The only culpably fraudulent data traced so far occurred when a clerk in king's bench, faced with an inadequate draft, began by emending the text before him and eventually made a fresh enrolment replete with novel details;[1] even here the emendations may have been offered verbally by the coroner rather than from the clerk's imagination.

The terms of two verdicts were never, in the cases just mentioned, irreconcileable, but an inquest on the Isle of Wight seems to have demanded two separate versions. The texts appear consecutively on the roll of Nicholas Spencer, coroner for the Isle of Wight;[2] they appear to refer to different inquests held on the same day by the same coroner, on the same death, with the same four townships, but with wholly different juries. Initially this suggests that an error may have arisen from the existence of two presentments, one from the jury and one from the townships,[3] and that the engrossing clerk, in ordering and formulating the materials before him, failed to realise that two consecutive items on the file were twin records of the same proceedings. This would be an unlikely error, if all inquests before Spencer

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[1] JUST 2/190, m.1, schedule, d, and 1d (King's Bench Cal., nos 397 and 402).

[2] JUST 2/156, m.3.

[3] Hunnisett, Medieval Coroner, 13-17.

followed the same procedure, and the substance of the jury findings suggests another possibility, namely, that Spencer or his engrossing clerk normally conflated two recorded verdicts, but that in this case the details were so radically discrepant that it was easier, or perhaps fairer, to state both cases and to leave their resolution to the court of king's bench.[1] The accounts have most circumstances in common: the date of the killing (but differently expressed), the time, the victim, the other persons involved, the number of wounds, and the place of occurrence. The narratives are quite different. In the first, Master Edmund Alderford, rector of Whippingham, hit William Wonforton on the head with a sword, feloniously, while the latter was lying on the ground; the rector's brother William and one Michael Pickard aided and abetted. A detailed list of the rector's chattels was appended. In the second, Wonforton felled Pickard, and stabbed Edmund when he came to the rescue; William Alderford came, was struck by Wonforton, and felled him in return; thereupon Edmund struck Wonforton twice on the head with a sword, and Pickard then hit him under the ear with a staff, killing him feloniously with the Alderfords aiding and abetting. The choice of indictments was retained by king's

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[1] Some years earlier a single Dorset jury cheerfully returned separate verdicts on the same case in the same day; in this case one version was clearly milder than the other, with ceperunt substituted for rapuerunt, and the goods allegedly asported halved in value. The purpose may have been to ensure conviction even if one charge was considered too grave. KB 145/3/2/1, unnumbered membranes.

bench; the collective capias for Hampshire felons names Edmund Alderford and Pickard under styles derived from the first and second indictments respectively.[1] Apparently only Alderford came to court; he was remanded in the Marshalsea, and eventually pardoned, on the first indictment.[2] The records provide no reason for preferring one indictment to the other as an accurate account of the killing; it is just possible that the only real point of disagreement was the relative gravity of the wounds, in which case the differences were, in terms of events if not of legal responsibilities, minimal, and the unreliability of either account can be regarded as a matter of deficiency rather than of falsification. The case is perplexing, but it adds no extra suspicion to the reliability of the records; the perplexity was a contemporary problem as well as a historical one.

Save in the Wonforton case, then, careless editing and variant verdicts cast doubt on the factual reliability of the coroners' rolls; while, in the Warwickshire file and roll, 'in every case there is agreement in broad outline between file and roll on the circumstances in which death occurred, and whether by felony or misadventure', many details, 'the weapons, deodands and valuations of goods and chattels ... the field

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[1] KB 27/527, Rex m.13; cf. KB 29/39, m.15.

[2] KB 27/530, Rex m.32d; Cal. Pat. Rolls 1391-6, 718.

names ... the jurors and other persons', can vary considerably, or be absent from one record or the other. In such cases 'there is probably a slightly less than even chance in each variation that the roll is right'.[1] This demonstrates clearly the inadvisability of accepting an inquest on a coroner's roll as accurate in its minutiae. But assumptions of accuracy or unreliability still depend overwhelmingly upon the significance of the details at the time they were recorded. It is clear, for example, that, in cases of felony where the culprit was identified, names and places were frequently accurate enough to secure the appearance of the person in court; it is reasonable to suppose that this and other details of major importance - the identity of a homicide victime,[2] the place and manner of the deed - would be preserved consistently and carefully, even if there were two juries and several stages of transcription. In the second of the six Warwickshire cases with disparate versions,[3] the only one which was liable to proceed in higher courts, the variations are trifling for the most part; two jurors undergo change of

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[1] ibid., 226-7.

[2] The only mistaken return among Hampshire cases concerned William Milward, presented for the death of John Hermit of Netley; Milward was acquitted when the 'deceased' was found to be living still: KB 27/468, Rex m.16d.

[3] Hunnisett, 'Inquisitions', 214-5, 229-230.

forename, the victim's forename varies between Julia and Juliana (hardly an inconsistency), and the roll version is slightly fuller, presumably following the second presentment in these places. The only conflict is in the description of the knife, which in the file version is 'a knife called a broach' and in the roll version is 'a baselard'. Even this is not really a variant, 'baselard' being a general term indicating a large knife and 'broach' indicating (appropriately enough, since the culprit was John 'Bocher') a type of large knife used by butchers. In the substance of the account, the roll was not at odds with the extant earlier version, and could reasonably have been used for an indictment. It is in cases of accident - notably cases three and four - that an unpractical degree of carelessness obtrudes; it was in just such cases that further enquiry was unlikely to ensue. The extent to which the purpose of an enrolment affected its completeness may be assessed, pertinently, from a Hampshire case on Chantsinger's roll of which another version survives. In August, 1379, Chantsinger held an inquest on the death of William Daniels, and several named persons were indicted for the felony. The case was called into king's bench, and the returned certiorari survives, together with the schedule bearing a copy of the inquest proceedings, as returned by the coroner.[1]

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[1]The Recorda file is KB 145/3/3/1; its items are at present unnumbered.

Nevertheless, the case was also engrossed on Chantsinger's roll,[1] and the two texts are clearly not of the same order. Apart from minor variations of name and spelling, the differences arise less from careless transcription or discrepant verdicts than from formal engrossment. The schedule returned with the writ was the instrument whereby the accused might be taken and tried; as such enrolment was superfluous, and might reasonably have been omitted. In the event it was included on the roll, but with some abbreviation of substance; hence only Alan Frith and Geoffrey Tirvach, 'and others' were mentioned, because they had been attached and thus figured more than nominally in the matter, and various other, circumstantial details were omitted. No material discrepancy occurs, thus perhaps raising Chantsinger's credibility slightly above the suspect norm; the point of the comparison, however, is to illustrate the need to assess each entry and each datum in terms of the contemporary scrutiny under which it was designed to pass.

Despite these evident disadvantages, the coroners' rolls are likely to provide information consistently more accurate than that deriving from any other body of common-law evidence; whatever their subsequent editorial history, the initial records of inquests were almost always taken upon fresh corpses,[2] they

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[1] JUST 2/155, m.3d.

[2] Inquests were supposed to be held before the body

were taken at the place where the death had occurred,[1] and the jurors were commonly persons of fairly humble status from the immediate neighbourhood.[2] The essentially local nature of law-hundreds and tourns argues to a modest extent for the potential accuracy of indictments brought there, but concrete evidence in the form of exhibits is rarely recorded, and it is correspondingly difficult to be sure whether or not a crime had been committed, let alone by the defendant. The general circumstances, however, tend to favour evidence from these courts, as regards the chances of veracity. The same cannot be said of the better-known prosecuting agency, the presenting jury at peace sessions. As has been shown above, such juries tended to be less closely local and more socially exalted than in other cases, both of which factors would have tended to make their testimony relatively remote from the events which they were describing. This is borne out by some of their presentments. With peace sessions at regular intervals, there was no need for much delay between an offence and its presentment, but the surviving Hampshire examples show lapses of two or three years to have been quite unremarkable,[3] and seven and ten year delays also

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[1] ibid., 13-18.

[2] Above, 102-113.

[3] Putnam, Proceedings, 218 no.28, 228 nos 68-9, 229-30 nos 76-7.

occurred.[1] Since (presumably) accurate memory faded with the years, it might be unwise to rely on the jurors' precision in these cases. Details of content also arouse suspicions. The promptness of coroners' inquests makes their dating of cases vastly preferable to that of other sources, and provides a basis for comparison with the peace rolls; five Hampshire presentments seem in this light to be broadly accurate, but seven from Warwickshire show only one correct, with six varying from a few days to a whole year out.[2] Such points, perhaps, like the variations and minor discrepancies within the coroners' materials, argue genuine and independent attempts to say what really happened, where pat corroboration would be suspicious, but wilder contradictions suggest simple ignorance of the facts - two distinct homicides were each presented by no less than three Warwickshire hundred juries, giving in each case three virtually incompatible lists of suspects.[3] Even the orderly and professional gaol delivery records could be susceptible to muddled information: Richard Godwin, remanded perpetually in custody as a lunatic homicide, was eventually said to have been taken on

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[1] Putnam, Proceedings, 229 no.75, 216 no.17. For even longer delays, see Kimball, Warwicks Sessions, 101 no.26, 134 no.68.

[2] Post, 'Peace rolls', 637-8.

[3] Post, 'Peace rolls', 637.

suspicion of larceny,[1] and other cases show signs of clumsy prosecution, if nothing worse.[2]

Suspicion of inaccuracy - either through disregard for accuracy or through the inability to ascertain details precisely and consistently - is supplemented by suspicion that the indicting juries were sometimes less than impartial. This is seldom the case with coroners' juries, whose composition was regularly local, but a few inquests, notably that on the death of William Daniels, may have been conducted by juries which had been afforced to a higher social standard than normal, presumably because the fatal incident reflected friction between classes, and the coroner could not rely on a pro-gentry verdict from a peasant jury.[3] A similar attitude is to be expected from presenting juries at peace sessions, since the composition of such juries was normally well up the social scale. All five Hampshire presentments of homicides in the period from 9 to 16 Richard II were, in one way or another, cases in which the presenting jury was likely to have a personal or class interest; in each instance the reasons for presentment were extrinsic to the simple fact of homicide, which

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[1] JUST 3/179, mm.3d, 5d, 7, 7d, 8d, 9d, 11d, 12, 13.

[2] Joint thieves (JUST 3/179, m.7d) had become thief and victim by the next session (ibid., m.8d), while another man was tried for a theft at Bramley allegedly committed at a time when he was in gaol on a similar charge: ibid., mm.12d, 13. See further below, 269-70.

[3] Above, 112-113.

was insufficient to get other known cases included.[1] A man who seems to have killed in self-defence was presented by a jury including the coroner who held the inquest;[2] presumably the coroner was anxious either that the case should be prosecuted, or that no discrepancies in his evidence could be detected if the records were inspected. Another man had the misfortune to kill the warrener of an influential landowner, Sir Maurice Russell, and was accordingly presented by a jury including members of some prominent county families.[3] In a further two cases it was the lords of manors themselves who were slain. One, John Daccombe,[4] had served with the county coroners both as a peace sessions juror and as a subsidy collector;[5] the other, Andrew Walton, not only belonged to the 'official' class,[6] but also died at the hands of his wife and her lover, in a case so widely notorious that no presenting jury could plausibly overlook it.[7] These four cases suggest that

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[1] Post, 'Peace rolls', 636-7.

[2] JUST 2/155, m.21; Putnam, Proceedings, 228 no.68.

[3] JUST 2/156, m.2d; Putnam, Proceedings, 227 no.64.

[4] ibid., 221 no.41. The accused had been tried and hanged already, at gaol delivery: JUST 3/179, m.5.

[5] Putnam, Proceedings, 226-7 nos 61-2; Cal. Fine Rolls 1383-91, 117, 157, 217.

[6] ibid., 117.

[7] See below, 284-7.

peace sessions presentment was used consciously as a device for the defence of the gentry.

The fifth case confirms this from two points of view, in that influence was at work for the defendants as well as for the victim. The victim was John Keblewhite the younger, whose status is hard to assess. He was said to have been attacked 'within his bailiwick', namely William Fivehide's park at Sherborne Coudray, which suggests that he was some sort of private official;[1] his father, however, was subsequently a presenting juror,[2] and within a couple of generations the family inherited part of the Coudray estates,[3] so the dead man may have been of some local importance. His master, William Fivehide, was a Sussex landowner of the 'official' class,[4] a man of lawless temperament,[5] and the sort of petty magnate whose interests might have been served by local functionaries. The coroner's inquest found, quite probably correctly, that Keblewhite had been attacked and killed by a group of six men, who were identified and indicted. Three of the accused were from Reading abbey, and a fourth from Reading town; the other two

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[1] Inquest at JUST 2/155, m.12d.

[2] Putnam, Proceedings, 213 no.3, 220 no.38.

[3] Baigent and Millard, History ... of Basingstoke, 295.

[4] Cal. Fine Rolls 1377-83, 187, 198, 201, 280.

[5] For his rapes and assaults, see Cal. Pat. Rolls 1377-81, 54.

were scions of the gentry - Nicholas Gilot was the son of Humfrey Gilot, a regular presenting juror,[1] while Reynold Sheffield the younger was the son of a Berkshire escheator and justice.[2] It is not, then, surprising to find that a presenting jury at the following peace sessions, including both county coroners, omitted all mention of Gilot and Sheffield, and laid the blame entirely on the Reading men.[3] In the event no one suffered: Fivehide died soon afterwards,[4] and four of the culprits, including Gilot and Sheffield, obtained pardons in time to forestall prosecution when the coroner's roll was reviewed in king's bench.[5] The fact remains, however, that the peace sessions jury deliberately omitted to indict known offenders of their own social class, and this instance cannot have been unique.

Obviously there occurred from time to time homicides and other felonies against members of the 'official' class which came within the proper jurisdiction of their fellows on presenting juries; it is the selectivity of case and of detail which endorses the suspicion that class interests were being served.

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[1] Putnam, Proceedings, 217 no.22, 218 no.27, 219 no.31.

[2] Cal. Pat. Rolls 1391-6, 438, 607.

[3] Putnam, Proceedings, 226 no.61.

[4] Cal. Pat. Rolls 1388-92, 201-2.

[5] Cal. Pat. Rolls 1391-6, 222, 277, 311; C 67/31, m.11 [Taylor]; KB 27/527 Rex m.10d.

Similar considerations apply to the instances of open personal involvement on the part of the accusing bodies. Some presentments by sessions jurors of offences against their colleagues on other presenting juries have been noticed;[1] more directly still, William Over, the abbot of Hyde's bailiff, was on a jury which presented rivals from Waverley abbey for their part in a dispute,[2] and John Baker (Pistor) presented the theft of his own chattels.[3] These two Hampshire examples compare favourably with some other incidences - eight at Essex sessions in 1377-9,[4] and more than forty in the Kent sessions of 1316-17.[5] This self-interested prosecution was not confined to jurors. Thomas Brading, as steward to the duke of York, held the view of frankpledge which indicted a dog-owner for taking one of Brading's sheep which the dog had worried to death.[6] Although Thomas Skelton may not have been an active justice at the time,[7] he was a justice of the peace when three

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[1] Kent Keepers of the Peace 1316-1317, ed. B.H.Putnam (Kent Records, XIII, 1933), xxx.

[2] Putnam, Proceedings, 214-5 no.11.

[3] ibid., 230 no.77.

[4] Essex Sessions of the Peace 1351, 1377-1379, ed. E.C.Furber (Essex Arch. Soc. Occasional Publication no.3, 1953), 37.

[5] Putnam, Kent Keepers, xxx.

[6] JUST 3/194, m.4d; JUST 3/218/1, mm.223-4.

[7] The commission under which Hankford and Screen were said to be sitting does not seem to have been enrolled, but Skelton was included in commissions throughout the period: JUST 3/194, m.8; Cal. Pat. Rolls 1405-8, 497; 1408-13, 485.

men were indicted in 1409 on charges of breaking into his manor at Andover with intent to kill him and his servants;[1] it is extremely likely that Ringbourne was sitting in 1394 when a man was indicted for stealing his poultry.[2] It is remarkable (and, for the purposes of giving credence to the indictment, disappointing) that in each of these three cases the defendants were acquitted - in the Skelton case by a nondescript jury,[3] but in the Brading case by a fairly typical group of prosperous locals, including a coroner.[4] Both the alleged thieves could have been regarded as candidates for leniency, but Skelton's enemies hardly could; after all, since the alleged victims in each case were closely involved with the prosecution, if the indictments were righteous they were probably also factually accurate. Skelton may have preferred to sue his enemies for financial damages, in preference to the profitless revenge of felony convictions; otherwise it is hard to understand the acquittal, unless the determining court found the indictment unjustified. Given the opportunities for accuracy, the acquittal of such defendants casts more

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[1] JUST 3/194, m.8.

[2] For the indictment, see JUST 3/179, m.10; Ringbourne was on both commissions of 1390 (Cal. Pat. Rolls 1388-92, 342, 344), and was the principal active justice for some years after: above, 141-2.

[3] JUST 3/218/1, m.177.

[4] ibid., m.223; Thomas Collington was coroner in 1405: JUST 3/194, m.1.

than ordinary doubt on the truth of the allegations.

Commonly the truth of an indictment can only be judged, with circumspect scepticism, on its individual merits. The same is true of the verdicts which sometimes confirmed or rejected them. There are, in the first place, the discretionary verdicts whereby the petty jury found a defendant guilty of petty larceny on an indictment for grand larceny,[1] or - more frequently - returned a verdict of self defence to an indictment for homicide.[2] These are all very credible - or at least intelligible - when they are the only surviving verdicts, but the survival of an indictment as well as of the discretionary verdict sometimes shows the petty jury as eager to acquit as the presenting jury was to accuse. Walter Upcote was indicted by a coroner's jury (admittedly including two persons named Tiler) for the felonious homicide of William Tiler;[3] at gaol delivery it was found that Tiler had fallen on Upcote's knife in a fight which he himself began.[4] The discrepancy is even plainer in another case. A coroner's jury said that Maurice Hastell, chaplain, had lain in wait for Richard Tilly, stabbed him with a trencher, and thus feloniously killed him.[5] The petty jury found (as

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[1] Above, 86-88; below, 232-6.

[2] Above, 88-90.

[3] JUST 2/155, m.16.

[4] JUST 3/179, m.4d.

[5] JUST 2/156, m.2d.

they did in many cases whose indictments are lost) that Tilly began abusing Hastell, and attacked him during the ensuing argument; Hastell fled, and when cornered drew his knife, whereupon Tilly, making another attack, impaled himself upon it.[1] This elaborately circumstantial verdict of self defence was typical of homicide trials in this period; since fights were apparently of frequent occurrence, the intention was probably to protect the living - the dead being past anything but praying for - from the repercussions of a dubiously culpable business, the coroner's inquest verdict being probably true but not equitably relevant. In some cases the defendant may have arranged his acquittal at gaol delivery after the fashion in king's bench, but the fact of leaving the decision to a gaol delivery jury bespeaks insufficient wealth or unenviable self confidence; in others, of course, the stereotyped self defence verdict may have been punctiliously truthful. Reliance on such findings is nonetheless inadvisable without supportive reasons. With verdicts in king's bench credulity is precluded by the monotonous acquittal of every defendant not undergoing appeal by a private plaintiff or gaol delivery at trailbaston; the verdicts were manifestly independent of the facts and rights of the matter.

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[1]JUST 3/179, m.6d.

The one respect in which the records of determining sessions are reliable is in their presentation of the law. King's bench and gaol delivery alike were conducted by men of intelligence, education, and long professional training, and, despite the fear or favour which might colour the execution of their duties, their decisions may be taken to be those of astute and vigilent lawyers. Their dicta were the law; political vicissitudes might elicit equivocating opinions, and inflict humiliating penalties upon luckless favourites,[1] but the records of the courts - of both benches, and their satellites for that matter - and the less formal reporting of the year books allow no doubt that law was being made and applied, as well as bent, according to high conceptual principles and copious knowledge of precedent. Here the vast distinction between the regular determining courts and the courts essentially of first instance appears most forcefully. The justices of the peace undoubtedly had determining powers much of the time, and used them, at least on occasion, to determine all kinds of trespass against the peace and sundry felonies, but the number of indictments which found their way to gaol delivery suggest that little criminal business was determined at peace sessions. The privileges and delays which were evidently open to all but the least influential and

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[1]Sayles, King's Bench, VII, ix-xiii.

prosperous meant that the justices of the peace had total and effective jurisdiction only over matters of small material consequence or persons of no importance. The law was, accordingly, unconcerned that its infinite niceties should be enforced there or (even less) at coroners' inquests. The decisions made at peace sessions would never be taken as precedents, and the forms of indictments, whatever their source, were of little legal significance if the details were to be decided in fuller and more circumscribed legal surroundings. A century earlier, when presentment and perhaps appeal were less familiar events in the county, and the procedures less flexible, more notice was taken of the minutiae of accusations;[1] in the fourteenth century, the relatively informal and increasingly routine business of peace sessions made the task of applying strict legal standards to indictment formulae redundant as well as formidable. Hence the difficulty facing Plucknett when he essayed his 'Commentary on the Indictments': the indictments represented 'the spontaneous expression of the jurors' attitude towards criminal law, very little influenced by the academic conservatism of the professional lawyer'.[2] The presenting jurors, bullied or cajoled by the assortment of justices, were aware of the statutes

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[1] Best illustrated by Placita Corone, passim.

[2] Putnam, Proceedings, cxxxvii.

they could invoke and the procedures they might circumvent, but their business was accusation, not the compilation of a technically satisfactory record. Similarly the coroners' juries returned verdicts which were haphazardly embellished by the fitful legal learning of the coroner or his clerk. Only the higher courts aspired to satisfy more exacting standards and more permanent scrutiny.

This begs one final question about the accuracy with which the records represent the proceedings in court. The inadequate coroners' indictment embroidered in king's bench is unlikely to represent the inquest proceedings very accurately,[1] but for the most part there is little ground for suspicion. The limitations of convention, however, applied. In king's bench and to some extent at gaol delivery there was a tendency for an indictment to be summarised in the record of the trial, and such formulae as the routine inclusion of words of felony altered and sometimes made nonsense of the evidence actually heard and judged.[2] The traditions of the records also mean that the arguments conducted in court, the motives attributed to the parties involved, the material

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[1] Above, 184.

[2] Since a coroner's inquest mentioned a surgeon by name concerning the death of a patient under operation he was tried for felony although the verdict, like the inquest verdict, was exculpatory: below, 231.

evidence or witnesses adduced, and the mitigating circumstances allowed, seldom appear, the exceptions being such borderline cases as might otherwise produce a paradox - the suspect released as being of good repute, or the homicide recommended for pardon because of a verdict of self-defence. Within these limitations there are few grounds for complaint. Admittedly the late fourteenth century did see a small spate of complaints that professional clerks in the courts were corrupting the records to promote the interests of private clients, and one exalted victim of this practice actually elicited an apologetic and permanent correction; the clerks evidently had the opportunity to manipulate the records, and the fact that they actively increased these opportunities suggests that they sometimes took them.[1] The motives for such behaviour, however, were by nature incidental to private litigation; the chances and the justifications were far fewer where felons were concerned. In law, albeit not in fact, the records are manifestly representative.

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[1] Post, 'King's bench clerks'.

V

The Criminal Law

> The miserable history of crime in England can be shortly told. Nothing worth-while was created. There is no achievement to trace. Except in so far as the maintenance of order is in itself admirable, nobody is to be admired before the age of reform. Centuries of civilisation have passed the subject by, so that the law itself still largely reads like an Anglo-Saxon tariff; and the only intellectual interest and the only hope for the future lie in the external investigations of the criminologist.[1]

To the historian of the common law as an organic mutation and development of conceptual and technical niceties, the stolidity of the criminal side of things seems a readily attributable and almost culpable fault: partly attributable to an early and absolute procedural separation of criminal from civil wrongs, arising from the impersonality of indictment procedures,[2] and partly attributable to an inhibiting procedure - indictment, plea of guilty or not guilty to the general issue, inquest, and judgment - which in most cases precluded the two procedural opportunities for the claim, discussion, and award or denial of latitude - special

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[1] Milsom, Historical Foundations, 353.

[2] ibid., 357-8.

pleading and the special verdict.[1] The jurisprudentially barren operations of pardon and clergy, and the arbitrary intrusions of isolated statutes, did nothing to mitigate the stagnation and ossification of unsophisticated concepts and procedures.

As strictures on the poverty of medieval governance and a lack of juristic imagination these interpretations need modification. It is true that the criminal law made little use of Westminster as a forum for protracted debate, saw no dramatic elaboration of procedure, spawned no conceptual leviathan comparable with equity. These failings, however, were overwhelmingly reflections of fundamental dynamics of litigation operating through the medium of common-law processes; it was the very versatility of English legal development that determined the neglect of the criminal law. The separation of criminal from civil wrongs, far from making the criminal law read largely 'like an Anglo-Saxon tariff', arose from the desuetude of the Anglo-Saxon codes. The elaborate provisions of bot and wer, to ensure private redress for a wrong, did not preclude the development of concomitant notions that the power of the state and the order of society were insulted or threatened by the commission of some of these wrongs, and the governmental and social dominance of the king - or, in smaller contexts, of the lord - allowed the growth of the king's peace as a simplified and personified object of these

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[1] ibid., 362-4.

insults and threats. In the earliest phases of continuously perceptible evolution in the criminal law the crystallising category of crown pleas indicates a firm prescription of wrongs in which public interest was presupposed, and the fiscal emphases of the cumbersome eyre show a material basis for this royal enthusiasm. Yet the same early phases, particularly the massively productive thirteenth century, suggest that there was also a movement to circumvent some of the procedures which had developed. The Anglo-Saxon codes read very much like codifications of the feud, substituting a generally acceptable scale of emendation for the lawless situation in which the victim of a wrong essayed material redress from a prosperous enemy and empty vengeance on a pauper. The superior efficiency of public - that is, royal - sanctions in prosecuting such retribution proved, however, a mixed blessing, since the provision of standard procedures under an impartial arbiter also swept away one duality of consideration - the magnitude of the wrong, and the status of the culprit and his victim - replacing it with two monolithic factors, one a consideration of the magnitude of the wrong, the other a scale of consequent retribution embodying only (and in imponderable proportions) social hygiene and righteous indignation. Still the procedures were based upon private wrong, but the punishments were those of public rather than private interest. The rise of the jury of presentment bespeaks a lack of royal faith in dependence

upon private prosecutions for the maintenance of public order, and the disinterested attachment of standard penalties of death and forfeiture to a fixed range of extreme wrongs undoubtedly justified this lack of faith by reducing drastically the chances of material private redress by due legal process. Although provision for private prosecutions within the sphere of crown pleas has never lapsed completely, and was readily invoked throughout the later medieval period, it is clear that Edward I was reviewing the criminal law of a society which had lost its keenness of interest in the prosecution of public wrongs; procedural flexibility made a private lawsuit for damages a profitable venture where appeal of felony was not. Understandably, the elaborate development of procedure, and the chief employment of the legal profession, were all in the field of private litigation; the crown, uneasily encroaching upon the progressively abandoned preserves of private criminal suit, found relatively little to exercise the legal mind in courts whose customers mostly lacked the resources for legal strategy. 'Crime', indeed, 'has never been the business of lawyers.'[1]

Limitations of coverage, therefore, permitted (if they did not absolutely necessitate) a broadly underdeveloped criminal law. Even so, it would be a mistake to suppose that obsolete procedures and piecemeal

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[1]Milsom, Historical Foundations, 374.

legislation were the only determinants of the criminal law in the late fourteenth century; indeed, the rigid but skeletal structure, and a limited respect for precedent even when it was known, gave far greater judicial flexibility in this area than in others. 'The lamentable adherence of the professional lawyer to an archaic list of felonies and an inadequate conception of misdemeanour combined to stifle any serious attempt at reform',[1] but the interpretations of the law by determining justices, and the disregard for conventional forms shown in presentments by juries, lessened the rigours which strict observance of the general rules required, and reveal attempts to exercise novel niceties and subtleties. Throughout the fourteenth and fifteenth centuries the general rules were those titivated and handed on by Edward I. Treason, comprising not only vaguely-defined heinous offences against the crown but also the homicide of a husband, master, or temporal or spiritual lord, carried sentence of especially ignominious death. Felony consisted of culpable homicide, rape, prison breach, robbery, and grand larceny, and carried a death sentence. A gamut of lesser offences - petty larceny, extortion, economic offences, various types of misfeasance and nonfeasance - was lumped together with personal and property offences more commonly treated in other courts as private wrongs; the close similarity of these last

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[1] Plucknett, in Putnam, Proceedings, cxxxviii.

types of case is underlined by the common phraseology whereby such cases sued privately were transgressiones, civil trespasses, whereas the crown suits of all these minor matters were transgressiones contra pacem, the misdemeanours of later times. These were visited with the conceptually null penalty of being in the king's mercy, from which etymologically and practically amercement, occasionally varied with imprisonment, followed.

Within this framework there were several ways in which extenuating circumstances could be taken into account. For some minor offences created or defined by statute there were statutory punishments of divers sorts - usually permutations of imprisonment and amercement. Similarly, legislation could provide civil disabilities for offenders, in respect of such matters as inheritance or tenure of office. In court the wilder constructions of indicting juries could be trimmed or rejected before the defendant was obliged to plead. On pleading not guilty to the general issue the defendant was then able to posit arguments which led juries to return special verdicts, which normally came in two types, as will be shown later: verdicts of justification or self-defence, returned on indictments for felonious homicide, and verdicts of petty larceny returned on indictments for grand larceny. Less frequently, verdicts of misadventure or lunacy were allowed, principally in

homicide cases.[1] Lastly, it was open to the justices to remand a suspect or indictee from one gaol delivery to the next - six or twelve months' imprisonment - and then discharge by proclamation or by securing acquittal. Although pardon was, in its very nature, an external overriding of due legal sentence, it must also come under the heading of judicial expedients, since convicted defendants were sometimes remanded after trial 'in anticipation of the king's grace'. The procedure of prosecution and of trial, therefore, did not necessarily adopt the stark contours of the principal legal concepts, although an analysis of the criminal law must inevitably follow the contemporary patterns and definitions.

The compass of the law of treason was broad and ill-defined. It 'seems to contain two elements. One is about kingship ... The other is about treachery as such ...'[2] High treason, involving both elements strongly, suffered as a legal concept from its relative rarity in the courts and the heavy political overtones which it commonly bore, and a recent study has illustrated the difficulty of demonstrating abiding principles or consistent interpretations.[3] As far as the fourteenth and fifteenth

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[1] An alleged thief was remanded 'because of unsound mind' in 1409: JUST 3/194, m.6d.

[2] Milsom, Historical Foundations, 370.

[3] Bellamy, Law of Treason, throughout.

centuries are concerned, the most nearly definitive statement of the law was contained in a codifying statute of 1352.[1] Maitland's summary of the offences defined as treason suffices:

> to compass or imagine the death of the king, his queen, or eldest son; to defile the king's wife or his eldest unmarried daughter or his eldest son's wife; to levy war against the king in his realm; to be adherent to his enemies, giving them aid or comfort; to counterfeit the king's great or privy seal or money; to bring false money into the realm; to slay certain officers [chancellor or treasurer] or justices being in their places doing their offices.[2]

The royal interest in defining the scope of high treason was twofold: not only was it desirable to have a firm and eclectic definition, but the fiscal incidents of the offence - forfeiture of lands regardless of any mesne lord - were emphasised at a particularly useful juncture for royal revenue. The statute probably was, as it claimed, a statement of the law rather than a legislative innovation, although some of the emphases may have derived colour from the political careers of Edward III and his father.

Despite the elaborate exegesis which the statute has provoked, the common run of plea rolls suggests

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[1] 25 Edward III.5, c.2; cf. Bellamy, Law of Treason, c.4.

[2] Pollock and Maitland, II, 502n.

that no great subtleties, or even great authority, were attributed to it. Plotting the death of the king, unsurprisingly, was unquestionably an offence of ultimate heinousness, and - incidentally - provides some of the few witchcraft cases ever to come before the common law courts in medieval times;[1] presumably similar severity would have followed the seduction of queen or princesses, whose explicit inclusion must have owed something to the activities of Mortimer and Isabella more than twenty years previously. The killing of officers, too, was taken seriously, especially in 1381, although there were already signs that the idea was extending beyond the statutory limits.[2] Insurrection and aiding the king's enemies - particularly the former - were of more frequent occurrence, but it is less than certain that such activities were inevitably counted as treasonable. Genuine rebellions, such as the revolt of 1381, were prosecuted firmly as treason, and the unsuccessful defendants suffered the appropriate penalties.[3] The use of 'words of treason' to add weight to an accusation, as with 'words of felony', soon became an occasional resort of indicting jurors,

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[1] e.g. KB 9/224, m.258 [1427]; R.L.Storey, The End of the House of Lancaster (London, 1966), Appendix I; Bellamy, Law of Treason, 126-8.

[2] An accusation of killing the king's champion (not, apparently, when acting as such) was taken to be one of treason in 1380: KB 145/3/3/1, unnumbered membrane.

[3] Above, 96-7.

who were as usual concerned more with the effectiveness than with the legal phraseology of their presentments. Thus, when Nicholas Clifton used a group of his friends to help him elope with Eleanor West - by the standards of the day, essentially a matter for private litigation or perhaps a peace sessions presentment of trespass against the peace - the indicting jurors, probably at the instigation of Eleanor's irate father, said that Clifton and his friends 'treasonably rose against the king and his people'.[1] Robert Northridge and others allegedly 'made insurrection with armed force against the peace' to effect a ten-shilling burglary in 1394,[2] while a Cornish justice of the peace was indicted (maliciously, according to subsequent testimony) for, among other things, treasonably helping the Spanish to sack Fowey, and 'feloniously and seditiously' releasing an outlawed housebreaker without security;[3] on two occasions the constables of Coventry described apparently unimportant ambushes as treasonable.[4] The terminology of treason was evidently subject to the same sort of devaluation as had affected 'words of felony';[5] the idea of treachery

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[1] KB 27/534, Rex m.4; see also Post, 'Rape Legislation' (below, 244 n.2).

[2] JUST 3/179, m.10d.

[3] Putnam, Proceedings, 390 no.22, 398.

[4] Kimball, Warwicks Sessions, 82 no.30, 84 no.38.

[5] In the wake of the 1381 revolt, 'riot and rumour' became treasonable: 5 Richard II.1, c.6.

was a persistent association, but it was not restricted, in the minds of presenting jurors, to offences against the state and its officers. When used in this context it was not necessarily specific - the presentment on which John Hawkwood was tried suggests that he behaved like his condottiere namesake, but no actions were described.[1]

The matter of forging and uttering false coin or royal seals shows even more plainly that the statutory provisions were not administered uniformly. Of old, counterfeiting and clipping had been treated very seriously, and the 1352 clause was no novelty;[2] some subsequent indictments accordingly follow this pattern - John Bromley, for example, 'falsely and seditiously made false money ... in prejudice and deception of the king and his peaple', and two men who 'nightly made the king's coin' were noted as being indicted for treason.[3] The principle was extended by construction to include the transfer of a genuine seal to a false document, which the forger had wrongly supposed to be a trespass against the peace;[4] aiding and abetting, however, seems (on much later authority) to have been

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[1] KB 27/472, Rex m.18.

[2] Pollock and Maitland, II, 504-6; clipping was only included firmly by 4 Henry V, c.6.

[3] Kimball, Warwicks Sessions, 135 no.72; Putnam, Proceedings, 325 no.144.

[4] Fitzherbert, Abridgement, Coron 70.

mere felony, since 'treason can have no accessory'.[1] Yet, despite words of treason in the indictment, a case of counterfeiting in Yorkshire was described as felony by the marginating clerk; and in two remarkable instances - William Bromley, who confessed that he had sold base bullion as gold to the royal mint at the Tower,[2] and Thomas Bromley,[3] who admitted forging deeds and apparently sent himself false letters close under the great seal[4] - the matter was settled by amercement, in the manner of trespasses.

The difficulties in tracing the law of high treason in practice are heightened by the nonlegal factors which were involved: political expediency, which merely sought the ruin or the exculpation of defendants, regardless of precedent or fact, and forfeiture, which added fiscal spice to a prosecution, in that the crown took lands and chattels of an attainted traitor, rather than the 'year, day, and waste' and the chattels of a felon. Consequently,

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[1] ibid., Coron 55.

[2] Sayles, King's Bench, VI, 165-6.

[3] As yet no connection between these three Bromleys has been found, and there is a fourth counterfeiting namesake, John Bromley, leech: JUST 3/174, m.3d (1381).

[4] Bromley made fine at the Warwicks king's bench session of Michaelmas 1397: KB 27/546, Rex mm.27-27d. His case may have been favoured by political pressures; it is discussed and documented fully in J.B.Post, 'Courts, councils, and arbitrators in the Ladbroke manor dispute, 1382-1400', in Medieval Legal Records ... (H.M.S.O., forthcoming).

it was in the prosecution of petty treason that the concept of treason came most frequently before the courts, although the limitations of circumstance meant that there was little scope for legal argument.[1] The statute of treasons had segregated as 'another manner of treason' the killing of a master by his servant, a man by his wife, and a prelate by one of his spiritual flock.[2] The only issues - apart from those of fact - were the possible extension of treason to similar homicides. Shortly before the statute of treasons, a case of patricide may have been accounted treasonable,[3] and in 1322 Spigurnel cited the case of a woman burnt for complicity in an attack which her husband survived.[4] After the statute, Shareshill ruled that it was no exception to an indictment for petty treason that the defendant had left the service of his victim before the crime, if an inquest returned that the malice dated from the time of such a relationship;[5] a subsequent judge, however, when faced with a similar exception, took an inquest on the issue of the date of employment, implying that no attempt would be made

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[1] In general see Bellamy, Law of Treason, Appendix II.

[2] Statutes of the Realm, I, 320. Extensions of this were to be referred to the king in parliament.

[3] Bellamy, Law of Treason, 227.

[4] Fitzherbert, Abridgement, Coron 383 [1342].

[5] ibid., Coron 210 [1360].

to date the malice.[1] In the middle of the fifteenth century it was ruled that for the purposes of defining petty treason a servant stood in the same relation to his master's wife as to his master,[2] while an unsuccessful parliamentary petition of 1433 aimed at extending petty treason to cover a specific instance of wife-slaying. In this case the element of treason was attached less to the relationship between the homicide and his victim than to the revulsion of the petitioners from his offence,[3] as another petition, regarding a man pardoned for murder committed in attempting rape, emphasises.[4] It seems that the aggravation of a sexual motive played a part in the prosecution of petty treason, especially since defendants frequently had male accomplices in the crime,[5] some of whom were known to be lovers.[6] In practice, however, chronicle evidence

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[1] KB 27/546, Rex m.11.

[2] Fitzherbert, Abridgement, Coron 7.

[3] Rot. Parl., IV, 447, John Carpenter disembowelled his bride of a fortnight to establish whether or not she was pregnant, the action of an insane, or insanely jealous, man; in either case the petition smacks of vulgar journalism.

[4] ibid., V, 111-12.

[5] Sessions of the Peace for Bedfordshire 1355-1359, 1363-1364, ed. E.G.Kimball (Beds Hist. Rec. Soc., XLVIII, 1969), 88 no.152; Rolls of the Gloucestershire Sessions of the Peace 1361-1398, ed. E.G. Kimball (Bristol and Glos Arch. Soc., LXII, 1940), 86 no.16; Kimball, Warwicks Sessions, 104 no.40 and note.

[6] Fitzherbert, Abridgement, Coron 383; Putnam, Proceedings, 133 no.22; see also the case of Elizabeth Walton, below, 284-7.

suggests that sentences for petty treason were carried out so rarely as to be remarkable.[1]

Below treasons in the scale of criminal offences came the wide range of felonies,[2] including that eccentric but until 1961 persistently felonious form of killing, suicide.[3] The problems of medieval suicide are twofold: suicide was an infrequent occurrence, leaving no defendant to be tried in the higher courts, and its records are correspondingly sparse; also, indications of its legal nature and social incidence are alike obscured by fiscal considerations. Bracton adopted a fiscal classification when differentiating in law between states of mind.[4] His text, like those of his redactors,[5] leaves much to be desired,[6] but it is clear that he defined three types of suicide, distinguished by forfeitures of lands and chattels,[7]

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[1]The Westminster chronicler noted Elizabeth Walton's execution: below, 284-5; the brief annals of William Gregory mention another instance three years later: Camden Soc., new ser., XV, 93.

[2]For the developing notion of felony, see Pollock and Maitland, I, 303-5, and II, 464-8.

[3]9 & 10 Elizabeth II c.60 (Suicide Act, 1961).

[4]Bracton, II, 423-4.

[5]See the Tractatus Corone printed as Appendix II to Placita Corone.

[6]Placita Corone, 34-5 n.3; cf. remarks by D.W. Sutherland in Speculum, XLIII (1968), 169-70.

[7]On forfeiture procedures, see Hunnisett, Medieval Coroner, 29-30.

chattels only, or nothing. Forfeiture of lands and chattels was reserved for cases of felonious intent, either where the act was intended to cheat the gallows (conscientiae metus in reo veluti pro confesso habetur), or where a felonious frame of mind turned impetuously inwards 'through ire and ill-will'.[1] Mr Kaye would add to this cases where the execution of a felonious intention led by mistake to the death of the agent, although the text does not warrant this;[2] one of the cases mentioned below implies application of this principle. Forfeiture of chattels only, 'because the man is not convicted of felony', provided a mediate penalty for the depressive and the chronic invalid who acted 'through stress of living or intolerable troubles'.[3] No forfeiture was applicable in the case of the lunatic, the idiot, the retarded, or the delirious,[4] because 'they lack sense and reason', and are thus incapable of the intention fundamental to felony or injuria.

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[1] Sutherland paraphrases happily 'sheer perverseness'.

[2] Placita Corone, 34-5 n.3; Sutherland, loc.cit.

[3] Britton, ed. F.M.Nichols (Oxford, 1865), I, 8 gives this as the general penalty for suicide.

[4] Bracton wrote 'de furioso ... qui rationem non habet ... de mente capto, et de frenetico ... de infantulo' and of one 'qui laborat in acuta'; the terms are comprehensive, rather than individually distinct definitions.

Such nice distinctions were not observed so precisely in practice. It is clear that there was a desire to underline any mitigating circumstances,[1] which nevertheless suffered heavily from the fiscal interest in forfeitures; as a result, inconsistencies abounded. In 1313, when a lunatic wounded himself in a frenzy, recovered his reason, received the last rites, and died of the wound, his chattels were forfeit; yet no forfeiture was imposed in an exactly similar instance in 1348.[2] Other examples show the forfeiture question, especially as regards lands and chattels against chattels only, to have been a matter of common debate in the earlier fourteenth century,[3] although the demise of the general eyre meant that suicide cases rarely appear in the records of the justices. Such issues confronted juries and justices in many forms, and the terms of the verdicts sometimes reflects appreciation of the suicides' dementia and its legal implications. When a Kent jury had declared forfeit the goods of a woman who went mad and threw herself into the Thames, the justices distributed the value of the chattels in alms, since she had been 'in such a state that she could not forfeit these chattels because of her illness'.[4] A man who

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[1] See also below, 321-4.

[2] Fitzherbert, Abridgement, Coron 412, 244.

[3] ibid., Coron 259, 231, 362, 426.

[4] Eyre of London, 14 Edward II, I, ed. H.M.Cam (Selden Soc., LXXXV, 1968), 93.

attempted suicide while mad was acquitted in 1293;[1] another who attempted it after hanging his daughter was found by inquisition in 1228 to have acted 'while in a frenzy and not feloniously'.[2] A York jury in 1355 declared that a woman 'drowned by misfortune through the temptation of the devil'.[3] Occasionally some effort might be made to relate forfeiture to considerations of state of mind, as when justices asked the tithing whether a woman's suicidal frenzy had been continuous or intermittent, and levied forfeiture when the reply was 'intermittent'.[4] Other instances, however, suggest that the fiscal element obtruded rather more bluntly. According to an entry on Chantsinger's roll, for 1387, John Pavy of Woodcote 'was demented for a month continuously ... and he left his house ... and killed himself ... with his own knife'. On review this entry was marginated 'natural death' by the clerk in king's bench; but the possible forfeiture of chattels worth four pounds came into question. Other estreats from the same membrane were entered in their correct order between those of the previous year and those of the following, but not this entry; the membrane was detached for reconsideration, and at some later stage was attached out of

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[1] Hurnard, King's Pardon for Homicide, 166.

[2] Calendar of Inquisitions Miscellaneous (H.M.S.O.), I, no.2220.

[3] Hunnisett, Medieval Coroner, 21 n.2.

[4] Fitzherbert, Abridgement, Coron 324 [1329].

sequence at the end of the roll, while the four pounds was entered as felon's chattels at the end of the list of estreats.[1] This evidence of care in forfeiture for suicide is not isolated; there are examples of inquest juries being amerced for under-valuing chattels.[2] The concern with forfeitures may have been responsible for the rather high values which such chattels showed. Some of those adjudged felones de se were fairly well off compared with the generality of fled felons.[3] Of the four suicides presented at the Wiltshire eyre of 1249, one was worth £12 0.7d., and another 40s.½d.[4] Two years earlier the only suicide presented in Bedfordshire raised eighteen shillings, plus murdrum on the hundred for non-presentment of Englishry.[5] One of four Somerset suicides was worth 46s.8d;[6] a Hampshire man left

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[1] JUST 2/155, m.21; cf. KB 27/529, fines m.10.

[2] Crown Pleas of the Wiltshire Eyre 1249, ed. C.A.F. Meekings (Wilts Arch. Soc. Rec. Branch, XVI, 1960), 153; Eyre of Kent 1313-1314, ed. W.C.Bolland (Selden Soc., XXIV), 137; The Assizes held at Cambridge, 1260, ed. W.N.Palmer (Linton, 1930), 8; Bedfordshire Coroners' Rolls, ed. R.F.Hunnisett (Beds. Hist. Rec. Soc., XLI, 1961), 197. This last was another instance of misfortune found by inquest being changed to suicide at the eyre, again in the case of a madman.

[3] A fleeing felon could, of course, take some chattels with him; if, however, he had fled before he could be apprehended, it is unlikely that he took enough to make this present comparison invalid.

[4] Wilts Eyre 1249, 4 and 524.

[5] Beds Hist. Rec. Soc., XXI, 614. For non-presentment of Englishry, see Hunnisett, Medieval Coroner, 28.

[6] Somerset Rec. Soc., XI, 753.

£4 11s.;[1] six Cambridgeshire cases yielded a total of £10 17.9½d., plus a jury amercement.[2] In such cases there were good fiscal reasons for adjudging felonious suicide, and the practice was probably habitual with many justices; conversely, it was probably easier to obtain the kindly verdict of misfortune when the suicide was a married woman and the question of chattels did not arise.[3] One Hampshire suicide can scarcely be counted as such, although it ranked as suicide when reviewed in king's bench.[4] William Dean was a prisoner, on felony charges, in Winchester castle gaol; he set fire to his cell with the intention of burning his way out, but the smoke suffocated him. Quite plainly his intention was not suicidal, but his death was incidental to the execution of the felonious purpose of gaol-breaking, just as a homicide might have been; this accidental self-killing was thus felonious, and the verdict accordingly suicide.[5] This vindicates Mr Kaye's inclusion of the principle in the medieval law of suicide, whether or not Bracton intended to

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[1] KB 27/529, fines m.8d.

[2] Cambridge Assizes 1260, 2 (45/4½d.), 8 (£5 3.3d.), 24 (nil), 30 (44/10d.), 35 (23/8d.), 36 (10d.).

[3] JUST 2/155, m.13d; Beds Hist. Rec. Soc., III, 432.

[4] JUST 2/157, m.2.

[5] Cf. the same verdict on a woman who died in attempting an abortion: Calendar of Nottinghamshire Coroners' Inquests 1485-1558, ed. R.F.Hunnisett (Thoroton Soc. Rec. Ser., XXV, 1969), 10.

discuss it. Contrastingly, however, a Bedfordshire thief who fell to his death because the advent of the hue caused him to hurry down the ladder which he had just used for burglary was considered the victim of misadventure.[1] This sort of discrepant judgment was not necessarily the product of different policies or different periods; two cases on Chantsinger's roll show equal inconsistency. Lucy Harding of Petersfield went to a nearby stretch of water and 'ibidem se submersit', which seems like an objective account of a suicide;[2] Alice Brand, a few years later, 'voluntarie se submersit' in the river Test.[3] Voluntarie hardly adds to the phrasing anything not implicit without it;[4] yet Alice was adjudged a suicide and Lucy was not. As married women, neither had chattels; the likeliest explanation of the different judgments is that of plain inconsistency. The remaining Hampshire cases are consistent; all were plainly suicide and were judged so.

In contrast with suicide, homicide was an event of very frequent occurrence, and its legal implications were frequently debated at the time and have

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[1] Beds Coroners' Rolls, 282; the verdict of infortunium is explicit in the eyre record: JUST 1/26, m.28.

[2] JUST 2/155, m.13d.

[3] ibid., m.20.

[4] But the word was normally added, e.g. KB 27/529, fines m.8d, from Tauke's roll: 'se ipsum voluntarie suspendit'; 'se felonice interfecit voluntarie'.

aroused much controversy since.[1] Mr Kaye's treatment of the subject, though important in calling attention to significant phraseology, suffers from persistent reliance upon the peace rolls for verbatim and litteratim expressions of contemporary criminal law;[2] Dr Green very properly supposes the verdicts of such local jurors to be as much within the province of the social historian as of the lawyer. Miss Hurnard's pardons, like Dr Green's exculpatory verdicts, were all too often extra-legal, in that they imposed upon an established circumstance a legal consequence which was inconsistent with the legal interpretation: they represent procedures for circumventing consequences regardless of an individual's legal culpability.

Unfortunately these special approaches to the medieval law of homicide have obfuscated its relatively simple general structure - a structure which is revealed in the few permutations of judgment which occur in determined cases. Excluding those instances which fell within the categories of treasons, fourteenth-century justices acknowledged three categories of homicide: felonious, pardonable, and justifiable. Broadly speaking, a homicide was treated as felonious until it had been proved otherwise; all agents of

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[1] J.M.Kaye, 'The early history of murder and manslaughter', Law Quarterly Review, LXXXIII (1967); Hurnard, King's Pardon for Homicide; T.A.Green, 'Societal concepts of criminal liability for homicide in mediaeval England', Speculum, XLVII (1972).

[2] Post, 'Peace rolls', 639.

homicide mentioned on a coroner's roll, for example, would be subject to process and trial for felonious homicide, whatever the verdict of the coroner's jury. It was then open to the defendant to claim special circumstances, the truth of which could be subjected to comment in a special verdict by the trial jury, and the status of which would be decided by the justices. Although the onus of proof seems to have rested upon the defendant, the procedural and substantive resources of the law were well adapted to the accommodation of mitigating or exculpatory factors.

The category of justifiable homicides was fairly closely defined. In 1348 Thorp instanced three categories of homicide for which an acquittal was appropriate and no pardon was required: the killing of a man who resisted arrest by a person with a lawful warrant; the killing of a robber, burglar, or thief, who cannot otherwise be arrested; and the killing of escaping prisoners by a gaoler or other person with lawful custody of them.[1] These were not novel judgments, since the second and third of these had been applied piecemeal during the Northamptonshire eyre twenty years beforehand.[2] Further extensions of the second category were made, to include the killing of

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[1]Fitzherbert, Abridgement, Coron 179.

[2]The second, see ibid., Coron 288, 289, 290, 330; the third, Coron 328, 346, 349. In the last of these a pardon was required.

persons committing or attempting to commit homicide or arson,[1] but it does not necessarily follow that this category included the killing of any recalcitrant felon caught in the act, since the slender and early evidence suggests that a pardon at least was required by a woman who killed in defence against rape.[2] In general, however, within these limits the law was generous, explicitly ruling that defendants in such cases were blameless even by comparison with accidental homicides.[3] It is also possible that infanticide was sometimes regarded as justifiable, in the sense of qualifying for acquittal rather than pardon, but the evidence is inconsistent.[4]

Pardonable homicides - that is, homicides for which the justices remanded a defendant, convicted on an exculpatory special verdict, 'in anticipation of the king's grace' - fell into three broad general categories; diminished responsibility, misadventure, and self-defence. Responsibility might be treated as diminished on the grounds of infancy or of lunacy. Infancy was not a safe defence. In 1315 an accessory to homicide was acquitted without amercement because he was under age, but, since another accessory was imprisoned and

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[1] ibid., Coron 258, 192.

[2] Hurnard, King's Pardon for Homicide, 93 n.3. Cf. The problem of those who exercised the traditional right to behead outlaws: above, 49.

[3] Fitzherbert, Abridgement, Coron 261.

[4] See (circumspectly) B.A.Kellum, 'Infanticide in England in the Later Middle Ages', History of Childhood Quarterly, I (1974).

not hanged, there was no question of avoiding conviction for felony;[1] in 1351 a sentence upon a minor for larceny was respited,[2] and (much later) a juvenile homicide was remanded pending pardon.[3] Despite, however, one acknowledgement that 'ancient law' allowed no death sentence upon a felon under age, the persistent attitude was represented by the tag malicia supplet etatem: if the defendant was capable of distinguishing right from wrong, age was of no consequence.[4] Insanity, on the other hand, was accepted as grounds for clemency in homicide cases, although it is never found as a defence on other charges. By the later fourteenth century the flexibility of judgments in cases of diminished responsibility had been well established,[5] and two Hampshire cases illustrate the possibilities allowed by the justices.[6] Richard Godwin the younger seems to have been permanently mad. In January, 1387, he beat a married woman to death in broad daylight, and was immediately attached and sent to Winchester pending gaol delivery. The coroner's

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[1] ibid., Coron 395.

[2] ibid., Coron 129.

[3] ibid., Coron 57.

[4] ibid., Coron 118B, 57, 170.

[5] Hurnard, King's Pardon for Homicide, 159-170.

[6] A third case, in which Matilda Chanter, demens, killed a three-year-old boy, never came to court - she hanged herself a year later: JUST 2/155, mm.6, 7.

report makes no mention of his lunacy.[1] At gaol delivery, however, he was remanded indefinitely, without trial, 'because it is obvious to the court that he is an idiot and not in his right mind'.[2] He was remanded regularly at each delivery until the end of the reign at least; in the later entries the reason for his original incarceration seems to have been forgotten, and he was said to be held on suspicion of theft.[3] Clearly his reason was thought to be lost permanently, and perpetual remand was the only expedient. The case of Ingram Carpenter contrasts with this and illustrates a creditable rationale in judicial treatment. Carpenter was indicted, before John Tauke, for killing his wife Agnes with an axe. On his first appearance at gaol delivery he was remanded in custody;[4] the second time he was tried. The jury returned that he suffered from intermittent fits ('multociens in anno morbo furiositatis nequiter vexatur'), and that it was during such a seizure that he killed his wife; when asked specifically, they denied that he acted 'ex malicia et felonia precognatis', and he was acquitted. He was not completely discharged, but was released to mainpernors, apparently

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[1] JUST 2/155, m.13.

[2] JUST 3/179, m.3d.

[3] ibid., mm.5d, 7, 7d, 8d, 9d, 11d, 12, 13.

[4] ibid., m.7d.

in anticipation of pardon.[1] He did not appear at the next delivery because the case was called into king's bench; on rehearsal of the earlier trial he was again released on mainprise, conditional on his appearance at each gaol delivery, 'so that in the mean time he could seek the king's grace on this account'.[2] The judgment, however, is marked sine die, and amounted to an absolute discharge, since he occurs subsequently in neither gaol delivery nor pardon records. He was thus treated as a person with diminished responsibility; his periodic mania was accepted by the courts even though dementia was not apparent at the time of trial.

Misadventure or misfortune constituted a small and fairly distinguishable group of homicides, in which innocence of intention to kill was unquestioned, but in which the culprit had general responsibility for his constructive behaviour which led, through presumed negligence, to the death of a third party. Carelessly shot arrows, carelessly thrown stones, and the like led to recognised procedures: the homicide should be arrested and remanded, without mainprise but (by one canon) without suffering shackles, pending the issue of a pardon, which would legally exculpate him but

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[1] ibid., m.8. For mainprise of other lunatics, one recovered and one still deranged ('medio tempore sub salvo custodietur quod aliquid malam alicui de populo domini Regis non inferret quoquo modo'), see KB 27/471, Rex m.13d, and 475, Rex m.33.

[2] KB 27/530, Rex m.3. This was evidently standard practice: Fitzherbert, Abridgement, Corone 351 (1329) and 193 (1352).

would not waive the forfeiture of chattels required as though the killing were felonious.[1] Only two significant doubts seem to have arisen in this connection. One concerned professional negligence. In 1350 a couple in medical practice received pardon of the king's suit for homicide allegedly committed through ignorance of their art.[2] A later case, reported in rather more detail, unfortunately leaves its legal outcome in doubt. Gerard Goss, who practised as a surgeon on the Isle of Wight, was fully exculpated by the coroner's jury sitting on the death of a patient under operation,[3] but on review of the case in king's bench he was prosecuted as a suspect felon. The enrolment of the hearing breaks off before verdict and judgment,[4] but an annotation on the jury list records the jurors' finding, that Goss had operated as the coroner's inquest had said 'and not feloniously', that he was an established medical practitioner, and that the family of the patient had consented to the treatment.[5] It seems likely, from the earlier case, that a pardon would have been required, but none is to be found on the Patent Rolls

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[1] Fitzherbert, Abridgement, Coron 302 (1329), 354 (1329), 69 (1401).

[2] Cal. Pat. Rolls 1348-50, 561.

[3] JUST 2/156, m.3d.

[4] KB 27/527, Rex m.7.

[5] KB 37/2/16/2, unnumbered membrane.

or the Pardon Rolls, and an acquittal may have served instead.[1] The second problem was that of homicide resulting from malicious intention directed towards someone other than the victim. John Frere of Newtimber tried to separate Robert Carter and Simon Brand, who were fighting with knives; the coroner's jury found that his consequent death was caused 'at his own folly', a view which was supported in king's bench by margination as 'misfortune'.[2] An earlier and more authoritative discussion, however, explicitly accepted the principle of transferred malice, and sentenced a defendant to hang.[3]

The third of the pardonable homicides, homicide in self-defence, was the most problematical and the most frequently invoked; this point alone accounted for an overwhelming majority of the special verdicts in criminal trials. All such verdicts - and, at a different level, corresponding verdicts returned by coroners' inquests - emphasise that the survivor of a fatal incident was maliciously attacked by the deceased; from that point the defence of self-defence had alternative stylised forms. The simpler form and the most firmly exculpatory from the defendant's

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[1] Medical negligence was usually the subject of private litigation; see J.B.Post, 'Doctor v patient: two fourteenth-century lawsuits', Medical History, XVI (1972), especially 296 and references.

[2] JUST 2/155, m.8.

[3] Fitzherbert, Abridgement, Coron 180 and 262 (1348).

point of view, declared that the assaulted person adopted a defensive posture, holding a knife or point of some sort, and the assailant impaled himself upon this in making a further attack.[1] Coroners and their juries, aware that their findings would be reviewed by others at further remove from the events, took care to make their feelings clear. Thomas Starker, like John Frere, impaled himself 'at his own folly'; Thomas Dyker was excessively drunk.[2] Alexander Chaplain was said to have impaled himself thus 'through his own stupidity', but in this instance the verdict may have been affected by other factors, since the narrative implies that he was cuckolding the man who killed him, and the fatal incident occurred when the husband came home to find the chaplain with his wife.[3] Such a verdict might well be repeated, with embellishments, at the trial, as in the case of William Bush of Newport, Isle of Wight.[4] Bush was remanded on mainprise, pending pardon; this was a standard procedure, and as early as 1329 it was established that pardons in such cases should be available of course.[5] Another view, that these

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[1]Cf. Hurnard, King's Pardon for Homicide, 95.

[2]JUST 2/155, mm.11, 21.

[3]ibid., m.9.

[4]JUST 2/156, m.2; JUST 3/179, m.3.

[5]Fitzherbert, Abridgement, Coron 297.

victims had effectively killed themselves, and the defendants should thus be acquitted, was adopted sometimes,[1] but the requirement of pardon had fiscal as well as legal recommendation.

This category of passive self-defence was clearly distinguished from more positive action with the same purpose. By the late fourteenth century a conceptually stylised form of narrative had been developed, whereby a coroner's jury or a trial jury made it clear in their verdict that they wished clemency for the defendant, by stating, factitiously or otherwise, that he had had no means of escape from death save the killing of his assailant. A full specimen of the stereotype, returned by a Hampshire trial jury in 1407, elaborates the major features:

> 'William began an abusive argument, and then attacked Richard with a stave pulled from a fence, striking Richard and breaking the stave upon him. At this William's son ran at Richard and held him by the legs so firmly that he could not escape even though he was trying to do so. Richard then saw that William was coming at him again, wielding one piece of the stave, with the intention of killing him; realising that he was in such danger of death, and that he could not escape alive without defending himself, Richard seized and held William's head and stabbed him once in the back with a knife.'

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[1] Fitzherbert, Abridgement, Coron 213 (1363) and 94 (1370).

> Asked if the killing was done with malice aforethought, the jurors said not, but that Richard could not have escaped alive without defending himself and stabbing William in the fashion described, because William could have killed him with the stump of the stave.[1]

The essentials are the intention and ability of the assailant to kill the defendant, and the inability of the defendant to escape death without drastic retaliation. For good measure the original fight was customarily attributed, as here, to the deceased's initiative, but this was not essential. Less elaborate verdicts than this one show the same general principles at work,[2] with emphasis on the difficulty of escape because of uneven combat or because flight was hampered by insuperable obstacles.[3] The importance of flight was firmly underlined in 1369 by a judgment that killing an assailant without first fleeing as far as possible was not self-defence but felony;[4] conversely, the felonious intention of the assailant was taken, rather earlier, to obviate altogether the need to show self-defence.[5] In all cases where a special verdict of self-defence was

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[1] JUST 3/194, mm.3-3d.

[2] e.g. JUST 3/179, m.5 (John Colvile).

[3] e.g. KB 27/475, Rexmm.14d (Edmund Brown), 24d.

[4] Fitzherbert, Abridgement, Coron 226.

[5] Fitzherbert, Abridgement Coron 305 (1329).

returned, it was held necessary for the defendant to seek pardon,[1] the distinction between passive and active roles being that the former carried no forfeiture, whereas the latter carried forfeiture of chattels, pardon notwithstanding.[2]

The residue of homicides, not regarded as justifiable or pardonable of course, were felonious, and were punished as felonies unless pardon or commutation was granted of royal grace. There is, however, a strong suspicion that some homicides were more felonious than others, a suspicion which has defied attempts at definition. The difficulties centre on two problems - one semantic, one conceptual - which may or may not be related. The significance of the term 'murder' is one issue. Two meanings at least are undisputed. Murdrum was a fine surviving from the early years of the Norman occupation, which was levied upon the hundred if it failed to present Englishry, that is, if it neglected to demonstrate the English parentage of a corpse whose killer, if any, was unknown. This was formally abolished in 1340.[3] Besides this technical meaning, there was the more general usage of words on the ancient morth

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[1] ibid., Coron 284, 286, 287, 305, 361.

[2] ibid., Coron 94 (1370).

[3] F.W.Maitland, 'The Early History of Malice Aforethought', The Collected Papers of Frederic William Maitland, ed. H.A.L.Fisher (Cambridge, 1911), I, 305-6; for an early 'historical analysis', see Roger FitzNeale's Dialogus de Scaceario, ed. C.Johnson (Edinburgh, 1950), I, x.

or murdrum stem (cognate with mors) to signify particularly heinous forms of homicide, by stealth - a usage which Maitland conjectured to have been obsolete by the end of the twelfth century.[1] The trouble lies in the evolution of the modern legal sense of 'murder' to signify the most culpable homicides short of treason. Mr Kaye has attributed this usage to the statutory introduction of the term in its narrow sense, when a diluted, non-technical usage still obtained.

> The word Murder had had, in the thirteenth century, besides the technical connection with the murder fine and the ancient meaning of Morth, a general, non-technical usage, being used to refer to culpable homicide of any sort. Although the peace commission of 1380 and the Statute of 1390 used the word in the narrower sense of Morth, this predominance of the ancient meaning did not last long: in the fifteenth century Murder came to be used technically to describe all culpable homicide.[2]

The influence of enactments in the late fourteenth century is certainly over-estimated, since the term had an active official life before that time - once, indeed, in the rigid Teutonic sense of homicide followed by concealment of the body;[3] there are also

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[1] Maitland, 'Malice Aforethought', 306-7.

[2] Kaye, 'Murder and Manslaughter', 369.

[3] Post, 'Peace rolls', 639; KB 27/473, Rex m.23; cf. Maitland, 'Malice Aforethought', 306. See also the excepted felonies in Edward III's jubilee pardon of 1377: C 67/28B, m.1.

difficulties in associating this problem of usage with the conceptual problem of malice aforethought.

The phrase 'per maliciam precogitatam', or any of several equivalents, is commonly found as a negative, with exculpatory intention, in special verdicts, pardons, and the like.[1] Such occurrences were normally related to killings by misadventure or in self-defence, and Mr Kaye suggests on this basis that the phrase merely indicated - at least in the thirteenth and early fourteenth centuries - malicious as distinct from innocent intent, rather than the cold-blooded planning of a homicidal assault. It was only in the late fourteenth century, on this interpretation, that increasing governmental attention to particular forms of homicide - by stealth, by ambush, and on the highway - indicates a movement to segregate planned homicides, which presuppose malice aforethought, from spontaneous but culpable homicides; to this development the apparently official adaptation of 'murder' is allied, as further indication that a deliberate attempt was being made to diversify the legal concept of homicide in order to graduate culpability.[2] The evidence adduced in support of this argument shows clearly that the

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[1] Cf. the question to the jurors in the 1407 Hampshire case cited above, 235. The term was also used in trespass writs, e.g. for attempted poisoning in 1385: CP 40/490, m.23 (Sidnall v Creek).

[2] Kaye, 'Murder and manslaughter', 377-95.

Commons were increasingly specific in asking for action against crimes of violence, and that the peace rolls show signs of more precise and perhaps more technical usage towards and beyond 1400, but several factors make it difficult to take the further step of deducing actual or intended changes in substantive law.

The first and obvious objection to this hypothesis is that royal efforts to alter substantive law were, understandably, the business of criminal legislation, and without a statute of murders it is difficult to explain or expect the equivalent effects. However they might be phrased, a peace commission was essentially an administrative and procedural instrument, and a statute of pardons was a guide to the political overriding of judicial decisions: neither affected the law by which the appointed persons reached those judicial decisions. The period was not wholly devoid of radical change in the criminal law, as the 1383 statute of rapes amply demonstrated,[1] and the absence of a statute diversifying the law of culpable homicide is very strong as arguments from silence go.

Another pertinent silence emanates from king's bench. As the highest court in the ordinary treatment of criminal business, king's bench might be expected to evince key discussions of criminal law; certainly the most reliable indications of stasis

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[1] 6 Richard II.1, c.6; cf. below, 250-251.

or development in the law are likely to be found in trial courts - gaol delivery or king's bench - rather than in the spontaneous and minimally inhibited accusations of presenting juries. By ignoring such courts Mr Kaye avoided the fact that their evidence does not support his supposition of a substantive change in the law. This lack of support arising principally from the nature of felony cases and their courts of trial. For those who lacked knowledge and means, there was no alternative to the pot luck of gaol delivery (peace sessions trials being few and far between); for others, the sensible course seems to have been a certiorari returnable in king's bench. Except, therefore, cases heard in the counties under its trailbaston jurisdiction, king's bench heard and determined felony cases only when a party - the defendant on indictment, either party in appeal - had significant financial or personal influence. This factor is remarkably close to the neat division of verdicts in this court, whereby indictees were normally acquitted and appellees were frequently, though not invariably, convicted. Such verdicts were clearly not reached on legal criteria alone. Precise interpretations of the law were only invoked, noted, and heeded when both parties in appeal were well prepared with counsel (only allowed exceptionally to indictees),[1] thus accounting for

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[1] Fitzherbert, Abridgement, Coron 31.

the overwhelming predominance of appeal cases in the year book reports of felonies, although sufficient indictment cases appear - usually on procedural points - to show that there was no decisive bias in the reporting coverage. Yet none even of these debated cases shows the slightest concern with definitions of homicide beyond the traditional preoccupations of appeals; certainly nothing suggests a change in substantive law.[1] Nor are there the quibbles over indictment phraseology which might have been expected if significant changes had been made in the wording of felony charges.

A further objection to the hypothesis of changes in homicide law may be found in an alternative, or at least additional, reason, for the development of indictment phraseology: the professionalism of the clerks. The antiquity of the function, necessarily coeval with the sessions themselves, does not guarantee the antiquity of the appointment; on the contrary, all the early indications are that the clerical work of peace sessions was carried out by staff personal to one of the justices,[2] and thus of variable quality and qualifications. Only gradually was the need for

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[1] For homicide appeals after 1380, see Fitzherbert, Abridgement, Coron 4, 21, 25, 28, 235, 459, 465.

[2] Putnam, Yorks Sessions, 55 n.1; Some Sessions of the Peace in Lincolnshire 1360-1375, ed. R.Sillem (Lincs Rec. Soc., XXX, 1937), xxiv; Putnam, Proceedings, xci. Cf. B.H.Putnam, The Place in Legal History of Sir William Shareshull (Cambridge, 1950), 80-4.

a regular and professional clerk of the peace recognised, and it was in Richard II's reign that this office emerged as such, with the payment of wages from 1390 onwards.[1] Once it had emerged, there was a marked tendency for the position to be held by men who, as clerks or as attorneys, were officers of one or other of the benches, and thus had considerable legal training and experience at the fountain head of the common law.[2] It is not surprising to find that indictments from the late fourteenth century onwards show increased elaboration of legal terminology; this point alone is quite insufficient as evidence of change in the law, given that the recording personnel also constitute a variable over the same period. A much finer analysis of special verdicts in the determining courts, together with a correlation of the indictments in the court of first instance, must precede any definitive comments on development in the substantive law of homicide,[3] just as a correlation of pardons with their relevant court hearings must precede any judgment of the import and impact of the statute of pardons.

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[1] Putnam, Proceedings, xci-xcii.

[2] Post, 'King's bench clerks', passim; idem, 'Peace rolls', 634-5.

[3] Promised by Dr Green in 'Societal Concepts', 672 nn.10-11.

Two other categories of offences against the person (excluding robbery, with its property element) were also within the province of felony, although their ambivalent treatment at this date gives rise to difficulties of definition. The offences are mayhem and rape. Mayhem, strictly speaking, involved injury which reduced the victim's capacity to fight, which Bracton was inclined to interpret fairly broadly.[1] An appeal lay for the victim, but the fate of a convicted appellee is not clear; in the early thirteenth century punishment for wounding could be mutilation,[2] but at the end of the fifteenth century the suggestion that mayhem was a felony at all occasioned remark.[3] It is more than likely that in the fourteenth century - and probably well before - the appeal of mayhem was invoked as a nuisance factor or as a means of forcing a concord with reparation. The latter was a prompter, though not necessarily surer, means of obtaining recompense than the standard recourse of the victim, which Britton recommended - suit as a trespass, for damages.[4] The effect of the rise of trespass litigation in a suit such as this was

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[1] Bracton, II, 409-10.

[2] Pollock and Maitland, II, 488.

[3] Fitzherbert, Abridgement, Coron 63.

[4] Britton, I, 122-4. 6 Edward I (the Statute of Gloucester) c.8 seems to consider 'wounds and maims' a matter for trespass litigation.

to make a particular area of the criminal law emendable where prosecution for felony did not theoretically allow it, and the result was to remove the bulk of mayhem cases from the primarily criminal courts, and to foster peace sessions indictments, where woundings of all types are treated as trespasses against the peace.[1]

Similar problems of overlap between criminal prosecution and private litigation, in far greater complexity, beset the law of rape. The problems are exacerbated by the appropriation of procedures to achieve ends other than those for which they were formulated, by a muddled attempt to bring these diverse ends under a single chapter of the second statute of Westminster, and by the persistence of a superficial ambiguity of legal vocabulary. For present purposes it will be sufficient to survey the structure of these problems, and to estimate their likely effects upon the administration of the criminal law.[2] Three distinct categories of circumstance or offence came within the province of the law of raptus, 'ravishment'. Firstly there was rape, forcible

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[1] Cf. pp.475-6 of the 'Analytical Index to the Indictments' in Putnam, Proceedings.

[2] The following discussion is based principally upon J.B.Post, 'Rape legislation in England in the thirteenth and fourteenth centuries', Bull. Inst. Hist. Res. (forthcoming); further studies of this subject are also in active preparation for publication.

coition with an unconsenting female. Secondly, there was abduction, the forcible abduction of a female (or, within the specialised scope of ravishment of ward, any minor) with the intention of depriving her or some other party of a material benefit, by means of coerced marriage or otherwise. Thirdly, there was elopement, whereby a willing female was eloigned, seduced, or married, in defiance of the wishes of her parents, guardian, or family. Obviously such distinctions were far from rigid - a forcible marriage might be followed by a forcible consummation, or the marital intentions of a girl might contrast with the material ambitions of her abductor - but it was the failure to accommodate even the broadest qualifications which complicated ravishment law in the later medieval period.

Forcible coition was illegal. From the earliest post-Conquest codes onwards it had been a crown plea, and thus one of the more serious criminal offences;[1] there is some evidence that it may have been a matter for public prosecution as early as Henry II's reign.[2] The standard procedure was that of appeal, and the requirements of the accusations were set out in considerable and sometimes idealised detail by Bracton and his redactors.[3] The first statute of Westminster

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[1] Leges Henrici Primi, ed. L.J.Downer (Oxford, 1972), 10.1 and 13.6.

[2] N.D.Hurnard, 'The jury of presentment and the assize of Clarendon', Eng. Hist. Rev., LVI (1941), 402.

[3] Bracton, II, 394-5, 403, 414-7; Placita Corone, 9.

made it clear that the crown would prosecute in the absence of an appeal by the victim,[1] and inquiry of ravishments was promptly added to the articles of the eyre.[2] In the fourteenth century the offence is found with the other felonies among the presentments at peace sessions. The machinery was nevertheless of rather limited efficiency, even by the standards of contemporary criminal law. It was quite remarkably difficult to secure a conviction for rape, and in practice it was impossible to secure a sentence in conformity with the law. The sentence had been subject to statutory change anyway. Glanvill rather vaguely put rape among the offences punishable by 'death or mutilation',[3] but Bracton asserted firmly that the customary penalty was blinding and castration, although his allusion to an execution of this sentence remains the only evidence that it was ever applied.[4] In 1275 two years imprisonment at crown suit was introduced by statute,[5] and ten years later the second statute of Westminster made rape a capital offence, whether at private or crown suit.[6] But all these

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[1] 3 Edward I (Statute of Westminster I), c.13.

[2] Statutes of the Realm, I, 237-237a; H.M.Cam, Studies in the Hundred Rolls (Oxford Studies in Social and Legal History, VI, 1921), 89, 98-9.

[3] Glanvill, ed. G.D.G.Hall (London, 1965), 3.

[4] Bracton, II, 403.

[5] 3 Edward I (Statute of Westminster I), c.13.

[6] 13 Edward I (Statute of Westminster II), c.34.

provisions were empty. Before the first statute of Westminster every appeal of rape had some sort of diluted outcome: besides acquittal and failure to prosecute, there were copious nonsuits on technical grounds, frequent concords between the parties, for money or for marriage, and occasional amercements at crown suit on appeals that had failed.[1] Between 1275 and 1285 there was the recourse of imprisonment, but it seems to have been used as a means of avoiding full sentence, rather than as a sentence under different procedure.[2] After 1285 this option was not available to the justices, and (apart from an isolated and irregular instance of amercement)[3] acquittal had to be the expedient. It is clear from 1275 onwards how strenuously judges acted to prevent appeals of rape from going to a jury,[4] while in one case which reached that stage, the jury returning a special verdict that the defendant had been particularly brutal in his rape, the justices overruled his steadfast

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[1] e.g. Pleas Before the King or His Justices 1198-1212, IV, ed. D.M.Stenton (Selden Soc., LXXXIV, 1967), no.3491; Rolls of the Justices in Eyre for Yorkshire 1218-1219, ed. D.M.Stenton (Selden Soc., LVI, 1937), nos 959, 1086, 946; Three Early Assize Rolls for the County of Northumberland, ed. W.Page (Surtees Soc., LXXXVIII, 1891), 94, 113; Meekings, Wilts Eyre 1249, nos 108, 272, 461, 517.

[2] JUST 1/371, m.15d; cf. JUST 1/784, m.17d.

[3] Placitorum Abbreviatio (Rec. Comm.) 253 (1305). The amercement of £100 suggests that profit may have affected the issue.

[4] JUST 1/924, m.60d; KB 27/146, m.19; Placitorum Abbreviatio, 221; JUST 3/35B, m.39.

refusal to try pleading clergy, and sent for the ordinary.[1]

The factor which seems to have been behind this extreme reluctance to sentence for rape was the one which has always been problematical in this connection - consent; but the complexities in the thirteenth and fourteenth centuries were far greater than nowadays. It was very common in the thirteenth century for an accusation of rape to be voided because of evidence that the plaintiff had consented to the defendant in the past,[2] and there was probably (despite Bracton's claim to the contrary)[3] a presumption of consent against the promiscuous. The fact of coition, let alone of consent or otherwise to it, has always been difficult to prove, and in consequence rape 'is an accusation easily to be made and hard to be proved, and harder to be defended by the party accused, though never so innocent'.[4] Medieval jurors detected malice behind some of the allegations.[5] Yet in addition to these abiding problems there were two additional points of difficulty. Firstly, social attitudes to

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[1] JUST 3/35B, m.38.

[2] e.g. Stenton, Yorks Eyre, nos 545, 669; Meekings, Wilts Eyre, nos 310-11.

[3] Bracton, II, 418.

[4] M.Hale, Historia Placitorum Coronae (London, 1736), I, 635. Cf. the maxim of Travers Humphreys, that 'a prosecutrix is not to be relied upon in a sexual case': Criminal Days (London, 1946), 135.

[5] e.g. Curia Regis Rolls, IV, 232-3; VII, 98.

sexuality were such that consent to a mildly or even wholly coerced coition might be given subsequently, either from the shame that only marriage could salve, or from the discovery that it was not necessarily worse than death. It may have been with this in mind that the second statute of Westminster made its provisions 'although she consent afterwards'.[1] Secondly, there was the risk that the shame sanction might be invoked by a couple whose union was unacceptable to the girl's family; an allegation of rape, perhaps in conjunction with an elopement, might force the kin to accept a concord by marriage. This possibility is emphasised by a strikingly similar, but better documented, practice in nineteenth century Cuba.[2] It seems at first glance grossly improbable that the legal vocabulary of rape should have been so rudimentary as to include relatively innocent relationships under the heading of an awful crime, but this was a positive desideratum among the families likely to be affected. Fortuitously, the incident which makes this point most clearly, and which gave rise to

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[1] This phrase served other purposes: it limited proof of intention to accomplished fact; it discounted the woman's consent without voiding the coercive nature of the offence; and it prevented any allegation of common-law encroachment upon the strictly ecclesiastical matters of simple fornication and adultery.

[2] V.Martinez-Alier, 'Elopement and Seduction in Nineteenth-Century Cuba', Past and Present, LV (1972).

the last medieval statute of rapes, occurred in Hampshire in 1382.[1]

Sir Thomas West was a veteran of the French wars, of good family and extremely wealthy; he had advanced considerably the social position inherited from his father, and had virtually attained peerage status. On the latest campaign in France his company had included Nicholas Clifton, the dashing but somewhat scapegrace cadet of a gentle Lancashire family, and Clifton had become a familiar of the West household. As such he escorted West's wife Alice and their children on a hunting expedition in the New Forest, during which he sprang an ambush of his friends, and made off with West's daughter Eleanor. West was furious. He obtained a special commission of oyer and terminer, but it was ineffectual beyond prompting Clifton to obtain a royal pardon. West remained vindictive, and petitioned John of Gaunt for remedy, which was provided in the general form of a common petition granted in the next parliament. This statute made two innovations: ravishers, and their victims if consenting, were to be ignored in respect of any hereditary tenure; and the appeal of rape was given

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[1]The following paragraph is based entirely on Post, 'Rape Legislation'; the fundamental materials are SC 8/147, no.7347; SC 8/146, no.7252; Rot. Parl., III, 139-40; 6 Richard II.1, c.6; Complete Peerage, XII part ii, 517-20; The Fifty Earliest English Wills, ed. F.J.Furnival (Early Eng. Text Soc., LXXVIII, 1882), 4-10; Burke's Landed Gentry (17th edn., 1952), sub art. Clifton of Lytham.

to husbands or next of kin, regardless of the woman's consent. No elopement, in other words, was to be allowed to interfere with dynastic policies. West clearly approved of these terms - he subsequently petitioned the king in parliament, for the statute to be made retroactive for the specific purpose of disinheriting Eleanor and hanging Clifton. The second petition was unsuccessful, possibly because there were strong sympathies with offending parties anyway; an abortive common petition in the following year sought the repeal of the whole statute, as 'too rough and ready'. For the runaways the story had a happy ending: Clifton and Eleanor married, had a son whom they named after Sir Thomas, and were reconciled to Lady Alice before her death. But their adventure illustrates plainly the attitude which allowed the terminology, and the law, of ravishment to remain so confusingly elastic.

In comparison with the law concerning offences against the person, that concerning offences solely or primarily against personal property was uncomplicated. This was for two main reasons. On one hand theft or extortion meant that an identifiable amount of money or value of goods had changed hands, and that under most circumstances the victim would prefer to sue the offender for restitution or damages, rather than instigate proceedings which, if found to

be felony, resulted in the forfeiture of the felon's chattels.[1] Hence the common pleas rolls, and where they survive, the records of other courts handling private litigation, are full of writs or plaints that a defendant took the plaintiff's goods in a manner which sounds entirely felonious. Hence, too, the likelihood that when such offences were prosecuted as felonies the interests involved were in some way minor - the plaintiff or the defendant, or both, were poor or unfree, or the chattels were less costly than litigation to retrieve them. This aspect of the criminal law could therefore be expected to attract little attention from the legal profession. On the other hand, offences against property do not commonly allow for diversity of motive, and the scope for establishing mitigating circumstances was negligible; neither poverty nor kleptomania was recognised as palliating the profit motive. The only exception to these two qualifications is arson, whose motive is seldom profit and which does not offer hope of restitution; it is rare among the criminal records, and seems to have been treated as a straightforward felony.[2] When possible it was sued as wilful damage, for damages.[3]

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[1] If an appellee (or, occasionally, an indictee who had been captured by the victim) was convicted, the victim was allowed to reclaim his property.

[2] e.g. JUST 3/174, m.1d.

[3] e.g. the burning of gorse: 'Three courts of the hundred of Penwith', nos 74-5.

Robbery was the least equivocally defined of the offences against personal property; it referred exclusively to thefts from the person carried out violently or with the threat of violence. It did not apply to the non-violent thefts such as purse-cutting, as a curious incident in Westminster Hall showed: a provincial man attempted to steal a baselard from an apprentice at law, and the offender's fate was decided by distinguishing between the baselard, worth half a mark, on which the apprentice had had his hand (thus retaining possession) throughout the attempted theft, and the belt (worth fourpence) on which it had hung, which the offender had cut and which had fallen to the ground, leaving the owner's possession and thus counting as stolen. The distinction was one between grand and petty larceny; there was no suggestion that theft from the person constituted robbery in itself. Had it been robbery, the value of the booty would have been irrelevant.[1]

Larceny, or simple theft without complications of personal assault, was, by a customary prescription already old, and durable to Blackstone's day and beyond, divided into grand larceny and petty larceny. The division was at a shilling: if the booty was worth

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[1] Fitzherbert, Abridgement, Coron 178 (1349). But two convicted robbers were remanded in the Marshalsea in 1393 'because the court is not yet advised of the judgment to give them', although the amount involved was 15s.3d: KB 27/527, Rex m.1.

more, the offence was grand larceny, a felony, and punishable accordingly; if worth less, the offence was petty larceny which, as a mere trespass against the peace, was punishable by fine or by imprisonment at the discretion of the justices. It was a matter of frequent debate whether grand larceny commenced at 12d. or at 12¼d., and instances of both can be found. The only guide to local Hampshire practice at this period is an indictment before the steward of the Isle of Wight, Thomas Brading, in 1408, for the theft of one of Brading's sheep 'worth 12d., feloniously', but the defendant was acquitted and the scale of the alleged larceny was never judged.[1] The generality of indictments specified amounts clearly above the limits, and thieves of eighteen or twenty pence were condemned as felons. Some latitude was perhaps assumed by justices, however: in 1391 eight men stole rings worth five shillings from the abbot of Qúarr, but the two available for trial were allowed to make fine.[2] No reason is apparent, but any or all of three factors may have influenced the decision. Firstly, the indictment was not framed to include words of felony; although justices were not (unless challenged by defendants with adequate legal knowledge, as sometimes happened)[3] sticklers for precision in

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[1] JUST 3/218/1, mm.224, 231.

[2] KB 9/108, m.4.

[3] e.g. KB 27/537, Rex mm.19-19d (Margery Cyfrewast, successfully challenging in 1395 waivery for treasonable ravishment in 1375).

these matters,[1] they may have heeded the omission if they judged it deliberate. Secondly, the individual share of the loot was less than a shilling even though the aggregate was more, an irregular but understandable interpretation. Thirdly, the confession and fine of the parties was less trouble to the court than a trial for felony, and there may have been an element of plea-bargaining, whereby the co-operation of the defendant was obtained in exchange for a lighter sentence. This has been noted in the sixteenth century,[2] and it would hardly be surprising to find the expedient earlier; after all, jurors for five hundred years returned special verdicts undervaluing stolen goods in order to reduce grand larceny to petty,[3] and specious evasions may be coeval with the laws they evade.

Despite the general simplicity of application apparent in the law relating to larceny, there were some indications that there was at least two established areas of flexibility. Some cases of larceny which were conspicuously outdoor were treated as trespass against the peace, regardless of the amounts involved - breaking into a close and taking coneys

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[1] e.g. 'furtively' allowed instead of 'feloniously' on a Lincolnshire indictment: KB 27/473, Rex m.14d.

[2] J.S.Cockburn, in a paper (now awaiting publication) delivered to the 1975 Legal History Conference at Cambridge.

[3] e.g. JUST 3/179, m.3 (1389). A hanging judge could mislead a lenient but ignorant jury into valuing goods down to 12d. and then passing judgement for grand larceny: Cockburn, op.cit.

worth 2s.3d., or mowing and stealing crops worth fifteen shillings.[1] Although it had no consistent sanction in statute or judgment, the element of housebreaking may sometimes have been regarded as aggravating a consequent larceny.[2] It was not essential: plenty of rustling cases were judged as felonies.[3] Nor was housebreaking always treated as a felony in itself; although a carefully-worded indictment might specify that the defendant 'broke into the house of T.S. feloniously' and proceeded to do something else feloniously,[4] an indictment for simple housebreaking could be thrown out of court as inadequate.[5] Nevertheless it seems likely that any leniency extended to poachers and the like was justified by the absence of the housebreaking factor, and that the inclusion of this point in the charge would have a contrary effect. This feeling is reflected in the developing use of the term 'burglariously' - a word with no intrinsic legal meaning at this date - to add weight to peace sessions

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[1] KB 9/108, mm.4, 20-21.

[2] Most commonly, housebreaking apparently became burglary, and therefore felony, if the intention was felonious, i.e. larceny or homicide: Fitzherbert, Abridgement, Coron 178, 229, 264.

[3] e.g. JUST 3/171, m.5d (John Burton and others); JUST 3/179, m.10 (John Hogheles).

[4] JUST 3/194, m.8 (John Reed and others).

[5] JUST 3/179, m.12 (John Doget); another, however, in the same case, went to trial: ibid., m.11d (Robert Doget).

indictments.[1] A second point of flexibility was extended to persons taken with the mainour. Although at one time the hand-having thief could expect no mercy whatever, the procedure of disavowing the mainour had already made inroads into this monopoly,[2] and it seems that the benefit of any possible doubt was further stretched to disregard the value of the mainour in reaching judgment; by the late fourteenth century, the most that a thief taken with mainour had to fear was imprisonment.[3] This only applied when the mainour was not attributed to any specific theft, and may thus reflect the problems of evidence which in their more concrete instances led to disavowal.

An offence which was concerned with neither personal nor property matters, but which invariably counted as felonious, was prison breach. Provided that the custody was lawful or within the king's gaol, any attempted or successful escape was felonious,[4] and it was also felonious to procure or attempt to procure an escape by anyone else.[5] The rationale was a dual one: any escape from his custody, however

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[1] Putnam, Proceedings, 'Analytical Index', 472-3.

[2] Above, 86-7.

[3] JUST 3/179, m.13 (Richard Besant).

[4] Pugh, Imprisonment, c.X.

[5] e.g. KB 9/108, m.24 (John Spy).

deputed, was an affront to the king's peace, while the attempt to avoid lawful and (presumedly) just delivery from gaol was taken as an implied confession to the offence which had led to the incarceration. Like approvers and abjurors, escapers who could not find an extraordinary reason for stay of sentence were hanged without further trial.[1]

In the wake of all these felonious activities came those of the offenders' accessories, in a wide range of descriptions but under two loose headings: accessory to the fact (in modern parlance), which included 'aiding and abetting', 'being present in force and aid', 'consenting and aiding', and the like; and reset, which comprehended both knowingly harbouring a felon, and knowingly receiving stolen goods. Neither of these could be prosecuted independently of the offences to which they related; it was an accepted point of law that no accessory could be tried before the principal had been convicted either by trial or by outlawry.[2] Since accessories of all sorts were usually treated leniently on the fairly infrequent occasions when they were convicted, the difficulties of prosecution were scarcely justified by the probable result. When the justices delivering Winchester gaol were confronted with a man accused of resetting a

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[1] Fitzherbert, Abridgement, Coron 243, 435.

[2] Fitzherbert, Abridgement, Coron 77, 116, 277.

horse stolen at Midhurst in Sussex, the complications of establishing whether or not the thief had been convicted were obviously daunting, and the man was discharged, somewhat improbably, on grounds of insufficient indictment.[1] In similar vein, several appeals of reset were quashed by the Coventry gaol delivery justices, despite copious details and the arrest of the defendants, as 'insufficient and not to be judged'.[2] But four accessories to homicide were hanged with the principals on appeal by the widow.[3] Professor Cockburn[4] has suggested very plausibly, on the basis of assize indictments, that as long as it was impossible to indict an accessory without reference to principals already convicted, the further convenience was adopted, of indicting known or suspected harbourers of felons or receivers of stolen goods as principals in the relevant offences. This would accord with the perceptible tendency to deal less casually with defendants against whom suspicion was particularly strong; when a woman was accused of aiding two men, one of whom had been pardoned, to murder her husband, she was acquitted in respect of the pardoned man but

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[1] JUST 3/179, m.7 (Robert chaplain of Liss).

[2] JUST 3/167, m.7 (King's Bench Cal. nos 1029-31, 1033).

[3] JUST 3/179, m.5.

[4] Or myself: see J.S.Cockburn, 'Early-modern assize records as historical evidence', Jnl. Soc. Archivists, V (1974-5), 222 n.47.

remanded in the hope that the other might be 'outlawed or otherwise convicted', enabling her to be tried.[1]

Below the potentially felonious type of offence came extortion. There was a recognition in law that the general administrative principle, that officials found their fees where they might, had some limits, and the presentments of grand jurors in such matters often resulted in fines by the accused parties. The commonest charges were those against deans and registrars, for extorting excessive fees for probates,[2] but others were not rare - coroners taking bribes for holding inquests,[3] and all sorts of law officers taking money for withholding or withdrawing their powers of arrest.[4] No legal interest seems to have been taken in this kind of offence - probably because the offenders were well able to pay - and the church does not seem to have minded the secular discipline of its staff in such matters.[5]

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[1] KB 27/473, Rex m.23.

[2] KB 9/108, mm.2, 4.

[3] KB 27/471, Rex m.21.

[4] ibid., Rex mm.5, 21.

[5] The dean of Andover made fine for the doubly ecclesiastical business of accepting a bribe to allow two servants to fornicate with impunity: KB 9/108, m.9.

In addition to all these more or less precisely defined felonies and trespasses against the peace, there was a welter of minor offences representing the infinite variability of criminal matters which juries saw fit to present and justices saw fit to punish. Some of them were specific - the forcible ejection of lawful occupiers from their tenements,[1] for example (albeit most commonly a matter for private litigation), or making a rescue upon a subsidy collector.[2] Very commonly, however, the accusation was a general one, sometimes in terms which had been hallowed by custom or statute,[3] at others in more spontaneous terms. 'He is a common thief' was a frequent addition to larceny indictments, to offset any leniency that might have been extended. The definition of 'common thief' was problematical, being in theory contradistinct from a specific accusation; practical application had to be more concrete. In 1377 John Moyse was found guilty of a particular felony in Essex, and of being a common thief. The jurors were then asked 'if he is accused, or if they believe him guilty or suspect, of any particular felony other than that already mentioned', to which 'they say, specifically, no'. It was therefore held that 'in this case he ought not to be adjudged a common thief', and was thus eligible for

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[1] KB 9/108, m.3 (referring to the statute against forcible entry, i.e. 5 Richard II.1, c.7); KB 9/167, m.21.

[2] KB 9/108, m.32.

[3] e.g. the statute against 'insidiatores viarum et depopulatores agrorum': 4 Henry IV, c.2.

a recent general pardon which excepted common thieves.[1] On the other hand there was no objection to an indictment alleging that certain parties were 'common nightwalkers, principally as poachers and takers of coneys', and one of the accused made fine accordingly.[2] Another indictment initially allowed (process was issued, but the defendant did not appear) was among four presentments made in king's bench by Meonstoke hundred at the Hampshire sessions in 1393.[3] The first presentment was of robbery, the second of closing a footpath and bridlepath 'with force and arms'. The third, however, was a general declaration of communal disapproval:

> Richard Bulstrode of Denmead is a common nightwalker and affrayer of the peace in the vill of Denmead in the parish of Hambledon; he lives neither by commerce nor by craft nor by private means adequate to live on; from 13 Richard II onwards he has broken the hedges of various persons in Denmead and elsewhere, doing various kinds of damage; he stays up at night and sleeps by day; he keeps people away by threats and assaults.

The fourth accusation, equally vague, was against another nightwalker, 'who attracts bands of malefactors, to the general peril'. Such indictments could be challenged in court without difficulty if the defendants were sufficiently articulate and knowledgeable,

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[1] KB 27/473, pleas m.57.

[2] KB 9/108, m.4 (John Bastard and others).

[3] KB 9/108, m.8.

but the reaction of the courts suggests that the presenting jurors were not being unduly optimistic. Much, of course, depended upon the discretion of the justices, who were reluctant to deal with petty local quarrels, but were also reluctant to release persons they judged to be criminal. In 1411 three men were indicted at peace sessions for the (allegedly but doubtfully) felonious breaking into a manor, and the more legally amorphous offences of conspiracy to rob and kill the occupant (one of the committing justices), being common nightwalkers, and being common disturbers of the peace. All defendants were found not guilty, but before they were released they were nevertheless required to find security of forty marks or forty pounds each for their good behaviour towards the justice and anyone else: they were, in later terminology, acquitted and yet bound over.[1] Not everyone was so fortunate. A man acquitted of homicide was remanded in custody 'because of ill repute'; whatever happened to him, he was not among the prisoners at the next gaol delivery.[2] Another, acquitted on the not explicitly felonious charges of removing goods worth one mark, and of being a common thief, was remanded similarly; at the next delivery he was convicted and hanged, on an indictment brought (before the same originating

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[1] JUST 3/194, mm.8, 8d; JUST 3/218/1, mm.149, 149d, 151, 182.

[2] JUST 3/179, m.8 (John Skitt); cf. ibid., m.9d.

official)[1] after the acquittal and remand, although allegedly referring to an even earlier offence.[2] In all these instances, and the many more that they represent, there was at work a firm purpose, though vulnerable to abuse, among judges, officers, and juries, to deal with uncertain or undefined criminality.

There remain two matters which do not properly belong to the field of criminal law but which cannot pass quite without mention here. The first of these concerns offences which, though not strictly criminal, were prosecuted by the same procedures. Some of these offences can be classified as matters of public works: failure to maintain or keep clear bridges, waterways, or rights of way, or to deal adequately with refuse. Many such presentments have been published from king's bench and from local court materials,[3] and they can be matched copiously from peace sessions materials. But the larger proportion of non-criminal matters under criminal procedures were economic offences against the regulation of employment and trade: demanding or paying wages in excess of

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[1] John Deacon, acting in the first instance as steward to the warden of the New Forest, and in the second as steward to the earl of Salisbury there.

[2] JUST 3/179, mm.9d, 10 (Richard Reynes).

[3] Public Works in Medieval Law, ed. C.T.Flower (Selden Soc., XXXII and XL, 1915-25); London Assize of Nuisance 1301-1431, ed. H.M.Chew and W.Kellaway (London Rec. Soc., 1973).

those permitted by statute;[1] breaking the long-established lawful ratio between the price of grain and the prices of bread and ale;[2] retailing goods at prices or in condition forbidden by statute; using fraudulent or unauthorised weights and measures; forestalling and regrating in order to manipulate market prices; and the like. Few of these cases were even remotely criminal in practical terms, but they occupied much of the time at peace sessions,[3] and at local sessions of king's bench.[4] Many of the fines involved must have been seen as licensing fees rather than as punishment.[5]

The second matter strictly beyond the scope of the criminal law was pardon. 'A pardon does not affect the legality of the act. It simply frees a guilty person from the legal consequences of his illegal act'.[6] Copious use was made of the royal prerogative of mercy, particularly at times when troops were needed in royal armies or when fees were

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[1] See Putnam, Statutes of Labourers.

[2] See A.S.C.Ross, 'The assize of bread', Econ. Hist. Rev., 2nd ser., IX (1956); see also J.B.Post, 'Manorial amercements and peasant poverty', ibid., 2nd ser., XXVIII (1975), especially 306-10.

[3] Putnam, Proceedings, 'Analytical Index', 481-2.

[4] e.g. KB 9/108, mm.5, 6, 11, 13, 14.

[5] Post, 'Manorial amercements', 305-6.

[6] Holdsworth, History of English Law, VI, 217-8.

needed in the exchequer, and it became common for persons of all sorts to sue pardons from chancery when (or even before) they were indicted for felony or for potentially expensive trespasses. There is no indication that any effective control was placed upon the issue of pardons, despite statutory limits placed at the request of the commons upon the types of offence which were eligible,[1] and the evasion of legal consequences persisted undiminished.[2] The only sphere in which pardon practice can be said to have been assimilated into the law is that of pardonable homicide, the ancestor of manslaughter, which has been discussed already.[3] In this instance it is never clear whether the pardon is to be regarded as exculpatory or merely as a gracious reprieve. The habitual anticipation of pardon in certain types of case suggests that the intention was to free from blame, as is the intention of free pardons nowadays, and this is supported by a case in which the pardon of a principal was held to require the acquittal of his alleged accessory;[4] yet the function of most

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[1] e.g. Rot. Parl., II, 104 no.10 (1339), 161 no.28 (1346), 171 no.53 (1347); III, 544 no.84 (1404).

[2] This was far less true in the fifteenth century: Storey, End of the House of Lancaster, Appendix II.

[3] Above, 227-236.

[4] KB 27/473, Rex m.23.

pardons, in cases where there was no suggestion of justification or excuse, was to remit the sentence of any felon who had the resources to sue for grace.

VI

Criminal Justice

Even when a moderate amount is known about the procedures and the law under which persons were arraigned and tried, it is very difficult to gain any clear impression of the efficiency and justice of the system. In any age it is impossible to eliminate completely the malicious indictment and the accidental miscarriage of justice, and in the fourteenth century, when officials could deal arbitrarily with large portions of the population, and when only common sense could do service for systematic detection, these hazards must have been very real. More than this it is impossible to say on these points; malice would hardly be committed to writing, while for material evidence the historian is limited to the bald and stylised record of what contemporaries thought significant for legal purposes. Nevertheless it is possible to attempt some answer, albeit a heavily circumscribed and tentative answer, to important questions about the practice of criminal justice in this period: were convicted defendants really guilty? were acquitted defendants really innocent? did the perceptible successes of the judicial agencies genuinely impinge upon the professional criminal? how much actual success is now imperceptible? The questions are large; the evidence is tenuous, but not wholly wanting.

Professor Cockburn has analysed a large body of assize indictments from the sixteenth and early seventeenth centuries, and has found many cases, of conviction and acquittal alike, seriously deficient in law and fact;[1] allowing for developments in law and in bureaucratic procedures, many of the strictures must be entertained as suspicions about cases two centuries earlier. One of the most probable is what might be termed official malice, whereby arbitrary or subtle manipulations of procedure are used to effect or attempt a conviction against a person believed to be criminal but against whom the evidence is defective in fact, the indictment defective in law, or the jury defective in returning the required verdict. The early-modern assize records have the double advantage of having, in many cases, surviving recognisances which supply further or contrary information on indictees, and of having occasional annotations by assize clerks indicating dissatisfaction or problems with the verdict. These make it clear that some defendants, however criminal they may have been, were convicted for crimes they did not commit or for crimes described so erratically as to imply serious gaps in the evidence. Such doubts are only revealed in the medieval courts by blunders in sorting or recording the stages in procedure, but they do occur. The case of Richard Reynes has already been mentioned:

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[1] Cockburn, 'Early-modern Assize Records'.

acquitted on one indictment, he was remanded in custody while another, and more effective indictment was procured.[1] John, otherwise Richard, White and William Nash were taken and held on suspicion before July 1391, but it was nearly a year later, and two views of frankpledge after the alleged events, that they were indicted for stealing from each other.[2] Thomas Tapener was supposedly taken with mainour valued at 8d., and remanded in custody; at the next gaol delivery he was tried, the new indictment and the alleged further offence being subsequent to his imprisonment.[3] Even more suspicious was the case of John Kirkby 'called Hunt'. He and one John Elsyng were taken with mainour (a fur robe), and remanded in February 1392; at the next delivery, on an indictment subsequently procured, he was convicted of stealing a purse and small change from Elsyng, and hanged.[4] All these cases suggest official attempts to secure convictions on the wrong grounds, though possibly of the right persons; if the court intended to secure a conviction, it was not, as Sir Impey Biggs put it, 'going to boggle over a trifle of adverse evidence'.

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[1] Above, 192, 263-4.

[2] JUST 3/179, mm.7, 8d.

[3] JUST 3/179, mm.12d, 13.

[4] JUST 3/179, mm.7d, 8d. It is possible that Elsyng the younger and Kirkby stole from Elsyng the elder (cf. KB 9/108, 16), and that Elsyng the younger was treated leniently on this occasion, although he was soon in trouble again.

Clearly, however, judicial elasticity did not operate in one direction only. Various types of lenity have been discussed above in their procedural or legal context. Thieves taken with mainour but not otherwise accused were generally discharged, perhaps after remand; likewise those taken on suspicion without more concrete charges.[1] Here the difficulties of prosecution or the manifest triviality of the offence may have been taken into consideration. With specific indictments, however, this explanation is unsatisfactory, and it seems more than likely that the justices had defendants remanded in relatively minor but capital cases, regarded the interim imprisonment as a punishment, and obtained an acquittal at the next session;[2] this was, after all, an explicit policy in some cases of petty larceny or similar matters.[3]

So far, the argument against accepting verdicts as necessarily honest reflections of the justice of the charges has been based upon the indications that in particular cases the courts, supervised if not directed by the justices, adopted various discretionary procedures in order to obtain the required result.

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[1] Above, 80-87.

[2] e.g. JUST 3/179, mm.10 (William Thatcher), 11d (Joan Tailor), 12d (Richard Clerk). Evidently jurors were not always complaisant - John Hogheles was convicted: ibid., m.10.

[3] Above, 94-5.

The inference must be that many of the apparently straightforward cases in the records were decided on individual merits which were allowed to prevail notwithstanding the formal requirements. Although this hampers reliance upon the particular instance information in the documents, it does not necessarily imply that the ends of impartial justice were ignored altogether - merely that guilt or innocence, in these cases may have been general to the defendant rather than particular to the charge. This approach may well have been a commonplace in the gaol delivery courts, from which all the evidence so far cited has been drawn. But there are powerful reasons for supposing that different criticisms can be levelled at the verdicts found in king's bench, and that different criteria from those of particular or general guilt or innocence determined the outcome of trials there. These reasons do not originate in clues from particular cases, but from suspect patterns in the rates of conviction.

The first of these criticisms can be illustrated by a single illuminating instance. At a county visitation in 1379, king's bench held a single delivery of four groups of prisoners from the royal gaols: Melton, Bury St Edmunds, and Norwich (one Norfolk batch, one Suffolk).[1] The total number of prisoners from both counties was seventy-three. The convictions,

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[1]KB 27/475, Rex mm.32-39.

however, were unevenly distributed. Of the Suffolk prisoners, only two were convicted (one hanged, one allowed clergy) from a total of thirty-eight - roughly 5%. Of the Norfolk prisoners, however, six out of thirty-five were hanged (roughly 17%), and the proportion is misleading in that one group of eight remained unprosecuted because of a defaulting appellor; the conviction rate is more nearly represented as six out of twenty-eight (roughly 21%). The difference is suggestive. It is hardly to be supposed that the divers indicting courts in one county would be uniformly more accurate or plausible than those of another, and there can have been no good reason for county bias on the part of the central court. Presentation of all the cases was the responsibility of one man, the sheriff of both counties. There can have been only one variable - the petty juries. There was a tendency at gaol delivery to present batches of cases to a jury, rather than one apiece,[1] and the cases at the king's bench session will have been put to a relatively small number of jurors from each county.[2] Clearly, in the context of such trials, a lenient or a hanging jury could have an effect on the conviction rate quite irrelevant to the guilt of the accused. The rate for both counties was probably on the low

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[1] e.g. JUST 3/218/1, mm.177, 188.

[2] The jury lists do not appear to survive on the crown side file KB 37/3/2/1.

side - the Hampshire gaol deliveries from 1388 to 1399 aggregate at 30% for specific offences, or 25% of all prisoners - but this cannot have been much consolation to the Norfolk prisoners.

A second, and far more generally applicable, criticism can be made of verdicts in king's bench. Broadly speaking - excepting, that is, an occasional case of error or political offence - there were six ways in which felonies came to be tried in king's bench. During a 'superior eyre' the court would deliver any royal gaols in the counties it happened to visit; it heard hundredal presentments and tried anyone taken on the resultant process; it issued process (often extremely belated) on undetermined cases from coroners' and peace rolls collected and reviewed during the visit. Local sessions apart, cases came into king's bench on appeal by the victim; on appeal by approvers (who were often transferred to London for administrative convenience); and on summons by writ of certiorari sued out of chancery. These methods fall roughly into two categories: cases which came before the court in consequence of routine judicial administration, and cases which were summoned at the request of a party. The two categories do not provide conviction rates which are equally plausible as evidence of justice done. At king's bench gaol delivery, as the last paragraph showed, some were convicted and many were not, at a rate at

least roughly comparable with that shown by normal gaol delivery. Hundredal presentments, too, were treated plausibly if severely; at the Winchester sessions in 1393, six out of eleven defendants were convicted, and another two had pardons.[1] Approvers' appeals, which will be considered in detail shortly,[2] likewise had mixed outcomes. The undetermined coroners' and peace sessions cases, however - cases which the local administration had not brought to court - show the first signs of suspicious uniformity. Twenty-eight such cases came into king's bench in the wake of the 1393 visitation; three lack an ascertainable outcome, but the remainder were all in the defendants' favour: eight acquitted, thirteen pardoned, four autrefois acquit.[3] It is suggestive that many of these offences were homicides said by the coroners' juries to have been committed in fights where the victim was as much to blame as the accused,[4] and there may not have seemed to be strong grounds for prosecution; on the other hand, some of the defendants had originally been indicted for felonious homicide,[5] sometimes with

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[1] KB 27/527, Rex mm.1, 7, 11, 11d, 12.

[2] Below, 295-310.

[3] KB 27/527, Rex m.9; 530, Rex mm.1-3d, 4d-6, 29d, 32d (cf. Cal. Pat. Rolls 1391-6, 718); 531, Rex m.1d; 532, Rex m.9d; 536, Rex mm.4, 21d; 537, Rex mm.19-19d; 545, Rex m.9.

[4] e.g. KB 27/530, Rex m.1d (cf. JUST 2/155, m.2); ibid., Rex M.3d (cf. JUST 2/155, m.21d); ibid., Rex m.32d (cf. JUST 2/156, m.3).

[5] e.g. KB 27/530, Rex m.1 (cf. JUST 2/155, m.16d).

unequivocal circumstantial evidence of felonious intent,[1] as at the death of John Keblewhite the younger.[2] Since the defendants were all 'found' by the successors of sheriffs who had 'failed' to find them before, it looks as though they only appeared in king's bench if they were confident of a favourable verdict or armed with a pardon anyway.

Scepticism about verdicts on these desultory prosecutions is considerably heightened by the conviction rates shown among king's bench cases arising from central procedures rather than from local visitations. Appeals of homicide, robbery, or larceny, brought by widows or victims, were never very frequent in this court: in some terms a handful, in others none at all, and placed among the private litigation in the common pleas section of the Coram Rege roll. The outcome, however, was predictable; normally, though not quite invariably, the defendants were convicted. Trinity and Michaelmas terms, 1379, show a typical crop: two appeals by the victims of robbery, two, of homicide, by widows; all seven defendants convicted.[3] The verdicts, in other words, almost always favoured the appellor who had brought the case to the court. The counterpart of this

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[1] e.g. KB 27/531, Rex m.1d (cf. JUST 2/156, m.2d).

[2] Above, 194-5.

[3] KB 27/474, pleas m.66; 475, pleas mm.19, 85d.

improbably standardised conviction rate was that of cases summoned into king's bench upon certiorari, or occasionally on similar writs. Few of the cases can have been of legal, fiscal, or political importance, and these usually bear heavy circumstantial evidence of their extraordinary significance.[1] In the vast majority, the only party whose interest could constitute the 'certain causes' which prompted the writ was the defendant, and a certiorari was regarded as the defendant's means of taking his case to his preferred court,[2] for the exhibition of a pardon,[3] or for the purpose of a 'fair' trial. In fact cases upon certiorari, even more markedly than appeals, show verdicts favouring the party who brought the case into the court; the pattern may not have been invariable, but no exception has been found for the two decades of Richard's reign.[4] Types of offence seem to have varied as much as with the other doubtful results, with cases of apparently serious criminal intent as well as of probably pardonable homicide.[5]

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[1] e.g. Sayles, King's Bench, VII, nos 9 and 20.

[2] Cf. A. Fitzherbert, The New Natura Brevium (9th edn., London, 1794), II, 242-8.

[3] Blackstone, Commentaries, IV, 315-6.

[4] One case of autrefois convict hardly breaches the rule: KB 27/508, Rex mm.4-4d.

[5] e.g. KB 27/527, Rex mm.4d (cf. JUST 2/155, m.1), 10d (the Keblewhite case again), 12d (cf. JUST 2/155, m.4).

The precise reason for these patterns is obscure, but it is plain that it had little to do with the events the indictment purported to describe, or with the deserts of the defendant. Some cases resulting in pardons can be exonerated: it was the overt practice of justices in all determining courts to remand, 'pending the king's grace', defendants whose offences came within the ill-defined customary scope of pardonable homicide, and it was not within their discretion to reject pardons which were produced in court by defendants who did not seem to deserve them but had paid an obliging chancery to issue them nonetheless. There was no area of judicial discretion which allowed a direction to the jury on a verdict; once the indictment was found good in law it was up to the jury to decide for itself. Very possibly this position was not honoured; it is easy to conceive of a judge advising or browbeating a jury into an acquittal on various technically inadmissible but ready comprehensible grounds - procedurally, for example, it would be simpler to acquit a fairly presentable defendant and have done, than to complain about the drawing of the indictment or the absence of vital testimony and begin the whole business from scratch. Such a system would, of course, allow extensive abuse by impatient or dishonest justices; yet it is difficult to suppose that expedition and corruption between them could have elicited such uniformity by this particular stratagem.

The acceptance of bribes by judges, even to the extent of a general habit, is only too likely, but if that were the explanation (or at least the sole explanation) it would surely have led to the abatement of indictments rather than to the chancy business of influencing the jury. It would be more reasonable to suppose that the jurors were bribed.[1] The mere fact of the certiorari indicates that defendants reaching king's bench by this means had fluid resources; in many cases their mainpernors were clerks of the court (acting in their capacities as private lawyers), representing further expensive precautions.[2] A financial investment in the jurors' good opinion would mean that the case could be allowed to come to issue without need for a pardon, or for judicial discretion (which might have been more than twelve times as expensive). The prevalence of embracery was already problematical, and in the previous reign it had been

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[1] This is much more likely in the occasional case where an acquittal was served before a justice who was the victim of the offence: E.L.G.Stones, 'The Folvilles of Ashby-Folville, Leicestershire, and their associates in crime, 1326-1347', Trans. Royal Hist. Soc., 5th ser., VII (1957), 122.

[2] e.g. John Abingdon mainprised by John Cogger (KB 27/536, Rex m.14), and Walter Philip by Brian Huscarle and John Horder (ibid., Rex m.21d). Margery Cyfrewast, whose exceptions to her indictment suggest exemplary legal advice, was mainprised by Huscarle, Stephen Fall, Thomas Crow, and Thomas Bedford: KB 27/537, Rex mm.19-19d. These clerks are identified in Post, 'King's bench clerks'.

the subject of a statute;[1] the remedy, however, was by action of decies tantum, for recovering from the juror ten times the amount of the bribe, and was designed for redress in private litigation where one party had suffered to the advantage of another, whereas the only party to suffer thus in criminal cases was the crown, and that in a fairly conceptual way.

One last, tentative explanation for these verdicts can be offered. The defendants who reached king's bench upon certiorari did so from a basis of material resources and understanding of procedures which by that definition puts them out of the common run of indictees. Their status was not necessarily exalted, but it may be that they could enlist the fellowship of clerks, justices, and jurors, not in a personal way but in respect of their respectability; the idea that criminality had a maximum social level survived into much less hierarchical societies than the England of Richard II. This, together with the fact that the jurors were (relatively) local to the defendant, may have obviated more tangible grounds for a nexus of obligation. The same, of course, would have been true of appellors. Whatever the explanation, it is obvious that the verdict of a trial jury cannot be taken as a reliable guide to the guilt or

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[1] 38 Edward III, c.13.

innocence of the defendant; it is probable that most of those who perforce remained at the mercy of gaol delivery were treated fairly by the standards of the day, but the superior court dispensed favour rather than justice.

Scrutiny of the documents suggested that the more local the origin of the indictment, the more likely it was to be accurate;[1] the evidence of conviction rates suggests likewise that determining courts in the counties were less affected by factors extraneous to the evidence and law under consideration. On these bases the bulk of gaol delivery verdicts (especially convictions) on hundredal or coroners' indictments may be accepted as fair. But this is no help towards establishing whether or not a particular charge was true in fact or a particular defendant guilty in substance. Demonstration of these points is dependent upon the intrinsic circumstantial plausibility of the indictment (or special verdict) or upon external evidence, both of which account for very few cases.

The trouble with most indictments is the unyielding terseness of their formulae, which seldom allow mention of anything resembling a motive. In property offences the profit motive was perhaps regarded as too evident for words; it is noticeable that the only

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[1] Above, 189-192.

special verdicts on such charges were to reduce the scale of the punishment rather than to find mitigating reasons for the commission of the offence. In homicide the varieties of motive were recognised in special verdicts and in indictments. Both show that many of the deaths followed from quarrels in which guilt could not be apportioned fairly between killer and victim, and benefit of the doubt was allowed to the survivor. Normally the basis of the quarrel is not given, although a London coroner thought it fair to mention that Thomas Shaw 'had said in John Miles' presence that he, Shaw, could have Miles' wife Agnes when he liked, against Miles' wishes, and had often lain with her for twopence, like a common whore'.[1] Similar considerations may have led to the death of Alexander the chaplain when he was found with another man's wife.[2] In these circumstances the substantial truth of the indictment seems very probable. The same can be said of homicides, whether allegedly felonious or not, in manifestly domestic circumstances - husbands and wives, parents and children, servants.

Although this sort of information is usually lost if it is not contained within the indictment, it is occasionally possible to demonstrate from other sources the existence of a motive, or a relationship

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[1] KB 145/3/2/1, unnumbered membrane.

[2] JUST 2/155, m.9.

within which a motive is highly probable. At gaol delivery James Dingley and his servant Peter were convicted, on a coroners' indictment that Dingley 'feloniously and with malice aforethought' stabbed Walter Puncheon in the back while he was making water against a wall, with Peter aiding the felony.[1] Dingley claimed clergy, and his servant was remanded pending pardon.[2] No explanation or mitigating circumstances was recorded during the entire proceedings, although Dingley was ultimately also pardoned - most unusual for a convicted clerk.[3] In fact Dingley and Puncheon were merchants, and there was a history of disagreement between them;[4] Puncheon seems to have been a quarrelsome person altogether,[5] and not above swindling his own kin.[6] The killing, therefore, is likely to have been the outcome of business differences, despite the lack of attributed motive in the indictment. Less directly, the killing of William Daniels by (among others) Alan son and Agnes servant

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[1] JUST 3/179, m.12d.

[2] Pardon of Peter Perrott at C 67/30, m.23.

[3] Cal. Pat. Rolls 1396-9, 515.

[4] Cal. Close Rolls 1396-9, 223.

[5] ibid., 91, 203, 218, 221.

[6] He tried to appropriate his nephew's inheritance, but on his death the nephew collected the estate of £600: Cal. of Select Pleas and Memoranda of the City of London 1381-1412, 201, 202, 204; Cal. of Letter-Books of the City of London: Letter Book H, 445-6.

of William Frith is more probable in view of Agnes' tendency to violence as recorded in the local court rolls.[1] Evidence of notoriety is also strongly supportive, perhaps indicating motive, but at least reinforcing the weight of suspicion. Similar presentments by different juries at the same session cannot be regarded as certainly independent of each other, but this often seems very likely. Three different Warwickshire juries presented the death of William Pain of Kenilworth, in terms discrepant enough to preclude simple borrowing, but similar enough to show common knowledge of the basic event:[2] the same applies to three presentments of the death of Adam Otheyn.[3] If the notoriety was wide, and independent of the original indictment, the information in the latter gains yet more credence. In this respect the case of Elizabeth Walton is quite extraordinary, and for this reason, as well as for sundry points of legal interest and for the illustration of subsidiary sources, her tale is worth attention.

The case has relatively full coverage in the legal records;[4] there is also a journalistic account,

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[1] JUST 2/155, m.3d; Hants Rec. Off., 5.M.50/184. See also Cal. Pat. Rolls 1381-5, 533, and C 67/29, mm.5 and 12, for pardons.

[2] Kimball, Warwicks Sessions, 99 no.18, 100 no.23, 104 no.40.

[3] ibid., 136 no.75, 137 nos 78, 80.

[4] Inquest at JUST 2/155, m.21d; gaol delivery hearing at JUST 3/174, m.2; review in king's bench at KB 27/508, Rex mm.4-4d, printed in Sayles, Select Cases, VII, 54-6.

perhaps imaginative in circumstantial detail but recognisably sound in outline, by a metropolitan chronicler, the Monk of Westminster,[1] and with a few other occasional references the story can be reconstructed. Elizabeth Daubeney was born in 1354, and by the time she was fourteen had already married Gilbert Giffard.[2] Before she was twenty her husband had died abroad,[3] and when she inherited her father's estate she was married to Andrew Walton.[4] According to the chronicler, this second husband also spent time abroad, and during his absence Elizabeth developed a liaison with a priest - Robert Blake, her husband's domestic chaplain. When Andrew returned he was killed; accounts differ in detail. The chronicle and the coroner's roll agree that he was killed in his bed by his wife and chaplain, the inquest jury adding the complicity of John Ball, another servant of the household; the chronicler reports that Elizabeth and Blake were attached the following morning when they were caught unawares together in bed. The inquest jury spoke only of felony, but when the case was tried at gaol delivery it was given more elaborate treatment. The main charge was roughly the same, while specifying

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[1] Polychronicon Ranulphi Higden, IX (Rolls Series, 1886), Appendix, 173. I owe this reference to Mr L.C.Hector.

[2] Cal. Inq. P.M., XII, no.377.

[3] ibid., XIV, no.29.

[4] ibid., XV, no.974.

that the killers lay in wait, doing the deed feloniously and treasonably; there were other charges, presumably deriving from indictments before the justices of the peace, which were cited then but have since been lost, that Blake and Ball had lain in wait over a period of a fortnight to kill Walton and two other named men. The elaboration of these additional charges may be gauged from the inclusion of a statement of the killers' intention to drown Walton and the others in a nearby pond. All the charges were prosecuted successfully. Blake claimed his clergy and was committed to the Ordinary for Winchester; the chronicle says that he died in prison. Ball was drawn and hanged - the appropriate petty treason sentence.

Elizabeth was convicted and sentenced to burn. The jury added that her chattels (valued at eight shillings by the coroner's jury) should be distinguished from any devolving from her husband, since she could not, in consequence of her own role, inherit the latter, but valued her own manor of Henton Daubeney at eight marks a year, net; they failed to notice her Gloucestershire holdings. Before sentence could be carried out, Elizabeth claimed pregnancy, which a jury of Winchester matrons confirmed; she was therefore remanded.[1] Her next court appearance was in

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[1] A humbler woman whose sentence of death was respited a few years later was pardoned before execution: Cal. Pat. Rolls 1391-6, 317.

king's bench, whither the case had been called for review, but on rehearsal of the gaol delivery findings sentence was confirmed. On 17 April, 1388, she was burned at the stake in Bermondsey, and her estates were forfeit.[1]

Notoriety on this scale, coupled with the inherent plausibility of the allegations, puts an overwhelming balance of likelihood upon Elizabeth's guilt. But evidence of actual or potential motive, whether provided in the legal proceedings or detectable elsewhere, is likely to emerge only in those cases of which Elizabeth Walton's crime was typical: what may be termed the nonce-criminals, whose offences - however excusable or heinous, and whatever the outcome - were symptomatic of isolated and exceptional situations to which a single serious crime was the solution for persons who would not otherwise come within the cognisance of the criminal law. It is improbable that Elizabeth Walton, or any of the other persons indicted for killing their spouses, was a murdress by habit; there is no suggestion that Nicholas Clifton regularly abducted the daughters of county magnates. Evidence of motive, especially if it was deliberately recorded, serves principally to pick out the amateurs who failed to get away with it, and to elucidate piecemeal

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[1] See Cal. Inq. Misc., VI, no.66. For evidence of another gentlewoman burned for a similar offence, see Cal. Inq. P.M., IX, no.117.

the attitudes of society towards their crimes; killing spouses, as the rare example of a segregable category, was peculiarly deprecated.[1] These are not the generality of crimes and it is another matter to establish or suggest how guilty were the generality of alleged criminals.

In identifying those with whom crime was not a unique experience, it would be handy to make a broad distinction between the professional criminals and those who merely used illegal methods for secondary purposes. Such a distinction can hardly be rigid, but the second category certainly accounted for a good deal of the known lawlessness of the period, the Pastons providing the hackneyed later example.[2] The Paston evidence is of course exceptionally reliable in that the narratives were compiled for private information and not for public allegation in bill or presentment, but material of equal status, suggesting the same tenor of behaviour, is not wholly wanting

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[1] Killing a husband was petty treason, and it is interesting that pains were taken to indicate the element of plotting involved, as in the cases of Elizabeth Walton, Alice Pain (above, 284), and Agatha Russell (JUST 2/155, m.12). Killing a wife was mere felony, and prosecuted as such: e.g. ibid., mm.3d (Richard Hole), 16d (William Ringwood; trial at JUST 3/179, m.5), and John Orchard (trial at JUST 3/179, m.4). A common social attitude was perhaps reflected in the very high conviction rate for both types of offence, and the great rarity of pardon for either.

[2] It is conspicuous that all the examples of 'violence' selected by Dr Myers relate to the incidentals of litigation among the propertied classes: English Historical Documents, IV (1327-1485), ed. A.R.Myers (London, 1969), nos 720-730.

from the late fourteenth century. In the course of a single but protracted series of Warwickshire lawsuits John Catesby never once alleged in court (save in the routine formulae of trespass writs) any violence on the part of his opponents; yet in his purely private notes he mentioned, without apparent surprise, the rougher side of the business: a mill maliciously wrecked by Sir William Bagot, the arrival of a hostile parson with eighteen armed men, assaults on his tenants by the duke of Surrey's steward, the destruction of hedges by a substantial local family called in to help with the harassment.[1] None of these incidents was prosecuted as a breach of the peace, but there might have been little or no effect if they had been. The litigation of Richard Wayte, particularly as regards William Upton, his cousin by marriage, seems on a variety of evidence to have been reinforced by self-help. In an assize of novel disseisin against Geoffrey Roucley for lands in Hambledon, Wayte came under suspicion of having suborned the jury,[2] and on Roucley's death forcibly occupied his manor of Wymering, ousting the escheator who had taken over.[3] By the time the commission of inquiry into this was issued, Wayte was already in trouble for his dealings with Upton. Allegedly Upton had

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[1]Post, 'Ladbroke Manor Dispute'.

[2]KB 27/506, pleas m.6.

[3]Cal. Pat. Rolls 1388-92, 270.

appropriated Limborne manor in disherison of Wayte,[1] and although for reasons unknown Upton had been outlawed and his manor of Wade put under the escheator, at crown suit,[2] Wayte and his associates had been forced to find sureties in chancery that (in the standard terms which vouch for the familiarity of the problem) 'they would not make or cause illicit assemblies or meetings which could lead to disturbances of the king's people or to harm to the persons of his lieges, and they would pursue their business in form of law and not by armed force'.[3] Almost at once, according to a further commission and the count of the king's attorney in king's bench, they broke into Limborne manor, ill-treated Upton's wife, and took away twenty pounds' worth of goods. No outcome to these proceedings was recorded,[4] but not long afterwards there were presentments - again without recorded conclusion - in king's bench, accusing Upton of forcibly reoccupying Wade and removing the present tenant's cattle, and of forcibly occupying the manor of Wellsworth, said to belong to a group including one of Wayte's associates.[5] The rights of the matter

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[1] KB 27/542, Rex mm.28-28d.

[2] Cal. Inq. Misc., V, no.179.

[3] KB 27/540, Rex m.36d.

[4] KB 27/540, Rex m.36d; 542, Rex mm.28-28d.

[5] KB 9/108, m.3.

remain obscure, but it looks very much as though both sides were using extra-legal force as a supplement to, or a substitute for, litigation. Long recitals of this kind of grievance, even when unsubstantiated by other evidence, often have convincingly circumstantial detail: Thomas Russell, according to a dispossessed widow from the Isle of Wight, used a royal serjeant at arms to support his false contention of a royal commission for his depredations.[1] In such cases as these it is sometimes possible to establish who was in the right, more often it is not; the supportive evidence indicates, however, that the irregular practices alleged were only too likely.

The corroborating evidence of unlawful means in the pursuit of litigation is generally restricted, like the litigation itself, to the propertied classes and their associates. Unsurprisingly, it is the same group that has provided the most information about the professional criminal; it is by no means impossible to bear out, by evidence or by inference, purely criminal charges involving defendants of good social standing, if those defendants were operating professionally on a large scale or over a wide area. Such demonstrations have been attempted successfully for various criminal gentry in the second quarter of the

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[1]JUST 3/167, m.21.

fourteenth century.[1] The activities thus painstakingly disclosed have enormous value in indicating the sheer prosperity and social prominence of a good many of the criminals, and some of their crimes. For some time Sir John Molyns was able to shelter his persistent criminality behind his political connection.[2] Merchants robbed in Cannock Chase in 1341 found prosecution difficult; their assailants were knights, from powerful midland families, conducting the robbery from Lapley priory.[3] The Folville gang, though led by members of minor landowning families, included various beneficed clergy and the constable of Rockingham castle.[4] The Coterels recruited the sheriff of Nottingham, and enjoyed the support of the Lichfield chapter.[5] The crimes, too were on an exalted level: murdering a baron of the exchequer, kidnapping a king's bench justice, extorting by threats from a mayor of Nottingham or from one of the Luttrells.[6] The activities of these gentle gangsters

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[1] Stones, 'The Folvilles'; J.G.Bellamy, 'The Coterel Gang: an anatomy of a band of fourteenth-century criminals', Eng. Hist. Rev., LXXIX (1964); 'A medieval robber baron: Sir John Molyns of Stoke Poges, Buckinghamshire', ed. N.M.Fryde, in Medieval Legal Records ...; cf. Bellamy, Crime and Public Order in England in the Later Middle Ages (London, 1973), cc.II-III.

[2] Fryde, 'Sir John Molyns'.

[3] Bellamy, Crime and Public Order, 45-7.

[4] Stones, 'The Folvilles', 122-4.

[5] Bellamy, 'The Coterels', 701, 703-4.

[6] Stones, 'The Folvilles', 119, 122; Bellamy, 'The Coterels', 706-7.

were not unique to their period or their class, but the parallels may be seriously limited. In the first place, the end of Edward II's reign and the first decade of his son's were years of great political turmoil in which local disorders, whether political or simply personal, had gone relatively unchecked by central government; indeed, the strong measures against Molyns or the Folvilles, which provide the confirmatory evidence of the offences, were by way of an acknowledgement that their crimes were out of the ordinary. By the end of the century a number of factors may have combined to reduce the scale and the scope of criminality, even if its overall effect was proportionately much the same. The local agencies of justice had settled into the incipient pattern of quarter sessions and assizes which were perhaps more effective under government whose political upheavals were predominantly central; drastic depopulation and the consequent economic problems had not only had social effects which have yet to be explored, but had also required an intensification of royal administration; Edward III had made serious attempts to reduce the opportunities of officials for abusing their functions;[1] the judiciary had experienced the reforming zeal and the repressive severity of

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[1] J.R.Maddicott, The English Peasantry and the Demands of the Crown, 1294-1341 (Past and Present Supplement no.I, 1975), passim; W.R.Jones, 'Keeping the peace: English society, local government, and the commissions of 1341-4', American Jnl. of Legal Hist., XVIII (1974).

Shareshill.[1] In consequence the apparent scarcity of such gangs on the earlier scale in Richard II's reign is not altogether remarkable, although it cannot be supposed that the phenomenon was utterly unknown.

This concentration of modern studies upon the the criminal gentry, and upon a period when they may have been less hampered than usually by law enforcement, implies that there is far less prospect of perceiving the genuine underworld at work, and of establishing with reasonable certainty the guilt of professional small-time criminals who must have constituted the vast majority of Professor Putnam's socially unidentified burglars, robbers, murderers, sleepers by day and wanderers by night.[2] Very occasionally it is possible to see traces of a probable underworld in isolated cases or groups of cases. An apparent team of nine, for example, was arraigned, on various charges, at the Winchester gaol delivery in the summer of 1388. The charges related to events in the autumn of 1386, and the proceedings seem to have been designed for the conviction of the leader, John Woodford from Oxfordshire, since his supposed

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[1] B.H.Putnam, The Place in Legal History of Sir William Shareshill (Cambridge, 1950), passim.

[2] B.H.Putnam in The English Government at Work, III, 217, cited both by Stones, 'The Folvilles', 117, and by Bellamy, 'The Coterels', 698.

accomplices - local people - informed against him and were acquitted.[1] But these small blocs of evidence are rare, and all too often ambiguous or implausible. The only systematic way to reconstruct any underworld relationships would be to correlate the names and origins of all recorded defendants in the country over a period of several decades; pending this ideal possibility, there is one route which can lead to such correlations - not systematically, but with substantial piecemeal rewards. The finding aid is the approver's appeal.

Superficially there are grounds for doubting the usefulness of approvers' appeals either for catching criminals in the fourteenth century or for identifying them in the twentieth: the procedures were cumbersome and the circumstances equivocal.[2] Professor Pugh has nevertheless argued that some such appeals at least are authentic in substance if not in every detail, and illustrated this from mutually corroborative appeals, albeit from approvers in a single gaol.[3] The point is indeed a sound one; the procedure was to some extent welcomed by criminals and judicial administrators alike, and the results are - perhaps

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[1] JUST 3/179, m.2d.

[2] Above, 36-37.

[3] R.B.Pugh, 'Some Reflections of a Medieval Criminologist', Proc. Brit. Acad., LIX (1973), 18-19.

were - surprising. For the prisoner's part, the advantage in turning approver lay in the procedural delays it caused. For anyone fearing an adverse judgment in court, whether just or otherwise, confession and appeal provided a simple means of obtaining extra weeks, months, or even years during which escape or pardon might be effected. From the official point of view, the approvement of one felon gave an opportunity for tracking down a number of others, and it was undoubtedly for this reason that the procedure was minute and exhaustive even by the standards of the medieval courts. In practice, a variety of other motives prompted officials to elicit confession and appeals from prisoners. An appeal of felony, however false, was a means to extort money from an innocent man, and coroners and sheriffs were clearly aware of this. Approvers' appeals were sometimes found to have been induced by torture or privation,[1] and accusations were withdrawn in court. Thus Adam Hasting, on the third day of his appeals, 'said that he refused to make appeal further. Therefore by the law and custom of England this appeal is closed'.[2] Hasting had a pardon in view. Not so Thomas More, who, confronted with his appellee, 'said nothing, but held himself mute', and was hanged

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[1] Hunnisett, Medieval Coroner, 72-3; Hamil, 'Approvers', 248-252; H.M.Cam, in The English Government at Work, III, 161-2.

[2] KB 27/546, Rex m.11.

forthwith.[1] William Nethercote, who claimed clergy and was not therefore in fear for his life, not only withdrew his appeals, but made the further accusation that his appeals were formulated for him, and that his consent was gained by means of thumbscrews.[2] Such manipulation of appeals by officials was not necessarily for unofficial purposes. In a long series of appeals before Chantsinger, there appears a case of homicide uncharacteristic of the other appeals; it tallies, however, with an unresolved case on Chantsinger's roll, and he may have been attempting to enhance the detection rate in his bailiwick.[3]

The miscellany of improper motives which might lie behind a set of approver's appeals, and the fact that the appellees were often acquitted, suggest that the substance of such appeals should be disregarded as evidence for the crimes they describe. This suggestion is not borne out by the texts themselves. Frequently they contain a plenitude of circumstantial detail which is not easily explained in terms of prison gossip or official prompting, and which is plausibly consistent with the approver's acquaintance with actual circumstances he is describing. A good

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[1] KB 27/468, Rex m.24d.

[2] KB 27/533, Rex m.12d.

[3] JUST 1/797, m.2; JUST 2/155, m.15.

example is the testimony of William Rose, the approver whose appeals against some fifty persons were heard by Chantsinger.[1] In the descriptions of places there is much detail; while some of this is no longer traceable - fields named after their contemporary tenants are very common - there are accurate local references over a large area: Ock Street, Abingdon; Friar Lane, Coventry; Caversham Bridge, Reading; St Giles and Carfax, Oxford; Saracen's Head or New Inn (now lost, but bearing this dual name c.1400),[2] High Wycombe. Such detail, at this date, must have come from the knowledge of someone who had been to these places; the Coventry reference suggests that this at least was furnished by Rose, who allegedly came from Loughborough. A further type of detail, which cannot be checked but which is intrinsically persuasive, is the emendation or addition to the record, as originally taken down, which adds to the description or narrative without being essential to the appeal. On two of its four membranes the roll of Rose's appeals bears such annotations, clearly written after, but not long after, the text, and perhaps supplied by checking with the approver. Occasionally the addition was essential - the insertion of the county after a place-name, or the correction of a legal formula - and could

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[1] JUST 1/797.

[2] V.C.H. Buckinghamshire, III, 114.

have been added without special knowledge. Other instances, however, imply such special knowledge. Thrice, the insertion is a surname; thrice, places not previously specified; once, part of a date; once, the colour of a stolen horse. Throughout these two membranes an appended figure indicates how much Rose received as his share of the booty from each felony; while this does not imply special knowledge, the variant which occurs twice, 'nothing but his food', at least colours the supposition that the account is more authentic than contrived. This supposition is amply confirmed by a study of the appellees.

From the official purpose behind the system of approvement it might be supposed that most of an approver's appellees would be practising criminals, that a tithe of them might be susceptible of tracing and trial, and that some of them at least would be known as criminals from other sources. The last two points can indeed be demonstrated, and the copious accusations by Rose provide a suitable subject. The original reasons for Rose's indictment are no longer apparent; at the earliest mention he was already a prisoner in Winchester castle gaol, on 16 February, 1389.[1] His career as an approver ended in October, 1396, when he was sentenced to hang for

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[1] JUST 1/797, m.4. He had still been free on 5 February: ibid., m.3.

failing in an appeal.[1] The roll of his appeals shows that he accused at least fifty-three persons of felony, while one defendant not mentioned there was also indicted 'on appeal of William Rose'.[2] Some of these appellees were already in trouble: John Marston of Basing had been acquitted once at gaol delivery, together with one John Rose, on a robbery charge, but at the next sessions he was hanged for horse-stealing. Neither indictment mentions appeal by William Rose.[3] Thomas Shearman, alias Thomas Reynold of Ireland, seems to have been held in Wallingford gaol before Rose's appeals could have been effective beyond Hampshire; he had himself turned approver by 1391,[4] and was eventually committed as a convict clerk.[5] Richard Fruiter of Northleach does not appear on Rose's roll of appeals, but he appeared at gaol delivery in February, 1392, appealed by Rose, and after adjournments his case was called into king's bench,[6] although it never appears there. This was

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[1] KB 27/531, Rex m.15. Sentence was executed, since he was 'already hanged' at KB 29/39, m.18.

[2] JUST 3/179, m.7d.

[3] ibid., mm.4d (February 1390) and 5 (July, 1390).

[4] KB 27/519, Rex m.19.

[5] KB 27/532, Rex m.14d. 'Thomas Shearman of Buckingham' was involved in a suspect horse sale in Winchester in 9 Richard II: J.S.F[urley], Town Life in the Fourteenth Century (Winchester, n.d.), 154-5.

[6] JUST 3/179, mm.7d, 9d, 10, 10d.

not his first occurrence in the records; some years earlier a Middlesex jury made presentment against Thomas More, who then turned approver and appealed, among many others, Richard Fruiter of Northleach.[1] A less certain but, in view of the Fruiter connection, possible identification is that of Margery Brown. She was appealed by More, who described her as concubine of William Brown of Chester; a woman of the same name was described in Rose's appeals as concubine of Robert Leech of Hull. Both appeals concern felonies in the south of England. In a further two instances there is independent evidence for the criminality of Rose's appellees,[2] but forthcoming after the date of his appeals. John Chiefhine never appeared in court on Rose's appeal, and was subsequently appealed additionally by David Copper of Petersfield, then in the Marshalsea.[3] The second instance heightens the perspective of Rose's associations. When king's bench was sitting at Winchester, Thomas Chapman of Flegg, in Norfolk, was presented for cutting the pursebelt of Lancaster Herald;[4] he

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[1] KB 27/468, Rex m.24 and d. For a similarly remote 'coincidence', cf. the case of Maurice Durant or Teraunt of Fenny Staunton, Hunts, appealed independently by approvers in Coventry and Lincoln gaols: KB 27/470, Rex m.6d; KB 29/30, m.19.

[2] A third instance is that of Nicholas Badcock or Batcock, presented for minor delinquency at Southwick view of frankpledge: Hampshire Record Office, 5.M.50/181.

[3] KB 27/536, Rex m.14.

[4] KB 9/108, m.17.

turned approver,[1] and among his ten alleged confederates were John Brazier of Leighton Buzzard, and his wife Mariota. This John Brazier appeared coram rege in the following term to defend the charges; in the ensuing duel Chapman was defeated and sentenced to hang.[2] Brazier was not, however, discharged, but was returned to the Marshalsea. This accusation supports his identification with John Brazier of Woburn Chapel (five miles from Leighton Buzzard) who, with Marion his wife, featured among Rose's appellees.

If this last identification is correct, it is the only example of a person whose existence and criminality are attested both from successful prosecution of Rose's appeals and by independent information. There were several persons, nevertheless, for whose careers plausible evidence resulted from the capture and approvement of Rose. John Thresher, imprisoned at Winchester for reasons now lost, appealed Rose of felony while king's bench was delivering the castle gaol; Rose won the duel, and Thresher was hanged.[3] Rose's own appeals had begun to take effect before this; at the gaol delivery of February, 1391, William Suddon of Shefford, described as 'thief',[4] appeared

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[1]The schedule of his appeals is at KB 9/171, m.5.

[2]KB 27/529, Rex m.20.

[3]The case was recorded on both the Coram Rege roll (KB 27/527, Rex m.4d) and the gaol delivery roll (JUST 3/179, m.9). The latter omits the outcome.

[4]As a prejudicial description or 'addition' this would not have been allowed later, when indictment requirements were nominally more rigid: Cockburn, conference paper cited above (255 n.2).

on various appeals for receiving stolen goods, and was remanded pending a duel on the day of the next delivery.[1] The result is not recorded, but Rose at least survived. At the Winchester 'eyre' of 1393 he was transferred to the Marshalsea, and his appeals became effective further afield. In Trinity term of that year John Brazier of Woburn Chapel was produced to answer; on one of the charges Brazier put himself on the country, but delays occurred, and in Easter of 1394 he fought and lost the duel, after which he was sentenced to hang.[2] Meanwhile, William Miller of Banbury had been attached; he put himself on the country, and was released to mainpernors pending summons of a jury. Eventually his case was respited nisi prius, and the verdict is no longer extant.[3] John Saddler of Oxford also appeared, and claimed successfully that the appeal, that he was a moneyer of false coin, was not specific and that he had no case to answer. He was released without day.[4] Two other appellees appeared in the same term and made the same claim about their charges of reset; William Shearman was remanded in the Marshalsea, with unknown result, and William Baker of Wokingham was released on mainprise, subsequently failing to appear

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[1] JUST 3/179, m.6.

[2] KB 27/529, Rex m.24d, 25; 532, Rex m.23.

[3] KB 27/530, Rex m.15; 536, Rex m.20d.

[4] KB 27/530, Rex m.23d.

when required.[1] Finally, William Courser of Braintree was brought to answer; he was acquitted by jury in October, 1396, and Rose was sentenced to death.[2] The proceedings instituted from his appeals continued until Michaelmas, 1402, when the last postea was added to the collective capias entry on the Controlment roll.[3] This entry yields a little further information about the appellees' fate in some cases, since it was kept up to date by annotation and interlineation. From these jottings it appears that William Shearman was acquitted (sine die per judicium), as was, eventually, William Baker; their alleged companions, William Kingston, John Shearman, and John Fuller, appeared and were discharged likewise. John Gilling is noted as having produced a pardon; John Daniel died before he could be produced. It is also indicated that John Brazier's wife, Marion Sanky, his servant, Marion Sinclair, John Kingston, and Robert Sutton had all been accounted for and excepted from outlawry proceedings.

The evidential value of Rose's appeals was thus quite high in fact, whatever misgivings the accusations of approvers apparently merit. Of fifty-four persons appealed by him, twenty or twenty-one are shown, independently, to have existed. Nine of his immediate colleagues, and three of their

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[1] ibid., Rex m.25d; 532, Rex m.15.

[2] KB 27/531, Rex m.15.

[3] KB 29/39, m.18.

associates, were cited as felons in more than one context, suggesting that they were indeed criminals or the close associates of criminals; John Gilling's pardon implies that he anticipated an adverse verdict. Thus more than twenty per cent of Rose's alleged associates and their associates (and the connections could be explored to greater removes) can be shown on very strong probability to have been practising criminals. It is just possible that in some instances Rose's approvement was used by officials to manufacture charges against known criminals, or that notoriety rather than personal knowledge caused Rose to accuse some persons; the evidence is nonetheless most simply explained on the assumption that Rose was a genuine felon informing on his confederates, and that, whatever the means by which his testimony was obtained, it represented a proper and potentially effective proceeding directed at the detection and prosecution of crime. It would, of course, be unsafe to argue from this alone that the generality of appeals by approvers should be given credence; for this reason it is worth examining another group of appeals which resulted from the Winchester 'eyre' of 1393. It seems quite likely that there was some connection between some of the people involved with this second group and William Rose and his friends, particularly since the latter were active in the vicinity of Hertfordbridge, where two of the former,

Henry Hoggele and Thomas Warner, dwelt;[1] but no other common factor can be traced, and the groups may be regarded separately.

At the delivery of Winchester gaol in July, 1391 William French of West Cosham appeared on indictment before the justices of the peace, charged with incitement to felony and receiving stolen goods; he was remanded twice before the advent of king's bench.[2] Among his alleged confederates was John Arnold of Sussex. At the 1393 'eyre' French was associated with others when they were all presented for felony. The hundred of Portsdown presented him on two main charges, under the style of William French, skinner, once with John Stempe, and once (robbing the same victim on the same day) with his wife Isabel, John Barnaby, William Appleby, and John Bacon.[3] At the same time Thomas Warner, 'son of Peter Warner of Hartley Wintney', was also presented for felony, presumably by Odiham hundred within which the offences took place.[4] Bacon and Warner both turned approver. Bacon appealed, among others, William French, Warner, Henry Hoggele, and John Hosteller.[5]

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[1] JUST 1/797, m.2; KB 27/530, Rex mm.11 and 31.

[2] JUST 3/179, mm.7 and 8d. The J.P. hearing is at JUST 1/796, m.2, and printed in Putnam, Proceedings, 218, nos 28-9.

[3] KB 9/108, m.3.

[4] ibid., m.22.

[5] KB 27/527, Rex m.1d; 530, Rex m.31; ibid., Rex m.11; 531, Rex m.2d.

French opted to defend himself by duel, lost, and was hanged forthwith; the appeals against Warner and Hoggele never came to court. Another appeal, against William Hosteller, was tried by duel in which Bacon lost, and he was hanged.[1] Warner appealed John Bacon,[2] appropriately enough, as well as French and Barnaby, together with David, vicar of Yelling, and his brother Baldwin.[3] Barnaby (with Appleby) was covered by a pardon;[4] David was eventually acquitted,[5] by which time Warner had been committed as a convict clerk.[6] He was thus safe from the appeals of Hoggele, who had now in his turn turned approver, and was in fact acquitted on those charges.[7] Hoggele's appeals included Stempe, Barnaby, Arnold, and John Hosteller,[8] and William Flambard, in consequence of whose acquittal by jury Hoggele was hanged.[9] To this group William Nethercote may perhaps be added, tentatively; he appealed David and Baldwin of Yelling, but retracted the appeals in court, and was later committed as

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[1] KB 27/533, Rex m.1.

[2] KB 27/536, Rex m.10.

[3] KB 27/534, Rex m.2; 536, Rex m.10.

[4] Cal. Pat. Rolls 1391-6, 241-2; cf. KB 27/527, Rex m.1d.

[5] KB 27/537, Rex m.16d.

[6] KB 27/527, Rex m.11.

[7] KB 27/534, Rex m.4.

[8] KB 27/530, Rex m.31; 531, Rex m.2d.

[9] KB 27/532, Rex m.3d.

a convict clerk;[1] the names of his appellees may or may not have been supplied by someone else.

There is good reason to regard this group as less convincing than Rose and his colleagues. Most of those involved were in gaol together in Winchester castle or subsequently in the Marshalsea, giving them ample opportunity to concoct charges against their fellows already under suspicion, and the results of such opportunity, even if groundless, might well have the inbred look of this series of appeals. On the other hand the indictments against some of them, especially those against French, show that they were notoriously criminal, and this in turn supports the plausibility of their various accusations. The appeals were less widely ranging than those of Rose, and introduced few identifiable people not already in custody, but this reduced their value as legal evidence rather than their value as historical evidence. While lacking intrinsic significance, the cases of French and his associates serve to support the evaluation of approvers' appeals which the testimony of Rose encouraged.

Once the evidential value of approvers' appeals is accepted, however cautiously, the implications regarding the mobility of the criminals becomes apparent. Criminals, of all people, have the strongest motives for moving frequently from place to place,

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[1] Above, 297.

particularly in an age when the slow processes of law were hampered by laborious travelling conditions, and it is to be expected that persons accused in one place will derive from various others, except perhaps in cases of homicide, an offence arising from personal associations more frequently than do larceny or robbery. Even so, the origins of William Rose's colleagues, where mentioned, were remarkably dispersed: by counties, there were five from Oxford; four from Berkshire; three each from Buckingham and Southampton; two each from Warwick, Gloucester, Hertford, Wiltshire, Bedford, and Leicester; one each from Essex, Monmouth, Cambridge, Nottingham, and Chester; and one from Ireland. More surprising is the fact that Rose himself had, according to his confession, committed felonies in most of these counties. While the places are considerably more reliable than the dates - which might well be approximate or simply artificial - it is interesting to reconstruct Rose's itinerary, according to the record, since the summer before his arrest. In July, 1388, he was allegedly in Banbury; in August, in Aldermaston (Berks), Tetsworth (Oxon), Towcester (Northants), and Litcham (Norfolk); in September, in Loughborough and in Yateley (Hants); in October, in Banbury again, Bury St Edmunds, Royston (Cambs), Shefford (Beds), and Romsey (Hants); in November, in Hitchin (Herts), and Dunmow (Essex); in December, in Reading; in

January, 1389, in 'Hursele' (Glos); in February, in Kingsclere (Hants). Even if the chronology is condensed or scrambled, it remains probable that Rose had visited these places in the recent past.[1] He was no special criminal, as far as can be told, but a mere horse-thief and highwayman; whether or not he was typical of his class has yet to be discovered. His mobility certainly contrasts with the staidly parochial lives usually attributed to the medieval peasantry, and suggests that much more may be learned from the records of his kind.

There is thus good reason to think that some agencies of justice were capable of the sustained prosecution of criminals, even if trials often left something to be desired. The efficiency with which the agencies discharged these responsibilities - and, indeed, the attitudes of the various sectors of the judicial administration to the responsibilities - are matters of yet more uneven evidence and of correspondingly greater speculation. By the end of the fourteenth century the crown agencies, in the durable

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[1] On a smaller scale, in terms of documentation, it is worth noting the case of John Kirkby of 'Ruston' (? Long Riston) in Holderness, who fled to the church of St Alphege, Winchester, turned approver, and made appeals of two felonies, one committed near Plymouth, the other at Bury, 'Norfolk' (recte Suffolk). He then escaped from sanctuary and disappeared: JUST 2/157, m.4. In this case the approver may have selected distant places in order to delay process as much as possible.

pattern of quarter sessions, gaol delivery at assizes, and king's bench over all, were not merely established but regular in their incidence and, as far as possible, thorough within their respective terms of reference. It is at the more narrowly local level that the difficulties begin. Indictments tried at gaol delivery have already been used to indicate that, in Hampshire at least, local courts, especially private hundreds and liberties, played a large supportive part in the administration of criminal justice.[1] The evidence is not, and can never be, strong enough to establish statistically the contribution of private courts to the maintenance of the king's peace,[2] but some broad and impressionistic inferences are offered here to supplement the more local and short-term evidence adduced so far.

In the first place it is clear that some local agencies were exercising full criminal jurisdiction until at least the end of the fourteenth century. Under the first three Edwards, hundreds can be found trying and executing thieves taken with the mainour,[3] or appealed robbers,[4] as part of their routine jurisdiction. Towards the end of the century such references still occur, but with a greater tendency to

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[1] Above, 20-30.

[2] Above, 173-176.

[3] e.g. KB 27/1, m.23 (1277).

[4] e.g. SC 2/161/74, m.18 (1333).

originate from the exceptional private franchise. The liberty steward whose noose broke has been mentioned already;[1] but other examples abound. The mayor of Dartmouth, for instance, perhaps mistaking his privileges, burned a woman in the late 1380s;[2] the bishop of Lincoln's steward, holding court at Louth, in 1381, tried on appeal a thief who, when convicted, pleaded clergy, and had to be sent to the county gaol for delivery thence to the ordinary.[3] There is nothing to suggest that these particular courts felt under any pressure to relinquish their full jurisdiction.

On the other hand it seems likely that from the middle of the thirteenth century onwards many local court-holding authorities had abandoned the exercise of such powers. In 1285, quo warranto proceedings for Warwickshire revealed that Philip Marmion and his ancestors 'anciently had gallows on their own land ... which were demolished a long time ago'; the previous abbot of Leicester had a bailiff who erected gallows at Curdworth for a specific occasion, 'but no one can remember that any thief was ever taken or hanged before or since'; Fulk Lucy erected gallows in Shrewley apparently as a mere means of staking a claim.[4]

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[1] Above, 176.

[2] Cal. Pat. Rolls 1388-92, 253.

[3] JUST 3/167, m.26d.

[4] Plac. de Quo Warr., 780, 782, 785.

Throughout the quo warranto proceedings the emphasis, from the points of view both of franchise holders and of the crown, was upon the financial consequences of the rights rather than upon the jurisdictional responsibilities involved, and it may well be that the crown was already beginning to win, by pressure, appropriation, or default, a gradual monopoly of criminal justice. In 1277 the bishop of Ely roundly claimed 'imprisonment, attachment, judgment, and execution of malefactors' on all his manors, but admitted that his officers customarily took defendants before the royal itinerant justices.[1] A few years later a county court was amerced by the crown for hanging a woman on her own confession of homicide,[2] while even in the 1230s the men of Romney lost two hundred marks for allowing an approver's duel without royal authority.[3] The tendency of the Hampshire liberties to send their felons before the royal justices probably reflects the difficulties of asserting independence and the relative simplicity of compliance; by Richard II's reign there was also an increasing awareness of private rights against a summary lord.[4]

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[1] KB 27/1, m.22.

[2] JUST 1/956, m.42d (1285).

[3] E 372/76, rot. 13d.

[4] At a tourn for Cheriton and Beauworth, a poacher was not prosecuted: 'let a writ of trespass be sued, because he is free': DL 30/108/1597, m.1 (1380).

Exploring the decline of private criminal jurisdiction, in an attempt to establish a chronological impression, is hampered not only by shortage of evidence, but by difficulties with such evidence as is available. In Hampshire, to the end of the fourteenth century and beyond, private franchise courts were a major source of indictments determined at gaol delivery. In Warwickshire, however, the pattern is very different: even before the end of the thirteenth century, the indictments cited at gaol delivery almost always came from the sheriff's tourn,[1] and half a century later the keepers of the peace were also accounting for a proportion of the cases (drastically reduced in number following the Black Death),[2] becoming the normal cited court of first instance except for coroners' inquests and appeals in the county.[3] The last franchisal indictment noted as such came from the Black Prince's steward and was tried in 1370.[4] This contrast between the counties disturbs the possibility of finding a simple chronological development, but it does support, indirectly, one answer to the key question whether franchise courts were hanging

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[1] e.g. JUST 3/69, mm.43-44, 47-48; JUST 3/97, mm.6-6d (1298-9).

[2] e.g. JUST 3/137A, m.2 (1351); JUST 3/140, mm.1d-2 (1355-6).

[3] e.g. JUST 3/157, mm.3-3d (1373): 10 peace sessions indictment, 1 coroner's, out of 11.

[4] JUST 3/142, m.15.

their felons and leaving no trace in the records, or gradually abandoning in the crown's favour their traditional criminal jurisdictions.

The evidence of gaol delivery indictments allows alternative lines of argument: either the Hampshire indictments at the end of the fourteenth century represent the last period of a decline which had become effective much earlier in Warwickshire, or else they represent a weakness - using the royal courts in preference to ancient liberties - which the Warwickshire franchises resisted by determining their own indictments. Since at least one Warwickshire franchise was exercising full jurisdiction at this date (quite apart from others up and down the country),[1] while none outside Winchester has been detected doing so in Hampshire, the latter argument is superficially attractive. Nevertheless the alternative is more likely to be accurate, for a variety of reasons. In Warwickshire as in Hampshire, the handhaving thief seems to have been sent to the county gaol, even when the arrest was made by the officers of a liberty which might have been expected to exercise infangenthief;[2] a fortiori, indictments before stewards which

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[1] The quite exceptional quasi-urban manorial liberty of Wakefield did so until 1650: D.J.H.Michelmore and M.K.E.Edwards, 'The records of the manor of Wakefield', Journal of the Society of Archivists, V (1975), 246.

[2] e.g. JUST 3/140, m.2d (1357, Barford), 4 (1359, Stratford upon Avon); JUST 3/32/2, m.177 (1363, Alcester and Atherstone).

were tried at gaol delivery, in the period before such indictments all but disappeared suggests that jurisdiction was not being exercised or defended.[1] Furthermore, the curious procedure whereby liberty officials, apparently in their official capacities, appealed thieves suggests that some way was being sought to circumvent the effective desuetude of full criminal jurisdiction in the private courts. It is also interesting to note that indictments from sheriff's tourns declined markedly over much the same period, suggesting that both trends might by symptoms of a single cause.

Both Warwickshire and Hampshire patterns are consistent with a general encroachment of royal jurisdiction, principally in the form of peace sessions. The contrast between the two specimen counties would be quite explicable in these terms. In Warwickshire, with four hundreds, and those all royal, the development of a versatile and regular royal court in the county would probably have met little resistance; in Hampshire, with over forty hundreds, and those mostly private, the appropriation of business would have been slower and less marked. In either case there were strong reasons for leaving the justices of the peace to get on with things: they were supposed to hear presentments hundred by hundred, and if this was

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[1] e.g. JUST 3/140, m.4; JUST 3/146, m.6; JUST 3/149, m.27 (1359-63).

indeed carried out it duplicated the work of the law-hundred or the view of frankpledge, and at more frequent intervals. This point, too, would tend to hasten the change in a county with a simple hundredal structure, and retard it elsewhere. In a simple county the justices would only need to summon perhaps half a dozen juries, each representative of a hundred; but no justice would have attempted to hear separate presentments from fifty juries in Sussex or thirty in Dorset. In such cases recourse would be to composite juries, which could not constitute a straight surrogate for hundredal representation, and the local courts may have remained more active in consequence. The strength of this hypothesis remains to be tested against more detailed evidence from the country at large, but at present it looks as though the second half of the fourteenth century saw a broad supersession of private courts by the crown in the field of criminal justice - a supersession towards which the crown had been working for a century or more, and which was only effective when depopulation and the need for economic regulation gave the justices of the peace their critical momentum. If this is true, then the survival of all peace and gaol delivery rolls for a given county for a given period in the last decades of the fourteenth century would allow a reliable view of the prosecution of felonies, under a patchwork criminal administration which was nevertheless approaching the position of a royal monopoly.

VII

Epilogue: Looking for Patterns

A central function of this work has been to circumscribe heavily with critical apparatus the apparent potentialities of the criminal records, and to show that in many instances the documents do not survive in sufficient bulk or detail to answer questions that the historian would very much like to put. Such matters as the motives, incidence, and geographical distribution of crime must remain in large part obscure because the evidence is wanting: even if the record survives, its overt testimony has to be treated with great caution. Nevertheless, it has been argued that there are substantial areas where the inherent plausibility of the records, or (better still) the mutual corroboration of independent records, allows a confident description of procedures, events, identities, and relationships. After all, the documents were intended for use as administrative tools, and thus had some roots in administrative requirements; if these requirements can be perceived, the interpretation of the documents is less treacherous. In consequence, it is tolerably easy to establish the general state of the criminal law; the personnel of justice can be identified and in some degree classified from court to court; the appeals of approvers give some insight to the nature and activities of the

fourteenth-century underworld. In such areas extensive and positive progress is clearly feasible.

Unfortunately, modern historiography has discovered that in many respects the historian must quantify in order to signify, and whatever some practitioners may like to think, quantification from medieval sources is never less than difficult and seldom less than futile. Some important events, such as the severe famines of the early fourteenth century, left few traces which allow statistical descriptions, and the scale of the disaster can only be quantified impressionistically from a wide variety of scattered references;[1] the same is broadly true of the Black Death, although small pieces of evidence are susceptible to reliable statistical analysis.[2] Correspondingly, it is extremely hazardous to attempt anything akin to a criminological study for the later medieval period. The hazards have not deterred pioneers in the field; although the results so far have tended to underline the difficulties,[3] failures

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[1] I.Kershaw, 'The great famine and agrarian crisis in England 1315-1322', Past & Present, LIX (1973), 3-50.

[2] 'The tenants of the bishops of Coventry and Lichfield and of Worcester after the plague of 1384-9', ed. E.B. Fryde, in Medieval Legal Records ...

[3] e.g. B.H.Westman [alias B.A.Hanawalt], 'The female felon in fourteenth-century England', Viator, V (1974). There is no attempt to relate proportions of female offenders to possible idiosyncrasies in the general sex-ratio, and the arguments tend to presuppose the guilt of indictees.

of this sort should not outlaw the whole enquiry. There are good reasons for commending two of the more obvious and common-sense approaches, even if the results are more nearly guesses than anything else.

The first potentially legitimate approach is the crude handling of copious data in the hope of finding clues to some simple correlation. Dr Hanawalt has provided an example of this in her comparison of the incidence of crime with other economic features of the early fourteenth century.[1] Her discussion of the sources and their problems will not bear criticism, and the data are inadequately analysed; nonetheless, the overall presentation of the materials shows (if it be arithmetically accurate) that there was a remarkable increase in prosecuted crime at the time of the main agrarian crisis. It is not clear whether this represents an increase in crime, an increase in prosecution, or both, and it may be that any given datum used could be assailed on its individual complexities; but despite these reservations, the crude approach does seem to reveal that the criminal records confirm other evidence of profound social crisis in the years following 1314, and this is a valuable point, however much the work may need revision by more careful scholars in the future.

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[1] B.A.Hanawalt, 'Economic influences on the pattern of crime in England, 1300-1348', American Journal of Legal History, XVIII (1974), 281-97, especially 290.

The second potentially legitimate approach, and indeed the more acceptable one, is the segregation of a narrow documentary basis which can be analysed closely enough for the results to be tolerably convincing. It is possible that long-term studies of every type of crime and criminal can be undertaken for small areas for which the sources survive in abundance, and the results modified in the light of economic and administrative evidence.[1] Additionally, fragments of documentation which are complete and consistent within their own terms of reference can sometimes yield suggestive quantified results which could hardly be sought on a wider scale. An interesting, if slight, example of this is concerned with suicide.

Some of the difficulties connected with medieval records of suicide have been discussed already.[2] In addition to these, it would be dangerous to accept manifest suicides as the only ones occurring in the records; some of the accidental deaths, or even homicides,[3] may be suicides successfully concealed,

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[1] Dr J.S.Beckerman of Yale is carrying out such a study for Great Horwood in Buckinghamshire over the period 1300-1450.

[2] Above, 220-224.

[3] For details of a suspect 'homicide', see J.Miller and K.H.Rogers, 'The strange death of Edward Langford', Wilts Archaeological and Natural History Magazine, LXII (1967), 103-9; the coroner's jury defended their verdict vigorously.

deliberately or in default of evidence. The classic reason for concealment of suicide was the consequent forfeiture of chattels.[1] Humane considerations were probably present as well,[2] although a few cases suggest that humanity was exercised in the verdict rather than in the suppression of an inquest or of the facts presented there; certainly there is no evidence for 'the full-blown medieval horror of suicide' which Dr Hair expects to have affected the number of concealed suicides.[3] But he has rightly emphasised the relatively high proportion of women drowned, many in their family wells, and he has suggested that for the harassed housewife the well provided a counterpart of the modern gas oven.[4] This may have been the case in Tudor times, and a small sample of fourteenth-century evidence accommodates such an interpretation. In Chantsinger's inquest records, consistent for over fifteen years, there are twenty-four deaths from 'accidental' drowning: ten women and fourteen men.

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[1] P.E.H.Hair, 'A note on the incidence of Tudor suicide', Local Population Studies, V (1970), 36-43, and 'Deaths from violence in Britain: a tentative secular survey', Population Studies, XXV (1971), 5-24.

[2] Risk of forfeiture cannot have been a reason for concealment when in 1256 a man found his mother hanging by her wimple, cut her down, laid her in bed, and gave out that she had died naturally; her husband was still alive: Three Early Assize Rolls for the County of Northumberland, ed. W.Page (Surtees Soc., LXXXVIII, 1891), 121-2.

[3] Hair, 'Tudor suicide', 41.

[4] ibid., 41-2; 'Deaths from violence', 14.

Some of the deaths were associated with other factors: six of the men were said to have been drunk, and one man and two women were suffering from 'falling sickness'. Only one woman drowned in a well - perhaps illustrating the abundance of watercourses in the county; no one, surprisingly, was drowned in the sea.[1] If the drunkards and invalids ('epileptics' would be too precise) are discounted, there were slightly more women drowned than men; the various hazards of life, notably travel and labour,[2] might have been expected to produce more drownings in the male sector than in the female,[3] even if the male/female ratio in society at large had been badly imbalanced. It is thus quite possible that the reports of women drowned do indeed conceal a number of suicides. Since the ratio of deaths in accidents other than drownings was roughly seven men to every two women, some third or half of the women drowned may have been suicides. The choice of drowning might have been determined by the alternatives. Suicide by any sort of wounding was fairly rare save among lunatics; hanging, a popular method, not only made a suicide verdict inevitable or nearly so, in

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[1] A county coroner would only have jurisdiction over maritime deaths if they occurred in inlets or if the bodies were found on the shore: Hunnisett, Medieval Coroner, 149.

[2] For factors affecting the incidence of drowning, see Hair, 'Deaths from violence', 12-15.

[3] Chantsinger's rolls show an overall 'misfortune' ratio of 29 female to 82 male.

contrast with drowning, but also presented practical difficulties - the number of hangings in barns suggests that the average domestic residence lacked either height or beams suitable for its use as a gallows. There are still plenty of questions unsolved but the numerical evidence on the central point is very strongly suggestive.

The prospects for the criminological medievalist are therefore far from grim. Nothing so detailed can be expected of the later middle ages as can be compiled for the eighteenth or nineteenth centuries, but the possibilities of careful piecemeal analysis are legion. For these studies, and for the many other areas of study which the documents can illuminate, the fundamental prerequisite is an understanding of the relationship which English society maintained with its criminal elements, as that relationship is expressed in the criminal records.

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