THE DEVELOPMENT OF THE PRISON IN MODERN BRITISH SOCIETY AS A RESPONSE TO ENDfMIC PANIC ABOUT CRIME, 1750-1850.

by

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NOTE CONCERNING AUTHORSHIP AND PUBLICATIONS

I have personally written this thesis. With the approval of my supervisor, elements of it – or, at least, closely related pieces – have been published in various shapes and forms. These articles are listed below, together with a book review.


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ABSTRACT

This thesis attempts to throw fresh light on the nature of present-day deviance and social control by providing a historical perspective. It is postulated that there has been incessant panic about "crime" for some two hundred years. Alarm of this kind is reflected in systematic mass imprisonment, by which, in turn, such feelings are themselves perpetuated. Accordingly, in this thesis, both historical and sociological techniques are utilised. The sociology of moral enterprise being the point of departure for this thesis, Chapter One discusses this literature in so far as it is relevant to the thrust of the enquiry. Chapter Two, using a long run of court records and other sources, looks at some of the final manifestations of a less obsessive attitude towards lawbreakers, in the eighteenth century, when Britain was still only on the threshold of industrialisation. Social control, as exemplified by prosecution in the courts, was then a matter for individuals, rather than a function of the state. Similarly, there was no generic concept of "criminals" as a class: only individual lawbreakers were recognised. Chapter Three examines the ideological underpinning of "crime" as perceived in a capitalist society. Particular attention is paid to the development of the nascent press, notably the ordinary of Newgate's Account, the Gentleman's Magazine and the London Magazine, as a means of disseminating panic. This is complemented by an examination of the writings of prominent ideological entrepreneurs, such as William Eden and Martin Madan, who were animated by, and themselves exacerbated, this same concern. Chapter Four traces the way the prison was presented as the cure for crime. A case study of Gloucester prison, drawing on unpublished manuscripts, allows comparison between aims and actualities: many of the problems facing modern prisons emerged in this initial experiment with incarceration. Chapter Five discusses essential elements of continuity in the perception of crime and punishment from the late eighteenth century onwards.
The growing involvement of the state is traced, from the very beginning of mass imprisonment. In conclusion, it is suggested that customary views of social control, in which imprisonment features conspicuously, in the course of time have obtained a degree of mystification which places them beyond questioning or ready understanding. The historical perspective adopted in this thesis marks an attempt to de-mystify not only the prison as an institution but also general views about "crime" with which its existence is associated.
CHAPTER I

FOLK DEVILS AND CRISIS POLICING: ASPECTS OF THE SOCIOLOGY OF MORAL ENTERPRISE

The problem of crime and its control is widely seen as one of the major threats to the stable existence of modern, urban, industrial, capitalist societies. The object of this thesis is to examine how such importance came to be attached, and continues to be attached, to crime and to attempts at controlling it, in particular through the use of imprisonment. "Moral enterprise" is the term which Howard Becker has coined to describe this process, which entails "the creation of a new fragment of the moral constitution of society". Changes in the moral universe are accompanied, according to Becker, by concrete changes in the law, institutions and policies of social control agencies. The obsession with crime is both symbolised and sustained by a whole set of interlocking social arrangements for processing criminals, such as the police and the courts, which have as their ultimate point of reference the prison system, the intake of which they collectively determine. Accordingly this thesis is concerned to explore the development of the modern notion of crime from its beginnings in the eighteenth century, and to analyse the growth of the various institutions, especially the prison, which underpin our current view of deviance and its control.

The literature of moral enterprise has provided much of the methodology and the inspiration for this thesis. At the same time, this thesis questions some of the assumptions fundamental to that type of approach. Much of this short introductory chapter is, therefore, devoted in part to an examination of aspects of the

relevant works, by Howard Becker, Joseph Gusfield, Kai Erikson, Stanley Cohen and Stuart Hall. Their achievements and their limitations form the context in which this thesis is situated.

The canon of works which constitute a recognisable sociology of moral enterprise is relatively small and compact. Cross-reference abound, indeed Stanley Cohen actually refers to the "tradition" represented by studies such as that by Erikson of witchcraft and religious deviance in seventeenth-century Massachusetts and that by Becker of marijuana smoking in 1930's America, each of which is concerned with "some form of moral panic".

A common theoretical heritage sustains this "tradition" - symbolic interactionism - although only in mutilated form. Briefly, sociologists of moral enterprise have argued that crime or deviance is not a functional or innate quality but that it stems from the subjective application of particular "labels" to socially underprivileged individuals by agents of social control who have decided to pick upon them. In this view, deviance is the product of social control. The importance of this tagging or marking of deviants is that it underpins what Becker has called "the construction of moral meaning in everyday life." In other words, the labelling of innumerable individuals as a great shoal of "criminals" comprises an important element in the symbolic universe in terms of which people

2. Cohen, Folk Devils, p.16.
take stock of their situation in society. Becker, Erikson and Gusfield were prominent among those who pressed home the message that deviance "is the product of enterprise", and that it is as important to study this enterprise as it is to study deviance itself.¹

The major case studies of moral enterprise are based on this common theoretical framework. Kai Erikson, in his Wayward Puritans, defines deviance as "not a property inherent in any particular kind of misbehaviour; but a property conferred upon that behaviour by the people who came into direct or indirect contact with it."² This compares closely with Becker's slightly older formulation: deviance is not a quality of the act the person commits, "but rather a consequence of the application by others of rules and sanctions to an "offender"." In Becker's hands this definition, so Stanley Cohen observes, "has now been quoted verbatim so often that it has virtually acquired its own canonical status".³ The emergence of what has become a respected and well defined approach is also noted by Gusfield: "Recent perspectives on deviant behaviour have focused attention away from the actor and his acts and placed it on the analysis of public relations in labelling deviants as "outsiders"...".⁴ This was the great achievement of the sociology of moral enterprise. It also forms the backdrop to this thesis, even if the play which has been staged is a rather difficult one.

The various studies of moral enterprise have concentrated their attention on dramatic but short-lived phenomena, rather than on long-term processes. Kai Erikson is concerned with the witch-hunting and other forms of religious persecution among some of the foundling fathers of America, the puritans of New England.⁵

5. Erikson, Wayward Puritans.
It is not surprising that these events have also formed the material for a well known play, The Crucible, by Arthur Miller. On this side of the Atlantic, Stanley Cohen's Folk Devils and Moral Panics is concerned with simply one aspect - but a particularly exaggerated one - of post-war control culture, the furore over the "Mods" and "Rockers". With their motor bicycles and their scooters, their respective "uniforms" and their distinct hair-styles, they were easy game for critical attention, neatly labelled from the outset. While their activities and the fuss which they provoked appear to have died away, similar repression still in fact continues. It has not, however, attracted the same sociological commentary. Stuart Hall has explored a rather different panic, the "crisis" about mugging of the early 1970's. It is significant that Policing the Crisis should open with all the menace of a thriller: "On 15 August 1972 an elderly widower, Mr. Arthur Hills, was stabbed to death near Waterloo Station as he was returning home from a visit to the theatre. The motive was, apparently, robbery". Further violence, cases of mistaken identity and other features of the "thriller" genre follow in swift succession. With Joseph Gusfield's study of the American temperance movement, the scene is set for one of the most colourful and romanticised deviants of all time, Al Capone.

Vivid and interesting as those studies are, they nonetheless have limitations. In particular, they mystify the "panics" with which they are concerned by implying that they are liable to crop up in much the same shape at any time. Stanley Cohen's key formulation, which is quoted in full by Stuart Hall, makes this ahistoricity quite plain:

Societies appear to be subject, every now and then, to periods of moral panic. A condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests: its nature is presented in a stylised and stereotypical

1. Hall, Policing the Crisis, p.3.
2. Gusfield, Symbolic Crusade.
fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right-thinking people; socially accredited experts pronounce their diagnoses and solutions; ways of coping are evolved or resorted to; the condition then disappears, submerges and becomes more visible.¹

From this passage it would appear that moral panics are rather mysterious events that exist beyond time, being perpetually liable to occur and to disappear. This episodic view of "moral panics" compares interestingly with the critical outlook towards the "mob" adopted by, among others, Charles Dickens in his historical novel, Barnaby Rudge, set against the "Gordon Riots" of 1780. Dickens despised and feared the crowd, the "mob", as he called it, in much the same way as Cohen deplores and denigrates "moral panics". Like Cohen, Dickens refused to ascribe validity to the social phenomenon – in this case, the "mob" rather than the "panic" – which was at issue: in his view, the mob erupted irrationally, for no good reason. This led Dickens to a terminology astonishingly close to that of Cohen when he described the "mob" as a "moral plague" which spread uncontrollably, like a deadly epidemic.² The connotations of the two terms, "moral panic" and "moral plague" are in fact virtually identical. Cohen, however, claims to be writing "historical sociology", rather than a dramatic work of fiction. At the same time he contends that "the processes by which folk devils and moral panics are generated do not date".³ This view is a reflection of the way in which, while over-dramatising his subject, he isolates it from the wider question of the nature of social control in modern, urban, industrial societies. The kind of panic with which Cohen is concerned could not, however, have existed in anything like the same form prior

1. Cohen, Folk Devils, p.9; Hall, Policing the Crisis, pp.16-17.
to the industrial revolution, as will be made plain in the course of this thesis. "The crucial question to ask", as seen by Cohen, "is not the simple transactional one of why the behaviour was seen as deviant at all...but why the reaction took the form it did at a particular time." Accordingly, he examines the cultural snap albums of the sixties, but does not address himself to wider and more long-term considerations of "law and order" manipulation in capitalist society.¹

Stuart Hall, in his analysis of the moral panic about mugging in early 1970's Britain, also suggests that crime has always been seen in the same light. As has been pointed out, Stanley Cohen's almost mystic passage about societies "appearing to be subject, every now and then, to periods of moral panic", is quoted by Stuart Hall.² While Stuart Hall can see that "it is precisely the annual statistical increase in certain crimes dramatically presented in the media, which fuel and legitimate concern about crime", he takes the existence of such statistics for granted, despite his awareness of the problems associated with their construction. Indeed, he relies upon these self-same statistics in support of his own argument.³ At one point token reference is made to earlier scares about crime, when Hall recalls the "famous outbreak" of garrotting in London in 1862-3 which "triggered off a reaction of epidemic proportions."⁴ This serves only to confirm the notion, which it is the object of this thesis to criticise, that "moral panics" are timeless, and can occur in any kind of society, being perpetually but intermittently liable to recur.

Another drawback to the various studies of moral panics is that by concentrating on detailed aspects of particular crises they inevitably make it impossible to assess more generally why "moral panics" occur. By being so concerned with the specific, they miss the general forces at work in certain types of society, forces which may produce

¹. Ibid., pp.10-177.
². Ibid., p.9: Hall, Policing the Crisis, pp.16-17; see above pp.10-11.
³. Ibid., p.4.
⁴. Ibid., pp.10-11.
escalated crisis at intervals. It is more revealing to look at elements of continuity in successive "crises" and also evident, if in more muted form, in between the more spectacular bursts of "panic". Just as, essentially, views of "crime" have been relatively stable over the last two centuries or thereabouts, so there has always been some element of panic. Indeed it is, arguably, more helpful to think in terms of the one long-running panic: it is in these terms that this thesis is organised. Our views about "crimes" are better understood by taking an overall view of their continuity in one capitalist society than by looking at any spectacular but shortlived heightening of tension. For some two hundred years, or since the advent of industrial capitalism, there has been, as will be suggested in this thesis, one long-running panic about "crime", a panic of a kind which has also gripped other comparable countries. In pre-industrial Britain, as will be discussed in Chapter Two, crime, however much a matter of intermittent, individual concern, was not the object of the same, systematic, panic-stricken attention as later became the case.

The remorseless character of the modern outlook on crime may indeed vary in its primary focus, which at one time may be drug-taking and, at another, mugging, but it is best understood in all its aspects - such as the role played by the press or by statistics - by focusing on the overarching continuity rather than on some more extreme illustration of the underlying approach to social control. In the language of T.S. Kuhn, the one enduring but not everlasting "paradigm" has long continued to hold sway, compounded of ideas of "the criminal" as distinct and dangerous, and of "crime" as a major threat to society, a threat which it is still possible somehow, to deal with once and for all.¹

Although this thesis is concerned to examine the hegemony of this "social control paradigm" in a British context - or, to be more precise, in an essentially English one - it is worth emphasising at this stage that other comparable countries are also in the thrall of the same set of attitudes. In America, indeed, the point has been well made that "crime waves" are conjured with so often as to render the term meaningless. Jessica Mitford, surveying the annual proceedings of the American National Prison Association from its foundation in 1870 up to the present, comments:

One can pick up a volume at random - 1890, 1905, 1922, 1936, 1953 - and find therein that a crime wave of staggering proportions is engulfing the United States (lyrically described in the 1870 proceedings as "the sweeping and swelling tide of crime")...1

A very similar observation about the permanence of American "crime wave" is made by Daniel Bell:

If one were to believe the newspapers - and the statistics on crime - every year in the United States seems to show a new and more serious wave of crime...... And yet, a sober look at the problem shows that there is probably less crime today in the United States than existed a hundred, or fifty, or even twenty-five years ago, and that today the United States is a more lawful and safe country than popular opinion imagines.2

Unfortunately, Daniel Bell discusses changes in the level of crime as if he had private line to the Recording Angel: he takes it for granted that "crime" could be quantified over time if only the statistics could be more reliably put together, oblivious of the fact that it is

only in being defined, handled and counted as "crimes", in an inevitably haphazard and subjective fashion, that the transformation of events into statistics originates. This, however, does not seriously weaken Daniel Bell's basic argument, that "crime" is perpetually being foisted on to the American public as the object of crisis. Jennie McIntyre, who makes much the same point, also, like Daniel Bell, emphasises the role of the press:

Especially since the growth of the mass media, there have been, from time to time, surges of public alarm concerning crime waves..... in each and every decade, there have been prominent articles about the need for strong measures to meet the then current crisis in crime. From time to time, there have been commissions appointed or committees formed to investigate what was seen as intolerable increases in crime. It may be that there has always been a crime crisis. 1

It is no doubt understandable that in the United States, a relatively "new" society in comparison with Britain, but one which has changed faster and more visibly, there should be greater awareness of continuity in attitudes and anxieties about crime.

Such indeed, is the timelessness with which ideas about crime are apt to be characterised that even the most recent and radical criminologists have conceived of "crime" as, in the words of Paul Rock, "a Platonic form which reveals itself in different places and at different times to different people." Rock's point, even if his time-scale is short, is one worth pursuing:

The beings and groupings that inhabit crime's bestiary are apparently thought to be simple, discreet and analytically transparent. Work on juvenile delinquency,

for instance, has been managed as if it were a single, prolonged assault on one essential problem. An article written on New York gangs of the 1950's can be celebrated as a refutation of assertions made about the Chicago of the 1920's. Observations on Californian delinquents in the 1960's can, in turn, upset conjectures about East Coast society. British examples are flourished to counter American theories. This attribution of a noumenal core to deviant phenomena has encouraged the development of a number of arguments in which unlike is pitched against unlike. It has been revived by radical criminologists who assume that all criminology has been directed at the explanation of processes and events. Crime is so defined by radical criminology that it becomes an absolute which permits only one master scheme of interpretation. 1

If traditional or "positivists" criminologists and their radical successors have both conceived of crime in the same way, this is a reflection of the enduring continuity in attitudes towards crime, attitudes now some two centuries old, rooted in the one long-running panic.

In taking this long-term approach to the way in which crime is perceived, this thesis could be characterised as being historical as much as sociological. The apparently problematic nature of any combined approach can certainly be exaggerated or misunderstood. In recent years criminologists in particular and sociologists in general have shown renewed enthusiasm, both outwardly and in practice, for the cultivation of historical method. This approach, once employed by Marx and by other foundling fathers of sociology, but subsequently rather more neglected save by such exceptional figures as C. Wright Mills, has now come back into favour. 2 The problems associated with this sort of methodological marriage have been aired anew in various quarters, for instance by Gareth Stedman Jones and by Paul Rock in an issue of the British Journal of Sociology


largely devoted to this topic; or, more passionately, by E.P. Thompson in the title essay of his collection, The Poverty of Theory. Leaving this kind of polemic to one side, for others to continue, this thesis is offered as social history strengthened by a strong sociological backbone.

On this basis, an attempt is made to explore how there has been continuity in beliefs about "crime". Self-conscious capitalism has perenially identified "crime" as a grave source of disorder and, at the same time, utilised it to frame a particular conception of order for the direction of society. Indiscriminate abhorrence of "crime" finds a recent echo in public displays of indiscriminate allegiance to "law and order": the terminology is modified, while the outlook remains the same. Only by understanding that "crime" as processed in our society, in our minds and in our prisons, is not an eternal phenomenon can we hope to come to terms in a more realistic way with the multi-faceted problems of deviance.

The previous chapter emphasised the need for better appreciation of the extent to which there has been continuity in the way crime is perceived as also in the organisation of social control. Too many criminologists have treated "crime" as if it were timeless. Arguably, this ahistoricity constitutes a major constraint on a better understanding of society. In the main, both popular and academic attitudes towards crime — constituting a firmly entrenched social control paradigm — together with the internal security organisations of the state, are as recent and as old as urban, industrial capitalist society itself is.

In this chapter an attempt will be made to examine the way in which crime was seen by the ruling-class in mid to late eighteenth century, before endemic panic had taken firm root, and before the social control paradigm had gained its full ascendance. This was precisely the period when England was beginning, unevenly, to adopt industrial methods of production. At the same time, this society was still outwardly traditional to a considerable extent as were its methods of social control. For most people life was still — literally — highly parochial. Small graduations of status or "degree" counted for much. Ties of dependency were, characteristically, highly personal. Deference and paternalism, however, to some extent made up for and obscured stark inequality. In the words of Harold Perkin, "although class was latent in the politics, industrial relations and religion of the old society of the eighteenth century, it was overlain by powerful bonds and loyalties which effectively prevented its overt expression."¹

It nevertheless remains vital to incorporate "class" into any discussion of eighteenth century society. In this work the role and outlook of the ruling class is of particular significance, precisely because, as Douglas Hay has argued, the term can most appositely be applied to the very group of people who wielded the power of the law:

Far from being the property of Marxist or marxialist historians, the term [ruling class] is a leitmotif in studies of the period. Partly this is due to the testimony of the sources: gentry and aristocracy claimed the title with complete assurance. Its historical usage, however, remains imprecise. Usually it has been defined in terms of income or status: the rent of the great landed estate or the exact meaning contemporaries gave to the word 'gentleman'. Class, however, is a social relationship, not simply an aggregate of individuals. As a relationship based upon differences of power and wealth, it must be sought in the life of the institutions that men create and within which they meet. The law defined and maintained the bounds of power and wealth, and when we ask who controlled the criminal law, we see a familiar constellation: monarchy, aristocracy, gentry and, to a lesser extent, the great merchants. In numbers they were no more than 3% of the population. But their discretionary use of the law maintained their rule and moulded social consciousness. 1

This "operational" definition of the ruling class avoids the dangers of what Ralph Miliband has described as "structural super-determinism". 2 Eighteenth century society was too varied and too complex to permit the objective dictates of the kind of class structure that is visibly subordinate to the mode of production to govern men in their actions: they were not altogether consistent, nor were their responses to particular situations completely automatic. Class relations were mediated in an indirect fashion through institutions and ideologies, of which the most important were the law and the legal system.

Because the law and the legal system were so much the property of the ruling class, this small segment of society and the way in which it viewed criminals demand close examination. Not that it was able to command full consensus. As E.P. Thompson has argued, "the anonymous threatening letter was an intrinsic component of social and industrial protest."¹ This alone should remind one, he adds, that, even before the 1790's, the gentry never achieved "such an overwhelming hegemony that their order appeared to be as unquestionable as the overarching sky."² But there were also limits to the extent to which the ruling class constituted "a knowing, self-interested and capable elite" of the kind implicit to what Paul Rock has called "naive conflict theory".³ Again, as E.P. Thompson has emphasised on several occasions — not least in the concluding section of Whigs and Hunters — the ruling class was tightly circumscribed by its own rules and its own institutions.⁴ On its compliance with these the maintenance of its hegemony depended. If it is necessary to differentiate popular and ruling class attitudes, it is also important to bear in mind interconnections between the two.

An examination of the attitudes of the ruling class is especially important in relation to an understanding of social control at this period. It is, however, inevitable that attitudes must be deduced from the manner in which deviants were dealt with, in the absence of anything approaching proper attitudinal data. But this was not the kind of society in which the ruling class was able to delegate to others the maintenance of social order. Consequently, the way in which criminals were treated can be used with some confidence for what is has to show of the prevailing outlook of England's rulers. Lacking any organised police force, and with but a small, somewhat immobile army, the ruling class could not afford to rely too strongly on formal procedures of social control — or to make provocative mistakes. Considerable sensitivity had to be shown to the feelings

² Ibid., pp.304–5.
of the populace. This helps, for instance, to explain why judges were concerned to get any of the rare defendants who declared themselves to be guilty to change their plea to one of not guilty. If the adversary trial has nowadays become a rarity, with, in the U.S.A., justice being "negotiated", or, in the U.K., defendants being pressurised into pleading guilty (if not, indeed, with "plea-bargaining" emerging here as well), in eighteenth century England, by contrast, some semblance of a proper trial was seen by all as indispensable. The courts of that period, in order to function as the setting for status degradation ceremonies, but with the appearance of legitimacy or fairness, had to make concessions which from a modern standpoint seem almost unthinkable. Such differences are quite inexplicable without proper consideration of changes in attitudes. In any case the courts were, in the eighteenth century, invoked far less frequently, and by individuals, rather than institutionally. Yet this choice of options - on the one hand the courts, and on the other, the various extra-legal ways of dealing with criminals - as likewise the extent, relatively, to which each was employed, also demands that one take into account the role of attitudes.

The England of this period provides a minor object lesson of the way in which men can organise their society on the basis of shared understandings, and informal rather than formal procedures of social control. It was precisely because this personal and unofficial way of maintaining order worked so well that, in some individual cases,

1. Various arguments were used by the judges to persuade defendants to plead not guilty: that the courts could only take mitigating circumstances into account if a trial were held, or that sentence could not be reduced for those who pleaded guilty. See The Proceedings on the King's Commission of the Peace, Oyer and Terminer, and Gaol Delivery for the County of Middlesex, 1742-43, trial 165, p.115; ibid., 1783-4, trial 661, p.867. (Hereafter referred to by its more popular name, London Sessions Paper).
to their credit, members of the ruling class were reluctant to develop what might be called a "reserve army of social control". The so-called "reformers", who were beginning to become actively interested in the promotion of prisons and a police force, had to argue their case in terms of a break-down of order which, to a considerable extent, was the creation of their own imaginative propaganda. Their aversion to the time-honoured attitudes which underpinned the traditional pattern of social control does nothing to diminish the importance, in its day, of such an outlook.

The salience of the eighteenth century for this thesis deserves to be asserted afresh. Current mainstream attitudes towards crime - the congruence of which with organised law enforcement has been strongly emphasised - have been presented as being rooted in a panic endemic to urban, industrial, capitalist society. With eighteenth century England it first becomes possible to speak, in words borrowed from E.P. Thompson, of the emergence of a "complex society of manufacturing industry and capitalist agricultural improvement". It might be suggested that to balance specificity against continuity must always be problematic. Deviance could be said always to have constituted a resource which rulers and authorities have harnessed to their needs. But some attempt to differentiate past and present is still valuable, however problematic. The extent of the transformation in the way in which deviance was understood and dealt with which occurred during the industrial revolution is as good an illustration as any of the significance of what happened then, if we are to understand much in our own society that we take for granted. Prisons, a police force, an institutionalised and bureaucratic criminal justice system with all its ramifications, were each essentially late eighteenth century innovations. No other extension to the coercive apparatus of the state has been so important - or so little studied.

A detailed description of the way in which order was maintained in the eighteenth century would be beyond the scope of this work. Sir Leon Radzinowicz and others have already mapped out some of the more prominent features. Instead, this chapter will be focussed on what the ruling class thought about crimes and criminals. Because its attitudes were determined by its need to cope, on a personal or individual basis, with particular law-breakers, such use as was made both of the courts and of alternative procedures must be examined - but with an eye to deducing the outlook of the ruling class. Here the main source is represented by the London Sessions Paper, otherwise known as The Proceedings on the King's Commission of the Peace, Oyer and Terminer, and Gaol Delivery for the County of Middlesex, for 1742-1788. Printed in magazine form, and taken by many London coffee-houses, it was also an official record - a slightly abbreviated transcript of all the major criminal trials of the metropolis, as held at the Old Bailey. Although it has occasionally been commended, by for instance M. Dorothy George, in her much re-printed London Life in the Eighteenth Century, surprisingly little use has been made of it. Radzinowicz, notably, manages to discuss the criminal law in the eighteenth century without making the slightest reference to it. The only other - and much smaller - series of criminal trials to have been printed, contemporaneously, were the Surrey Assizes. These have been surveyed by J.M. Beattie in an article which is useful for comparative purposes. Assize sermons for the middle years of the century have occasionally been drawn upon - another almost unused source - but many of these have proved more revealing of the preoccupations of the church than of attitudes towards criminals. To supplement such semi-official material, use has been made of the press in particular, which gave crimes and


criminals extensive coverage. Two important, widely circulated organs have been picked out, the Gentleman's Magazine (1744-1788), a monthly which enjoyed a circulation among the ruling class and throughout society second to none, and its main competitor, the London Magazine (1764-1788). Pamphlets - which rivalled them with the newspaper press - have also been consulted, above all those written by the ordinary of Newgate. If the stage is represented solely by The Beggar's Opera, this is not only because it was a great favourite, but also because it was the subject of perennial controversy in the salons of the capital.

This chapter will be divided into two main sections. The first, "Lawbreakers as Adventurous Individuals", will look at what the ruling class thought of the criminals with which it lived - what it read of them in the press, and what it said of them in its leisured moments. The second section, "Prosecutors as Responsible Individuals" will explore the way in which the ruling class conceived of its duty to deal personally with criminals, either through the courts or by some form of extra legal proceeding. Together these two sections serve to illuminate the place of "crime" before it had become the object of endemic panic, the outbreak of which will be the subject of the next chapter.

SECTION 1: LAWBREAKERS AS ADVENTUROUS INDIVIDUALS

"Crime" as such had no place in the eighteenth century. In Dr. Johnson's Dictionary of the English Language of 1755 "crime" is

defined simply in individual rather than collective terms as
"An act contrary to right; an offence; a great fault; an act
of wickedness."¹ "Crime" as a generic term simply does not appear
in the Dictionary. What is now known as crime – a social phenomenon
seen as threatening to society – had no such emotive significance
then. "Crime" was not the obsession which it has since become.
Equally, the idea that, if only its causes could be ascertained, it
could itself be eliminated, was unknown. Instead, it was taken for
granted that men would occasionally break the law.

In the eighteenth century, even more than now, crime was apt
to be defined in varying ways, and with extreme vagueness, as is
shown by the entry in Dr. Johnson's Dictionary. There was no consensus
as to what did or did not constitute "a crime". There were, however,
as always, those who were ready to point a finger. Stephen White,
in his much reprinted sermon of 1745, A Dissuasive from Stealing,
denounced thefts from woods and fields, as being pervasive, and
committed with impunity.² But one man's property was often considered
to be another person's rightful perquisite. "Users" and "exploiters",
so E.P. Thompson has emphasised, held different conceptions of property,
the former seeing it in less absolute terms than the latter.³ But
the line-up of attitudes was never clear-cut. The views of ordinary
people – the "exploited" – were not infrequently echoed by the more
understanding or realistic representatives of the ruling class.
Patrick Delany, haranguing readers of his Eighteen Discourses, reminded
them that the right to property excluded the "right of starving one
another to death". Theft, he added, being any injury to the property
of another, this specifically included "the oppression of griping
landlords upon the poor tenants under their power."⁴ Similarly, in

¹ S. Johnson, A Dictionary of the English Language, 2 vols.
(London, 1755), vol. 1, unpaginated.
² S. White, A Dissuasive from Stealing, 4th edn. (London, 1769),
³ Thompson, Whigs and Huntres, pp.240-45.
⁴ P. Delany, Eighteen Discourses and Dissertations upon Very
Important and Interesting Subjects (London, 1766), pp.158-59
and 174.
a rather more rhetorical assize sermon preached before the university of Oxford, John Burton voiced sentiments with which many who were less articulate would doubtless have agreed:

As to the eighth Commandment, this also is either boldly transgressed or ingeniously eluded by many of the powerful. They who talk most magnificently of Honour and Justice, they who are most religiously punctual in observing the established rules of gaming, at the same time will not hesitate to steal in a reputable way... they will not render to Caesar the things which are Caesar's, nor to God the things which are God's, yea and they will triumph in the unpunished applauded cheat. The fair-dealing tradesman is defrauded or distressed, and the hire of the labourer kept back by fraud exieth in vain: they can without remorse do such acts of injustice as these, while they are most scrupulously exact, where they think their honour concerned.....

Such differences of opinion as to what constituted theft serve as a timely reminder both that the possibility of a crime-free society is illusory, and that it is meaningless to try to calculate a hypothetical "dark figure" of unascertained crime for any period.

Eighteenth century gentlemen not only disagreed as to what should be held to be in contravention of the law, but, in addition, they had no conception of "criminals" as a generic term. Nor did they, unlike their nineteenth and twentieth century descendants, think of criminals as a separate - and dangerous - social class. While Dr. Johnson's Dictionary does define "criminal" as a noun, in individual terms, as either "A man accused", or "A man guilty of a crime", the word was then little used in either of these two rather different senses. Although it is now second nature to many people to label those to whose behaviour they take exception, as "criminals", with the implication that they are of an innately evil disposition, liable to

1. J. Burton, Principles of Religion the only Restraint from Wickedness, a Sermon Preached at the Assizes... before the University of Oxford..., August 7, 1745 (Oxford, 1745), pp.20-21.
behave in all manner of anti-social ways, in the eighteenth century, the use of the word in such generalising terms was unknown. Even those who were keen to emphasise the magnitude of the threat posed by lawbreakers used a vocabulary that was more precise and more restricted. Henry Fielding’s deliberately alarmist pamphlet of 1751 is entitled *An Enquiry into the Causes of the Late Increase of Robbers*. He always specified that his quarrel was "thieves" or "robbers", "idle and disorderly persons", or "vagabonds". When he wanted to present the danger as broadly and as emphatically as he possibly could, he had to draw on a foreign language, by comparing the London gangs to what "the Italians call the Banditi".1

If the eighteenth century ruling class did not think of "the criminal" as a threat to the social order — troubling itself instead simply with the misdeeds of individual wrongdoers — this was a reflection of the way in which lawbreakers were organised, in a carefully categorised hierarchy. This pyramidal demarcation in its turn mimicked the gradations of the wider society. Delinquents were as unthinkingly respectful of status as anyone else, not least among themselves. It is only historians who have lumped them all together as "criminals": in their day, they regarded themselves as having their own particular crafts or professions, like other people. Highwaymen were generally seen as the leading order of thieves. Macheath, in *The Beggar’s Opera*, being one of these, "looks on himself... as a Gentleman by his Profession".2 Visitors from abroad noted details of this strict division of labour, which others took for granted.

J.W. von Archenholtz, resident in England 1769-79, described the various categories: highwaymen — who considered themselves "dishonoured

by sneakingly picking a pocket" - house-breakers, pickpockets, and footpads. "These different kinds of robbers", he added, "keep themselves perfectly distinct, and do not encroach on the province of each other."¹ K.P. Moritz said much the same, though he appreciated that pickpockets, to be found "even in the best companies", could also hope to attain high status. Footpads, it was widely agreed, counted for least: in the words of Moritz, they were seen as the "lowest and worst of all thieves and rogues".²

The snug fit of the different sorts of delinquent with the existing social hierarchy, and the way in which wrongdoers were seen, above all, as individuals, was mirrored in what the church had to say. In a society in which religion, both as organised and as expounded, was closely bound up with the maintenance of the existing social order, it was unusual for anyone to distinguish clearly between a "sin" and a "crime". This world of men was also that of God. Daniel Waterland, a leading early eighteenth century divine, explained that however much people might lament the successes of wicked men, the hand of God was still in everything:

We see indeed a great deal of villainy in the world, and too often (as we say) it thrives, and prospers, and triumphs.... Wicked men, for instance, commit violence, rob, plunder, murder or the like; they do it for their own humour, and God suffers it for quite other ends. He had determined, suppose, to take off such a person for his sins, to chastise another, or to prove, try and exercise a third. ³

Whatever happened on earth, all would be judged by God as individuals. It was no excuse that many others transgressed. In the eye of God, so Stephen White emphasised in his Discourse Against Stealing, "the sin

is the same, whether one man only, or a multitude, be guilty of it and his God's all-seeing eye will find out, and his powerful arm will punish every sinner, according to his works. This belief that God, in his own good time, would deal with malefactors, must have been comforting, especially to those who felt they had suffered at their hands. A refined version of this doctrine — usually restricted to where murder was concerned — was that God might not even delay his vengeance on the individual wrongdoer until the day of judgment, but would instead intervene providentially "in this life" either by helping to bring such offenders to justice, or by chastising them in some other way.

In the mid to late eighteenth century, the ruling class relished lawbreakers for their bravado and their escapades, even if it was seen that they could not go altogether unchecked. Francis Place, as a lad, saw highwaymen going about quite openly in the 1770’s and 1780’s. By the 1820’s, he, like others more powerful than him, looked back with indignation. "What must have been the character of the times", he asked, with reference to the Accounts of the condemned produced by the successive eighteenth century prison chaplains, "when an Ordinary of Newgate could authorise the publication of such tales as merry adventures?" In that half-century, the place of crime had shifted dramatically, and with lasting effect. In the twentieth century, criminals — such as the great train robbers — still occasionally arouse the excitement of the public, but no newspaper would give a practising pickpocket the adulatory profile which the London Magazine for December 1766 accorded to George Barrington. Under the headline "George Flash, a character", the most celebrated pickpocket of the time — "much famed in London for his dexterity", as Archenholtz

observed—was described. "Intimately acquainted with all characters from a lord to a lumper, he has a thorough knowledge of mankind from Westminster to Wapping, and makes a very good figure at a cricket match". This was the man who, trading on his "easy manners of a gentleman of fashion", successfully stole a diamond-studded snuff-box from Prince Orloff while in his private box at Drury Lane. He might be secretive, indeed quite unfathomable, so the *London Magazine* recognised, but, "have a little patience, and you will certainly hear of him in an advertisement from the police in Bow Street." When he had, at last, been convicted, in 1777, and sentenced to a term of hard labour in the hulks on the Thames, it made a fashionable outing to see him at work, so the *London Magazine* then noted. Even the most respectable of eighteenth century newspapers displayed very different priorities from those of today. In January 1776, for instance, American developments, however important, took second place to "crime news", as it would now be called, in the *Gentleman's Magazine*. Its comment on the main item, an intriguingly complicated case of forgery, was that "the people appear to be as much divided in their opinions about the guilt or innocence of Robert Perreau as about the American cause." Lawbreakers were a never-ending source of fascination, whose exploits excited enormous interest. Some were remembered long after they were dead. The fame of Jack Sheppard, hung in 1724 for housebreaking, was particularly well established. His two escapes from Newgate, his attempted get-away while actually en route for Tyburn, and his final hopeless attempt to have himself revived after being hung, were perhaps unsurpassable. Half a century later, John Villette,
the ordinary of Newgate, commented that he could not think of any other criminal "whose adventures have made so much noise as Sheppard's. He was for a considerable time the subject of conversation." Villette added that he had seen "6 or 7 different histories of his life, and several copperplates... the principal of these was done from the original picture by Sir James Thornhill...". This was apparently quite as flattering a portrait as most of those commissioned for themselves by members of the ruling class - but then Sheppard was cherished by England's rulers almost as if he were one of themselves. He made the stage, in a "pantomime entertainment" called Harlequin Sheppard put on at Drury Lane. Also, he featured in that long-running dispute of polite society, the battle of the "ancients" against the "moderns": in a piece in the British Journal entitled "Conversation" he was made to debate with Caesar as to which of them was the greatest. He was still a standard of comparison in 1781, when the biographer of a lesser criminal (Patrick Madan), was forced to conclude that "readers will agree with us, when we assert that his celebrity will greatly lessen, when his Madan's actions come to be put in comparison with a Sheppard, a Turpin, or a Colonel Jack." There was always some new malefactor who would be made into the idol of the day by the press. Even the occasional stricture served only to emphasise the singularity of his exploits. Whatever moral indignation was shown was invariably counterbalanced by unabashed adulation. Typical of such coverage in both tone and extent, was that lavished on the leading light of 1750, James Maclean. Even the headlines styled him the "Gentleman Highwayman". "Since the 27th of July", opened an article in the Gentleman's Magazine, following his arrest on that day, "the conversation of the town has been so much turned upon the gentleman highwayman, that some account will be expected

2. Ibid., pp.268-9.
A letter by Horace Walpole confirms the fascination of England's rulers. "I have been in town for a day or two, and have heard no conversation but about M'lean, a fashionable highwayman, who is just taken." The next issue of the Gentleman's Magazine offered an "Account of Maclean under Condemnation"—mentioning not least his innumerable visitors—besides devoting most of its review of books to a discussion of pamphlets about Maclean. Four at six pence, and one at a shilling, were noticed. An Account of James Maclean from his Condemnation to his Execution by the Rev. Dr. Allen, was singled out for commendation on somewhat conflicting grounds:

This has already gone through two editions, and deserves to be made still more public, for two very good purposes. 1. For a lesson to our gay youth. 2. To subsist an indigent orphan, the rev. author having given the profits to Maclean's daughter, but 5 years of age. 3

The incongruity of these twin considerations neatly reflects the way in which empathy was felt for this man and his family, quite as much as indignation.

Even a lesser criminal might well hope to receive a similar mixture of sympathy and of criticism. The same book reviewer in the Gentleman's Magazine also discussed a pamphlet about a forger called William Smith. Observing that it was dignified by "two odes on his melancholy condition" (while under sentence of death), and "some encomiums on his person", he then added further tribute culled from the pages of the Daily Advertiser:

With talents blest, to charm the mind and eye,
What pity, Smith, at Tyburn tree must die!
Cover'd with crimes, no king cou'd well forgive,
What pity so complete a wretch shou'd live! 4

Written as much in admiration as in alarm, the tone of this quatrain can be matched in many other instances. The biographer of Patrick Madan subtitled his pamphlet, in part, "A Series of Events equally calculated to astonish the Mind, and to lead the Heart to Virtue, by exhibiting the Deformity of Vice...." As before, appreciation takes precedence over resentment.

Dr. Dodd, hung for forgery in 1777 despite considerable outcry, was just one more example of the many lawbreakers over whom a commotion was raised in the usual conflicting terms. His very epithet, "the unfortunate", was that of others too: one of the pamphlets about Maclean was entitled A True Account of the Unfortunate James Maclean. While Dr. Dodd received even more favourably accentuated attention than other malefactors, this was simply because he was in holy orders, and a highly popular preacher. His case was not "the first to stir the public conscience", on the whole problem of capital punishment, as Radzinowicz has attempted to argue, since the death penalty itself was never questioned by anyone. Only the small minority who did not align themselves in favour of Dodd and his reprieve were concerned to raise capital punishment as an issue, and their stance was of course one of approbation. The general clamour was focused simply on the Doctor as an individual deserving of exceptional treatment due to his clerical status. Robert Goadby was one of the few who, standing up for judicial principle rather than personal considerations, lamented what he saw as the irrational sympathy shown for Dodd:

He [Goadby] published a pamphlet, in which he endeavoured to prove that the notion too generally entertained that his fate was hard, on account of the character he bore, and of

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1. See, for instance, Anon., An Authentic Narrative of the Celebrated Miss Fanny Davies, 2nd edn. (London, 1786), pp.6-7, in which she is described successively as "display[ing] vice in its utmost deformity", and as "the celebrated heroine of our history".
3. For a full-length biography of Dr. Dodd, see G. Howson, The Macaroni Parson: A Life of the Unfortunate Dr. Dodd (London 1973). (Hereafter cited as Howson, Macaroni Parson).
the many good qualities he possessed, was erroneous. He argues that... his being a clergyman rendered it more necessary that he should suffer, than if he had been a layman. He also makes some very judicious remarks on the blameable lenity with which it is fashionable to treat a departure from honesty, and a breach of the law, a lenity, calculated to lessen that horror with which every man ought to consider even the most inconsiderable acts of dishonesty, especially when exercised to maintain a boundless and inexcusable extravagance.  

The author of a letter to the Morning Chronicle confirmed that Dodd was simply one more individual lawbreaker over whom agitation was fanned by the press. He also provided an interesting criticism of the way in which criminals were turned into celebrities, when he condemned the excited and extended coverage lavished on Dr. Dodd as "only the latest and most flagrant example of the irresponsible behaviour of the newspaper-writers, who, by their insatiable greed to fill their sheets, were perpetuating and encouraging the very vices and dissipation they pretended to abhor."  

The expectations which guided both "criminals" and "victims" in their encounters were different from what they now are. In the eighteenth century, even those personally confronted by lawbreakers enjoyed a certain sense of security which came from knowing that robbers, unless provoked, could be expected to behave in a restrained and honourable fashion. As Paul Rock has pointed out, "the organisation of deviancy itself" helps shape the manner in which it is responded to by others. It is typical of the period that Macheath, in The Beggar's Opera, should declare his faith in his gang in high upstanding terms: "I have a fixed confidence, Gentleman, in you all, as Men of Honour, and as such I value and respect you."  

1. Gentleman's Magazine, February 1784, p.94. It has not proved possible to locate a copy of Goadby's pamphlet: nor is its existence referred to by Howson, Macaroni Parson.  
2. Cited in Howson, Macaroni Parson, p.146: Morning Chronicle, 19 February 1777.  
Not only did the good naturedness of lawbreakers favourably influence men of property: their expectations of honour - as mediated through the press for instance - tended in their turn to accentuate what one gentleman referred to as the "politeness and generosity" of English robbers.¹ "Deviance" and "social control" each exist only in terms of a continuing interaction between those associated with one "side" or the other. In eighteenth century England, the prevailing pattern of interaction resulted in both lawbreakers and those opposed to them reinforcing each other in a sense of confidence which was mutual.

In a period strong in rational self-awareness, this confidence in the "honour" of lawbreakers was frequently expressed by comparing English robbers with those of France and other foreign countries, to the disadvantage, of course, of the latter. This sentiment can be found in the most highly regarded literature of the time. Tom Jones, exculpating those highwaymen "whose highest guilt extends no further than to robbery, and who are never guilty of cruelty nor insult to any persons" added that this was "a circumstance that, I must say, to the honour of our country, distinguishes the robbers of England from those of all other nations; for murder is, amongst those, almost inseparably incident to robbery."² The wide diffusion of this belief is illustrated by K.P. Moritz's description of a stage-coach journey between London and Richmond in 1782, in company with several ladies and a gentleman. The latter pointed out to us the country seats of the Lords and great people by which we passed; and entertained us with all kinds of stories of robberies which had been committed on travellers, heretofore: so that the ladies at last began to be rather afraid; on which he began to stand up for the superior honour of the English robbers when compared with

the French; the former, he said, robbed only, the latter both robbed and murdered. 

This account neatly shows the way in which a persuasion that lawbreakers were men of honour served to soften the impact of their activities, and fostered, instead, their entertainment value.

"Violent crime" in particular—the grande peur of more recent times—was a far less appreciable cause of worry in the eighteenth century. If the ruling class was able to cherish robbers for their peaceableness, this was because even those lawbreakers who carried arms—the highwaymen and the footpads—could be relied upon, in the main, not to use their weapons. Highwaymen in particular, the elite amongst the criminal fraternities, made it a point of honour not to fire, if this could possibly be avoided. Such conduct not infrequently met with some mark of appreciation, when this was possible. Villette, in his Account of a highwayman called William Hawke, described how:

A gentleman who had been attacked by him, and who fired at him, came into the Press-Yard after his Conviction, and enquired for him. The Gentleman mentioned the Time, the Place, and the particular Circumstance of firing at him, and expressed a real Concern for the Prisoner’s Situation, and told him, he came on Purpose to thank him for his Humanity in not returning the Salutation, and taking away his life when in his Power. — Several Gentlemen, I was informed, visited him on the same Account, and offered their Service to him for the civil and kind treatment they had met from him.

In addition, Villette both laid heavy emphasis on Hawke’s declared unwillingness ever to harm anyone, and, at the same time, criticised those who rashly attempted to resist highwaymen. It was better, he felt, to submit when challenged. So confidently could the good

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naturalness of highwaymen be taken for granted that it was possible to call their bluff, even though this clearly constituted an exceptional act of provocation. One of the rare but illuminating occasions when this happened is described in the Gentleman's Magazine:

Mr. Belcher, and his wife, of Chipping Norton, were returning from Hook Norton fair, in company with others, when they were attacked by a single highwayman, who robbed the men of their money, and then accosted the woman with the usual demand, "Your money, Madam!" "No, Sir, you have robbed my husband, but you shall not rob me." The highwayman then presented his pistol to her breast. Without the least emotion, she dared him to fire, on which he clapped spurs to his horse and made his escape, though earnestly pressed to be pursued by Mrs. Belcher. 1

The reluctance of highwaymen to use their pistols can now be placed in perspective. On the one hand, in the eighteenth century, "violent crime" was not seen as a particular problem, although (and, no doubt, in part because) access to firearms and other weapons was far more common that it has come to be. On the other hand, in our own society, where violent crime is felt to constitute a major threat to social order, few people would bother to thank anyone who had robbed them for not having hurt them at the same time, as was done by Hawke's visitors. The key to understanding this paradox is that we have lost the ability to cope with lawbreakers as fellow individuals, while they, in turn, have discarded the conventions appropriate to them as respected adventurers. It was of one such convention that Mrs. Belcher took unexpected advantage.

Another cherished characteristic of the eighteenth century robber was his willingness to return money, or not to demand it in full, in cases where hardship or difficulties might otherwise have resulted. With highwaymen in particular, observed K.P. Moritz, there

were "numberless instances of their returning a part of their
booty, where the party robbed has appeared to be particularly
distressed...". But even footpads, although constituting a
less honourable tribe of lawbreakers, were no strangers to such
generosity. In a trial at the Old Bailey in 1779 Joseph Kinsey
described how, when driving a cart to London, he had been assaulted
by two footpads, called James Davis and James Wood.

Wood clapped a pistol to my breast and said he would shoot
me dead if I did not give them my money.... they searched
my pockets and asked for my watch; I told them I had not
a watch, and that I had nothing about me but a bad sixpence
and sixpenny worth of half-pence; upon which they said
poor fellow, then let him go; and they did not take my
money. 2

The description offered by Lot Cavanagh, a highwayman executed in
1743, of one of several such occasions, was left in his own words
when the ordinary of Newgate compiled the Account. Stopping two
butchers on the way to market at Exeter,

I took from them about £7 and a watch; they desired I
would return them some silver to bear their charges to that
city; upon which I put my hand in my pocket, throw'd them
three half-crowns, and bid them drink my health, and then
I rode off again. 3

No discussion of the conduct of eighteenth century lawbreakers, and
of the honourable light in which they were seen, would be complete
without mention of a further incident yet more remarkable, which was
well publicised at the time by the press. It was also described by
John Villette in his Account of William Hawke:

1. Moritz, Travels, p.525.
2. London Sessions Paper, 1779-80, trial 2, p.3.
3. J. Guthrie, Account of the Behaviour, Confession and Dying-
Words of the Malesactors who were Executed at Tyburn, on Tuesday
the 12th of April 1743 (London, 1743), p.25.
Another Instance of his Humanity (the particulars of which he communicated to me, different Accounts having appeared in the public Papers) is, On a Time.... between Hounslow and Slough, seeing a poor labouring Countryman sitting upon a stump of a Tree, with his Head upon his knees, crying, Hawke asked him what was the occasion of his Sorrow. He replied, That he had a few Minutes before been robbed by Two Footpads of upwards Two Guineas, a Saving which he had made by Hard Labour, and was going to Lodge in the Hands of his Master for the Payment of his Rent. This scene of Distress so affected Hawke that he took up the Man behind him, and immediately went in pursuit of the robbers.... He soon came up with them, and with a Pistol demanded the Money. Having no arms to resist the Demand they gave it, with Seven Shillings more of their own. All of which Hawke gave to the Countryman, with an additional Present of Half-a-Guinea out of his own Pocket.... 1

This was the ne plus ultra of lawbreakers as honourable - and entertaining - individuals, tied by the restrictive conventions of the delinquent hierarchy, and, in short, anything but a threat to social order.

The closest most Whig grandees ever came to confronting highwaymen, the "big criminals" of their day, was probably across the orchestra pit at Covent Garden, at one of the innumerable performances of The Beggar's Opera. John Gay's play - as Archenholts noted - was "one of the favourite pieces of the English stage". 2 Its initial run of sixty-two performances in early 1728 represented "an almost unbelievable and unprecedented success", by the standard of the day. It retained this popularity throughout the eighteenth century, being produced every year at Covent Garden, and often in the provinces. It was only in the nineteenth century that "performances gradually became less frequent." 3 "Today", even, in the words of a student of English literature, "The Beggar's Opera is usually regarded as one of the very few great plays of the eighteenth century and as one of the major literary works of the Augustan period....". 4

3. Gay, Beggar's Opera, p.3.
The quality of the play, as drama, may be said to reflect the ease with which an eighteenth century playwright could draw upon the world around him in conjuring up lawbreakers as characters of well-rounded individuality. With its colourful but convincing crew of malefactors, The Beggar's Opera represents an artistic celebration, of the highest quality, of lawbreaking as a merry adventure.

Eagle-eyed to a fault, literary critics have scrutinised The Beggar's Opera for the slightest sign of political satire - and ignored its impact at the time. Undoubtedly the play was intended, in part, to satirise Walpole and the court; by them it was certainly perceived in this light. To others, however, the play assumed a different importance, as the focus of a separate longer-running debate. In this, the charge against The Beggar's Opera was that it glamourised the activities of lawbreakers to the point of inspiring more innocent people to emulate them. The attacks of the moralists can not be ignored simply because, in the words of a modern literary critic, their "view of the play is very shallow". The eighteenth century controversy is interesting because, while couched in instrumental terms, as to the "criminogenic" effects of the play, it is very revealing of the way in which the exploits of malefactors were discussed at the time.

From its first appearance, The Beggar's Opera drew the fire of self-appointed guardians of the nation's property, as for instance in a pamphlet of 1728 tellingly entitled Thievery à la Mode, or the Fatal Encouragement. Another critic that same year was William Duncombe, who wrote to the press to complain that anyone could be allowed to introduce upon the stage as a proper subject for laughter and merriment, a gang of highwaymen and pickpockets, triumphing in their successful

1. The production of the sequel to The Beggar's Opera, called Polly, was banned in advance by Walpole, in December 1728: Polly was only staged for the first time in 1777.
2. Lewis, Studies in English Literature, p.60.
3. Anon., Thievery à la Mode, or the Fatal Encouragement (London, 1728).
villainies, and braving the ignominious death they so justly deserve..... How far The Beggar's Opera may have contributed towards those daring attacks which are daily committed on the property of the subject, in the streets of our capital, in defiance of all law, and, I believe, beyond the example of former ages, I will not pretend to say: but, I am sure, nothing can be more proper to foment these violences than such lines as these:

"See the ball I hold!
Let the chymists toil like asses,
Our fire their fire surpasses,
And turns all our lead to gold."

Duncombe conceded that his view was of the kind liable to be "ridiculed by the fluttering beaux and belles of the town", but The Beggar's Opera, so he argued, amply deserved "the rebuke of a Christian", like anything else which "has a direct tendency to promote a general depravity of manners...."). By 1771, "Crito", the author of a letter in the London Magazine, could reflect that he was travelling "a beaten road". He was able to cite Queen Caroline's condemnation of The Beggar's Opera as "one of the most extraordinary and immoral compositions that ever disgraced a theatre, as tending to lessen the deformity of vice", before launching his own sally:

Our pulpits have too justly remarked that the hero is a highwayman of the most abandoned principles, who engages in scenes of seduction and profligacy wholly unfit for representation; yet, for the sake of a fortunate catastrophe, is spared the due punishment of a halter. A young woman, the heroine of the piece, is given as a really deserving creature, though bred in the very bosom of infamy; yet, deserving as she is painted, she rejoices in sharing the fate of a despicable villain.....

1771 saw an attempt by the Middlesex justices (an "extraordinary request", as one of their opponents put it) to dissuade Garrick from having the piece performed. But they were unsuccessful, and, in the

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salons and coffee-houses, the debate dragged on. In 1773, a letter to the Gentleman's Magazine referred to The Beggar's Opera and its tendency "as the general topic of conversation". The play, of course, was still being performed.

The failure of the essentially symbolic crusade for the suppression of The Beggar's Opera emphasises the minority status of those like William Duncombe who resented that "the lives of such abandoned wretches as robbers and street-walkers are described as agreeable, and full of mirth and pleasure." The "winning side" was represented by gentlemen such as James Boswell, who, discussing with Dr. Johnson "the common question whether it The Beggar's Opera was pernicious in its effects", concluded, like his hero, that even if it did tend to glamourise the "adventurous depredations" of highwaymen, he would be "very sorry to have The Beggar's Opera suppressed; for there is in it so much of real London life, so much brilliant wit, and such a variety of airs... that no performance which the theatre exhibits delights me more...." If those like James Boswell, who could see that The Beggar's Opera might "corrupt" the law-abiding, were still prepared to approve of its being performed, this only emphasises their lack of panic over lawbreaking and the intensity of their fascination with malefactors. The fact that it was about "real London life" made The Beggar's Opera irresistible. The tone of the play was, after all, scarcely very different from that of the countless pamphlets and newspaper articles dealing with lawbreakers - perhaps just a little more open in the unguardedness of its admiration.

Edward Gibbon the historian offered the "ingenious observation" that "The Beggar's Opera may, perhaps, have increased the number of

3. Ibid., p.653.
highwaymen; but that it has a beneficial effect in refining that class of men, making them less ferocious, more polite, in short, more like gentlemen."  

The Beggar's Opera, if it had such an effect, did so because, in portraying lawbreakers as adventurous individuals and men of honour, it epitomised the prevailing outlook of the ruling class. The mannerisms and customs of highwaymen, pickpockets and prostitutes, their extremely human share of both loyalties and inconstancies; it was these which, evoked so attractively by John Gay, endeared his play to so many for so long.

Allusion is made in The Beggar's Opera to many of those conventions which the ruling class cherished so strongly in malefactors. Macheath, as mentioned, addresses his gang as "Gentlemen". If no reference is made to any money being returned, Macheath does remind his gang that pistols - "the tools of a Man of Honour" are only to be used as a matter of "last resort". Even the beggar's closing comments hardly go beyond John Burton in his assize sermon, as quoted earlier. John Gay and John Burton, to the extent to which they were worried by lawbreakers, both wanted to encourage men of all ranks to become more God-fearing and law-abiding. The beggar's words may serve as a fitting conclusion to this section:

Through the whole Piece you may observe such a Similitude of Manners in high and low life, that it is difficult to determine whether (in the fashionable Vices) the fine Gentleman imitate the Gentlemen of the Road, or the Gentlemen of the Road the fine Gentleman. Had the play remained as I at first intended [with Macheath actually being hung, rather than reprieved, and thereby allowing a happier conclusion], it would have carried a most excellent Moral. 'Twould have shown that the lower Sort of People have their Vices in a degree as well as the Rich: And that they are punish'd for them.  

2. Gay, Beggar's Opera, p. 72 (Act II, Scene II); see above, p. 34.  
3. Ibid., p. 72 (Act II, Scene II).  
5. Ibid., p. 112 (Act III, Scene XVI).
SECTION 2: PROSECUTORS AS RESPONSIBLE INDIVIDUALS

The eighteenth century gentleman saw himself as being personally concerned to deal with lawbreakers. In its most solemn and official form, this responsibility took the form of legal proceedings in court. Even the decision to prosecute was made by individuals – invariably men of substance – acting in their own right. The way in which this duty was undertaken can be said not only to reflect the way in which malefactors were seen as individuals, but also to have shaped, in part, this very outlook. Lawbreakers were dealt with as and when someone felt that their actions constituted a threat to social order. Any man of property was continually and individually liable to be confronted with a far wider range of decisions than is the case today, following the development of the police and the other professionalised and bureaucratically organised elements of the "criminal justice system", as we now know it. In the eighteenth century prosecutors were also, in effect, responsible for securing the arrest of those whom they wished to take to court. Both this and something of the essentially unprofessional way in which malefactors were handled is encapsulated by the account given by a prosecutor, in 1785, at the Old Bailey. He described how, a boy having alerted him, he had seized red-handed a man who had just picked his pocket of a handkerchief: "a number of respectable people were by and extorted a promise from me that I would prosecute."  

The custom, in eighteenth century England, of prosecutions being implemented by individuals, was simply one element of a judicial system in which untrained people played a far greater role than today. With the important exception of the assize judges, even the major legal functionaries, notably sheriffs and justices of the peace, were chosen on a part-time, short-term basis, from among those qualified on the basis of their property. Similarly, constables, reselected annually,

were supposed to be men of standing, although the practice of allowing deputies tended to broaden the social composition of the constabulary. Jury service represents the most important — now democratized — survival from days when lawbreakers were dealt with personally by members of the ruling class. But while the selection of jurors has been changed so as to make them more representative of the community as a whole, the very function of juries has at the same time been restricted. In the eighteenth century, the grand jury still constituted a significant pre-trial hearing agency, rejecting one in seven prosecutions even at the end of the century. Only later did it decline in significance, leaving the petit or trial jury as a forlorn reminder of a differently constituted criminal justice system.

Because the eighteenth century courts were very much the preserve of the ruling class, those who attended these ritual celebrations of the sacredness of property were accustomed to serve in an unpaid capacity. When at the Old Bailey a constable applied, fruitlessly, for his expenses in appearing as a witness, "Mr. Alderman Watson" observed that he "himself, and the jury, and every man that attended there, on business of the sessions, were taken from their employments; but in doing what they could to protect society, their reward was themselves." In contrast to the way in which, silently, the conduct of cases, like the initial decision to prosecute, has been taken over by the police, the eighteenth century courtroom was the personally arranged show-case of the ruling class of the day. As such, all that went on was watched over with a protective eye, as grand and petit jury successively scrutinised each case. When prosecutions could be seen, recognisably, as having been initiated by individuals (rather than by an institutionalised agency of self-declared

3. It was characteristic of John Wilkes, as a gentleman and a leader of reform that, when a sheriff, he abolished admission charges to the galleries at the Old Bailey — which rapidly tended to become over-crowded. Gentleman's Magazine, October 1771, p.471.
impartiality such as the police), the importance of guarding against malice was obvious. These untrained gentlemen were sensitive, if erratic. Whatever the quality of their sense of judgement, members of the eighteenth century ruling class had in any event only themselves to take to task for being too easy-going towards lawbreakers. Then, unlike their latter-day spokesmen, they could not shrug off their responsibility for dealing with malefactors under cover of calls for the rigorous enforcement of "law and order"—by others.

Because England's rulers were so closely and so personally involved in the workings of the courts, the question obviously arises as to what extent they were able to manipulate the law itself to suit their ends. Broadly, there is little doubt that the laws were their laws, designed to meet their needs. As enacted by them, the laws served, as they were explicitly intended, to perpetuate the existing distribution of property, and to affirm the sacrosanctity of this division in men's minds. This was clearly enunciated by John Wibbersley in a sermon preached before the assize judges and the mayor of Newcastle in 1752, and published at their combined request. "Civil Society was instituted for the Preservation and secure Enjoyment of Property: but this End cannot be attained, except by Laws enforced with Penal Sanctions...."² Others proclaimed this gospel of inequality still more explicitly. Richard Watson, Bishops of Llandaff, in a sermon before the stewards of the Westminster Dispensary, declared that:

Amongst all civilised nations, the security of property constitutes one of the principle branches of their jurisprudence. From a state of property, however introduced, springs up a division of mankind into two classes, one possessing more, the other possessing less, or nothing at all:

1. London Sessions Paper, 1775-76, trial 416, pp.249-50; ibid., 1779-80, trial 174, pp.225-26; ibid., 1785-86, trial 37, pp.68-75. These trials illustrate the concern of the judiciary to guard against malicious prosecutions, brought for reasons of spite.

2. J. Wibbersley, A Sermon Preached at St. Nicholas' Church, in Newcastle, at the Assizes... (Newcastle, 1752), p.10.
the more and the less may vary through a great many
degrees, yet the division still remains certain; and
the consequent distinction of mankind into Rich and Poor
has been generally established.

This division between rich and poor - between the ruling class and
the common people - was, so the Bishop added, just and inevitable:
it was to be viewed as "the natural appointment of God himself."1

As in their general purpose, so too in many details of their
execution, the laws supported this hieratic society in its continuing
existence. Given the importance of ties of dependency, and of the
emphasis placed on keeping servants and other employed labourers in
a state of servile attentiveness, this is well illustrated by the way
in which the behaviour of these subordinates was regulated by statute,
and dealt with in the courts. Not only were there innumerable laws
of this variety (including some, of course, which prohibited attempts
to combine against employers),2 but, when it came to sentencing, the
fact that an offence had been committed by a servant against his master
was treated as an aggravating rather than mitigating factor, a weighting
which was defended by both Blackstone and Paley.3 The Recorder
of the City of London, passing sentence of death upon Henrietta Radbourne,
who had been convicted of murdering her mistress, reminded her that
servants were bound to their employers "by every tie of duty and
obedience", and told her "the crime that you have committed is equally
an offence against the laws of God and men; it is of all others the
most aggravated in its nature, and the most dangerous to society."
Needless to say, she was expressly informed to expect no mercy from
her sovereign or from the court, and then sentenced to death by hanging,
her body afterwards "to be delivered to the surgeons to be dissected
and anatomised, pursuant to the statute...."4

1. R. Watson, A Sermon Preached before the Stewards of the
Westminster Dispensary,....April 1785, 2nd edn. (London, 1793),
pp.1-2 and 4.
2. C. Hill, Reformation to Industrial Revolution (Harmondsworth,
of Moral and Political Philosophy, in The Works of William Paley,
published 1785. (Hereafter cited as Paley, Principles). For a
judicial pronouncement as to the need for dishonest servants to
be dealt with in an exemplary fashion, see London Sessions Paper,
1784-85, trial 945, p.1252.
Although the laws were class laws, designed to perpetuate the status quo, and serving as a tool of repression, their effectiveness depended primarily on their power as mass ideology, as has been argued by E.P. Thompson and Douglas Hay. As Thompson pointed out, "The essential precondition for the effectiveness of law, in its function as ideology, is that it shall display an independence from gross manipulation and shall seem to be just." In other words, the law had to assume a reality and an existence of its own. Even the rulers had to demonstrate their respect for law: they were "whether willingly or unwillingly the prisoners of their own rhetoric, they played the games of power according to rules which suited them, but they would not break these rules or the whole game would be thrown away." It was, of course, appreciated that, while "Laws were made for ev'ry degree", in practice, the rich often managed to evade them, since "Gold from Law can take out the Sting". Nevertheless, hopes were still pinned on persuading even the most privileged gentleman to conform to the law (as, for instance, by John Burton). The rare grandee who was brought to justice was made the occasion of a great stir, and much propaganda. The hanging of Lord Ferrers, in 1760, for the murder of his steward, was the most notable event of this kind. Its importance in sustaining the ideology of the law has been emphasised by Douglas Hay, though further evidence might also be adduced.

John Northouchuck, a bookseller so radical as to demand legislation to prohibit "the undue enlargement of private fortunes", was able, on looking back a dozen or so years later, to salute 1760 as a year "distinguished to all lovers of impartial justice by the execution of Lawrence Shirley Earl Ferrers....".

2. Thompson, Whigs and Hunters, p.263.
He was hung at Tyburn before a "wast" crowd of people, who were "decent, and admired him, and almost pitied him". In other words, he received the same quasi-adulatory treatment as any of the other lawbreakers whose heroic status was confirmed at Tyburn. Justice had been seen to be done even to the greatest, and, if only for once, unforgottably.

While only an occasional victim had to be sacrificed by the ruling class from among its members, so as to maintain an appearance of fairness in the implementation of the laws, far greater numbers of humble malefactors were sent to the gallows under "sanguinary statutes" which made even the most trifling thefts capital under many circumstances. The discretion with which these statutes were employed constitutes a further problem in terms of the extent to which the ruling class contrived to manipulate the law. What has struck historians investigating these "scarecrow statutes", as one contemporary referred to them, is the contrast between the legislature, which was continually extending the number of capital offences throughout the eighteenth century, and, by contrast, the ever increasing number of capital offenders who were pardoned. Radzinowicz has asserted that this apparent dichotomy can only be accounted for in terms of a divergence between the legislature and the judiciary. This suggestion has been contested by Douglas Hay, who argues that "Parliament passed many laws in part because they knew they would not be rigorously enforced; that is, they legislated on the basis of their experience." And since both the courts and the legislature were so much the province of the ruling class, with the same gentlemen serving in both, Hay's explanation, so far as it goes, is evidently incontrovertible.

A difficulty still remains, for Hay simply poses anew Hadzinowicz's problem: the need "to explain the coexistence of bloodier laws and increased convictions with a declining proportion of death sentences that were actually carried out." Hay's answer to this is that both pardons and the gallows were cherished because their use in combination gave the ruling class the opportunity to show its benevolence as well as its strength, thereby boosting the law as an ideology compounded both of mercy and of severity. Patronage was an essential vehicle of social control, and, in the behind-the-scenes strategems necessary to secure a pardon, it could be employed to striking effect. Showy concessions reflected "the relative insecurity of England's governors, their crucial dependence on the deference of the governed", which compelled them to moderate their ferocity. England in the eighteenth century "was a society with a bloody penal code, an astute ruling class who manipulated it to their advantage, and a people schooled in the lessons of Justice, Terror and Mercy."¹

Hay's analysis represents an exciting and illuminating advance upon that of Radzinowicz, and fully explains the significance of the pardon. Unfortunately, Hay, like Radzinowicz, never looks at procedure in the courts, so consequently he misses even the more "legal" of the many alternative ways in which, with an equally benign appearance, the ruling class contrived to circumvent the sanguinary statutes. Pardons were spectacular, but they were only the tip of the iceberg. Discretion usually took other forms. Only a third of those sentenced to death in the mid eighteenth century received pardons.² But, of all defendants tried on capital charges, substantially more than the sum total of all those condemned to death were instead found guilty only of a lesser non-capital charge. In fact about five times

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2. J. Howard, The State of the Prisons in England and Wales, (Warrington, 1777), pp.482-83. (Hereafter cited as Howard, Prisons, 1777). It is shown here that of 1,121 people sentenced to death at the Old Bailey between 1749 and 1771, 443 or 39.5% were later pardoned.
as many capitally-charged offenders were convicted simply of a non-capital crime as were pardoned.¹ All then shared the same fate, transportation, although it was the reprieved convicts who were more likely than those who received "partial verdicts" to get the longer term of fourteen years.² Even discretion as practised to this extent does not represent anything like the whole story, since for every capital offender put on trial, there were many other lawbreakers who, for similar discretionary considerations, were never formally charged, however well their offences were known. Although their numbers can never be calculated, these undoubtedly constitute the real mass of the iceberg. The rest of this chapter will mainly be concerned with these less sensational ways in which the sanguinary laws were circumvented and manipulated. Those strategems which were employed in court, those which were used outside, but in the shadow of the courts, and the way in which the punishment of lawbreakers by the crowd was connived at, will be examined, in their various forms, in the remaining three sections of this chapter.

The pardon is a very obvious ploy. It is also, in effect, a very troublesome and expensive one, since it can only be put in operation after the whole criminal justice procedure has been successfully negotiated. When prosecution was the responsibility of individuals, it made sense for them to adopt cheaper and more convenient, but still discretionary, ways of dealing with malefactors. It must have been these alternatives, rather than just the pardon, which gentlemen in parliament had in mind when they passed capital statutes. The only residual problem is why they should actually have extended

¹ See below, Table II, p.58.
² Hardly any of those sentenced to transportation (rather than pardoned on condition of accepting transportation) received a fourteen year term: for instance, of those sentenced to transportation in 1786-87, 324 in all, 317 received seven year terms, while only seven got fourteen years sentences. London Sessions Paper, 1786-87, pp.1171-79.
the number of capital offences. "The extraordinary carelessness and callousness of the Legislature", as Sir William Holdsworth described it, is illustrated, he claims, by an anecdote told by Sir William Meredith:

He [Meredith] was once passing a committee room, where only one member was holding a committee, with a clerk's boy; he happened to hear something of a hanging; he immediately had the curiosity to ask what was going forward in that small committee that could merit such a punishment. He was answered that it was an Enclosing Bill, in which a great many poor people were concerned who opposed the Bill; that they feared those people would obstruct the execution of the Act, and therefore this clause was to make it a capital felony in any one who did so. 1

What this shows is not "the extraordinary carelessness and callousness of the Legislature", but simply that this was the customary way in which, time out of memory, statutes had been draughted, that is, with a fixed penalty which gentlemen in the courts (or contemplating how to deal with a transgression) could be depended upon to invoke only in the last resort. To that anonymous single member, with his clerk's boy, this was the entirely natural way of proceeding, and there was nothing callous or careless in it. Each extension of the death penalty served to place a sledgehammer in the hands of a particular interest group (such as the backers of an enclosure bill), but merely as the final, formidable supplement to a whole arsenal of other tools. More capital statutes gave increased flexibility for dealing with lawbreakers, thereby heightening the impact of discretion: they were not intended to result in more people being hung.

England's rulers did not relish the full rigour of the legal process. The problem of dealing with malefactors, precisely because it took so individual a form, and was seen in so personal a light, was one which they preferred to handle as discreetly and as circumspectly as they could. Opportunities for mercy were created as readily as possible, when they did not arise naturally. When serving on grand or petit jury, gentlemen of property acted in the knowledge that they held life and death in their hands. It is as easy, notoriously, to assert that juries, through compassion, acquit offenders unwarrantably, as it is difficult to substantiate this, with any degree of precision. All that is incontrovertible is that counsel for the defence often felt able to count on the jury being highly sympathetic. Garrow, in one of his many defence cases at the Old Bailey, while acting on behalf of a woman called Mary Davis, who was charged with possessing and uttering a number of - dammingly identical - shilling pieces, did not deny the attempt to pass off the false coins, but concentrated on appealing to the jury as men of merciful disposition:

Gentleman, the punishment of the prisoner if convicted, is, that she shall lay in gaol for a year, and I am confident that there are none of us who have attended her, and who know the situation of that gaol of Newgate, who know the miserable situation of the wretches that are confined there, that will feel any sentiment but compassion, for anybody who has lain in a gaol only one night; and I am perfectly satisfied that you will not, you cannot, I am perfectly satisfied you dare not commit that poor woman, and that unfortunate infant, her child, to have its education in the gaol of Newgate..... 1

Mary Davis was then acquitted.

Juries could be relied on to lean over backwards to acquit in cases where defendant and prosecutor might have prior reasons for being on bad terms with each other. The slightest suspicion of malice could wreck a case. 2

2. See above, p. 466.
Even the presiding judge often took it upon himself to probe for this kind of impulse. In a trial at the Old Bailey in 1784, in which Lewis Durowe was charged under the Black Act with shooting at Huxley Sandon, when the two parties were obviously bitter enemies, the judge took the opportunity to seize upon the smallest of loop-holes. The scene of the crime had been specified in the indictment as the house of James Brewer and John Sandy, when its owners were actually called James Soundy and John Brewer: "that is a fatal variance in the indictment, and where a man is charged in a capital offence, strict law is adhered to, so that you cannot do anything but acquit him."\(^1\) Where robberies were alleged to have been committed by prostitutes, the jury were usually directed by the judge to bring in an acquittal. "Judicial displeasure", so J.M. Beattie confirms in his examination of the Surrey assizes 1736-1753, "fell not infrequently on men who had brought misfortunes of this kind upon themselves, and judges often went out of their way to undermine the prosecutor's case.\(^2\)

As possible motivation behind malicious prosecutions, neither personal enmity, nor entanglement with prostitutes represented the most sinister of the dangers against which juries and others had to guard: the risk of prosecutions being brought for the sake of monetary gain. When substantial rewards were by statute payable in many cases to those who brought criminals to justice, corrupt prosecutions were an obvious temptation. Judges and juries were, however, very strongly on their guard. Counsel for the defence often cross-questioned prosecutors as to their expectation of a reward in a way which clearly impressed juries.\(^3\) Once, a prisoner acquitted

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in this way was sent a donation by one of the sheriffs, "which
was followed by many of the audience, and the prisoner then returned
his thanks for a collection of some pounds, and was instantly
discharged." A better illustration of the court-room as a carefully
ordered show-place could hardly be conceived. It is doubtful
whether, as Radzinowicz has written, reliance on a system of monetary
incentives "engendered connivance, corruption and still more crime." A
few "innocent" people may occasionally have been framed: there
were undoubtedly some sensational "blood-money" conspiracy trials. But
this sort of corruption is at least universally recognisable for
what it is. Malpractices were so obvious and so sinister a
possibility that judges, juries and defending counsel could and
did watch vigilantly for them. Corruption only becomes widespread
rather than exceptional when it gets built into - and behind - the
routine and the respectability of an organised police establishment.
With a "force within a force", corruption can mushroom - undetected.
Whereas, with a system of rewards, everyone can appreciate the need
to be watchful.

If the humanity of juries could be relied upon, and if even the
judges when handling capital cases in particular, proceeded with
extreme scrupulosity, this was a mentality bred by the scaffold.
Mary Rowell, questioned as to her identification of a highway robber,
replied, "Yesterday, I thought I could swear to him, but today it touches
so near death, I think I could not swear to him." It is, of course,
one of the standard arguments of those opposed to capital punishment
that in those trials where a conviction might result in the penalty
of death, juries become more likely to acquit, unwarrantably. It
seems surprising, then, that in mid eighteenth century London, at the
Old Bailey, the high rate of acquittals (roughly 40 per cent overall)

3. For the outcome of the most sensational of these trials, see
below, p.75.
4. B. Cox, et al., The Fall of Scotland Yard (Harmondsworth, 1977)
p.16.
was not even higher for those tried on capital charges. Taking
the two mayoral years which happen to be most conveniently tabulated
in the London Sessions Paper, those of Robert Willimott (1742-43),
and Sir Robert Westley (1743-44), it is evident that the proportion
acquitted was on average, no greater for those on capital charges
than for those indicted with lesser, non-capital offences.

TABLE I: ACQUITTALS AT THE OLD BAILEY

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<thead>
<tr>
<th>Type</th>
<th>1742-43</th>
<th>1743-44</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>No. Tried</td>
<td>% Acquitted</td>
</tr>
<tr>
<td>Capitally charged</td>
<td>172</td>
<td>43.0</td>
</tr>
<tr>
<td>Non-capitally charged</td>
<td>308</td>
<td>40.9</td>
</tr>
<tr>
<td>Total</td>
<td>480</td>
<td>40.9</td>
</tr>
</tbody>
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Sources: London Sessions Paper, 1742-43, pp.298-300.

The reason why the proportion of acquittals was at the same level —
which is high by twentieth century standards — whether the cases were
"capital" or not, was that "partial verdicts" were used on a very
extensive scale. These meant that a defendant was cleared on his
original, capital indictment, and found guilty of a lesser offence.
The value of the property stolen would be reduced to below the threshold
at which the relevant type of theft became capital. Or simply the
category of the theft could be altered. Many prosecutors, of course,
anticipated the process, by not laying charges in full when framing
the original indictment.¹ Others, in open court, specifically requested

Sessions Paper, 1743-44, trials 298 and 303, pp.147 and 149.
that a partial verdict might be returned. "Pious perjury" on the part of the jury, as it was sometimes referred to, was so firmly built into the criminal justice procedure of the period that even the judge could openly recommend a partial verdict. For instance, in a case of 1784, where Ann Duff was indicted with the theft of clothes valued at over £5, which was more than sufficient to take her to the gallows, but had helped, by way of mitigation, to have some of the clothes recovered from a pawnbroker's shop, Mr. Justice Ashurst directed the jury:

Gentlemen.... in consideration of the manner in which this recovery was made, it will be for you to consider, whether you will find her guilty of stealing anything but what is found, which is under the value of 40s; on the other hand, if you are truly satisfied, and choose to find your verdict in the most penal manner you are authorised to do from the evidence, you may in that case find her guilty of the whole indictment.

Of course, after so pointed a prompting, the jury returned the formula customary in such cases "GUILTY of stealing to the value of 39s."

Ann Duff's sentence was, in the end, merely one of six months in prison.

If such a process should seem a bizarre way of bending the rules, it could well be compared with the way, even less open, in which justice is nowadays negotiated in the U.S.A. There, again in the face of tough, often fixed sentences, and without any means of appealing against sentence, it is normal for those being prosecuted, on offer, to settle for a guilty plea to a charge of less gravity than that which might have been preferred. In both cases, the judicial process is manipulated in a discretionary manner, while some semblance of due process is maintained at the same time.

2. London Sessions Paper, 1783-84, trial 689, p.621; see also trials 690 and 699, pp.623 and 632.
The importance of partial verdicts has not been fully grasped by historians. The extent to which they were employed can be inferred from the following table, which gives in detail the fate of all those tried at the Old Bailey on capital charges, in the years 1742-43, and 1743-44, in each of which 172 people were indicted in this way.

**TABLE II: FATES OF CAPITALLY-INDICTED DEFENDANTS AT OLD BAILEY**

<table>
<thead>
<tr>
<th>Fate</th>
<th>1742-43</th>
<th>1743-44</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sentenced to death</td>
<td>40</td>
<td>42</td>
</tr>
<tr>
<td>Partial verdict</td>
<td>58</td>
<td>70</td>
</tr>
<tr>
<td>Acquitted</td>
<td>74</td>
<td>60</td>
</tr>
<tr>
<td>Total</td>
<td>172</td>
<td>172</td>
</tr>
</tbody>
</table>


From this table it will be clear first that the number of those sentenced to death was very small compared with the number put on trial on capital charges, and secondly that partial verdicts were made to play a major role in by-passing the sanguinary statutes, within the official criminal justice process. Pardons only went to a minority of those few capitally-indicted defendants who were found guilty.¹ This can be set in context. The sum total each year of all those who were tried on capital charges, was smaller than the number of those who were actually hung, annually, in sixteenth-century London, which, of course, had far fewer inhabitants; on average, there were 560 executions per annum at Tyburn in the reign of Edward VI.² Partial verdicts did not imply too hard a fate:

1. See above, pp. 50-51.
transportation, at most, and then only for seven years usually (it was more likely to be a fourteen year term for those who had been convicted in full and then pardoned). 1 And once in the New World, convicts whose fate was not very different from that of emigrant indentured labourers, often fared quite well. 2 Finally, the impact of partial verdicts can be set in perspective by referring to both tables together. While the rate of conviction (in any form) for all 480 defendants in 1742-43 was 58.3 per cent (280 out of 480 tried), only 40 of the 172 or 23.6 per cent, of those tried on capital charges actually received a - possibly reversible - death sentence. Similarly in 1743-44 the overall conviction rate was 60.4 per cent (272 of the 450 defendants); but only 24.4 per cent, or 42 out of 172, of those capitally indicted ever heard the judge pass his far-from-final sentence of death. Without taking partial verdicts into account, such disparities can not be understood. But once this has been done, partial verdicts can be seen in their true colour, as the major support which they were of the law as ideology. It was only with their aid that the ruling class was able both to have its sanguinary statutes for their coercive value and to make out that the law was merciful.

It was troublesome and it was very costly to invoke the courts, whatever the outcome. 3 The worry and the expense had to be borne by individual members of the ruling class; to them, legal action was the last resort, usually. Indeed, it was almost a sign of failure. It was upon the threat of prosecution that they relied. When out-of-court strategems are examined, it immediately becomes apparent that only a minority of those offenders whose culpability might have been fully established in court were ever subjected to prosecution. Greater

1. See above, p. 51.
2. Gentleman's Magazine, February 1786, p. 103: "There is no doubt, when America belonged to this country, that many convicts reformed, and became profitable members of another state." For a similar modern viewpoint, see M.D. George, London Life in the Eighteenth Century (London, 1925), p. 143.
numbers were let off with a warning, or some small punishment, or merely on making restitution. Together, these constituted another important way - neglected by historians - in which the gallows was by-passed. The realisation that a "criminal" offence had been committed by someone did not constitute the signal for legal action which it now does, to the main institutionalised engine of prosecution, the police. While nowadays the courts are often felt to deal too lightly with offenders, in the eighteenth century, the reverse applied - prior to the hardening of attitudes towards crime which occurred with the onset of endemic panic. Then, the way in which malefactors were dealt with in court was considered so severe that many preferred, whenever possible, to deal more swiftly and still more personally with offenders, in some other way.

The carrying through of a prosecution demanded considerable determination. The long interval between each assize, customarily six months or so, outside the metropolis, allowed passion to diminish. It was also sufficiently extended for prosecutors to feel that those whom they had indicted had been given a taste of punishment; pre-trial detention in an eighteenth century prison was nothing to relish. Perhaps the only statistic of any value in relation to out-of-court action is one computed by J.M. Beattie: in almost 9 per cent of all proceedings against property offenders in the Surrey assize courts (1736-53), the prosecutor, despite forfeiting a monetary "recognisance", never showed up in court, causing the case to lapse. The records for the Old Bailey are also punctuated - perhaps a little less frequently - with entries such as that for five consecutive trials in the December sessions, 1742: "No prosecutor appearing, acquitted."  

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1. For an example of restitution, in this case legally enforced, following the theft of some wood, see J. Beresford ed., The Diary of a Country Parson 1758-1802 by James Woodforde, 5 vols. (London, 1924), vol. 1, pp.97-98.
There were those who, concerned to see the law enforced more rigorously, complained of the prevailing reluctance to prosecute - and by this they meant reluctance even to indict. Henry Fielding suggested that prosecutions were being discountenanced on such a scale as to help foster a sense of impunity on the part of offenders, thereby actually encouraging them. Failure to prosecute, he suggested, stemmed from "a benevolent and tender-hearted Temper". Such an outlook, it might be argued, was but one more reflection of the way in which "criminals" were seen as individuals, rather than as a class of evil-doers threatening to society. It is interesting that Fielding himself, in so moral a fable as Tom Jones, succumbed to this tolerant viewpoint. Mrs. Western explicitly aligned on the side of the angels as "a good-natured woman", and the wife of Squire Western, refuses to prosecute a highwayman who had robbed her of money and ear-rings. Even the hero, Tom Jones himself, allows another highwayman to go free.

Others besides Fielding occasionally criticised the gentleman of the period for their reluctance to prosecute. Francis Hare, Bishop of St. Asaph, in A Sermon Preached to the Societies for Reformation of Manners (1731) complained of the way in which to be a witness, to give evidence, to be an Accuser of Prosecutor, is to be an Informer: which is such an ill-sounding word, that good men are discouraged by it from doing what otherwise Reason and Conscience tell they ought to do.

But such criticisms were matched by counsels of moderation from other, perhaps even more imposing quarters. Richard Watson (later Bishop of Llandaff), in the course of an assize sermon delivered at Cambridge in 1769, pointed out that while the Bible talked of eye for eye and

3. Ibid., vol. 2, p. 150.
4. F. Hare, A Sermon Preached to the Societies for the Reformation of Manners... (London, 1731), p. 15.
tooth for tooth, it also called on those who had been hurt to turn the other cheek. Such sayings, whatever their tenor, were not to be interpreted literally, "yet undoubtedly they circumscribed the liberty of redressing wrongs allowed to us by the common laws of society, and greatly diminish the occasions of appealing to the civil magistrate." He then singled out for denunciation those petty or revengeful prosecutions which "feed the malignity of our dispositions, by gratifying our pride and lust of revenge; these are totally repugnant to the spirit of Christianity." Similarly, George Periam, in a sermon at the Buckingham assizes in the summer of 1755 - "Published at the request of the High Sheriff and Grand Jury" - stressed that only such offences "as all indifferent persons shall judge in their nature insupportable, or in their consequences pernicious", were to be prosecuted. He called upon his listeners to be ready to recede a little, in matters of no great moment, and not let every slight encroachment upon our privileges excite our resentment, where patience much better becomes us. For here... even exacting of legal [revenge], before men in power, and authority (which, in strictness of justice, may perhaps be thought allowable), is notwithstanding forbidden.

The importance of such adjurations lies not in any precise implications for particular prosecutions, but in the fact that they lent official sanction to the discretionary decisions of those wondering whether or not to mount a prosecution, even when they decided in the negative. Most potential prosecutors needed scant reminding - only the seal of approval, either way. It will never be possible to quantify the prosecutions which were quite intentionally left unlaunched. A whole range of pressures combined to dampen the ardour of potential

1. R. Watson, *Christianity Consistent with every Social Duty*. A Sermon Preached at the University Church, in Cambridge, at the Assizes... (Cambridge, 1769), pp.7-8.
prosecutors, who had to cope with the decision on their own.
At one extreme, there was the possibility of intimidation by the offender's friends.¹ At a more practical level, there were considerations of time, worry and money. Perhaps most important of all were peer-group pressures. Fanny Davies, a well-known highway-robber, who dressed as a man, was on one occasion caught and held for trial. But she was discharged the last day of the session, by proclamation, as the gentleman, though he preferred an indictment at Hick's Hall, did not like to prosecute a poor weak woman, lest he should be the contempt of the crowd, and the laughter of the lawyers.²

As a woman, Fanny Davies was particularly likely to receive favourable treatment.³ It is only from the biographies of particular "criminals" that a picture of refusals to prosecute can be built up.⁴ Unfortunately the pamphlets produced by the ordinary of Newgate and others tend to cover the lives of the "bigger" lawbreakers — those who were more likely to be prosecuted. Fanny Davies also escaped prosecution on another occasion, when, having arranged for two men to burgle the house of her - titled - paramour, the plan came unstuck. She was let off scot-free: the peer did see to it that the two burglars enlisted in the army.⁵ From incidents such as this, it is apparent that even the more formidable lawbreakers were not infrequently allowed to escape unpunished. The case of George Barrington is another good example. Although widely known as a pickpocket, it was

¹ For an example of an anonymous letter of intimidation sent to a prosecutor, see J. Villette, The Annals of Newgate, 4 vols. (London, 1776), vol. 2, p.146. There were occasional prosecutions of the senders of such letters, London Sessions Paper, 1775-76 trial 210, pp.155-58.
⁴ Such biographies would also illuminate the use of such alternatives to court proceedings as punishment by the crowd: see below, pp.72-77. J. Villette, The Annals of Newgate, 4 vols. (London, 1776), vol. 1, p.51, notes of one lawbreaker that he "turned his hand to picking pockets, in which he had tolerable success, though now and then it brought him under the discipline of the horse-pond."
only after a long career that he was eventually taken to court. Prince Orloff, from whom he stole the diamond-studded snuff-box, was no doubt only one of many who refrained from prosecuting him.¹

This reluctance to prosecute offenders was often pointed out by those who were opposed to the proliferation of sanguinary statutes. Dr. Johnson was one of these.

He who knows not how often rigorous laws produce total impunity, and how many crimes are concealed and forgotten for fear of hurrying the offender to that state in which there is no repentance, has conversed very little with mankind.²

In alluding to a concern for repentance, Dr. Johnson was perhaps hinting at the way in which gentlemen preferred, whenever this was possible, to overcome lawbreakers and quietly coerce them anew into conformity. But, in his desire to emphasise the reluctance with which the scaffold was resorted to, what he (in common with other critics of the sanguinary laws) certainly does not spell out is that potential prosecutors, even though they systematically by-passed the gallows, still made full use of the terrible threat which it represented, as a deus ex machina, in their confrontations with lawbreakers, however reluctant though they might be actually to stain their hands with blood. Critics of the sanguinary statutes were the last people to enthuse about, or even to mention, the more subtle ways in which they were utilised.

The name given to out-of-court settlements was "making-up". This usually involved a servant or some other employee who was suspected of a theft being induced to confess, to make restitution, and to apologise, in return for a pledge of immunity from prosecution.³

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2. S. Johnson, in the Rambler, 20 April 1751.
3. "Making-up" did sometimes take place where the parties involved had no previous connection of any kind. See, for instance, London Sessions Paper, 1742-43, trial 301, p.187; London Sessions Paper, 1763-64, trial 109, pp.76-77.
This suited both parties: the servant escaped a trial, quite possibly on a capital charge, while his master recovered the stolen property, and gained a more submissive servant, besides avoiding the unpleasant and profitless duty of prosecuting him. J.M. Beattie, on the basis of his study of the Surrey assizes, has noted that "the extraction of an apology and a promise not to offend again was a regular part of the maintenance of household discipline...". Making-up only worked because employees could, in the main, depend upon the courts to protect them from being placed in double jeopardy. Indeed, at the Old Bailey, it was often laid down that prosecution through the courts, following on from (and taking advantage of) a private settlement, was, in the words of one of the judges, "a very wrong thing". If on occasion the practice of the courts seems very slightly to have strained this ruling, this was no doubt the reason why, in the case of a man charged with the theft of jewels and precious metal, valued at 59 shillings, from his employer (a potentially unpardonable capital offence), Sir Henry Gould was quite explicit in his instruction to the jury that

as this case stands, it will be impossible to reach the prisoner..... the whole of it rests on the admission of the prisoner, after the prosecutor told him it would be better from him to speak the truth, and nothing short of that would satisfy him. It is the law of this country, and a very proper one too, in my opinion, that no evidence of confession can be received, that is procured on promise of indemnity.

After this reminder of the need not to undermine the practice of making-up, the jury then brought in an acquittal. Such a verdict went far to legitimate private settlements. It is interesting that

in the eighteenth century the law did not make any provision for confessions to be rendered admissible in court by means of the kind of "caution" now enshrined in the "Judges' Rules".  

Making-up was even tolerated by the courts when it involved the payment of money. In the course of a trial at the Old Bailey, a witness described how he was present

at the magistratès, when these women [the prisoners at the bar] were taken up for robbing the prosecutor; it was left to the prosecutor's attorney.... he said if the two prisoners would give five guineas, all proceedings should be stopped. I did not hear Moody [the prosecutor] mention anything about money, he heard the offer of the attorney, I dare say, as he stood close by....

The prisoners refused the offer, which was why they stood trial.
What is interesting is that, when summing up, the judge, Sir William Ashurst, while pointing to a number of flaws in the case for the prosecution, made absolutely no reference to the attempted making-up, despite the involvement of money.  

It would seem that this was so common (although unmentioned even by J.M. Beattie) that it too enjoyed the sanction of the courts.  

Whether payments made in this way represented a sort of unofficial "fine" or whether they came closer to what would now be called "blackmail", it is hard to say, not least because, to judge from instances in the London Sessions Paper, such compensation had in some cases been offered by the defendant, and, in others, demanded by the prosecutor.

1. In the eighteenth century, confessions normally only featured relatively infrequently in the courts, and then were made in return for complete immunity from prosecution, by way of "King's evidence". This contrasts both with the strictly limited discounts on potential sentences usually offered to present-day "supergrasses" and with the great reliance placed by the police on the exaction of confessions from suspects generally, for subsequent presentation in court.


4. For examples of contrasting cases, see London Sessions Paper, 1742-43, trial 301, p.187; London Sessions Paper, 1779-80, trial 154, p.201.
Another form of negotiation with thieves existed alongside making-up. Not involving any show of atonement, this can best be described as ransoming. In the early part of the eighteenth century in particular, it was routine practice for those who had been robbed to negotiate for the return, at a price, of their property, by making use of such intermediaries as pawnbrokers, or even constables, or by advertising in the press. This was one of Jonathan Wild’s lines of business. Such negotiations which, like "making-up", represented a "bargain" for both parties, were "without doubt very numerous", it was said in 1701. Bernard Mandeville lamented a quarter of a century later that "nothing is more common among us": his criticism was similar to that later made by Fielding. As Mandeville wrote, "the friendly Commerce, and amicable Negotiations, now in vogue, between Thieves and those that are robbed by them, are the greatest encouragement to low Villainy that can be invented...". The legislature attempted to stifle this practice, but what the effects were of acts passed in 1717 and 1752 it is hard to gauge. Horace Walpole, robbed by highwaymen in 1749, haggled by correspondence for the recovery of his watch, his sword, and his coachman’s watch. Radzinowicz has noted that cases even of police involvement in deals of this kind continued to occur in the early nineteenth century.

Both making-up and ransoming, together with non-prosecution or the failure of a prosecutor to appear in court, were all somewhat

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differing ways in which the sanguinary statutes were circumvented. At the same time, both making-up and prematurely-terminated prosecutions made use, explicitly or otherwise, of these same statutes, in terrorem. Critics of the sanguinary laws, on whom historians have relied so heavily as a source, had no reason to point out this aspect of them. More generally even, something of a conspiracy of silence enveloped such practices as making-up or stalling on prosecution: these were, after all, unofficial short-cuts, not to be paraded too openly, just as few bragged about negotiating with thieves. Together, such considerations explain why even so good a historian as Douglas Hay, aware as he is of the danger of relying too heavily on those opposed to the sanguinary statutes, can still miss very important ways in which the scaffold was by-passed.¹ These were the discretionary stratagems of individual gentlemen, rather than of a police force organised on bureaucratic lines, which explains the lack of archival evidence. They allowed England's rulers to deal, still often to great effect, with law-breakers as individuals. Thanks to these highly personal tactics, only an occasional gentleman was left having to shoulder the responsibility of an actual prosecution in court. The various alternatives were all far more convenient, and, whichever was used in a particular situation, they left those who had had recourse to them with the satisfaction of having themselves done whatever lay within their power. Lastly, by directing business away from the courts, it was these stratagems - rather than pardons, which only constituted a "miserable supplement to a sanguinary code", as William Godwin observed - which reduced the number of executions to a minimum, and, at the same time, enhanced the impact of every hanging that did take place.²

The most dramatic alternative to the processing of lawbreakers by the courts, under the sanguinary laws, was the immediate infliction of punishment at the scene of the offence, at the hands of the crowd. Such action usually took the form of a ducking or a whipping. This, obviously, was not a case of particular gentlemen preferring some alternative of their own choosing, to prosecution through the courts. But while such on-the-streets justice depended in the first place on ordinary people being outraged at theft, it did also need the connivance of the ruling class in general. The crowd could scarcely have functioned as an agency of social control without the sanction of the authorities.

In imposing its own form of justice, the crowd was only acting in extension of the way in which it participated at hangings and other punishments ordered by the courts. Its behaviour at Tyburn, and other places of punishment, has long been a subject for discussion.¹ The manner in which the crowd conducted itself at hangings and whippings, or when offenders were placed in the pillory or the stocks, shows that the ruling class was quite prepared to tolerate violence - and also that it felt it could count on popular backing. Not only were these various forms of punishment all administered in public, but the very point of the pillory or the stocks lay in holding up lawbreakers to ridicule if not to physical abuse. The officially approved part played by the crowd in "topping up" legal punishments, as well as in enhancing their impact by its presence, was well appreciated by Don Manoel Gonzales, a Portuguese merchant who visited Britain in 1730.

Mobs and tumults were formerly very terrible in this great city [London] ..... But there is now seldom seen a multitude of people assembled, unless it be to attend some malefactor to his execution, or to pelt a villain in the pillory, the

¹ For the most recent examination of the staging of executions at Tyburn, see P. Linebaugh, "The Tyburn Riot Against the Surgeons", in B. Hay et al eds., Albion's Fatal Tree (London, 1975), pp.65-117.
The line between public and private punishment was a thin one. Parson Woodforde once mentions that when a potato-stealer was whipped through the streets of his local town in Somerset, the man "being an old offender, there was a collection of 0.17.6 given to the Hangman to do him justice."  

There is, unfortunately, an even greater lack of evidence in relation to the carrying out of punishments by the crowd than there is for private settlements between potential prosecutors and law-breakers. While the latter category of offenders occasionally if unfairly appeared in court, those who were dealt with by the crowd seem scarcely ever to have been placed in double jeopardy of this kind, which means that there are few references to punishment at the hands of the crowd in official records.  

When a malefactor was punished by the crowd, that was usually the short but sharp end of the matter. If the ruling class preferred to look the other way when the "mob" dealt with a thief, this did not mean that it was opposed to such action. The point was rather, that, precisely because this unofficial, community-based practice was so useful an addition to other methods of social control, England's rulers did not feel any need to question it. The fact that even the "reformers" - despite arguing the need for a "reserve army of social control" in terms of the spread of disorder - did not seek to criticise "the mob" in its justice - inflicting capacity, only underlines the point.


3. In one exceptional case at the Old Bailey, a dock-worker was tried and convicted on a charge of theft, although he had previously been ducked and suspended from a crane. However, Baron Botham, in sentencing the man to be privately whipped, commented that the punishment would have been greater if the man had not been dealt with by his employer. London Sessions Paper, 1786-87, trial 28, pp.63-64.
The eighteenth century crowd has been the subject of considerable research by historians, notably George Rude and Edward P. Thompson. They have emphasised the need to view the common people as "historical agents" and have attacked the use of such terms as "mob" and "riot", with their connotation of spasmodic and unruly assemblies of people of low, if not criminal repute. Thompson, who has concentrated on "food riots" (which involved the forcible but orderly expropriation of grain at a "just" or uninflated price), has stressed that:

It is possible to detect in almost every eighteenth century crowd some legitimating notion. By notion of legitimation I mean that men and women in the crowd were informed by the belief that they were defending their traditional rights or customs; and, in general, that they were supported by the wider consensus of the community. On occasions this popular consensus was endorsed by some measure of licence afforded by the authorities. But despite his recognition that the crowd only acted when it felt itself to be in accord with "the wider consensus of the community", Thompson still concludes that, at bottom, the moral economy of the crowd was at variance with the outlook of the authorities: "the popular ethic sanctioned direct action by the crowd, whereas the value of order under-pinning the paternalist model emphatically did not."

Whatever the validity of this assertion so far as food riots are concerned, there is no evidence of any particularly strong ruling-class disapproval of the punishment of malefactors by the crowd. The law itself sanctioned "direct action" - notably, "the hue and cry". A shout of "stop thief" was probably the nearest signal to a levée en masse known to most people in the eighteenth century. The London Sessions Paper provides innumerable instances of arrest as a result of "hue and cry". Taking a single issue, from the mayorality of Samuel Plumbe (1778-79), covering cases 134-161 for the mayoral year, one finds three striking instances of the effectiveness of this practice.

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2. E.P. Thompson in Past and Present, p.78.
Case 139 concerned a shop-lifter: the prosecutor deposed that he saw the theft take place, followed the man responsible into the street, "and cried, Stop Thief! He was taken directly". In case 142, a pickpocket was on trial. The prosecutor (the victim, once again) testified: "As I was walking in Old Bond Street,... the prisoner came against me; I felt in my pocket, and missed my handkerchief; I cried out Stop Thief! and he was taken in a minute." Case 161 was more serious, being one of highway-robbery. A witness, Daniel Shirley, described how "as I was going down Crutched-Friars, I heard the cry of Stop Thief! I stepped into the highway, opposite Savage-gardens, I saw the prisoner running towards me; He came up and said, For God's sake do not stop me. I immediately stopped him." It is obvious that the apprehending of thieves necessitated an active response on the part of all who were roundabout, whatever their position in society. But, equally, it also depended on those who called out "Stop Thief!" being able to feel they could rely on such a response.

In fact, the hue and cry itself often ended not in an arrest but in the punishment of the offender by the crowd, as still happens today in, for instance, Kenya. Horace Walpole describes in one of his letters how he was aroused one night by the cry of "Stop Thief": a neighbouring house was being burgled. Together with a servant, and some watchmen and chairmen who also answered to the shout, he successfully cornered one of the burglars. His servant had a blunderbuss, which one of the chairmen demanded: "Give me the blunderbuss, I'll shoot him!" On this occasion "military execution", as Walpole put it, was prevented, and Walpole himself took charge of the burglar. Some of those who were tried at the Old Bailey had been

"saved" in this way. Simon Onely, whose handkerchief had been stolen by a pickpocket, explained in court that "the people would have me have left him to them; said I, If I leave him to your mercy you will whip him to death, or drown him — so I secured him." Simon Onely's fears were perhaps a little exaggerated, but they were echoed by another prosecutor who explained how, while listening to war being proclaimed at the Royal Exchange, a man had picked his pocket. He had personally laid hold of him: "The mob desired me to commit him to their management; which I did not care to do." So much was it second nature for bystanders to intervene that the words "Stop Thief!" were probably more often than not the signal for punitive action on the part of what at once mushroomed into a crowd.

If anyone might be expected to show alarm for the way in which the power of the law was usurped by the crowd, it is the judges, and they were essentially on approval, at least when their values were being maintained. It was not the fact of "direct action" which worried them, only the use to which it was put. It hardly ever fell to a judge to comment on the punishment of lawbreakers by the crowd; at the Old Bailey, in the course of the entire period surveyed, a judicial opinion was only delivered once, at any length. This was in 1785, when, following the accidental drowning of a pickpocket by a crowd, the man considered most responsible, one John Fray, the pickpocket's original victim, was tried on a charge of murder. One of the witnesses was a watchman who described how he had attempted to arrest the pickpocket, and save him from the ducking.

I told the mob the consequences of the pond, that it was a deep place, but that I would take the boy into custody, and take him to a justice.... a man said, you ought to be ducked as well as the boy, and I expected it: with that the mob forced the boy away from me..... and took him into the pond.

There can be little doubt that the ducking was collectively organised, rather than simply the "responsibility" of John Fray, who, as another witness put it, was "the dupe of the mob". Indeed, Fray, too late, had made some attempt to save the pickpocket from drowning. In court, Fray, who was as bemused by his plight as most other Old Bailey defendants, was consistently favoured by the Judge, Sir Henry Gould. That the judge was on his side emerges clearly in Gould's summing-up:

Gentlemen, this common error of punishing pickpockets by ducking, is a thing that happens, as we all know, very frequently; certainly speaking in general upon the subject, it is never accompanied with an intention... of taking away the life of the offender; according to the course of the law of this country, certainly such a procedure is not strictly justifiable... but yet, gentlemen, we are to consider... that the law gives some indulgence to the infirmities of human nature... and I should conceive, in a case like the present, that although by no means it would be a strict justification of the prisoner, yet... taking the circumstances of the case into consideration and seeing there was no particular malevolence or design to destroy the person, to admit that consideration to mitigate the charge, and reduce it from murder to manslaughter... this is the first instance that ever I knew of so unfortunate an event following the punishment of a ducking: so that you must see that there has not been any precedent to give a caution to those people that act upon the sudden effort of passion from the detestation of this business of picking pockets...

Gould's view which, as he explained twice over, had been confirmed by "my learned brother, and the Recorder", proved quite acceptable to the jury, who found John Fray guilty only of manslaughter. He was sentenced simply "to be fined 1s. and imprisoned six months in Newgate."¹

It is harder to ascertain the opinion of others as to the acceptability of the crowd as an agent of punishment, since for the most part gentlemen tended to look the other way. The savage mauling

of four "blood-money" conspirators in the pillory in 1756 occasioned some comment as to the use of the crowd as "a supplement to the law". One correspondent in the Gentleman's Magazine was highly critical: "the mob is ever disposed to worry anything that is thrown into its reach, and finds just the same pleasure in battering a malefactor... as in the destroying of any unhappy animal." His own suggestion, it might be noted, was that these four notorious "thief-takers" should still have been put to "the most exquisite torture", even though this would have necessitated a law after the fact. The pillory, however, continued in use until 1837: an attempt in parliament in 1780 to have it abolished came to nothing. If anyone spoke in representative terms for the authorities, it was John Villette, the ordinary of Newgate, who enjoyed a commanding role in the official processing of those condemned at the Old Bailey. He described with obvious approval how first MacDaniel and Berry were pelted in the pillory, and then how, later, Egan and Salmon were attacked with potatoes, cabbage stalks, stones, etc., so that Egan was struck dead in less than half an hour, and Salmon was dangerously wounded so that it was thought impossible for him to recover... Thus, though the law could not find a punishment adequate to the horrid nature of their crimes, yet they met with their deserts, from the rage of the people.

On those rare occasions when a newspaper referred to the punishment of a more ordinary lawbreaker by the crowd, it did so in a matter-of-fact way which reflected both the acceptability and the taken-for-grantedness of this practice. The Gentleman's Magazine in one

2. Ibid., p.166.
3. For an account of the debate in parliament, and of the fatal pillorying which had provoked it, see Gentleman's Magazine, May 1780, pp.243-45; Gentleman's Magazine, April 1781, pp.60-61.
place refers to the ducking of a pickpocket as "the usual discipline": in another, it relates how, spotted through "the vigilance of a poor woman", a pickpocket underwent "the discipline of the mob", being "rolled in the kennel."  

"Direct action" has in recent years acquired very strong connotations. These must be discarded in order to appreciate the tacit approval enjoyed by the eighteenth century crowd when it set about punishing lawbreakers. Nowadays, "direct action" is more often explicitly illegal, and more obviously defiant, given the greatly extended and omnipresent coercive apparatus of the state. But prior to the extension of the power of the state, violence on the part of the crowd was not usually recognised as such. This compares interestingly with the way in which police violence is thought of at present: that is to say, it is not perceived as "violent", unless the force involved seems to have exceeded the customary norm. Now, as then, the most obvious circumstance in which the dividing line between legitimate force and "violence" is held to have been breached is when someone is killed. Just as John Fray was only awarded token punishment, when a pickpocket had been drowned, so, in our own society, only the most circumspect of proceedings are set in motion whenever anyone dies at the hands of the police. But even if blame is apportioned to some individual, this is far from implying that the system itself - whether it be the police or, in the eighteenth century, the crowd as an agent of punishment - has been brought into question. At most, some slight tint of concern might be allowed, temporarily, to colour the utterances of those in power. In 1767, the London Magazine described how, following the descent of a large body of tin miners upon a Cornish estate, in search of hoarded grain, some silver spoons were found to be missing. The owner of the estate sent after

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the tinners, who then searched each other. When the culprit had been found,

they carried him to the public cross, and sent the cryer round the town, to give notice that such a person, mentioning his name, had been found guilty of the theft, and that he should be publicly punished for the offence. They then procured some thongs from a saddler's, made two whips, stripped him, and tied him to a post, and two of them gave him to the amount of two hundred lashes, heartily laid on, and to such a degree, that he now lies dangerously ill. Such are the notions of justice in our common tinners. 1

If this punishment was seen as slightly excessive, it was scarcely questioned in principle. The crowd, in conforming to the practices of its betters, had learnt to imitate them only too faithfully. Evidently this was neither surprising nor unacceptable. England's rulers could feel secure in the knowledge that their ideas of justice were also held by the common people, who were even willing to do their work for them. No better illustration of the hold of the law as ideology could be imagined.

CHAPTER 3

CRIME, PANIC AND CAPITALISM

Eighteenth century England, although continuing to deal with malefactors on a personal basis, also witnessed the mushrooming of endemic panic over crime. This panic, so it will be argued, was simply an aspect— but a very important one— of capitalism as an ideology, the hegemony of which was being built up at this time. Therefore, in order to understand the panic, it is necessary, first, to take account of the impact of capitalism as the common ideological coin of the ruling class. Nor can an ideology—a value-system—be discussed without some reference to the predicament of those who espoused it at a time when the displacement of one economic order by another was being consummated. It was the late eighteenth century which saw the national level of investment being pushed above a five per cent level which, in terms beloved of certain economic historians, indicated the "take-off into sustained economic growth". This, naturally, strained existing methods of discipline and control to breaking point, or was felt to do so.

The importance of examining this panic over crime was that it underpinned the development of a new and supplemental form of social control: the prison. To this outcome, the next chapter will be devoted. Of course, ideologies do not of themselves cause new forms of social organisation to come into being. They do, however, within certain constraints, determine the way in which men and women react to those changes they see, or are led to see, around them. Accordingly this examination of the panic over crime, as an expression of capitalist ideology, necessarily precedes and paves the way for the chapter that follows this one. Neil Smelser sets up and delineates a succinct

answer as to the role of ideology in a social system:

What is the place of the value-system? It is first the source of the criteria for perceiving, evaluating and controlling the achievements of the social system. It specifies the conditions under which members of the system should express dissatisfactions and prepare to undertake change. A value system does not initiate change in the absence of other conditions... there must also be an actual or perceived situational pressure and the promise of facilities to overcome that pressure.

Later in a sequence of structural differentiation the value system occupies a similar position. It supplies standards for legitimising and approving new plans and ideas. ¹

In-depth consideration of new plans, ideas and developments is reserved until the next chapter, although this one will explore briefly the mounting dissatisfaction with traditional methods of punishment, and the first tentative canvassing of supplementary approaches, since both of these constituted an important sign or expression of the manifestation of an alarmist attitude towards crime.

The first substantive section of this chapter, "Capitalism as Ideology", will be devoted to a discussion of capitalism as an ideology. Adam Smith's *Wealth of Nations* (1776) and other such early capitalist tracts will be examined.² Capitalism will be discussed as an ideology "in the round", without any particular emphasis on the way in which crime was perceived. A preoccupation with order was but one facet of a way of looking at - and mystifying - a world in which exploitation raged not so much unchecked as unappreciated.

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The following section, "The Promotion of the Capitalist Perspective: the Ordinary of Newgate's Account, 1745-46", is designed to serve as an introduction to the role of the press in the dissemination of panic over crime. Entitled The Ordinary of Newgate, His Account of the Behaviour, Confession and Dying Words, of the Malefactors, who were Executed at Tyburn, on Monday the 4th of May, 1741 (or whenever), this hybrid production was closely attuned not only to the rhythm of the criminal justice process, but also to the views of those who superintended it (of whom the ordinary, or chaplain, was himself one). The Account was produced as often as malefactors were hung in London – some half a dozen times a year, in batches of varying sizes. Not quite an ordinary newspaper or periodical, nor a pamphlet, semi-official in its status, the Account was a trendsetter and a source of copy for the regular press. During the 1740's, the Account became something of a mouthpiece for capitalism, fleshing it out as an ideology, and giving an important stimulus to panic-mongering on the part of the ordinary press.

The subsequent section, "The Press and the Promotion of Panic", will discuss more generally the way in which the eighteenth century press (or, rather, for convenient analysis, representative organs) came to present crime as a grave and serious problem. The terms in which this problem was spelt out of themselves indicated the kind of answers which could appropriately be put forward to deal with it. To give an example, perhaps the most important development in the presentation of crime by the still-youthful press of the eighteenth century was the abandonment of the time-honoured view of crime as a nuisance in the metropolis alone, in favour of emphasising its significance as a problem of nation-wide dimensions. Obviously, a

1. The Ordinary of Newgate, His Account of the Behaviour, Confession and Dying Words of the Malefactors who were Executed at Tyburn... (with date of day of execution). (Hereafter cited as Account).
national problem demanded an appropriately striking national solution. More specifically, the "causes" of crime, as outlined by the press, also indicated the precise kind of counter-measure that could appropriately be developed to deal with it, in place of or alongside those that already existed. In this lies the value of looking at the panic and, in particular, at the role of the press, which did so much to bring crime into the parlours of the newspaper-reading public.

"Riding the Panic: some Ideological Entrepreneurs and their Message", is the title of the final section. The problems which are thought to beset any society will always attract the attention of those who persist in thinking they can solve them. Entrepreneurs interested themselves in the crime problem as readily as in industrial production. This section is devoted to a discussion of some of those authors who, in book form, assessed the problem as it was seen, and suggested counter-measures. In contrast to the anonymous punditry of newspaper-writers, they wrote as, usually, named individuals, personally pledging their reputations in the cause for which they believed themselves to be fighting. Historians have customarily referred to them as if they were divided into two distinct groups, one composed of forward-looking humanitarian "reformers", and the other, of conservative "advocates of severity". Here it will be argued instead that these two groups can more usefully be seen not as inseparably opposed, but rather as propounding like-minded solutions in shared terms, as suggested by their common ideology, capitalism. One particularly important tenet which united these ideological entrepreneurs was their underlying faith in the judicial process, a belief which invites critical reappraisal. This was the rock upon which they founded their proposals for further strengthening - finally perfecting, as they saw it - the administration of criminal justice.

SECTION 1: CAPITALISM AS IDEOLOGY

The importance of ideology in shaping - and veiling - the way in which people understand the world, and their place in it, has been more fully appreciated in recent years. The interest that is being shown in Gramsci, or for that matter Althusser, is a reflection of this. Some historians likewise are moving in this direction. One of the contributions to the long-running debate on the anti-slavery movement of early nineteenth century Britain and the United States may be instanced with great relevance. In an article in Past and Present, Howard Temperley has pointed out that the abolition of slavery meant, strangely, the abolition of "a highly successful system of large-scale capitalist enterprise". Still more paradoxically this took place at the very moment when large-scale production of goods of all kinds was under way, and as capitalist ideas were in the ascendant. This conundrum, so he has argued, can only be resolved by examining capitalism as an ideology. Capitalism, he suggests, may be defined in three different ways:

First, it is commonly used to describe the workings of a free-market economy - buying low, selling high, investing private capital and effort whenever they will produce the most profit. Secondly, it is used to describe the ideology or system of beliefs of those who believe in the encouragement of such activities. Associated with it we commonly find notions about minimal government, a common system of law, the promotion of individual self-interest and the removal, so far as the proper maintenance of social order will allow, of all restrictions which might prevent men from benefiting themselves, and, incidentally, benefiting society, by making free use of their capital and labour. Finally, capitalism is a term used to describe the kind of society which, in the eyes of its critics, those beliefs and practices actually produced - wage slavery, unemployment, the cash nexus as the ultimate arbiter in human affairs, the ruthless subordination of some classes to others. 1

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There is no reason why the second and third of these two definitions of capitalism should not be used alongside each other. In practice, however, a way seeing being a way of not seeing, the third or "Marxist" definition has been espoused at a cost of neglecting capitalism as an ideology. This is true even, for instance, of Gramsci's theory of hegemony. Although he was concerned to understand the mechanisms whereby the ruling class had built up its ideological stranglehold over society, he never freed himself from a narrowing preoccupation with the problems faced by a Marxist party seeking to win over the masses. It was the nature of ideological hegemony - the channels through which it percolated - rather than the constituents of capitalist ideology, which interested Gramsci.

Arguably, however, both of these are relevant to a full understanding of society, or, as Howard Temperley so convincingly demonstrates, to an appreciation of particular changes. This constrained approach to ideology is deeply rooted in the Marxist tradition. Some Marxists have on occasion conceded their lack of any particularly developed theory of the superstructure. This is a deficiency which may well reflect the heritage of laissez-faire liberal capitalism to which Marx was a sometimes unthinking heir. Marx examined capitalism as an ideology only in so far as this was necessary to expose the mystification essential to perpetuation of the capitalist mode of production. The theory of fetishism which, as Alex Callinocos puts it, is "the kernel of the theory of ideology" deriving from Marx, lays bare the nature and extent of exploitation in capitalist society. It does not foster any broad understanding of capitalist ideology in all its ramifications or, as it were, from within. Marx's quarrel, however, was with an

economic system, not the ruling class and the wider deceptions
it practised, even against itself. Marx makes the main thrust
of his theory amply clear in the preface to the first edition
of *Capital*:

Individuals are dealt with only in so far as they are
the personification of economic categories, embodiments
of particular class-relations and class interests. My
standpoint, from which the evolution of the economic
formation of society is viewed as a process of natural
history, can less than any other make the individual
responsible for relations whose creature he remains, however
much he may subjectively raise himself above them.  

The realm of ideology, peripheral to Marx, is a man-made realm:
more than that, it is one in which individuals may exert themselves
in ways which actually fly in the face of economic self-interest.
In this lies the importance — and the fascination — of studying it.

It is perhaps as revealing of the direction of current thought
as it is honest that Althusser, writing as a Marxist, can acknowledge
the inevitability of ideology, within any society, whether class-based
or not:

> Ideology (as a system of mass representations) is indispensable
> within any society if men are to be formed, transformed and
equipped to respond to the demands of their condition of
existence.  

Althusser's last word on the subject is represented by his essay,
"Ideology and Ideological State Apparatuses". Building, as he
acknowledges, on such small foundations as Gramsci had managed to lay,
he argues that the supremacy of the ruling class depends not so much
upon brute force as upon its ideological hegemony over society — a
hegemony enduringly institutionalised in the churches, schools, trade

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   vol. 1, pp.20-21.
3. L. Althusser, "Ideology and Ideological State Apparatuses" in
4. Ibid., p.136, note.
unions, political parties and other organisations of modern society. He refers to these as "Ideological State Apparatuses", as distinct from "Repressive State Apparatus", such as the army or the police. The importance of this analysis lies in its liberation from what Nicol Poulantzas has described as the "classic Marxist tradition of the theory of the State [which] is principally concerned to show the repressive nature of the State, in the strong sense of organised physical repression."  

At the same time, Althusser remains constricted in precisely the same way as Gramsci had been half a century earlier: all his effort is devoted to exploring the way in which capitalist ideology maintained its hegemony or ascendancy - by virtue of its "materiality" - rather than to analysing its nature, contents and side-effects. Plus ca change...

Different scholars have assigned different dates to the emergence of capitalist society. Capitalism, however, has not always meant the same thing to them all. The espousal of capitalism as an ideology undoubtedly lagged behind the gradual process of economic development that pushed Britain down the road to "industrialisation". As the eighteenth century wore on, the ruling class slowly and unevenly committed itself to capitalism as its ideology, while remaining essentially a landed elite. But the industrial revolution began, after all, in the countryside: until well into the nineteenth century it was not unusual for factory workers to return to the fields at harvest time. Agricultural and industrial enterprise went hand in hand. At the risk - an unavoidable one - of seeming arbitrary, the publication in 1776 of Adam Smith's Wealth of Nations can be taken as a sign that capitalism as an ideology had attained orthodoxy,

respectability, and even rigidity. Smith's patron was none other than the Duke of Buccleuch. As Harold Perkin recapitulates:

The English landowners, or many of them, had sold their souls to economic development long before the Industrial Revolution, and as the most important preconditioning of it. When it came... they seized on Adam Smith, as in an earlier age they seized on Locke, to justify their instincts by the borrowed light of reason. 1

A single industrial project, the Coventry and Oxford canal scheme of 1768, saw the participation of Lords North, Guildford and Spence, and of the Dukes of Marlborough and Buccleuch. 2 If the aristocracy was well attuned to profitable enterprise, this left them on a similar footing to that of merchants and industrialists. The only difference was that these had to fulfil some part of their unoriginal ambition in their children:

The ultimate motivation of the industrialists... was a dynastic one: to found a family, to endow them splendidly enough to last for ever, and to enjoy a vicarious eternal life in the seeds of one's loins. 3

Capitalism, as an ideology, is brilliantly and enduringly embodied in Adam Smith's Wealth of Nations. Following its initial publication in 1776 it went through many editions both in and after his own life-time. 4 Even a hostile critic described it as a powerful "masked battery", the fire of which would sweep away obstacles to the advance of the new mercantile and manufacturing interests. 5 Others were more fulsome in their admiration, hailing it unreservedly as "a publication for the present time". 6 Certainly, with hindsight,

2. Ibid., p.74.
3. Ibid., p.85.
Smith "appears to us as the herald if not the prophet of a new order." Yet what confirmed his appeal to his contemporaries was the way he encapsulated the experience of the previous decades. As Howard Temperley points out, Smith and the other "classical" economists were concerned to describe, and, in a sense, to legitimise something which had already been going on for a long time... what is important about them is what they reflected rather than what they taught, although in the long run that was important too. 2

Or, as Harold Perkin puts it, while "the ruling aristocracy long anticipated Adam Smith in the practice of laissez-faire... he undoubtedly helped them to formulate the theory." 3 However, the diet of Adam Smith which England's governors followed was of course a "selected" one.

The representative quality of Adam Smith's thought - in so far as any theorist can ever speak for those other than himself - lies above all in the main thrust of his work. Central to capitalism, as an ideology, is the promotion of economic growth - primarily for the greater profit of a fortunate few. Smith's Wealth of Nations constitutes the first great textbook of economic growth, rather than of trade. His emphasis, in the words of Andrew Skinner, on "the growth... of manufacturing industry, and particularly his exposition of the division of labour as the prime agent of change, accorded with contemporary experience." 4 Smith's outlook was symptomatic of that awareness of rapid change which led people, in the late eighteenth century, to think as never before of "progress" - and, at the same

time to dwell wistfully on a distant past which, significantly, was coming to be seen as qualitatively distinct. "Decline" and "decay" had long been on men's minds. Now "improvement" was too - and in no respect more tellingly than in terms of the "Improvement in the Productive Powers of Labour", to select a phrase from the title of Book One of The Wealth of Nations. It was no longer a question of maintaining the status quo, or keeping society as it was. Instead, change had somehow to be accommodated, or so it was vaguely perceived. Not even Smith appreciated this with any clarity: but the problem was one of which he was not unaware. If his views on the subject of social order among "the Different Ranks of the People" showed inconsistencies, this was scarcely particular to him alone.

It was symptomatic of the uneven way capitalism is always going to be expounded. On the one hand, he could see that the momentum of economic development entailed an ever worsening problem, or cluster of problems, of social order; on the other hand, he resolutely maintained that economic development was still in the best interests of society as a whole. Or, to put that differently, while order was problematic, deviance was yet both avoidable and, indeed, intolerable. Given this dichotomy, it is hardly surprising that, even though Smith's conception of economic growth is a supremely "sociological" one, he should have adumbrated his social theory on a piece-meal basis. Accordingly, these two divergent stands, "pessimistic" and "optimistic", will be followed up separately.

Capitalism tolled the knell of the - almost immemorial - conception of society as a minutely graded hierarchy. It suggested a new form of categorisation, one in which "the poor", as the working class was still often referred to in the late eighteenth century, were accorded a new identity, and a new importance as a source of profit.

2. See below, p.102.
Previously, the poor had been valued—and disciplined—for their services, but these were thought of as concrete and finite; now they were to be exploited without limit in the pursuit of profit.

In this new view, society was composed of three different classes:

those who live by rent... those who live by wages, and those who live by profit. These are the three great, original and constituent orders of every civilised society. 1

The appellation "civilised" underlines what Reisman has referred to as Smith's "refusal to consider non-capitalist forms of industrialisation". 2 This so-called "civilised society" was not one in which the poor were destined, at least in the short run, to secure any particular improvement in their lot: from an endless feast for the lucky few, only the left-overs were destined for the poor, on occasion, quite literally. The resultant new, intense concern with the minds of "the poor" which stemmed from this fresh appreciation of their potential for exploitation, led Smith to reflect with indignation that though the interest of the labourer is strictly connected with that of society, he is incapable either of comprehending that interest, or of understanding its connection with his own. His condition leaves him no time to receive the necessary information, and his education and habits are commonly such as to render him unfit to judge even though he was fully informed. 3

To Smith, social order was a matter of getting the labourer to adopt a perspective naturally foreign to him, that of the wider society and long-run gains. This was a problem of such enormity that Smith kept returning to it, from various angles. Reisman, discussing Smith's labour theory of value, notes that

While Smith's views on the objective exploitation of the labourer by the capitalist and the landowner may be ambiguous, there can be no doubt, however, that he expected the labourer to have a subjective sense of exploitation. 1

Capitalism, to Smith, and to others, entailed a highly defensive indeed insecure outlook on the world:

Wherever there is great property, there is great insecurity. For one very rich man, there must be at least five hundred poor... The affluence of the rich excites the indignation of the poor, who are often both driven by want, and prompted by envy, to invade his possessions. It is only under the shelter of the civil magistrate that the owner of the valuable property... can sleep a single night in security. He is at all times surrounded by unknown enemies, whom, though he never provoked, he can never appease... 2

It was the division of labour which Smith considered to be "the greatest improvement in the productive powers of labour". 3 At the same time, he could also appreciate that the continual refinement of this self-same division did nothing to make the workforce more tractable - far from it. Long before Marx, he drew attention to the spiralling alienation that was unavoidable in a society in which "progress" was equated with higher profits.

In the progress of the division of labour, the employment of the far greater part of those who live by labour, that is, of the great body of the people comes to be confined to a few very simple operations: frequently to one or two... The man whose life is spent in performing a few simple operations... gradually becomes as stupid and ignorant as it is possible for a human creature to become.

The torpor of his mind renders him not only incapable of relishing or bearing a part in any rational conversation, but of conceiving any generous, noble, or tender sentiment, and consequently or forming any just judgement concerning many even of the ordinary duties of private life. Of the great and extensive interests of his country, he is altogether incapable of judging... 1

Aside from this, there was the even more basic problem of accustoming the workforce to the rhythms and the rewards (such as they were) of large-scale industrial enterprises. Problems were unavoidable in a situation where, generally, "the labourer is one person, and the owner of the stock which employs him another".2 At one point, Smith candidly concedes that men are apt to work harder when self-employed, adding that this kind of workman was also "less liable to the temptations of bad company, which in large manufactories so frequently ruin the morals of the other [kind of worker]."3 The problem of imposing work-discipline, which has been described by a recent historian as "one of the most critical, and one of the most difficult transformations required in an industrialising society",4 was not one which Smith could simply ignore. "All the poor indeed are not sober and industrious", he lamented in The Wealth of Nations.5 He was more outspoken still in his Glasgow Lectures:

In the commercial parts of England, the tradesmen are for the most part in this despicable condition; their labour through half the week is sufficient to maintain them, and through want of education they have no amusement for the other, but riot and debauchery. So it may justly be said that the people who clothe the whole world are in rags themselves. 6

"Riot and debauchery" had long been censured, at least intermittently. "St. Monday", however, was an ancient tradition which only came under sustained attack in the late eighteenth century because it undermined the profitability of the new industrial enterprises.¹ This was at the bottom of Smith's complaints rather than any dislike of "riot and debauchery", as such.

The problem of disciplining a workforce accustomed to irregular patterns of effort and used to near-subsistence conditions was further exacerbated by that of the unregulated anonymity of an increasingly urbanised society. The development of new agencies of social control, within the community, was only spasmodic, at most. Perhaps the sole significant - "voluntary" - innovation of the late eighteenth century was the Sunday School movement. As conceived in the 1780's, these schools were explicitly designed with a view to promoting the socialisation and the indoctrination of the youthful workforce - or, as the managers of a north country school put it, so that

the rising generation should be trained up in a regular observance of the Sabbath, and instituted in those branches of knowledge which are suited to their capacities, and tend to make them useful members of society. ²

Concern as to the condition of an ever more menacingly urbanised society was widespread. It was, so Andrew Skinner notes, a contemporary commonplace that the great numbers confined in cities were, in Adam Ferguson's words "profligate, licentious, seditious and incapable of government or public affections."³ If Ferguson or, as will be seen, Smith, was saying anything new in following this line, it was in seeing the problem in national terms, rather than as confined to London. Henry Fielding, writing in 1751, had only the metropolis in

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mind when he so vividly characterised it as "a vast Wood or Forest, in which a Thief may harbour with as great Security as wild Beasts do in the Deserts of Africa or Arabia." Smith's own manner of delineating this problem was comparably startling. So long as a man "of low conditions" lived in a country village

his conduct might be attended to, and he may have what is called a character to lose. But as soon as he comes into a great city, he is sunk into obscurity and darkness. His conduct is observed and attended to by nobody, and he is therefore very likely to neglect it himself, and abandon himself to every sort of profligacy and vice. 2

Smith was blind to the irony of the way in which capitalism, by unleashing the forces which drew people into town, set the scene for "crime". If, nonetheless, he was alive to what he saw as a regrettable side-effect, this left him in no mind to criticise capitalism fundamentally, for all the colour of his remarks.

Smith was a characteristic, as well as ardent exponent of capitalism. It was - as, of course, it still is - a leading feature of capitalism that, as an ideology, it emphasised the precariousness of order and yet, at the same time, asserted that its brand of economic growth was or could and should be made to be of general benefit. The point of this paradoxical outlook was that, in emphasising both the problematic nature of order and the indispensability of effective discipline and control, capitalism was left permanently imbued with a sense of panic - of desperate but not, however, of hopeless panic. Within this ideological framework, particular problems of social control could be presented in such alarmist terms as legitimised Draconian counter-measures. Indeed, capitalism only retained the legitimacy which comes through "naturalness" by continuing to point in panic-stricken terms to problems by which the social order was beset since, otherwise, there could be no apparent justification for

the whole repressive apparatus of the state — that "reserve army of social control" which has always loomed so large in capitalist society. More subtly, capitalist highlighting of instability lent considerable support to an economic order which was indeed productive of social conflict. An apparently endlessly escalating threat of disorder was made to look as natural as the continued existence of that inequality which was inherent in the economic system. Both, seemingly, were unavoidable, and the inevitability of the one conveniently reinforced and justified the other.

Society was hard-pressed, but not without hope of salvation. The exponents of capitalism conceded that disorder was more of a problem than it had been in the past. At the same time, however, they suggested not only that any problems were, at least ultimately, surmountable, but also that the rewards for overcoming them were glittering indeed. These sentiments were all subtly blended together by Smith when he argued the need to control the poor.

The vices of lenity are always ruinous to the common people, and a single week's thoughtlessness and dissipation is often sufficient to undo a poor workman for ever, and to drive him through despair upon committing the most enormous crimes. The wiser and better sort of common people, therefore, have always shown the utmost abhorence and detestation of such excesses, which their experience tells them are so immediately fatal to people of their condition. ¹

In other words, the need for compliant "workmen", if profits were to be kept up and enhanced, rather than the effect of particular crimes themselves, was at issue. Working people were being seen in a new light. There is no more telling sign of the flowering of capitalist ideology in the mid-eighteenth century than the way "high" wages were coming to be seen as a useful and productive incentive. ² For the

first time, subsistence wages were exposed to widespread criticism, as, paradoxically, part of a more keenly exploitative attitude towards labour. Formerly, the problem with the poor had been to contain their potentially explosive energy by getting them to work; now the aim was to get them to work ever harder in the interests of still greater profits. This new doctrine of productivity was expounded, among others, by Smith:

The wages of labour are the encouragement of industry, which, like every other human quality, improves in proportion to the encouragement it receives. A plentiful subsistence increases the bodily strength of the labourer, and the comfortable hope of bettering his condition, and of ending his days perhaps in ease and plenty, animates him to exert that strength to the utmost. Where wages are high, accordingly, we shall always find the workmen more active, diligent and expeditious, than when they are low... 1

Smith's emphasis on the psychological as well as the physical stimulus of "high" wages was to be expected, given that by the middle of the eighteenth century "increasing attention was being paid to the skill, quality and quantity of the labour performed, as well as to the level of money wages." 2 Smith was but one of many pundits:

The influence of luxury and the role of the labourer were often examined in conjunction with one another in contemporary efforts to define the conditions most conducive to a continuously high rate of economic progress. It was widely believed that Britain provided just the right balance between the extremes of plenty and hardship... 3

Smith addressed himself to the conservatives who feared the pendulum had swung too far and too fast in the direction of "plenty". Criticising those who complained that "luxury extends itself to the lowest ranks of the people, and that the labouring poor will not now be contented with the same food, clothing and lodging which satisfied them in former times", he pointed out "No society can surely be flourishing and happy

3. Ibid., p.50.
of which the far greater part of the members are poor and miserable."\(^1\) This carefully weighted, negative statement emphasises just how calculating, and precisely how limited by functional considerations Smith and other eighteenth century gentlemen could be in what they liked to think of as their individual pursuit of happiness.

As an exponent of capitalism, Smith's vision of the future was one of long-run confidence. Order and prosperity would be attained, eventually, and with perseverance. As towns continued to become centres of trade and industry "where the inferior ranks of people are chiefly maintained by the employment of capital", so their inhabitants would become "in general, industrious, sober and thriving".\(^2\) This view was expressed even more forcefully in Smith's Glasgow Lectures:

> The establishment of commerce and manufactures... is the best police for preventing crimes. The common people have better wages in this way than any other, and in consequence of this a general probity of manners takes place through the whole country. Nobody will be so mad to expose himself on the highway, when he can make better bread in an honest and industrious fashion.  

At bottom, despite all his worries, Smith had every faith in "the natural progress of things towards improvement", just as he believed in "the uniform, constant and uninterrupted effort of every man to better his condition, [as] the principle from which public opulence is originally derived".\(^3\) Perhaps the most important reflection of this fundamentally confident outlook was contained in Smith's belief that the poor could always be made to see the light of reason through education. Discussing the situation of "the inferior ranks of people",

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he showed himself to be far from inhumane, but always with an eye to the further promotion of capitalist society:

The state derives no inconsiderable advantage from their instruction. The more they are instructed, the less liable they are to the delusions of enthusiasms and superstition, which, among ignorant nations, frequently occasion the most dreadful disorders. An intelligent and instructed people besides are always more decent and orderly than an ignorant and stupid one. They feel themselves, each individually, more respectable and are more likely to obtain the respect of their lawful superiors. 1

This kind of assurance was a concomitant of economic expansion: the latter could never have occurred without the former. A belief that "the inferior ranks of people" could be got dutifully to accept their subordinate status, was central to capitalist ideology. Strident—and important—as Smith's squeals of alarm were, ultimately, they counted for less than a feeling of mastery.

Smith was only one of many who expounded capitalism, the ruling ideology, from the late eighteenth century onwards. Even when he seems, two centuries later, to be saying something that is strikingly modern, it is rarely, in fact, original. His discussion of, for instance, the deleterious side-effects of the division of labour,2 was "widely stated" by, among others, John Millar and Adam Ferguson, as Andrew Skinner has observed. 3 Smith's representative significance as an exponent of capitalism lies not so much in such matters of detail, telling as they may be, as in the broader outlines of his thought. The problem of controlling "the poor" and making them amenable to the constraints of the new economic order—a problem which Smith highlighted as strongly as he could without making it seem insoluble—

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2. See above, p. 40.
was the one great worry of the ruling class. The situation of the "lower orders" was the central obsession of capitalism, and with good reason. In an ever more obviously divided and stratified society, working people were being exploited ever more keenly for the sake of profits that had come to be seen as limitless. Ideologies are elaborated to explain or overcome a common problem: the problem in which capitalism was rooted was of far-reaching consequences.

In the words of Neil Smelser, the eighteenth century was "a century of browbeating the poor over lack of discipline, immorality, theft, drunkenness, holiday-keeping, etc." This browbeating, however, was only an unsubtle prelude to an unending pattern of castigation. Outbursts of feverish criticism were a symptom of the erosion of the "old vertical relationships of patronage and dependency" by "vertical class antagonisms". While many of those in the middle and in the lower echelons were gradually alienated from those in the higher ones, this parting of the classes was preceded and provoked

by a rejection on the part of the higher ranks not of the whole paternalist relationship - for they insisted on paternal discipline and filial obedience long after they were willing to pay the price for them - but of that part which alone justified it by the light and reason of the old society: paternal protection and responsibility.

This abnegation of responsibility - a sin more of omission than of commission - is central to the emergent capitalist ideology of the eighteenth century. If little was done for "the poor", this was legitimised by the ceaseless condemnation of their behaviour: while although the poor conformed to their new role of industrial wage slaves, at least for the most part, more than ever was expected of them.

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4. Ibid., p.182.
Browbeating of the poor was nothing new, but it gained added force in the course of the eighteenth century as capitalism enlarged men's greed. By mid-point, it is certainly possible to speak of a developed capitalist ideology, orchestrated round the exploitation of the poor, although by this date the ruling class had not yet come to speak with one voice. A note of panic is certainly evident in the complaint made in 1746 by Josiah Tucker, "economist and divine", as he is described in the Dictionary of National Biography. Well aware of what was at stake, he keenly lamented the idleness and insubordination of what he termed, significantly, the lower class of people.

Times never were worse. For the lower Class of People are at this day so far degenerated from what they were in former Times, as to become a Matter of Astonishment, and a Proverb of Reproach... Such Brutality and Insolence, and Debauchery and Extravagance, such Idleness, Irreligion, Cursing and Swearing, and Contempt of all Rule and Authority, Human and Divine, do not reign so triumphantly among the Poor in any Country as in ours. Nor did ever in ours, until of late, in any Degree to what they do at present. 2

Tucker then proceeded to examine the way in which the lower class had gradually emerged out of the personalised "Vassalage and Dependence" of feudal society. 3 Such depth as his historical analysis possessed was provided by capitalism. He was careful to explain the - highly profitable - importance of forcing the lower class to conform meekly to their subservient station. Happiness lay in exploitation, by and for the fortunate few to whom he addressed himself, those with property:

If there is any Happiness in Society, any Felicity in the secure Enjoyment of our Rights and Properties, any Preference in being conversant among an honest and conscientious people, whose Word and Service may be depended upon, who are all industrious in their several Callings, and who by these Means largely contribute to the Riches and Strength, the Power and Tranquility of the Common-weal, we know, and are well assured, that these things wholly depend upon the Manners and Morals of the People, and are best promoted by their living a godly, righteous and sober life. 1

Looking through capitalist eyes, Tucker also saw the need for a thorough reappraisal of time-honoured processes and types of social control. In providing the criteria—new criteria—for evaluating the social system, capitalism suggested that traditional methods of social defence might be usefully superseded by others that would be, quite literally, more profitable. The traditional approaches seemed out of place, or of little avail, in a society dedicated not simply to the perpetuation of its social arrangements, but to enterprise and profit. In addition, each of the two criticisms—of "the lower Class of People", and of the inadequacies of existing procedures of control—lent extra force to the other.

Nay, and when their Extravagances have run to that Height as to call for corporal Punishment, and the Censure of the Magistrate, there are no Hopes or Prospect of reclaiming them by that Means. For they have made it a Sort of Point of Honour to outbrave the Punishment: and as for the Shame and Infamy attending it, these Things make now but little Impression upon them; so that we have nothing left of Discipline in our Places of Chastisement and Confinement, but their Names. 2

If, as seen from a capitalist perspective, the outrageous behaviour of the lower class made it almost self-evident that new forms of discipline were needed, there was just one slight constraint which Tucker felt he had to bear in mind. That freedom, the unimpeded self-interest of every person which Adam Smith saw as fundamental

1. Tucker, Hospitals, p.22.
2. Tucker, Hospitals, p.11.
to 'civilised society', on which capitalism then as now laid such heavy emphasis, precluded anything which savoured of tyranny or despotism.

And still the Misfortune is, that we cannot, we dare not put in Practice those Remedies, which are successful in foreign countries, for fear of destroying the Freedom of our Constitution, and of running into the Jaws of Slavery and arbitrary Power. ¹

Holding by minimal government, Tucker felt obliged to rule out any idea of "Lodging discretionary Power with the Magistrate, to chastise all the Offences of the Populace just as he pleases, or of allowing him a Latitude of interpreting our penal Statutes by Parity of Reason."² This was not a surprising cautiousness, for the magistracy represented the crown, against the arbitrary power of which so long a struggle had been waged. Both more surprising, and more indicative of the grip of capitalism as an ideology was Tucker's refusal to countenance compulsory education for the children of "the Poor", although he felt sure that elsewhere - he may have had Jesuit Paraguay in mind - this contributed to the "Distance and Awe" with which the "Rich" were invested by the "Poor".³ All that Tucker himself felt able to suggest was that hospitals, by acting as schools of "Christianity and good morals" might become a means of getting the lower class to conform to the role expected of them in a capitalist society.⁴ Evidently it was acceptable to turn a traditional institution on its head where the intake of that institution was restricted to the lower class alone - the rich being treated in their own homes - for here a veneer of free choice was preserved.

By the middle of the eighteenth century many other members of the ruling class were talking the same language as Tucker. Charles, Viscount Townshend, in his National Thoughts Recommended to the Attention of the Public, of 1751, shows a clear commitment to capitalism.

1. Tucker, Hospitals, p.11.
2. Tucker, Hospitals, p.11.
3. Tucker, Hospitals, pp.11-12.
He opened by stressing the need for "good and proper regulations for promoting and securing a perfect and universal industry among the poor", whom he described as "the class of people of the first consequence", whose "industry is the only source of wealth to every country." This class-orchestrated view of society led him to dwell upon the danger to which he felt England "is at this time threatened with from the idle and licentious behaviour, which in general prevails among this rank of people, throughout the whole kingdom". Like Smith, he could see that the exaction of profits — "the increase of wealth" — in which he was so keenly interested could at the same time have adverse side-effects. But "Notwithstanding" any threat to the stability of the nation, he still believed in untrammelled economic growth or, as he put it, in "the introduction of manufactures not yet established as well as the improvement of those already established."¹ As with Tucker, Townshend's desire for profits, which itself led to his castigation of the lower class, in turn both found expression in and gave force to bitter complaints as to the inadequacy of the traditional penal sanctions. How could the poor not stand in need of reinforcement, Townshend asked, when criminals of all kinds now multiply so fast, as we almost daily see they do?... How comes it to pass, that the numbers which are condemned to death every session at the Old Bailey, and executed, make no impression on the minds of the poor, and in no degree deter people from committing capital crimes? And why, in many instances of lesser crimes, is the number of offenders, within these later years, increased to such a degree... that the punishments in such cases are mitigated? And is not the necessary consequence of this mitigation, that these laws are condemned by these people, whom they are intended to terrify and restrain? ²

¹. C. Townshend, National Thoughts, Recommended to the Attention of the Public (London, 1751), pp.1-2. (Hereafter cited as Townshend, National Thoughts).
². Townshend, National Thoughts, p.3.
To Viscount Townshend the way to cope with "the calamitous situation of this kingdom, with respect to the poor" - the way to get them to conform meekly to their exploited position - was to tackle the twin evils of drunkenness and idleness. If the problems of drunkenness seems unrelated to the pursuit of profits, it should be remembered that this often represented a considerable nuisance in those early industrial enterprises where, for the first time, people could no longer work at their own preferred pace: Boulton and Watt, for instance, went through severe and well-known troubles through skilled workers being drunk when needed. The solution advocated by Townshend was to disallow "all low credit" of the kind advanced in alehouses, and to implement existing provisions for the establishment of workhouses. Townshend - like Tucker or Smith - was essentially interested in the poor only as obedient workers, to be exploited and ordered about by the rich as necessary:

If a poor person is disturbed, by any means whatsoever, in the industrious course he is once fixt, he seldom settles again to industry. And I always consider this class of people as, in some respects, in a state of minority. They can never, from their situation in life... know, without continual guidance, wherein their own well-being consists. And whoever considers them in this light, as minors, will soon see what is proper to be done to secure their industry, and to preserve their moral state and happiness. Townshend's concern to achieve the absolute subordination - a state of "minority" - of "this class of people", and his desire that none of them should ever be disturbed from their "industrious course", lest they should never return to the fold, closely matches Smith's claim that it was vital never to allow "the common people" even a single week's thoughtlessness and dissipation. Any paternalist relationship with the poor had been disavowed; but their discipline

2. Townshend, National Thoughts, p.16.
3. Townshend, National Thoughts, p.16.
4. See above, p.94.
and obedience was insisted on as never before, for the sake of profits in which they would never share. Townshend's whole pamphlet is an excellent specimen of capitalist ideology. His tireless condemnation of the ways of the poor masked and at the same time vindicated his lack of meaningful interest in their condition - and also served to justify whatever measures were necessary for their control. To one member of the aristocracy, class had certainly come of age.

By the second half of the eighteenth century, capitalism was coming increasingly to permeate the outlook of the ruling class in all spheres. It was well on the way to being assimilated into the discourse of Westminster politicians of all "parties", which, then, were more in the way of factions or groupings within a still enclosed ruling class. Edmund Burke, putting the case for the government in his *Thoughts on the Cause of the Present Discontents* (1770), which, in the words of John Brewer, "adopted the standard analysis of the political pathology of the previous decade", exemplifies the way capitalist considerations were working their way to the forefront of men's minds:

> Our ministers are of opinion, that the increase of our trade and manufactures, that our growth by colonisation and by conquest, have concurred to accumulate immense wealth in the hands of some individuals; and this again being dispersed among the people, has rendered them universally proud, ferocious and ungovernable... so that they have trampled upon all subordination, and violently borne down the unarmed laws of free government; barriers too feeble against the fury of the populace so fierce and licentious as ours.

The castigation of the poor, inflamed by the desire for profit, was like a forest fire out of control, spreading this way and that with every shift in the wind. The browbeating of the poor served as an

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excuse for all the ruling class did or did not wish to do, for
all it achieved or failed to achieve.

It was capitalism's great strength as an ideology that its
focal element of - controlled - panic over the conditions of the
lower class constituted both an open-ended mandate for doing
whatever was necessary to bring the workforce to heel, and also
an excuse for inaction. Laissez-faire economic growth, the
compounding of inequality, even government itself, were all
legitimised alike. It was the poor alone who were the problem,
not the way in which society was given over to exploitation for
the profits of the few. All that had to be done was to exact from
the poor "their industry, and to preserve their moral state and
happiness". Of course, this view of things had to be disseminated
in all directions and institutionalised. How this began to occur
will be examined next.

SECTION 2: THE PROMOTION OF THE CAPITALIST PERSPECTIVE:
THE ORDINARY OF NEWGATE'S ACCOUNT, 1745-46

Every day, crime is thrust down the throats of those who read
newspapers. The importance of law-and-order news is that it affords
the press the opportunity

not simply to speak to the community but to speak for the
community, against all that the criminal outsider represents,
to delineate the shape of the threat, to advocate a response,
to eulogise on conformity to established norms and values,
and to warn of the consequences of deviance. In short, crime
news provides a chance for a newspaper to appropriate the
moral conscience of its readership. 2

1. E. Burke, Thoughts on the Causes of the Present Discontents
A capitalist press, therefore, can be expected to use crime reports to preach capitalism, or, at least, to propound capitalism by inference. The emergence of an avowedly capitalist press—while which the next section is concerned—took place in the course of the eighteenth century. As a major commercial enterprise, and a trail-blazer in a period of unprecedented and many-faceted economic growth, it can scarcely seem surprising that the press of this period was accustomed to promote capitalism. It is also worth emphasizing that the nature of journalism as an enterprise had important implications. Newspapers then, as now, depended on official sources for "copy": this alone has always done much to ensure that newspaper representations are "structured in dominance". In the words, once again, of Steve Chibnall, "there is a systematic tendency to take up definitions of situations and events articulated by those in legitimate institutional positions, and to exclude definitions developed by those who lack formal qualifications to comment."  

Prior to the days of regular police forces, the two vital official sources were the London Sessions Paper, and the ordinary of Newgate's Account. Both enjoyed ever greater importance in the course of the eighteenth century, and both were heavily plagiarised by the regular press. At a time when there scarcely were professional "reporters" as such, all newspapers and periodicals were accustomed to borrow freely from each other, often word for word, and without acknowledgement. Curiously, among those condemned at the Old Bailey was Thomas St. Legar, who had formerly been engaged by the proprietor of the Penny Post to "transcribe letters and essays for him out of the public papers, and articles out of the Sessions Papers and Dying Speeches." (The long-winded title of the ordinary's Account was often abbreviated to the shorter Dying Speeches.) Such plagiarism

2. For a discussion of the London Sessions Paper, see above, p. 23.
3. Account, 26 July 1745.
may well have contributed, in the long run, to the demise of the Sessions Paper and the Account, for both of these were run - like the prisons of the period - as profit-making, and profit-dependent, private enterprises. As such, their proprietors naturally resented this unauthorised borrowing: one of the ordinaries, James Guthrie, denounced it as "theft". Likewise, Joseph Gurney, manager of the Sessions Paper, complained in 1781 that

The practice which has of late obtained, of giving in most of the newspapers accounts of the trials at the Old Bailey, has so reduced the sales of the Sessions Paper, as to occasion me a considerable loss by its publication... 2

Like the Account, the Sessions Paper, which provided the only official trial transcripts, was a vital authority for the press: occasionally, it was even acknowledged as such. 3 For the most part, however, no such courtesy was shown.

The official standing of both the Sessions Paper and the Account was considerably enhanced in the course of the eighteenth century, thereby bolstering the commanding position of each of these periodicals in what Becker has called the "hierarchy of credibility". 4 From being, at the beginning of the eighteenth century, "little more than a broadside", the Account became, by the 1750's, a not insubstantial pamphlet or magazine. This, so Peter Linebaugh then asserts, reflects "its acceptance by the City officials". Early in the eighteenth century, by contrast, the Account had been viewed by the Court of Aldermen as one of the "undue practices" of the ordinary. 5 By the

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1. Account, 26 July 1745.
3. See, for instance, London Magazine, December 1784, p.486, for an item about trials and executions beginning: "From the last part of the sessions-paper of the last mayoralty, it appears that...".
1740's, the ordinary was able to refer graciously to his "most worthy patron, the Right Honourable the Lord Mayor, and Court of Aldermen".¹ There can be little doubt that this change in status reflected the more serious and even alarming light in which crime was seen. The ordinary, as chaplain of Newgate and confessors to the condemned, had a key situation in the social control machinery of the period, at its prominent and central Newgate-Tyburn axis. As such, successive ordinaries showed themselves to be, to varying degrees, in close touch with the changing cast of thought of the ruling class of the period.

In an ideological light, much more is to be learnt of the shifting attitudes of the ruling class from the Account than from the Sessions Paper: ideas alter more rapidly than institutions, and the Sessions Paper was more of an in-house publication, and less of a major journalistic - and propagandistic - enterprise than the Account. There are limits to the popularity of trial transcripts, and to what can be done with them. The Account, in contrast to the Sessions Paper, was a phenomenal best-seller, being "run off in printings of thousands", which ensured "one of the widest markets that printed prose narratives could command in the eighteenth century".² Marks of official recognition came first to the Account, and not until later to the Sessions Paper. Only in the 1770's was the latter styled first, as, "Revised and Published by.... the Recorder of London", and then as "Published by Authority".³

The importance of the Account lies not only in its effect upon the press - which is hard to guage precisely - but also, more ascertainably, in the way it was itself composed. Peter Linebaugh, author of the only analysis, to date, of the Account, has restricted

¹ Account, 1 August 1746.
himself to making use of it "to reconstruct the worlds of London crime... without the moral reference points the Ordinary posted on all sides."\(^1\) It is precisely this moral or rather ideological signposting which will be examined here for the first time to date.\(^2\) It was the Account which pointed the way for other periodicals and newspapers and, it seems reasonable to suppose, directly influenced them. What is certain is that in the stirring up of panic over crime — which, it has been argued, is central to capitalism — the Account was well to the fore. Some of the ordinaries, of course, showed themselves to be more sensitive than others to capitalism as a fledgling ideology. The last phase of James Guthrie's somewhat turbulent tenure (1727-1746) marked the coming out of capitalism. In the years 1745-46, he set the Account upon the ideological tack to which, broadly, it adhered thereafter. Previously, the Account had indeed served to assert the legitimacy of British justice, and the indispensability of the constant executions. What it did, for the first time, in the mid 1740's, was to make the presentation of "crime news" a vehicle for the inculcation of capitalism. While potted biographies of malefactors, with accounts of their dying moments, were written much as before, various other changes were made, emphasising the break. Summaries were given of the ordinary's sermons to the condemned. Editorials proliferated. Letters from like-minded gentlemen were printed. Even the format — and the publisher — were changed and up-graded. Paper of a superior quality, a larger and starker type-face, and a more sparing use of capitals, all contributed to make the change seem more pronounced.

Regrettably, not enough is known about the production of the Account to cast light on the background to this new development. Perhaps because there is no copy of the first new-style issue in the British Library, Peter Linebaugh omits to mention, let alone to account for the change. The copy, however, which is held in the

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2. It is strange that the Account is ignored in Radzinowicz, Criminal Law, vol. 1.
Bodleian Library, contains a full announcement of the change in policy, and one which deserves to be quoted:

It is proposed for the future to render this paper more generally useful to all ranks and degrees of readers. The misfortune hitherto has been, that the account of these unhappy sufferers, being published in a style and language a little too indelicate for the better kind of readers, their case has not been attended to, as one would wish, by those in whose power it is to put a stop to the growing evil.  

The reference to the "growing evil" of crime was indicative of the more serious light in which it was seen. The word "crime" indeed was not itself employed, but it was clearly a general - and threatening - social problem which the ordinary, James Guthrie, had in mind. He might well have been preaching this present day.

The ordinary showed the same obsession as Tucker or Smith or any other capitalist with the lives and morals of those whom he in his own way was exploiting. He wanted their slavish obedience so that others, too, of whom he was so dutiful a spokesman, might profit by their labours. "The fundamental principle of civil government" was, he declared, "attention to order and regularity and inspecting into the lives and manners of the governed." This mattered not for its own sake, but for the benefit of the ruling class. "Men once taught to be rational, would in course love industry...". Nor was this all:

The pursuit of this object with spirit and skill would soon change the face of things, and render it as safe to walk in London streets as in our own gardens in the country. The back of Great Queen Street and Long Acre, the lanes, holes and alleys about St. Giles, etc., would become the residences of honest industrious people; and night-cellars, gaming-houses, bagnios and other bawdy houses... be heard of no more.  

1. Account. 7 June 1745.
2. Account. 9 July 1745.
An obedient workforce - "honest industrious people" - safe streets and a clamp-down on places of ill repute: these the ordinary lumped alluringly together. Moral uprightness and the amassing of wealth were repetitively intertwined. "What an honour it would be to the nation to see the meanest of our fellow creatures decently clad, and pursuing the ways of honest industry?" Or, as he put it in another issue, "the welfare of a state depends upon the industry of the people." "Welfare" in capitalist society - a society in which, as Smith was to concede, there had to be at least five hundred poor men for every rich one - meant, so a letter published in the Account made clear, that, in a society where multitudes were "immersed from their cradles in ignorance, stupidity and misery" such people had to be "more attended to." Such attention, ostensibly for the benefit of those for whom it was prescribed, was in fact designed not by them but by the ruling class, for the advantage, above all, of its own kind.

I need not inform the rich and powerful that these unhappy people are our fellow creatures, nor that it is in their best interest to make them so in the best sense, since there is no one living but would be glad to walk the streets in safety, and to meet only people as honest and industrious as themselves.

In this aside, the ordinary pointed to what could be taken for granted.

The Account was addressed not only to the rich but also to the poor. These had to be reconciled to their place in society. The "unhappy wretches" under sentence of death were told by the ordinary that all the evils now attending their unhappy state, were entirely owing to idleness; that had they applied themselves to honest labour, they would have acquired more with safety

1. Account, 9 July 1745.
2. Account, 26 July 1745.
4. Account, 26 July 1745.
5. Account, 7 June 1745.
and reputation than could possibly be got by robbery; and that industry would have made them a credit to themselves and families, and an honour to their country, and brought with it peace, prosperity and happiness both here and hereafter... ¹

Here, the idea that crime does not pay was expounded in terms foreshadowing those later adopted by Smith; ² while "idleness", as has been argued, was also a central obsession to Smith, Tucker and Townshend. Intemperance, too, likewise viewed so widely as a major problem, came within the ordinary's sights. On one occasion, before condemning "the pernicious practice of drinking spiritous liquour", he reasoned, as he put it, with the condemned

on the nature of justice in various lights, as it regarded themselves, their fellow creatures and their Creator. I aimed to show that justice to themselves was founded on temperance and industry. ³

The need for temperance and industry was, he argued on another occasion, grounded in "the reason and nature of things", so that "even if there was no such thing as a future state" - the unusually unclerical concession of a capitalist priest - conformity of behaviour remained a mutual necessity "since we are able to do very little of ourselves, without the assistance of one another, in the pursuits of an honest industry." ⁴ The self-sufficiency characteristic of pre-capitalist, peasant society was at an end. The world in which the ordinary lived was one in which some - the many - were exploited by others - the few - and in which all were dependent on each other. It was a society in which, through "labour and industry":

We daily see men come as it were from nothing, and by justly acquiring wealth, shining among their fellow citizens in gilt coaches and nobly attended, while the idle and impatient are daily seen begging their bread... ⁵

¹. Account, 7 June 1745.
². See above, p. 96
³. Account, 9 July 1745.
⁴. Account, 26 July 1745.
⁵. Account, 26 July 1745.
Inequality was so firmly taken for granted by the ordinary, as by other capitalists, that he was happy to point it up in suggesting that riches lay within the grasp of all who worked hard. On one occasion, he even retold the story of Dick Whittington, describing him as an archetypal hard-working capitalist, trading profitably in cats, until gradually "he became as much renowned and as much resorted to by those who wanted cats, as a Turkey merchant now by the Spittle Fields weavers for rare silks." Wealth and high office became Whittington's. "What would a poor boy have wished more? Or what may not any poor boy be, who is as honest and industrious as Whittington?" As if he half-recognised that this myth of equality of opportunity was no more than a fairy story, the ordinary felt compelled to add that, while industry was the true basis of wealth and happiness, "if it happens not to make all people great, I believe it never misses making them easy and happy, respected and beloved, which are the most essential ends for which we lie here."¹ In other words, the masses were to reconcile themselves to their pitiful exploited lot, and to think themselves lucky.

For the ordinary, as for Tucker or Townshend, capitalism, in providing criteria for evaluation of the social system, also carried with it the seeds of dissatisfaction with aspects that seemed at fault. If the behaviour of the lower class was one of grave concern, with crime a "growing evil", capitalism indicated the need for a new approach to social control, so that the freshley appreciated profits of the ruling class might be increased still more. From this point of view, time-honoured punishments seemed inappropriate:

¹. *Account*, 4 April 1746.
The magistrates, as far as they are authorised by law, do everything in their power to prevent the growing evil; but as their power centres rather in the correction of the body than in the informing of the mind, so the remedies applied are at best but temporary expedients; those who are caught are duly punished, but that rather lessens the number for the present, than in any sense removes the cause. It was therefore heartily to be wished that people of fortune and interest would... consider whether it is not possible to find means of rendering such poor unhappy wretches, who are now the bane, of some real use and service to society... 1

Guthrie had sufficient faith in the criminal justice process not to be too critical of it, but he thought it might be improved still further. He dropped a clue to one alternative approach, in another issue, when he mentioned that, following one of his harangues to the condemned:

Tears flowed from them plentifully, and they appeared to become new creatures, so that I verily believe, that were they to live their lives over again, and could be kept out of bad company, they would have spent the remainder of their lives very honestly. 2

The idea of reclaiming offenders so that they might live to work again was at odds with the stance adopted by Guthrie himself in earlier years. Then, prior to 1745, he had often asserted the necessity, indeed the importance and the unavoidability of the executions over which he had presided. 3 Even in 1742 he had maintained that "tis too evident, that those who once engage in such evil ways, are seldom, if ever, reclaimed". 4 More startlingly still, in following his new line of 1745-46, and advocating the reformation of offenders, Guthrie was in effect taking to task the city authorities whose employee he was. They, too, had been worried by the spread of "daring outrages" at "such times as were heretofore deemed hours of security". But, in their petition to the King,

1. Account, 7 June 1745.
2. Account, 9 July 1745.
3. Account, 4 May 1741; Account, 31 July 1741; Account, 14 September 1741.
4. Account, 13 January 1742.
they advocated the corporal or physical punishments - "temporary expedients" as Guthrie condemned them - appropriate for chastising malefactors as so many separate and independent individuals: it is perhaps significant that the city authorities talked of specific "daring outrages", outrages committed at unprecedented times of the day by particular people, rather than of a "growing evil", as the ordinary did. The petition of the Lord Mayor and Aldermen requested

a speedy, vigorous and exemplary execution of the laws upon the persons of offenders, as they shall fall into the hands of justice, which may, under your majesty's princely wisdom, conduce greatly to the suppressing these enormities, by striking terror into the wicked, and preventing others from entering into such evil courses. ¹

The ordinary, who wanted London to be as safe as "our country gardens" at all hours of the day, saw malefactors in a different light from the city authorities.² Where they saw only particular "outrages", devoid of any wide-reaching implications, he saw the "growing evil" of men not participating in the workforce in which he so fervently wished them to belong. The ordinary thought in terms of a massive problem which threatened the social order as a whole, in contrast to the more narrow perspective of the Lord Mayor and Aldermen.

The ordinary was not so much interested in dealing with particular malefactors irretrievably wedded to criminal careers as in taking systematic and pre-emptive action "to remove the fundamental cause whereon the evil is built".³ With his talk of "remedies", and of "fundamental causes", the ordinary showed himself to be a child of the new "secular rationalism" which, as Scull puts it, pervaded the way men thought

1. For the full text of the petition, see Gentleman's Magazine, October 1744, p.563.
2. See above, pp. 107-08.
3. Account, 7 June 1745.
under the dominant, though not the sole impetus of the development of a capitalist market system. More specifically, it reflected the penetration of this realm of social existence by the values of science, by the idea that "there are no mysterious incalculable forces that come into play, but rather that one can, in principle, master all things by calculation."

It was simple. Crime had causes. These could be isolated. The appropriate remedies could then be applied. This pathological or positivist approach to crime, which became so firmly entrenched that it still commands widespread popular acceptance, emerged in the eighteenth century at the hands of such gentlemen as the ordinary of Newgate, James Guthrie. A specifically medical model - the simplest of all "scientific" models - was sometimes drawn on by Guthrie:

To speak in the physician's stile, the way to cure a malady is first to understand the distemper; the epithet of idleness usually given to these unhappy people, is too general, it conveys no adequate idea of the evil; the most low and grovelling are rendered quite stupid and insensible by the immoderate use of strong liquors; those of somewhat more liveliness and gaiety have their heads turned to appear with the outsides of gentlemen, but wanting both means and industry, pilfering becomes their natural resource.

Idleness and intemperance were the perpetual stigmata appended by capitalists to the poor - stigmata which served not only to neutralise the patterns of explanation which the poor themselves employed to give meaning to their actions, but also to legitimise counter-measures aimed at re-programming them. As a properly "scientific" diagnosis, the ordinary's model of crime-causation had to assume the status of universal applicability: it necessarily accounted for the behaviour of men as fellow members of the one society, and not as members of an - exploited - class.

2. Account, 4 April 1746.
The best and wisest of us all, wanting means of education, good examples, and good company, are liable through our frailties and passions of being hurried headlong into misery and destruction... 1

James Guthrie's conception of crime and its causes was carefully thought out. The "unhappy sufferers", as he collectively patronised them, were seen as constituting a distinct - disorderly - category in an otherwise well-behaved and orderly society. Their common condition was the effect of their delinquency, which had the one "fundamental cause" in all of them. 2 Finally, whatever would eliminate this cause would make society orderly, and perfect. The "social control paradigm", discussed in the first chapter, 3 had been elaborated for countless capitalists yet to come: crime and criminals had been established as a never-failing resource for capitalists to exploit ideologically.

This model of crime as a particular form of pathology threatening the social order was easily applied to individuals. They were made to look as if they were not fully responsible for their actions - as if they were in a state of minority, as Townshend puts it 4 - and thereby dehumanised. Crime was caused by idleness and intemperance, while bad company and lack of education served as environmental trigger mechanisms. Crime was idleness, idleness was crime. The life-stories of criminals were the life-stories of those who had failed to conduct themselves in the industrious and obedient manner required of the new industrial workforce - in the interest of others' profit. A stereotype had been born. Where it would not fit a malefactor, puzzlement ensued. One such case was that of Matthew Henderson, a servant who had murdered his employer, Elizabeth Dalrymple, without apparent motive. He had "never been vicious the whole course of his life, and was never given to liquor...". He had never "associated himself with bad company". Deprived of his usual pattern

1. Account, 9 July 1745.
2. Account, 7 June 1745.
4. See above, p. 103.
of explanation, Guthrie commented in his bewilderment that "there is something so uncommon in this malefactor's case, that it is a matter for surprise how he came to commit this bloody fact."

Because Matthew Henderson's case was "so uncommon", in that he had been a diligent servant, who never drank at all, he could not be fitted up with the usual deviant stereotype. Instead, rather lamely, the ordinary had to fall back on the theory that Henderson was insane: "it was some sudden frenzy, or a fit of madness which provoked him to commit it." Clearly, reformation, whether in a prison or by other means, would not have been particularly appropriate in Henderson's case. His was, however, as the ordinary had been at pains to emphasise, an "uncommon" one - and one which, by implication, indicates what traits the ordinary did regard as usual.¹

The ordinary was as keen as any latter-day protagonist of the "medical" or "therapeutic" models of rehabilitation to diagnose the criminal character. Then as now, diagnosis was grounded in the perspective of the ruling ideology, which emphasised compliance, obedience, and hard work.² At the end of the first new-style issue of the Account, the ordinary expressed the hope that, thereafter, it would "have the happiness to please people of the best understanding, by letting them into a true light of all the robberies and mischiefs, committed by an unhappy set of people...". With the assurance which sprang from this presumptuous taken-for-granted approach, the ordinary then explained - in his terms, with his values, not theirs - how the seven condemned people had fallen into criminal ways. Six had been found guilty of some kind of theft: these were the usual run of offenders convicted at the Old Bailey. In the first place, four of the six were described as deficiently educated. In three cases,

1. Account, 25 April 1746.
"bad company" was specifically noted as the crime-engendering factor, while additionally, in the case of one of the two women condemned, Lettie Lynn, who had been apprenticed to a brothel keeper, it was asserted that "those who taught her whoring naturally enough taught her thieving." Similarly, the case of the other woman, Mary White (alias Cut and Come Again), who had "had her education chiefly among thieves", was seen as indicating the need for "some speedy means of reformation previous to corporal punishment." George Norton, last of these six thieves, escaped the attributes of "bad company" and deficient education, but was seen to have been undone by "his drinking of spiritous liquors, the bane and destruction of the common people.

In his desire to make men "of some real use and service to society", so that they might be "rational", and "love industry", the ordinary outstripped the city authorities of the day who, as yet, were not so wholeheartedly committed to capitalism, as an ideology, as he was. Guthrie was a controversial ordinary, out of step with the city authorities: in 1734 his behaviour in office had been investigated, while in 1746 he was finally dismissed, supposedly on account of "age and other infirmities". The extent to which the ordinary delegated the production of the Account is of course open to question, but there can be little doubt that the broad outlines of editorial policy were controlled by successive ordinaries as seemed

1. Account, 7 June 1745.
2. Account, 7 June 1745; Account, 9 July 1745.
best to each of them: it brought them, after all, far more than their official salary of £35.  

1. Guthrie's successor, Stephen Rossell, reverted to the defence of executions - "the extreme wickedness of the age calls aloud for them", he asserted in his first issue - which he perhaps felt to be expected of his position: he also announced that he would, in contrast to Guthrie, avoid swelling the Account with any "heads of sermon", and that his "narrative" of the lives of the condemned would be "plain", "concise", and "almost in their own words".  

2. Jeremiads were not for him: but, as ordinary, he was short-lived.

After less than a year in office, Stephen Rossell was succeeded by John Taylor. Taylor's first issue of the Account immediately reverted in its approach to those of Guthrie in 1745-46, at least in large measure. Executions were criticised as a mode of policy, while generalised panic, so central to capitalism, obtruded once more:

We find there are those who, deaf to all invitations to Duty, untouched by any examples of the Vengeance of the Laws, not only disturb the Peace and Order of this City, but by their daily Transgressions, by Robberies, Murders and like, seem to aim at breaking asunder the ligaments of all society. These Wickednesses, together with the blasphemous Impieties of this Age, are such, and are growing every Day as to cry aloud for a proportionable Distribution of Punishments for their Crimes.  

Crime had re-emerged as a general social problem with far-reaching implications. This alarmist perspective was essential to the hegemony of capitalism as an ideology which has always been sustained by an acute but not quite overwhelming sense of anxiety and panic. Thereafter, great sensitivity was consistently shown to the need to keep the workforce well-behaved. John Wood (ordinary 1769-1774), for instance, had this to say of the aim of the Account:

1. Ibid., p.250.
2. Account, 1 August 1746.
3. Account, 17 June 1747.
The design of the present publication is to convince the world by what gradual steps the unhappy sufferers who gave occasion to it, were brought to their unfortunate end.

It is humbly hoped, that all the lower class, who may happen to read it, will profit by the intentions of it; and servants in particular will here see the fatal effects of dishonesty, of ill company, an extravagant mode of living, with a contempt of the principles and practice of religion. 1

If the Account was written, both literally and metaphorically, in the language of "class", it would seem likely that it was not only an indicator of the growing hegemony of capitalism, but also, as was argued at the beginning of this section, that it directly influenced the regular press. Where the Account led, other papers and periodicals duly followed: these will be examined next.

SECTION 3: THE PRESS AND THE PROMOTION OF PANIC

Newspapers and the mass media are nowadays taken largely for granted. The press and other national news sources do not escape critical scrutiny – a scrutiny which is, however, characterised by a lack of historical awareness. It is implied that newspapers have always been with us, and that the only problem is to monitor them on a day to day basis. Particular programmes or features or editorials are examined for bias, but the distortions inherent in any national presentation of news are ignored. This section, in exploring the way in which crime was built up as a grave national problem in eighteenth century England, will examine how, with the development of newspaper reporting, people ceased to see life around them in such local and individual terms as had formerly held sway.

1. Account, 27 May 1772.
Sociologists have emphasised in a particular fashion the problematic nature of media interpretation of the "news". The news, they have argued, is never value-free: it describes events which have been selected, distorted, presented in accordance with certain criteria, and ideologically infused. "There is, perhaps", suggests Steve Chibnall, "no other domain of news interest in which latent press ideology becomes more apparent than in what we may term 'law and order news'." The daily chronicling of deviancy informs people how they are to lead proper and law-abiding lives. It serves as a morality play, or "symbolic drama", in which established values are expounded and celebrated, and the boundary between good and evil is defined.

The symbolic drama may only occasionally become explicit in journalists' routine accounts of crime, deviance and police work, but it underlies them, surfacing when once again some apparent crisis of social control develops or when a particularly sensational crime captures the headlines. At times like these crime reporting may function as an important vehicle and repository of newspaper ideology while also indexing the perceived anxieties of its readers. The anxieties it documents tend to be generalised anxieties concerned with the breakdown of order... finding expression in concern about crime rates, delinquency, wildest strikes, violent picketing, terrorism and so on. But these are not seen as discrete social problems so much as symptoms of an underlying social malaise, a nameless, malignant sickness.

Like other media sociologists, Chibnall, who represents, to date, the last word on his subject, is concerned to delineate the ideological or didactic nature of press reporting in the here and now. This kind of expose, for all its undoubted value, ties Chibnall to the time-worn "spasmodic" interpretation of press reporting. Events are seen as erupting from day to day. Changes happen on a short-term basis only - a day, a month, a year, a decade at most - precisely the timespan

2. Ibid., p.xi.
adopted by the press itself. In this timeless view of things, history has no place. Current events and their impact alone command attention. These occur with mysterious regularity, the headlines being "once again" captured by "some apparent crisis of social control", or a "particularly sensational crime".

It has been argued earlier in this thesis that "crime waves", instead of being seen as ever-recurring but isolated phenomena, should be viewed as constituting one long continuous crisis. Panic about crime has characterised the press as long as it has been in existence - which is precisely the time-span of urban, industrial capitalist society. The more everyday reporting of crime by the press is the stuff of endemic panic. It is not the peaks - or the troughs - of crime-reporting which are of importance, but the overarching continuity in the crisis-engendering presentation of crime news by the press. Day in, day out, crime is reported by newspapers. If at times more space and bigger headlines are devoted to crime, the perspective changes little. Sometimes the press comments archly; on other occasions it screams out loud. Such changes of tone compare interestingly with the classic switch in police interrogations between an aggressive questioner and a soft-hearted one, both of whom have the same object, and each of whom looms the larger for the other. If there was no national reporting of crime news, there would not be any endemic panic over crime. To put that another way, the panic is the product of the press: as the press has developed, so the panic has deepened. In this country, the reporting of events by the press on a nation-wide basis is some two or more centuries old. In the United States, however, a fully national press, as opposed to a locally-orientated one, waited until the 1960's for its consolidation. This may explain why it was then

that crime became the object of an unprecedented level of panic. As Jennie McIntyre argues, from the standpoint of late 1960's America, "The intensity of current concern regarding crime may be due in part... to the excellence of news coverage". 1

In England, it was the eighteenth century which saw the emergence of a national newspaper and periodical press: it was then that localised, and individualised ways of seeing things began to be eroded. In 1780, it was still easy to be alive to the importance of the press, for it had barely established itself with any security as a national institution. This is clearly reflected in a letter in the London Magazine of that year:

It has been often observed, that there is not so inconsistent, so incoherent, so heterogeneous, although so useful and agreeable a thing, as a publik Newspaper... A Newspaper is so true of that caprice and levity for which our countrymen are remarked by foreigners, that it may justly be styled an Englishman's coat of arms; and modern heralds would do well to adopt so striking an emblem of our air, soil and constitution. 2

The press in the eighteenth century opened up new horizons. These, however, were as constricting in their own way as they were liberating. Fielding appreciated something of this when, in Tom Jones, he had Squire Western and Parson Supple enjoy "a most excellent political discourse, framed out of newspapers and political pamphlets...". 3 James Boswell was more appreciative of the power of the press: not for him Fielding's snide insinuation. "Knowledge", he asserted, "is diffused among our people by Newspapers". 4

What the press did was to widen men's horizons, or, rather, to direct them in particular ways. In particular, crime was put on the map, nationally. More people were made aware of more crimes than ever before. To this end, even the advertisements contributed. As a contributor to the London Magazine recalled in 1774, newspapers, originally "the vehicles of political information only", had rapidly become "the vehicles of general information".

From the number of hands into which they were distributed, it was soon discovered that they were the best and most convenient channels for making known our necessities... A man needed only to be at the expense of a few shillings for an advertisement, and his wants were immediately made known to many thousands of people, in a shorter space of time than could be done by any other method. If a horse was stolen, a house broken open, or a robbery committed, the printers of newspapers were immediately applied to... 1

Crime stood out even in the advertisements of the eighteenth century press. Advertisements for "lost" or stolen property - "no questions asked" - were only one of many ways in which crime was brought into the salons and parlours of everyone. There were also official notices relating to crime. In 1764, for the first time, the Public Advertiser and the Gazeteer carried announcements, repeated from time to time, over the signature of John Fielding the magistrate, stating that on account of the "extensive sale" of these two journals, all notices and advertisements from Bow Street would thereafter be printed in them alone. For this, a valuable privilege, each of them paid Fielding £50 a year. As R.L. Haig, historian of the Gazeteer, points out, the value of the Bow Street connection "is impressively indicated by the size of these payments. Fifty pounds was a considerable sum...". 2 Even in the eighteenth century, crime news featured prominently in the press, which valued it as a

circulation-builder. Following Fielding’s notice of 1764, the Gazeteer devoted even more space "to robberies and other crimes than had been customary in the past, and accounts of persons being brought before Fielding and committed or discharged by him appeared almost daily." As the leading early newspapers like the Gazeteer consolidated their position, so their presentation of crime became progressively more thorough. By the early 1780’s, the list of contributors "in pay" with the Gazeteer, following a lapse in the arrangement with Bow Street, regularly included "E. Cook", for "Bow-Street Intelligence", and "Mr. Newman, Giltspur Street", for "Commitment and Sessions News, Newgate".

In the course of the eighteenth century, the press, as it developed and grew in circulation, established itself as the legitimate and authoritative source from which people derived their knowledge as to the nature and extent of lawbreaking. This was an essential precondition to the growth of a sense of panic over crime. An early example of the conscious use of the press as the "authority" on crime news is provided by Henry Fielding, also a Bow Street magistrate, who backed up his policy of using special rewards, as distinct from standing ones, by referring to newspaper reports, or, rather, the lack of them for a while:

Instead of reading of murders and street robberies in the news almost every morning, there was, in the remaining part of the month of November, and in all December [1753], no such thing as a murder, but not even a street-robbery committed. Some such, indeed, were mentioned in the public papers; but they were all found, on the strictest enquiry, to be false. 3

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A different sign of the way in which, by the late eighteenth century, the press had established itself as the governing source of public opinion, is represented by the complaints of defendants who felt they had been cheated of a fair trial. Henry Sterne, charged in 1787 with robbing the Duke of Beaufort of "a badge called a George... value £500", hoped that "the illiberal manner in which I have been treated by the papers" would not prejudice the minds of the judge and jury. Some months later, Thomas Duxton, on trial for burglary on the evidence of a somewhat notorious witness, complained that "there have been a great many very infamous paragraphs inserted in the papers": he then expressed the hope that these "will have no weight on you, My Lord, and the Gentlemen of the Jury."  

The legitimation of the press as the source of popular knowledge, and the fuelling of panic, went hand in hand. To those who sought to tackle the problem of lawbreaking, the press was the natural place in which to air their views. Bernard Mandeville’s Enquiry into the Causes of the Frequent Executions at Tyburn (1725) was one of the earliest major capitalist trumpetings which was aimed at awakening the public to the need "to lessen if not prevent the common Practice of Thieving". It was originally published, by instalments, in the British Journal, earlier that year. Mandeville was fully alive to the power of the press: he emphasised that "there are in this City not a few Men of Business and good Understanding, whose Leisure allows them not to read much beyond the Publick News...". To those who wanted something to be done about crime, it was second nature to send letters to the press, or compose articles for it. Jonas Hanway, an early advocate of solitary confinement, in a hasty letter to a friend on the subject of prisons, slipped in a casual reference to his use of the press:

The County of Gloucester, I do not find has carried their Bill into Parliament for ways and Means of building the Capital Prison they meditated canvassing votes [for]. I have sent some thoughts today to the Printer of the Public Advertiser. Government seems to be distressed as to what to do with the great number of Convicts in our Prisons, and it may puzzle the most sagacious. 1

Even lawbreakers tried to cash in on the use of the press to influence the public. William Hawke the highwayman, while under sentence of death, was anxious to clear his character as far as possible, to facilitate a reprieve. His response, naturally, was to write a letter for publication, in the Public Ledger. 2

The consolidation of an authoritative national press in the course of the eighteenth century depended not only on the growth of aggregate circulation figures, in the face of restrictive taxation, but also on the emergence of a "press infrastructure". This has been located by John Brewer between the 1730's and the 1760's. Above all, he had in mind the rise of the monthlies:

The successful and sustained establishment of the Gentleman's Magazine, the London Magazine, and of the Monthly and Critical Reviews was symptomatic of the growing maturity of the press in these years. Taken together, they represent the growth of what I term a press infrastructure, an interlocking, overlapping complex of publications, engaging in frequent and blatant plagiarism, and generating controversy and polemic. 3

The first of these monthlies to be established was the Gentleman's Magazine. This, even in an age when all newspapers were very much the prerogative of the elite, was the elite journal par excellence. On the evidence of one of its more famous contributors, Dr. Johnson, who was a close friend of Cave, the brilliant editor, it sold 10,000

copies an issue. This was a circulation far bigger than that of any other monthly: it also dwarfed circulation figures for the dailies, few of which regularly sold more than 3,000 copies an issue. The Gazeteer was quite exceptional in breaking, briefly, the 5,000 mark.¹ There was, of course, a significant distinction between circulation and readership figures. Papers and periodicals were widely available in inns and coffee houses, where they were read by – or to – far more people than actually bought them. Small in circulation, and expensively taxed, the daily press of the eighteenth century enjoyed little security. Most newspapers were very short-lived. If, as Haig suggests, the success of particular journals is to be measured by their respective life-spans, it is singular that the Gazeteer in its 62 year run "was exceeded by the career of only one other daily newspaper."² Significantly, the leading monthlies fared much better than the dailies. The Gentleman's Magazine (1731) and the London Magazine (1732) both saw out the eighteenth century while still themselves going strong. Only in the century that followed did the ever cheaper dailies gain supremacy over other forms of newspapers. The trail followed by the mass circulation dailies was first blazed by the monthlies. These, from their beginning, were markedly national in both their outlook and their sales. Both the Gentleman's Magazine and the London Magazine were, along with their rivals, "widely distributed in the provinces."

Broad in scope if not comprehensive in their contents, they were designed to appeal to all tastes – which, indeed, they must have done much to standardise. "Whether it be extraordinary events, the art of good husbandry, or the latest political scandal, the Gentleman's Magazine provided easily digestible, synoptic coverage."³

¹. Haig, "Gazeteer", p.79.
In this it set the pattern for the mass media ever after. For the first time, the nation as a whole was put on one set of tram-lines.

The growth of a "press infrastructure" was made possible by improved communications, which brought London closer to the provinces. London was a pivot of extraordinary importance, economically, and by force of numbers: in the mid-eighteenth century, it was "the home of one person in ten, the workplace of one adult male in six."  

Politically, London was of overwhelming importance: court and parliament — acting as a massive seasonal magnet for large sections of the ruling class — and even an irrepressible citizenry, all exerted enormous leverage over a nation essentially unenfranchised. Finally, London was supreme, culturally. The poet William Cowper, noting in his travels round the country how at Sunday services "all the wives and daughters of the most topping tradesmen vie with each other every Sunday in the elegance of their apparel", added that he "could even trace the gradations in their dress, according to their opulence, the extent and the distance of the place from London."  

London in the eighteenth century was better able than ever before to impose itself — and its problems — on the nation at large. A continually upgraded and extended network of turnpike roads brought London into close contact with provincial centres, notably by making possible a proper postal service. This, in turn, was vital for bringing papers from London. For the first time, the isolation of local communities was broken down. This provoked occasional expressions of reservation. In an assize sermon, the Rev. William Purkis, "Fellow of Magdalen College, Cambridge, and one of his Majesty's Preachers at Whitehall", suggested that the "ease and convenience which we in this country have lately experienced in an easy

communication with distant places" might stimulate "luxury, extravagance and dissipation" to such an extent as to be productive of "real crimes". ¹ Purkis evidently had the poor in mind, but the outlook of the rich, of his own kind, had been altered quite as surely. It was, after all, in the words of J.H. Plumb, the early eighteenth century which first saw significant development of "a sense of common identity in those who wielded economic, social and political power."²

Through the medium of the press, problems that had formerly been local, indeed personal in character, were slowly transformed into national ones. In the case of crime, the process can be laid bare by examining the Gentleman's Magazine, the leading and best-selling organ of the period. For the purpose of this study, the years 1744-1788 have been analysed. The Gentleman's Magazine, it should be emphasised, itself drew heavily on other metropolitan and provincial papers and periodicals. Broadly, the pattern which emerged was one of increasing emphasis on crime on a national level, a conclusion which gains confirmation from quantified content analysis.³

The metropolis had long been known for the boldness of its lawbreakers: indeed, until the 1770's, apprehension over "crime", as reflected in the news reports (the "Historical Chronicle") and feature articles of the Gentleman's Magazine, was virtually always restricted to a London context. This limitation apart - and it was an important one - the note of alarm conveyed to readers could, on occasion, be quite strident, as was the case around the middle of the century. For November 1749, for instance, it was reported that "Robberies in and about this metropolis were about this time so frequent, that several parishes made voluntary subscriptions for

¹ W. Purkis, A Sermon Preached at Wisbech St. Peter's, at the Assizes... August 6, 1771 (Cambridge, 1772), p.6.
³ See Appendix 1, p.327.
maintaining extraordinary guards for the roads, and published rewards for taking robbers and housebreakers...". 1 Items in this vein, all however explicitly metropolitan, were frequent over the next few years. 2 Extracts from Henry Fielding's "excellent pamphlet", his Enquiry into the Causes of the Late Increase of Robbers, itself confined to the problems of the metropolis, were published the moment it appeared, early in 1751. 3 That year, the King's speech to parliament was also, somewhat unusually, reported in full. Particular mention was made by the King of the lawlessness of London:

I cannot conclude, without commending to you, in the most earnest manner, to consider seriously of some effectual provisions to suppress those audacious crimes of robbery and violence, which are now become so frequent, especially about this great capital; and which have proceeded, in a great measure, from that profligate spirit of irreverence, idleness, gaming and extravagance, which has of late extended itself...

Also, the Earl of Coventry was quoted in his reply to the throne as condemning "those audacious crimes of robbery and violence, which, in defiance of the laws, are now grown to such an excess, particularly in this part of the Kingdom." 4 In the middle of the eighteenth century, both the press and its sources concurred in seeing crime as above all a local problem.

It was only in the 1770's and 1780's that, for the first time, crime was presented as an emphatically national problem. An item in the Gentleman's Magazine for 1774 drew attention to a spate of assaults, robberies and murders, "most of them in the country". The following year, "desperate gangs of housebreakers" were described as infesting "both town and country". 5 Thereafter, although the

situation in London was occasionally specified as being of particular concern, a national perspective predominated. "A gentleman of nice distinction" was quoted as having calculated "the loss of property of frauds, thieves, robberies, housebreakers, etc., in England only, at more than a million of money yearly, notwithstanding the many penal laws for its protection." The widening of horizons did not pass unnoticed: some at least were well aware of a major shift in the accent of reporting in the press. The Gentleman's Magazine for 1783, which included reports as to assizes in the country at large, and of a "crime-wave" in the Birmingham region, as well as Old Bailey and Tyburn news, put the latter in a broad context.

It really is a melancholy reflection on the police of this country, that, notwithstanding the boasted lenity of our laws, more people are cut off annually by the hands of the executioner than in all Europe besides. The papers are filled with little else but robberies and villainies of one kind or another, not confined in a manner, as formerly, to the metropolis, but practised all over the country, where the gaols are full of felons.

Such cross-referencing on the part of the press enhanced the position of authority which it was in the process of attaining - a position which was further consolidated by interested outsiders. George Horne, complaining in a sermon of the way in which a "lawless tribe of profligate, desperate, unfeeling villains have broken loose upon the public", added that "even the public prints begin to exclaim, that there is no police amongst us, no remedy for these disorders; and, in short, that all is over".

Newspapers further stimulated an interest to which they themselves had given a major impetus. Where the press reported crimes,

perpetually, its readers multiplied them still more in their minds. Formerly, the only crimes of which most people had any knowledge were those in which they or those whom they knew had been personally involved or affected in some way. Now, however, remote outrages were continually being thrust before their noses. Little wonder that the reporting of crimes in the press on an ever more thorough basis led many to believe that housebreakers abounded as never before. As a correspondent in the Gentleman's Magazine lamented, in 1784:

Every real friend to order, decency and religion, must be deeply affected when they read the paragraph in your Historical Chronicle [Gentleman's Magazine, November 1783, p.974] in which you inform us, that "villains increase so fast, that a bare recital of their names and atrocious crimes would fill your Magazine." It is but too true an assertion, and a most melancholy proof of the very great profligacy and depravity of our common people, the newspapers now contain such a dreadful account of almost daily robberies, murders, etc., as no former times can parallel... 1

In "former times" there had been no newspapers. Now that they existed they supplied never-ending live ammunition for the guns of the capitalist press.

The Gentleman's Magazine not only portrayed crime as a mounting, national problem: it also discussed the wider significance of the threat and the possible nature of effective responses. The way in which, in the late eighteenth century, crime was presented in the pages of the Gentleman's Magazine, reflected a growing attachment to capitalism as the prevailing ideology. Crime was viewed as a major symptom of the crisis of order by which capitalism has always been bedevilled, and on which it has always thrived. While crime was seen as the result of the way society was developing, it was also thought to be eradicable, if only its "causes" could be isolated. These "causes", as referred to in the press, had a way

of implicating "the poor" in particular. In May 1786, the Gentleman's Magazine lamented:

To such a state of depravity is the lower class of people in the country, as well as in the metropolis, arrived, that incendiaries, murderers, assassins, house-breakers and desperate robbers abound in every county. 1

Sometimes, in an age of professed rationalism, a full-dress aetiological terminology was deployed. As a correspondent complained in 1784, magistrates, by punishing offenders, were only scraping the surface of the problem. This would never be solved

if they continue to follow the present plan, and attack effects only, while the cause is overlooked, and that only radical cure, a REFORMATION OF MANNERS, is neglected.

By a reformation of manners was meant the inculcation of "habits of industry", together with a fear of God:

In short, by thus removing the cause of our present complaints, and preventing the lower ranks of the people from following their wicked pursuits, the effect would of course cease. It would destroy that ungovernable humour, that licentious disposition to knavery which is so general among them, and which obliges our magistrates to punish so many of them with death.

Experience, so this correspondent added, amply proved this, for the existing modes of punishment were so obviously unavailing. Even if the penal laws were made more numerous, more severe:

nay, were they all framed like those of Draco, it would not remove the evil. The people, being still brought up in ignorance and wickedness, will grow more desperate, till by some more successful attempts than those memorable ones of June 1780 [the Gordon Riots], they at length overturn the constitution, and bring all into anarchy and confusion. 2

The need was for some kind of control which would get to the roots of the difficulties of a country socially and economically in a state of flux - a need dictated by capitalism. These difficulties reduced themselves to the problem of regulating the behaviour of the poor so as to make them obedient workers, precisely the perspective of Tucker, Townshend, Smith or any other capitalist. The problem, for all that it provoked near-panic, was not of a magnitude that defied solution: it was just - a matter of dealing with "the cause of our present complaints".

Crime was a problem for the nation at large, which lent itself to analysis in general terms. At the same time, offences were the responsibility of particular individuals. It was in terms of correcting the individual offender that the answer to crime was most commonly sought. Just as the ordinary of Newgate had argued that it was only by "gradual steps" that malefactors ended up at Tyburn, 1 so the Gentleman's Magazine in 1776 quoted a like-minded pamphleteer, John Disney:

Vice, profaneness and immorality, in all their varied shapes, most frequently take their rise from small, and almost imperceptible beginnings. Corrupt as we are by nature, murder and robbery are seldom, if ever, the first outlets of the unhappy wretch who commits them. He has learned, in some school of vice, the lesson and habits which lead to idleness and dissipation. 2

The idea underlying this kind of reasoning was that malefactors, for all that they had strayed, might still be forced back on to their proper course, their rightful station - rescuing society from "anarchy and confusion". Drastic but constructive measures were clearly indicated, in the interests of profitable economic growth, and a servile working class.

Imprisonment, coupled with labour, was an answer which found ever increasing favour in the second half of the eighteenth century. Here again the press, including the Gentleman's Magazine, did much to promote this kind of imprisonment. The Gentleman's Magazine proceeded cautiously. In 1750, brief mention was made of a letter in the General Evening Post, favouring imprisonment as a punishment which, under stern conditions, and with hard labour, "might deter more than death." A year later, the Gentleman's Magazine quoted a correspondent in the Gazeteer who also wanted to recommend "a life of labour as more terrible than a speedy execution", adding that the time was more than ripe "to try the experiment, when fraud, theft, robbery, murder, and all kinds of enormous villainy are practised in the face of justice."¹ A more paradigmatic example than this of the way a climate of panic was open to manipulation can scarcely be imagined. These early suggestions of imprisonment did not immediately recommend themselves in the 1750's: but then the panic was not yet endemic or national in character. In the context of the early 1750's, it is not surprising that the Gentleman's Magazine did not advocate imprisonment openly, or with particular vigour. After all, in 1752, parliament passed a law for the gibbeting of murderers, to supplement their death by hanging, while rejecting a more radical proposal to change the punishment of felons to "confinement and hard labour" in the dock-yards. The Gentleman's Magazine itself suggested that this innovation had been rejected because "'twas too severe".² In a land that prided itself on "liberty", "slavery" in any guise took some swallowing. Significantly, in the 1760's, the Gentleman's Magazine made no particular mention of imprisonment, not canvassing it again until the 1770's and 1780's.

2. Gentleman's Magazine, February 1782, p.82.
The press as a whole did not however allow the development of imprisonment as a means of dealing with offenders to drop from sight. Imprisonment, incorporating or rather centering around enforced labour, was too attractive a proposition in the light of the prevailing ideology simply to be forgotten. In particular, from the 1760's, the London Magazine, the leading rival of the Gentleman's Magazine, launched a considerable crusade on the subject. Accordingly, the London Magazine has been studied in detail for the period 1763-1788. Particular attention has been paid to the years 1766-1770, for, so often in these years was the punishment of malefactors discussed in the London Magazine, and with such significance was the subject invested, that the main items were felt to merit republication in book form, under the title Thoughts on Capital Punishment. The only time in these years that the London Magazine came anywhere near to conceding that its proposals for imprisoning malefactors and making them work were controversial, was when it quoted Thomas Nugent where, in his Travels Through Germany he commended the Danes for dealing with offenders in this way, while regretting that this kind of plan "proposed in England as a more effectual method of preventing enormous crimes than transportation or hanging... had been rejected as inconsistent with the constitution of a free country." In the London Magazine, as in the Gentleman's Magazine, there were frequent references to lawbreaking as a problem of ever worsening proportions, nationwide. These served to emphasise the need for counter-action, and to legitimise potentially contentious proposals. In August 1765 it was noted that "Instances of murder, robberies and every species of villainy, suicide, etc., have been very frequent in town and country this month": similarly, in September of the same year that "further barbarous outrages have been perpetrated in town

and country." In the London Magazine, the phrase "in town and country" was used time and again to highlight the extent of law-breaking as a national problem, demanding an appropriately drastic solution.

In the columns of the London Magazine, the many "sanguinary statutes" of the day were criticised as ineffectual and inappropriate. The tone was set in 1766 by "Philanthropos"—of whose identity nothing is known—who asked whether "instead of dispatching malefactors as usual, the end of punishment might not be better answered by making them living, standing examples, as the wisdom of the legislature shall judge proper." They might, he suggested, be put—in public view—to hard labour, and released only when judged to have reformed themselves. Interestingly, at this early stage in the crusade, "Philanthropos" felt he had to retain the option of death as a voluntary alternative. This curious proviso was no doubt designed to reduce any criticism by making the break with the past and existing practice seem less abrupt: but it also indicates just how harsh was the light in which imprisonment was envisaged by this protagonist, as, too, by the early proponents in the Gentleman's Magazine. Imprisonment was never, at least at this point, envisaged by its supporters as a soft option. "Philanthropos" ended the first in a series of letters by expressing the hope that if those who in the past had been executed had instead been dealt with in this way, they might have lived "to good purpose and been useful members of society". Written over two hundred years ago, these words match the current official aim of imprisonment—the encouragement and assistance of offenders so as to lead "a good and useful life"—with eerie precision.

The claims of imprisonment were advanced by questioning the worth of the gallows. Capitalism suggested criteria according to which hanging did not seem the appropriate punishment it had so long appeared. The need was for something that was more effective. Then as now, it was the easiest thing in the world to condemn old practices rather than propose new ones in authoritative detail. The crucial argument against hanging, which applied however solemn the way in which it was carried out, was that it necessarily constituted a measure of the last resort - when it served simply as the crowning accolade in the public career of the lawbreaker. Malefactors, notably highwaymen, were in many cases stimulated rather than deterred by the aura of the gallows, so the London Magazine lamented in 1776:

It is a sort of immoral maxim with this infatuated race of men, that they ought to enjoy the ease and dissipation of gentlemen, for perhaps a short but an agreeable period, and at last make an heroic exit, like others of their acquaintance and friends. 1

The hanging of occasional malefactors was the erratic custom of a society which did not by and large regard lawbreakers as a perpetual or all-prevading threat. The London Magazine can hardly ever be said to have had a good word for the gallows, though when Tyburn, with the rowdy processions which its use entailed, was abandoned in 1783 in favour of tidier proceedings in front of Newgate, this was a move which found favour. For a different point of view against which to set this iconoclastic outlook, it is necessary to turn aside from the press. Dr. Johnson, by then in his last years, was resentful of the ending of executions at Tyburn:

It having been argued that this was an improvement - "No, Sir, (said he, eagerly), it is not an improvement: they object that the old method drew together a number of spectators. Sir, executions are intended to draw spectators.

If they do not draw spectators, they do not answer their purpose. The old method was most satisfactory to all parties, the public was gratified by a procession; the criminal was supported by it. Why is all this to be swept away?" 1

Dr. Johnson's criticism of this innovation was the complacent comment of an old man who did not take "crime" seriously in the way the press did. Indeed, he prided himself on having walked the streets of London at all hours of the night without ever being robbed, his undistinguished clothing his only security. 2

The many executions of the period, fewer though they were than in previous times, were often criticised in the press - but rarely on humanitarian grounds alone. The multiplicity of objections indicates how deeply rooted the new-found disenchantment with the gallows was. Philanthropos, in his first letter, wished to restrict the death penalty to cases of murder, both because it left "no room for their [malefactors'] reformation", and because there did not seem "any great possibility that others will take the warning given them by their unhappy fate." 3 To one contributor in the Gentleman's Magazine, who was alarmed at what he saw as the mounting depravity, and anxious for lawbreakers to be dealt with more effectively, it was so clear that new methods were needed that it mattered not precisely why the old ones were failing:

Our executions seem to have lost all their good effects, and want that degree of terror and solemnity which such tragic scenes might, and ought always to produce... Whether this be owing to their frequency, or to the improper mode of conducting them, is not for me to determine; however, it is notorious, that the crowds who attend them go with the same ease and indifference they would to a race: stages are erected for the accommodation of these thoughtless beings, refreshments of all kinds are sold, and the only solicitude too many of them discover is, whether the criminals die hard, according to the Tyburn phrase. 4

Even in the Gentleman's Magazine, for all its caution in espousing imprisonment, routine reports of executions invariably included some note of criticism or repugnance, the one merging into the other. ¹ By the 1780's, executions outside as well as in London were being described and condemned: of the execution of a batch of eleven malefactors at Maidstone, it was noted, in the "Historical Chronicle", that this made "little, if any, impression upon the hardened class of thieves, many of whom were among the spectators.²

It was the London Magazine which led the way in systematically combining criticism of the prevailing reliance upon the gallows with calls for the development of imprisonment instead. When Goldsmith's Vicar of Wakefield was reviewed, the one passage selected for - approving - reproduction was compounded of precisely these two arguments, the one reinforcing the other:

It were highly to be wished, that legislative power would direct the law rather to reformation than severity. That it would seem convinced that the work of eradicating crimes is not by making punishments familiar, but formidable. Then instead of our present prisons, which find or make men guilty, which enclose wretches for the commission of one crime and return them, if returned alive, fitted for the perpetration of thousands; we should see, as in other parts of Europe, places of penitence and solitude, where the accused might be attended by such as could give them repentance if guilty, or new motives to virtue if inherent... nor can I avoid even questioning the validity of that right which social combinations have assumed of capitaly punishing offences of a slight nature. In cases of murder their right is obvious... but it is not so against him who steals my property...

Goldsmith concluded a long and rhetorical passage by expressing the hope that in future, "instead of cutting away wretches as useless, before we have tried their utility", "vengeance" might give place to

². Gentleman's Magazine, April 1786, p.347.
"correction"; it would then be found "that few minds are so base as that perseverance cannot amend; and that very little blood will serve to cement our security."¹ Goldsmith's criticism of the use of the gallows, and his recommendation, in its place, of imprisonment, was a point of view often put, as by this correspondent in 1772:

Nothing so much arraigns the equity of our laws, nothing can be a severer reflection upon our humanity, and nothing betrays a greater want of sound policy than the depriving of existence such a number of unhappy creatures who might be made eminently useful to society. ²

Another contributor to the London Magazine expressed much the same - capitalist - thought when he argued that if malefactors, instead of being executed, were "confined and kept in a state of servitude", their labour "might be useful, and their sufferings exemplary". Offenders dealt with in this way would "exhibit to the people a spectacle, which will have a much greater influence on their moral conduct than the terror of capital punishment. For what is more dreadful than a loss of liberty, attended with hard labour?"³

Imprisonment was a supremely capitalist solution to crime, pitched so as to deal with the problem of a society given over to the profit of the few. Capitalism as an ideology reflected an awareness of the weaknesses of the very social and economic arrangements of which it was the glass and the glue. Central to capitalism was an acknowledgement of a crisis of order. This crisis was identified in particular terms - terms which of themselves suggested imprisonment as an antidote. In its more rough and ready fashion, the press showed itself to be quite of the same mind as Tucker, Townshend or

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Smith as to the problems of a society in a state of flux - and readier than they were to canvass solutions for which it was not personally accountable, as in a sense they were. If stability and order were at a premium, it was the conduct of the lower class which aroused and monopolised concern. "Aurelius", a contributor to the London Magazine in 1764, could sense that "every order of society is got at least one step beyond its due bounds", but it was the behaviour of the poorer kind of people which worried him most:

And if we survey the inferior kind of extravagance, ought we not to wonder that our prisons are crowded with debtors, our highways with robbers, our shops and houses infested with sharpers and thieves, and our streets with strumpets and pickpockets; that our parishes are burdened, or in short, that all kinds of iniquities and miseries abound.

"A little rational consideration", Aurelius suggested, would easily demonstrate the links between "luxury, rapine, meanness, extravagance, misery, idleness, vice and guilt" - and their fatally destructive effects. If the problem was as simple as that, so, too, was the remedy. "Idleness" being, in the eyes of Thomas Amory - in a passage quoted in the London Magazine - the usual incitement to the ordinary run of crimes, "the confinement of the guilty to hard labour for a term of years" would, he suggested, be a more apposite punishment than hanging. It would "strike more terror into offenders, and better secure property", besides "making criminals serviceable to the public". A "rational" answer indeed, and one which seemed self-evidently simple to others besides Thomas Amory:

As to the bulk of delinquents, habits of idleness and dissipation constitute the most vicious part of their character. Put them therefore in such a situation, as that they shall necessarily exchange these habits for habits of labour and application, and you renovate and restore them, if I may say so, useful citizens to the community.

Under capitalist eyes, the restoration of "useful citizens to the community" meant the programming of obedient workers with "habits of labour and application". Imprisonment was an appropriate counter to the problems of an industrialising society as seen from a capitalist perspective, while its introduction was made the more necessary by the seemingly increasing extent of crime throughout the country - as rubbed in by the press.

The press, notably, from as early as the 1760's, the London Magazine, was strongly committed to imprisonment as an answer to crime. An ever-recurrent note of panic underpinned the calls for action. The question then however arises: precisely how influential was the press? Even with the aid of modern opinion-gathering techniques, it is still difficult to determine the extent to which readers are moulded in their views by the papers they read. It can be shown that they are not totally uncritical - but only in relation to particular, short-term issues, as presented by specified newspapers. The role of the press generally, over the long term, in helping to consolidate a climate of opinion, is rather more imponderable. If the press can be said to influence people at all now, it must surely have done so far more decisively in the eighteenth century when, before the advent of other forms of mass media, it virtually monopolised the dissemination of news. The eighteenth century press, moreover, was a pioneering enterprise, making its way with difficulty, in the face of various problems. Manipulation of the press was much wider and more blatant that it has since become, bribes being frequently the order of the day. Accuracy was the least of the worries of this fledgling press: what counted was to build up circulation.

By the same token, the frontier was still wide open for the trail-blazing papers and periodicals of the eighteenth century. In some areas, notably politics, they even had to fight their way, in the courts. In the various old and inadequate histories of the eighteenth century press, this aspect is always well covered. The liberty of the press — to report and discuss political events — was seen, then and now, as a vital issue, and as a sign of its growing power, for good or bad. Perhaps, however, uncontested aspects of the development of the press are to be seen as more important still. Of these, crime-reporting is particularly significant. A tone was set which has endured over more than two centuries: society is still — as ever — on the verge of foundering under the impact of crime, if one believes the pronouncements of the press.

The press led people to reshape their understanding of society by bringing the problems of the nation before everyone, day in, day out. Little wonder that people began to think in terms of general, nationwide problems. In the wake of the press came personal individuals — ideological entrepreneurs — with their own solutions to the problem of crime as it was commonly seen. The picture they painted, as the next section will show, was the same as that suggested by the press — to which, indeed, they often referred for corroboration and support. Crime was an ever-worsening problem to which a solution could be found by examining its causes. Martin Madan, one of these entrepreneurs, borrowed a vivid characterisation from the St. James' Chronicle of 9 November 1784: "If robberies continue to increase, as they have done for some time past, the number of those who rob will exceed that of the robbed". This was typical of the kind of

1. H.R.P. Bourne, *English Newspapers*, 2 vols. (London, 1887), vol. 1, p. 191, notes in what is the classic history of the press that the reign of George III saw "a steady increase both of newspaper enterprise and of the power of newspapers in influencing and informing public opinion...".

image of a mounting, nationwide problem conjured up by the press—and exploited by ideological entrepreneurs. And of the power of the press, Madan was fully aware. Lamenting that malefactors, even if convicted, could all too often expect to be reprieved, he then pointed, significantly, to the way in which, so frequently "the newspapers assure them, on relating the conviction and condemnation of the criminals at the several assize towns, that they were all reprieved before their Lordships left the town. I will not say always, but this is most usually the case".1 The press had added a whole new dimension to the way men saw the world—and even the way they saw others see it.

SECTION 4: RIDING THE PANIC: SOME IDEOLOGICAL ENTREPRENEURS AND THEIR MESSAGE

Capitalism, as an emergent ideology, emphasised in a novel way the problematic yet vital business of establishing order in society. It opened up vistas of change and development, and of ever increasing profits. It emphasised that none of these could be achieved save by disciplining the poor, by making, as Josiah Wedgwood put it, "such machines of men as cannot err"—in short by exploiting them far more systematically than had previously been the case.2 It was no longer sufficient to maintain the status quo. Order was emphasised more keenly—with a greater sense of purpose—than ever before. Endemic panic over crime, although only one

1. Madan, Executive Justice, p.38.
aspect of the feeling of urgency and of crisis, was undoubtedly of particular concern. Crime was, after all, relatively visible. On occasion, it affected the ruling class more directly than most of the other dysfunctions inherent in an industrialising society. More importantly still, crime made copy for the press, so that even those who were never directly troubled had news of it thrust constantly before them. "How are our newspapers filled with daily accounts of mischiefs done on the person and properties of his majesty's subjects", lamented Martin Madan. The condition of the poor—the working class—was in no other respect so minutely catalogued. No one in power doubted for one moment that the causes of crime were to be located, ultimately, in the "idleness" and dissipation of "the lower Class of People". In dreaming of a law-abiding society, the ruling class dreamt, in reality, of an orderly, industrious society in which the poor knew their place, and the rich grew richer. This is clear from the sermon preached at the funeral of John Howard, the most distinguished of the ideological entrepreneurs of the eighteenth century. The preacher, Samuel Palmer, suggested that if there were but a few others of Howard's calibre and determination to sustain his achievements, Britain would soon become a "blessed country". It was evidently a capitalist blissfulness he had in mind:

The poor would be more happy and less burdensome: the idle and profligate would be reclaimed. Crimes would be prevented instead of being punished. Our prisons in time... would often be almost empty; at least those confined in them would be useful to the community, and not dangerous to it when discharged. Many would go out reformed, and would become good members of society. Thus Englishmen, who vainly boast of their liberty, would enjoy liberty; would rest in their beds, and travel by night, without fear... 3

1. Madan, Executive Justice, p.34.
2. See above, p.91.
The endemic panic carried with it a tantalising dream.

John Howard is of sufficient importance to be discussed separately in the chapter that follows: the remainder of this chapter is devoted to a discussion of some of his fellow campaigners for a more orderly society. The use of the term ideological entrepreneur, coined to describe these social crusaders, deserves some explanation. A debt must be acknowledged to Becker's concept of the moral entrepreneur: as Becker remarks, enterprise, "generated by personal interest, armed with publicity", and conditioned by society, is a "key variable in law enforcement". Enterprise, so Becker adds, "operates most immediately in a situation where there is fundamental argument on the rules to be enforced."¹

Just such a situation held good in late eighteenth century England, where the ruling class, as has been argued, thought very much with one mind. Nevertheless, the term "moral entrepreneur" has been discarded. In the first place, this is because Becker specified twentieth century categories of crusaders: the righteous rule-creator, and the professional rule-enforcer. The entrepreneurs of the late eighteenth century were righteous without being rule-creators, and rule-enforcers without being professionals. They were the precursors of both kinds of "moral entrepreneurs". A further reason for adopting, instead, the term ideological entrepreneur, is that Becker, as a labelling theorist, over-emphasises the role of the individual.² The emphasis in this chapter has been on the ideological context within which problems of order were reappraised. Capitalism gave the ideological entrepreneurs of the late eighteenth century their cue - though "personal interest, armed with publicity" also played its part, however reluctantly this was sometimes conceded.

As Neil Smelser observes of those who were responsible for the development of new forms of machinery in the cotton industry, "the assets which accrue to the inventor and producer of ideas are prestige, honour and publicity".¹ Even the criteria whereby inventors or entrepreneurs were commended were, however, determined by the prevailing ideology, capitalism.

The more important social crusaders of the late eighteenth century, or, at least, some of them, have been discussed by Sir Leon Radzinowicz, in his History of the English Criminal Law, which still seems to command its field. Radzinowicz’s perspective is one in which the history of the criminal law is seen as the history of progress, and in which progress is identified in particular with the displacement of hanging, under the sanguinary laws, by imprisonment. Consequently, he divides his chosen representatives into two groups: the reactionaries who favoured the full enforcement of capital punishment, and the humanitarians who wanted to purge the statute book of the sanguinary laws. The former are castigated by Radzinowicz for being "advocates of severity", the latter are by the same token commended for being "reformers".² Remarkable and salient testimony to the enduring sway of Radzinowicz’s approach is that his division has recently been upheld by Douglas Hay, in an important and avowedly radical collection of essays. Hay criticises Radzinowicz for according the "reformers" moral alphas for rectitude and for being on the winning side - but then proceeds simply to transfer these to the "advocates of severity", whom he re-christens "conservatives", for the skill and cunning with which, as he sees it, they conspired to maintain the hegemony of the ruling class.³

This division between "reformers" and "advocates of severity" (alias "conservatives"), represented, on the one hand, by William Eden and Samuel Romilly, and, on the other, by George Ollyffe, Martin Madan and William Paley, is not altogether without foundation. It is however more revealing to compare the similarities, rather than the differences, between these two groups, in so far as they may have constituted separate factions. They shared alike the one ideology, capitalism. They had a common objective, to make England safe for the rich to exploit the poor, and even the same self-imposed constraint: the desire to avoid executing, so far as was possible, their fellow countrymen - who were also, of course, potentially valuable workers. The outlook of the ideological entrepreneurs was that of capitalist propagandists, such as Adam Smith and Charles Townshend. Society, they felt, was faced by a crisis of order, but at the same time they believed that stability was within their grasp. As ideological entrepreneurs they involved themselves, indirectly, in the same capitalist bonanza (the fruits of which they hoped to enjoy) envisaged by the likes of James Watt and Josiah Wedgwood.

The enlightened "reformers" and the obscurantist "advocates of severity" distinguished by Radzinowicz may have attacked each other on occasion, but this was no more than the infighting common to all groups of crusaders, be their Jerusalem what it may. Samuel Romilly ("reformer"), for instance, taunted Martin Madan ("advocate of severity"), with the promotion of harsh measures simply in the interest of the rich. Romilly himself, however, emphasised very strongly indeed, as the answer to "crime", the need "to preserve uncorrupted" the lower sort of people:

The means of removing the forces of profligacy are plain and obvious - to supply the poor with employment; to prevent them from plunging into drunkenness, gaming and
idleness, which are the forerunners of every other vice; and above all, to suppress all disorderly houses and seminaries of thieves. 1

Here, surely, Romilly was, if anything, even more class prejudiced than Madan. This was - and is - no more than an obvious line of attack in a class society which tried to draw a veil over exploitation. It was a weapon which any of these ideological entrepreneurs could wield against each other, if they so chose. Madan himself favoured class-oriented measures of social hygiene, "such as encouraging industry, lessening the number of alehouses, public places of diversion, etc."; on this point he referred his readers to Henry Fielding's Enquiry into the Causes of the Late Increase of Robbers, where, he noted, such measures were "well discussed". 2 If Madan felt these only constituted "the subordinate means of preventing robberies", his own preferred expedient - to discourage potential offenders by cutting down on pardons - would also, as he knew, have affected above all the working classes, who provided the gallows with most of its victims, had it ever been implemented in full. 3

Collectively, the various ideological entrepreneurs shared the same obsession. Where George Ollyffe ("advocate of severity", supposedly) had suggested "what a mercy [it would be] to the Neighbourhood and Kingdom, when unannoyed with alarm, fears, and sufferings of Mischief, and when they may have the satisfaction of the various Services and Improvements from their honest labours", 4 William Eden ("reformer") had in mind a very similar prospect of orderly and secure exploitation. In the society to which he looked:

they who offend against the law, and they only, have reason to fear: while those happier members of society, who deserve security, enjoy it to the full perfection to which the rectitude of their conduct hath entitled them. 1

If the various ideological entrepreneurs were working towards a comparable future, they also had a similar vision of a suitably adjusted past, in which the common people were conforming and well-behaved. The Anglo-Saxon "tithing" system, whereby family and neighbourhood groups assumed mutual responsibility for their members' good behaviour, was looked upon with favour by both Madan and Romilly. In this, neither was particularly original: Fielding had commended the "tithing" system in 1751, as had the London Magazine twenty years later. 2 This kind of nostalgia was simply the common coin of capitalism. The particular image of Anglo-Saxon England, that long-standing repository of symbols, which the ideological entrepreneurs seized upon, was chosen to match their ideal society of the future: it was a land in which, "it was said a child might go from one end of the kingdom to the other, with a bag of money in his hand, without fear of having it taken from him...". 3 A capitalist nirvana, this was the kind of picture of life "beyond the crisis" perpetually being introduced to highlight the extent of the disorder then supposedly prevailing.

"Criminal jurisprudence has within the last twenty years become a very popular study throughout Europe", reflected Samuel Romilly. Various "humane and rational principles" had, he continued, been almost universally adopted:

That criminal prosecutions ought always to be carried on for the sake of the public, and never to gratify the passions of individuals; that the primary object should be to prevent crimes, and not to chastise criminals; that that object cannot possibly be attained by mere terror of punishment; and that unless a just proportion be observed between the various degrees of crimes, in the penalties appointed for them, the law must serve to excite rather than repress guilt; are truths so generally received, that they are come to be considered almost as axioms of criminal law.

Precisely the same "humane and rational principles" - principles which to this day command widespread unthinking assent - were also adhered to by the "advocates of severity". Madan, whose treatise was the object of Romilly's Observations, saw just such principles as fundamental. He bracketed together the first two:

The prevention of crime is the great end of all legal severity: nay, the exerting that severity, by making examples of the guilty, has no other intention but to deter others, and thus pursue the great end of prevention. If this were not the case, all punishment would be nugatory, and therefore cruel; for the past could not be recalled, nor the last advantage accrue to the injured party, however much the criminal might suffer.

Romilly's third axiom, the uselessness of mere terror, itself a reformulation of Beccaria's leitmotif, the need for punishment to be, above all else, certain, was likewise accepted wholeheartedly by Madan - who was at pains to cite Beccaria (Radzinowicz's leading continental "reformer") on this point. "The noble Marquis of Beccaria observes very truly", argued Madan, "that a less punishment, which is certain, will do more good than a greater, which is uncertain."

Madan's own particular suggestion, in applying Romilly's third axiom, was simply that reprieves should not be resorted to so extensively as was then the case - which, he felt, only encouraged

1. Romilly, Observations, pp.2-3.
2. Madan, Executive Justice, p.11.
offenders with the hope of escaping punishment. Both "reformers" and "advocates of severity" were troubled - excessively troubled, no doubt, for they largely overlooked the other ways in which fatal or capital convictions were evaded - by the increasing employment of the pardon. Not that it was the case that, as Douglas Hay suggests, resistance to law reform and to the more extensive use of the pardon went together. If Madan criticised excessive pardons (though still allowing their retention in exceptional circumstances), it was an opinion shared by so prominent a "reformer" as William Eden. Nor was Madan's disapprobation of the pardon "clearly contrary to the current trend of public opinion", although this is what Sir Leon Radzinowics asserts. The Monthly Review, discussing Madan's Thoughts on Executive Justice, commented that his view "that the lenity with which our criminal law is administered tends to encourage the commission of crime... has long been the opinion of persons whom there is no reason to suppose of a sanguinary disposition." The one caveat which it stressed was that prosecutors might be discouraged by any curtailing of the pardon. The review in the Gentleman's Magazine was still warmer in tone. "This pamphlet has met the ideas of most of its readers, and has been generally thought well worthy the attention of those who only can remove the grievance." It fully endorsed Madan's stance, adding that "the frequency of reprieves is an encouragement to offenders, and therefore is really, though it might wear the semblance of mercy, the highest cruelty..." Madan himself argued vehemently for the humanity of his proposals, and expressed as much sorrow as any "reformer" over the number of people going to the gallows, whose deaths, he wrote, were "so numerous as to shock the humanity of every man that has not lost all feeling".

1. Madan, Executive Justice, pp.13-14, 63, 120; Eden, Principles, pp.319-20.
4. Madan, Executive Justice, p.70. Ollyffe, another "advocate of severity", likewise lamented the number of executions, and argued that judicious severity would save lives; Ollyffe, Essay, pp.3-4, 9-10.
Romilly's fourth axiom, the need for "a just proportion [to] be observed between the various degrees of crimes, in the penalties appointed for them", contained an implicit criticism of the indiscriminate sanguinary laws of the period. Lack of "proportion" was, however, virtually as abhorrent to the "advocates of severity" as to the "reformers". Madan allowed that judges were right to reprieve capital convicts in certain circumstances: where there was some doubt as to the fairness of the verdict, or where the law itself lacked precision, or where new evidence emerged after the trial.¹ Madan was also prepared to contemplate a revision of the penal statutes where these were "too sanguinary". This was a question which, as he confessed, he had "professedly avoided", but nonetheless he emphasised at the end of his treatise that "as a friend to examination and revisal of all things, I should not be sorry to hear that such a thing was in agitation." He left the matter, however, in the hands of the legislature.² Like Madan, earlier advocates of severity also saw the need for proportion. The anonymous author of Hanging not Punishment Enough was highly critical—like any later "reformer"—of the way murder and the theft of property worth five shillings each carried one and the same penalty, death, while George Ollyffe wanted to reserve a more cruel form of death for "crimes of the first Magnitude".³ Both argued, as did Madan, that added "severity" would save lives and promote order.

Of all the advocates of severity distinguished by Hadzinowicz, William Paley fits least happily into his categorisation. The comparatively youthful author of The Principles of Moral and Political Philosophy (1785) was not the reactionary he later became, in the aftermath of the French Revolution.⁴ The relevant chapter of this

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¹ Madan, Executive Justice, pp.48-49.
² Madan, Executive Justice, pp.152-55.
³ Anon., Hanging not Punishment Enough for Murthurers (London, 1701), p.4; Ollyffe, Essay, p.11.
⁴ Sir E. Barker, "Paley and his Political Philosophy", in Traditions of Civility (Cambridge, 1948), pp.221-22.
work illustrates even in its heading, "Of Crimes and Punishments", Paley's indebtedness to Beccaria, borrowing the title of the Marquis' work word for word, as Radzinowicz himself notes. ¹ Paley, if anyone, spoke for his age and his class in representative terms: he was no original thinker, again as Radzinowicz appreciates. As Sir Ernest Barker puts it, he was "eighteenth century of the eighteenth century". The Principles of Moral and Political Philosophy was undoubtedly an influential work: it went through fifteen editions in its author's lifetime, and 21 by 1814. Its utilitarianism had a "galvanic effect" on Bentham, another "reformer". ² If Paley's views on punishment later became "the credo of all opponents of the movement for the reform of criminal law", ³ this, if true, shows only that the protagonists on each side - in so far as it is worth talking of "sides" - were virtually of one and the same mind. Paley's work could never have achieved such eminence if, as has been suggested by Radzinowicz, he had "remained uninfluenced by any of the contemporary writings which propagated a new approach to crime and punishment." ⁴ On the contrary, he fully appreciated with his contemporaries that the purpose of punishment "is not the satisfaction of justice, but the prevention of crimes", and that "the certainty of punishment is of more consequence than the severity." If he was willing to entertain the idea of an "aggravated" death penalty for "a few" major offenders - murderers alone are specified - he did so in cautious and tentative terms, recognising the need to avoid "offending or impairing the public sensibility by cruel or unseemly forms of death". He was as critical as others of the indiscriminate nature of the sanguinary statutes, with their lack of "proportion", and singled out for attack the law which imposed death in respect of "private theft from the person", as needing to be made less severe. Also Paley, unlike Madan, was quite content for the sanguinary statutes to be implemented on a selective basis only. ⁵

³ Radzinowicz, Criminal Law, vol. 1, p.257.
⁴ Radzinowicz, Criminal Law, vol. 1, p.256.
Paley placed another still more important qualification against the use of capital punishment. He was far from adhering "almost unreservedly to what may be called the doctrine of absolute incorrigibility." It was not the case, as Radzinowicz also asserts, that he "doubted the effectiveness of secondary punishments in reforming offenders."\(^1\) Paley in fact fully endorsed suggestions made in the press, and by other ideological entrepreneurs, notably John Howard and Jonas Hanway, that imprisonment might at least partially replace hanging. "The end of punishment", he declared, "is twofold; amendment and example". He conceded that "the reformation of criminals" - in a significant early example of the use of the term "criminal" in the blanket sense in which it is now employed - had never as yet been effectively accomplished, but for the future, he was decidedly more hopeful:

Of the reforming punishments which have not yet been tried, none promises so much success as that of solitary imprisonments, or the confinement of criminals in separate apartments. This improvement augments the terror of the punishment; secludes the criminal from the society of his fellow-prisoners, in which society the worse are sure to corrupt the better; weans him from the love of that turbulent, precarious life in which his vices had engaged him; is calculated to raise up in him reflections on the folly of his choice, and to dispose him to such bitter and continued penitence, as may produce a lasting alteration in the principles of his conduct.

It was particularly important, Paley added - capitalist in his mentality - that this solitary imprisonment should serve "to reconcile the idle to a life of industry". Prisoners, he thought, should be allowed to retain their earnings, from which they might support themselves, while their sentence should be fixed "not by the duration of time, but by the quantity of work, in order both to excite industry, and to render it more voluntary".\(^2\) Indeterminacy in some guise has usually been a leading characteristic of the modern use of imprisonment by way of punishment: this was an unusual conception which may have inspired Richard Whately and others in the nineteenth century to suggest those "progressive" schemes of imprisonment which

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culminated in the "mark" system of Captain Maconochie. 1 Paley did not overlook the problem of the discharged prisoner. Here, too, he pointed the way ahead. Realising that it was difficult for ex-prisoners to obtain employment, he argued the need for "the state to secure a maintenance to those who are willing to work for it". 2 Paley was on the verge, it might be said, of welfare capitalism.

The basis of Paley's concept of punishment was that the frequency of hangings at that time had "three causes". The causes which he singled out - causes of "crime" - were not particularly original: "much liberty, great cities, and the want of a punishment short of death, possessing a sufficient degree of terror". 3 They were, however, highly expressive of capitalism, as articulated by his contemporaries, in books and, more importantly, in the press. "Much liberty" was another way of lamenting that the lower orders had become "universally proud, ferocious and ungovernable", as Burke had put it. 4 "Great cities" had aroused the trepidation of Henry Fielding, Adam Smith and many others. 5 "The want of a punishment short of death, possessing a sufficient degree of terror", was a complaint echoed by many writers, including Martin Madan. 6 As William Eden wrote, "the insufficiency of transportation [officially the leading secondary punishment] hath been a fatal argument for the multiplication of capital punishments". 7 Paley's view that imprisonment, as a more effective secondary punishment which might in part supersede the death penalty, should be at least as terrifying an alternative, was a perspective similar to those of Goldsmith, of the London Magazine which reprinted Goldsmith's thoughts on the subject, and of the Gentleman's Magazine too. 8 In the eighteenth century, to re-emphasise an important point, imprisonment commended itself on account of those "pains" for which it is now not infrequently criticised.

4. See above, p.104.
5. See above, pp.92-93.
6. Madan, Executive Justice, pp.75-76.
8. See above, pp.137, 143.
Martin Madan and William Eden, "advocates of severity" and "reformers", shared the same dream, it has been argued, of a society in which children might safely carry gold the length of the kingdom (an illuminating capitalist perspective, in several senses), and in which those who deserved security would enjoy it in the full perfection to which their rectitude - as good capitalists - entitled them. In a word, they believed that crime could be abolished. This belief, so novel then, has been the inspiration, or at least the pre-condition, of never ceasing efforts to deal with the problem of crime - efforts which may well, however, have been counter-productive. This emphasises the value of asking precisely why the various ideological entrepreneurs believed crime could be eliminated. What led Paley to imply that the introduction of imprisonment would not only directly reduce the frequency of executions but also mitigate the leading difficulties of a changing society, "much liberty", and "great cities"? Why for that matter did Madan think that hanging people more systematically would reduce the number actually hung? It may have been an age of optimism - but this particular kind of optimism still demands an explanation.

One interesting point which emerges from a study of the writings of the ideological entrepreneurs is that they always confined their discussion to the problem of how to deal with criminals once they had been caught. This outlook was one which the "advocates of severity" shared with the "reformers", and even, so Madan claimed, with classical and continental authors:

All writers on the subject of laws, that I have ever met with - as Plato, Cicero, etc. among the ancients; Montesquieu, the Marquis of Beccaria, etc. among the moderns - all contend for the certainty of punishment, in order to render laws respected and efficacious. 1

It is significant that while the first part of Madan's *Thoughts on Executive Justice* delineates the effects of the indiscriminate pardoning of offenders, the second is devoted to the guidance of those serving on trial juries. The problems of executive justice were but those of the courthouse and its proceedings. The infallibility of the judicial process, to Madan's mind, is evident at every turn. His argument, when objecting to the new practice of providing every trial prisoner with clean but uniform clothing, was that "his dress when he committed the fact should, if possible, be that in which he should stand at the bar, as most likely to mark the identity of the prisoner." The problem, as Madan saw it, was how to convict prisoners and, more important still, how to deal with them once found guilty. The problem was not how to catch them. Criminals would be apprehended: apprehended persons were criminals.

The ideological entrepreneurs of the late eighteenth century lived at a time when the very idea of criminal statistics of the type now all too familiar had scarcely entered anyone's head. Such figures, even, as later researchers have put together from assize records, were not available then. The earliest printed tables of any significance were those in John Howard's *State of the Prisons in England and Wales*, first published in 1777. These, however, related only to trials and convictions (besides, of course, giving details of the numbers of those held in prison). Yet Jeremy Bentham, discussing with David Steuart as to whether England or Scotland had more "capital" crimes, referred unquestioningly to the tables of convictions "published by our excellent friend Mr. Howard". He then expressed the hope that Howard would compile and publish further

statistics relating to trials (rather than convictions and punishments). That, however, was as far as his imagination extended. Similarly, when in 1786 the city of London petitioned the King to take effective measures to deal with "the great number of experienced and well practised thieves now in the kingdom", and, in particular, complained as to "the rapid and alarming increase of crimes and depredations in this city and its neighbourhood within the last three years", its yardstick was simply the amount of time spent trying criminals:

The fact of such increase is too publicly known, and too severely felt by your Majesty's subjects, to be doubted; and if any direct proof of it were wanting, it will most evidently appear from the number of days employed in the trial of felons at the Old Bailey, which, upon an average of the last three years, have been upwards of 55 in the year; whereas the highest average of any three years, prior to the year 1776, was less than 46, and the general average of twenty years, prior to that period, less than 34 days in the year. 2

Once again, this shows that trials alone were considered in estimating "crimes". The "rapid and alarming increase", which in fact was to be followed by a decline, can be accounted for by the ending of the War of American Independence (1783): this early example of "crime" statistics was too truncated to reveal the fluctuations in the number of trials between times of peace and of war. 3

The city of London's petition was, however, relatively advanced in its deployment of statistics, by the standards of the day. Madan had only the faintest grasp of what was going on in the courts, overall. His assertion that it was "most usually the case" that condemned convicts could expect to be reprieved was no hyperbole to him. 4 He really believed it, if the space and the feeling he devoted to the matter are any guide whatsoever. Certainly Paley, who

3. The significance of peace and war as major variables in this kind of context was certainly appreciated by Howard, Prisons, 1777, pp.482-83.
published in the same year as Madan, was extremely wide of the mark on this most important point: he believed that "of those who receive sentence of death, scarcely one in ten is executed." In fact, as was indicated in the previous chapter, two out of three were duly hung.

If Madan and Paley - and, no doubt, others now in oblivion - believed that so many capital convicts cheated the gallows by being pardoned, this goes a long way towards explaining their obsession with the need for "certainty" in respect of the punishment of those who had been caught. What they never thought to ask was whether all malefactors were apprehended in the first place. It is one of the most well-trumpeted findings of recent mainstream criminology that despite every effort by sophisticated police forces, most offenders are never reported, let alone caught and convicted. Two hundred years ago, however, there was no police force to which crimes could be reported and by which figures could be compiled: it is little wonder that there was no room for the appreciation of anything resembling the "dark figure" of today's unreported crime. That the eighteenth century, blissfully ignorant of this spectre, was obsessed by the technology of efficient punishment, is therefore understandable. It is an interesting comment on the continuing thrall by which we in this society are held by this obsession that it has in no wise been weakened by the findings of criminology. Ideologically well-entrenched passions die hard.

With but its own muddle-headed statistics, the emphasis of the eighteenth century was firmly upon punishing those who had been caught. This is not surprising: it reflects the rational view of the moral order then held by England's rulers, and their faith in their mastery. The idea that some malefactors might elude their

2. See above, p.50.
grasp altogether, and not receive the just deserts of their evil actions, was unthinkable. How could it be otherwise when there was confidence that, at least in England, all was for the best. Samuel Lobb delivered an assize sermon at Taunton in 1746, which he published "at the Request of the High Sheriff and the Gentlemen of the Grand Jury". It was on the subject of benevolence - both divine and human - which, he emphasised, was or should be for the deserving only. He found himself unable to conclude

without one word or two, touching the singular goodness of God to us in this nation, in giving us our lot under a Constitution and Government, regulated and conducted, so conformably as they are, to the Benevolence we have been considering... 1

It was an age of arrogance.

Capitalism as an ideology has always incorporated both a perpetual feeling of mounting crisis, and the confidence that this could be overcome - a confidence essential to the continued expansion of the economy, and the ever greater exaction of profits. This combination of two such divergent sentiments is, it has been argued, absolutely central to capitalism. Its constant reproduction necessitates a close look at any claim of imminent crisis, since this has so often served merely to justify some proposed measure of repression. Certainly the many late eighteenth century expressions of panic over crime need to be set in the context of an underlying faith in the orderliness of society. England's rulers, then as later, could and did combine seemingly irreconcilable views. Samuel Lobb began that assize sermon, the confident conclusion to which has just been cited, in a different mood altogether:

But alas! That men should live in harmony is a change not to be expected in our day; when men... abuse, as they do, the Reason given them to direct them as to their true happiness, by employing it in pursuit of a false one, to the occasioning all the crimes and quarrels that disturb the world... 1

If Samuel Lobb could begin a sermon in this manner, and conclude it so differently, his rhetoric deserves closer examination. Sidney Pollard, discussing a past aspect of social control, factory discipline in the industrial revolution, comments that while employers were always complaining of the disorderliness of their workforce, "Such opprobrious terms as 'idle' or 'dissolute' should be taken to mean strictly that the worker was indifferent to the employer's deterrents and incentives." By way of further explanation, he quotes T.S. Ashton: "it was the irrationality of the poor, quite as much as their irreligion, that was distressing... The workers were by nature indolent, improvident and self-indulgent." 2 In other words, it was really the workers' lack of responsiveness to the cash incentives offered them (such as these were) and their unwillingness simply to turn themselves into mindless agents of efficient production, which irked. The rhetoric of the age - the rhetoric of capitalism - was never a disinterested rhetoric.

The many exclamations of alarm raised by ideological entrepreneurs over the "rapid and alarming increase of crimes" should not be viewed as implying necessarily that there was a crisis of "law and order", for they were regularly counter-balanced, indeed outweighed, by more confident projections. The anonymous author of a Life of Patrick Naden professed himself to be much worried by "the great number of robberies that are daily committed", but at the same time was sure that

theft itself might almost be abolished if proper attention was paid to the education of the infant poor. The gibbet is rarely burdened with the weight of one who has had the blessing of a religious and virtuous education. 1

Similarly, William Mainwaring, addressing in his capacity as chairman of the session the Middlesex grand jury, in 1785, was appalled by "those outrages and depredations which have, of late, so greatly annoyed and terrrified the inhabitants of the metropolis, and the adjacent parts...". At a time, however, when proposals were being widely canvassed to put London's security arrangements on an entirely new footing, he was confident that:

If the laws relating to alehouses - the vagrant laws - and those powers which a magistrate is invested with to bind persons to their good behaviour, were duly executed, and privy search warrants frequently issued, to search for rogues and vagabonds; I cannot but flatter myself, that much might be done to restore us to security and good order, and that the metropolis would soon wear an aspect very different from the present. 2

Alongside Mainwaring can be set the ideological entrepreneurs discussed earlier. They too, for all their alarm over thefts and other crimes, cherished dreams of orderliness, of children carrying bags of gold before them in safety, and of the secure enjoyment of their possessions.

There were, no doubt, grounds of a kind for any feelings of insecurity. Some people did suffer harm or loss of property, though in an age when the rich were continually flanked by servants, it was rare for them to suffer personal hurt. Was crime increasing? Was it getting out of hand? These are questions fraught with methodological complications. Assize records apart - and these are no guide to the level of crime in the community, given the enormous numbers even of "known" offenders who were dealt with outside the

courts, as the previous chapter emphasised — there is no evidence on which exact answers might be built, even begging, for a moment, the theoretical limits of these. As the historian R.M. Hartwell has pointed out:

The evidence which could give decisive confirmation to theories is scanty and conflicting... it is impossible to decide whether or not crime was increasing in significant ways in the second half of the eighteenth century, and, equally important, it is equally impossible to say, even if crime was increasing, why it increased. 1

Conflicting the evidence certainly is. The London Magazine, in 1785, referred to "the police, particularly of the capital" — that is to say, to general security — as being "universally acknowledged to be extremely defective." 2 It was the view, however, of the German writer J.W. von Archenholtz, in a book first published that same year, that London's bad reputation was little deserved.

The English have no word in their language to express police [in the French sense of a force of men, or as we understand it now]; but it would be a great mistake to suppose the thing itself did not exist among them. Foreigners who cannot separate the idea of the city of London from that of the robbers who wait for them on the great roads that lead to it, maintain that this is one of the worst regulated cities in the world. Everything considered, however, the peace of London is as perfect as it is possible to be, in a city inhabited by such a prodigious number of men, in the full enjoyment of liberty... It seems to me inconceivable how that army of indigent people which swarm upon the streets of the metropolis, are not incited, by viewing the luxury and voluptuous life of the rich, to become murderers and assassins. The robberies and great crimes committed in London are very few in proportion to its bulk. 3

Indeed, if William Mainwaring, one of those who felt so strongly that the number of "outrages" had reached "so alarming an excess", was only half-right in referring to "those robberies and daring offences, which hardly a night, or even a day passes, without some melancholy instance of;" then the sprawling, turbulent, glaringly stratified metropolis, with a population of 900,000 at the end of the eighteenth century, had little enough crime by any twentieth century standard.¹ A few robberies each day was little to worry about, it might be thought.

By our obsessive standards, the eighteenth century was poorly informed as to the level of crime. Now, however, there is some appreciation that, for all our carefully presented official statistics, the actual amount of deviance is beyond calculation: in the eighteenth century, this game was more genuinely and openly a free-for-all. Madan was roundly taken to task by Romilly for his highly coloured arguments. Claims of the kind that "No man can stir a mile from his home without an apprehension of being robbed, and perhaps murdered", were, so Romilly considered, "the strongest hyperbole, and the most exaggerated descriptions".² Yet even Madan was of course so confident of criminals being caught that he could "much question whether a thief can be any safer in England, even in London itself, from the hands of the thief-takers, than he would be from those of the Marechaussée or Guet in France."³ If - without a police force of the dreaded and tyrannical French variety - English malefactors were so invariably being caught, this, by today's standards, could not unreasonably be taken to imply that eighteenth century England was relatively crime-free. Madan had, however, the presuppositions of his day and class: to his contemporaries, crime was still a problem despite the success with which lawbreakers were,

2. Romilly, Observations, p.10; Madan, Executive Justice, p.73.
apparently, being apprehended. In the last resort, it is because he and his contemporaries saw the whole problem in such different terms from us that it will never be possible to reconstruct with unchallengable finality a picture of the eighteenth century from within. Even, however, to appreciate the difference in outlook, can be claimed as a considerable advance.

This chapter has examined some of the implications of the growing ascendancy of capitalism as the ideology of eighteenth century England. In particular, the challenge which capitalism posed to time-honoured procedures for keeping lawbreakers in check has been discussed. It was no longer to appropriate merely to punish individual offenders corporally or capitaly. Instead, a more ambitious aim suggested itself, that of reforming offenders. Different sections of this chapter have examined the way in which the ordinary of Newgate's Account, followed by the press more generally, and by a coherent group of ideological entrepreneurs, took up a capitalist stance on this issue.

Crime was seen as the generalised recalcitrance of the lower class of people - the workers - writ large. It had its immediate "causes" in "Want, Idleness, Ignorance, Extravagance or bad Company". The importance of tackling crime, as the same writer emphasised, lay in the fact that "It is not merely the Multitude of Citizens that is the strength of England, but the number of industrious, sober Inhabitants...". There were those who sometimes adopted a more seemingly concerned and altruistic approach, such as Bomilly, who at one point talked of the need "to preserve uncorrupted that large but unfortunate description of persons who, being born in misery and indulgence, and differing from us in nothing but the

accidents of rank and fortune, are entitled to our utmost care and protection." For what purpose, however, were these people - "unfortunate" they were indeed - being preserved uncorrupted, if not for obedient and uncomplaining exploitation by the rich?

The pity of every execution was that each person "cut off from the commonwealth as a nuisance" was, as the London Magazine lamented, lost to it as a "profitable member". In a speech in parliament covered by the Gentleman's Magazine, Sir William Meredith lamented the deaths of some three thousand criminals executed in the reign of the previous monarch, George II: these represented "a considerable loss to society, as well as with respect of population, as to the labour they might themselves have been made to perform." A year later, in 1772, the Gentleman's Magazine itself emphasised the loss represented by the death of so many men in their prime who might otherwise have been made "very serviceable".

Mass hangings were coming to seem increasingly barbaric, but that was not the point: "not to dwell too long on the inhumanity of these frequent executions, let us look on them in a political view, and I am persuaded they will deserve attention".

It is the restoration, from a different perspective, of just such a "political view" which has been attempted here. Where liberal historians of the twentieth century have projected backwards into the eighteenth century the overwhelmingly humanitarian colouring of recent campaigns for the abolition of the death penalty, this chapter has focused upon the ideological underpinning of the ruling class of eighteenth century England. To this end, numerous quotations have been brought together so as to construct a picture that is as broadly based as possible. Sir Leon Radzinowicz, leading representative of

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1. Romilly, Observations, p.94.
3. Gentleman's Magazine, April 1771, p.146. Meredith's speech was originally delivered on 27 November 1770.
the liberal historians, has written in glowing terms of the slow but steady advance, in the eighteenth century, of the tide of "reform", sweeping before it a diminishing number of "advocates of severity", whose views he summarily dismisses as being "utterly foreign to the spirit of the English people, and so foredoomed to failure."

If one were to believe Radzinowicz, the late eighteenth century - a century in which the ruling class repeatedly tolerated punitive action against lawbreakers by the crowd - saw a mysterious and unexplained efflorescence of milk and water humanitarianism. Another very different explanation has been put forward here. The prospect of profits - of wealth - on an unprecedented scale brought with it a greater awareness of the need for order and discipline, of a character and an intensity previously unknown. The eighteenth century ruling class may genuinely have been somewhat more humanitarian in the light in which it viewed lawbreakers. At the same time, it had greater reason, in the shape of more lavish returns, to take the protection of property more seriously than had previously been the case. This enhancement of expectations - of which capitalism was symptom and stimulant - is reflected in an interesting passage in the London Magazine, with which this chapter may aptly be concluded:

In great and polished societies, where the right of property has been long ascertained, where it abounds in infinite variety, and where such time and labour are required in order to its production, the injustice of being forcibly or fraudulently deprived of it is felt proportionally greater. Therefore all the wisdom of the legislative is employed to devise such rules and regulations as shall tie up the hands of the idle and indigent, and afford quiet and unmolested possession to the proprietor.

CHAPTER 4

THE PROMOTION OF THE PRISON AS THE ANSWER TO CRIME

Where the previous chapter examined in broad terms how, under the influence of capitalism, crime became the focus of generalised panic - and was seen as a national "problem" to which an appropriately largescale answer was indicated - this chapter is more tightly focused upon the way in which the prison emerged as the widely favoured solution to this deeply felt problem. The two chapters are complementary. They share an over-lapping time-scale, although in the case of this chapter the period covered extends from the eighteenth century into the first quarter of the nineteenth century. While it might be expected that, in being more narrowly organised, this chapter is "merely" an excursion into old-style penology, any such characterisation is rejected. The wider society, and its ongoing historical dynamics, remain integral to the framework of analysis. Since, however, the prison does feature quite largely in this chapter, the views of penologists, who have caused the prison to be seen in a particular light, have inevitably had to be examined. In so far as they are actually criticised, it is on the grounds of their being both ahistorical and unsociological.

This chapter is not another reform-by-reform account - nor even "reform"-by-"reform" one - of the developments witnessed by "local" and "national" prisons. Such histories have already been written. Traditionally they have adopted the essentially uncritical approach characteristic of a now-abandoned kind of administrative history. More recently, a less complacent stance has become fashionable. The narrow kind of empiricism associated with British history dies hard, however. Methodological uncertainties make for analytical inconsistencies. Even in 1979 Michael Ignatieff can

devote ten pages in a 220 page book to the life and character of John Howard and then calmly observe that Howard would have made no impact had not his State of the Prisons appeared when the American war precipitated "a moment of acute crisis in the administration of criminal justice". This disclaimer makes little sense in the light of the new quality of obsession with criminals and their punishments which reached such remarkable proportions in late eighteenth-century England — or in view of the fact that the first of the new penitentiary prisons, construction of which, at Horsham, was undertaken in 1775, came too early to have owed anything to events in America. The methodological debt of this thesis is to the work of David Rothman and, more important still, of Michel Foucault, relating respectively to America and France. Foucault's unrivalled achievement is that he has written a history of the prison not as an institution, but, instead, as the point of application — and intersection — of knowledge and power as the forces which gave birth to the modern penitentiary — which, as he emphasises, was only the leading edge of other types of social control. Foucault, however, to some extent loses himself in studying the development of the prisons as an aspect of the growth of normalising and disciplined society, a society in which, for him, the processes of control have a semi-autonomous life and force, so that they scarcely respect even the ruling class.

This present thesis, by contrast, is concerned with the prison as a peculiarly public vehicle of control. The prison represents the official face of discipline in society. Imprisonment is a process of control to which the state openly admits. The reason why the prison enjoys public recognition and respect is because it can be

presented as the "answer" to crime, or a part of the answer. Crime itself is the object of endemic panic – as has been argued earlier – the scale and strength of which lends the prison great support. This chapter is concerned with the initial articulation of the crime-prison interface: a two-dimensional interface compounded of both ideological and organisational elements. For the purposes of this chapter, the taken-for-granted status of the prison – and even its wide range of latent effects – must be laid aside, to facilitate examination of the initial adoption of the prison as a place of punishment, in the terms in which this was proposed at the time.

There were prisons long before the late eighteenth century. But deprivation of liberty was not thought of as a way of punishing people – other techniques being felt to be more suitable – and so the prison was not considered as a "resource". At the time, the eighteenth century prison of the traditional kind was seen in a different light and also used differently – largely as a place of temporary detention for certain individuals – in comparison with its nineteenth and twentieth century descendants by marriage with organised "prison reform". Accordingly it should not be judged by irrelevant latter-day criteria. The lasting importance of the eighteenth century prison was, however, that it was employed as a negative yardstick in the struggle to promote a different kind of prison – the prison as a place of punishment. The first section of this chapter, "The Eighteenth-Century Prison: Users' and Critics' Views", therefore opens by discussing the way in which the "unreformed" prison was perceived by nineteenth and twentieth century administrators and penologists. Their views are then contrasted with contemporary users' attitudes towards the self-same prison, and those of its inmates. Following this there is a brief discussion of the eighteenth century prison, in the light of such contemporary views.
Finally, the slow emergence in the course of the eighteenth century, of conceptions of the prison as a "resource", and the manipulation of images of the prisons, on the part of various "reformers" or ideological entrepreneurs (of whom John Howard is the most famous and important) is assessed, returning this examination to the starting point of this section, and at the same time serving to introduce the next section.

The second, highly crucial, section is entitled "The Prison as the Answer to Crime". Endemic panic, so it was argued in the previous chapter, was - and is - an absolutely integral aspect of capitalism as an essentially defensive ideology. In the eighteenth century, this panic, ostensibly about criminals, was focused on the need to build up a disciplined work force. The crusade against crime was but the campaign for docile workers writ large. Idleness was the common enemy. In this section, examination of the almost messianic movement for the development of imprisonment, the cult of the prison, it might well be called - an examination which was initiated in the previous chapter - is now taken one step further. The thrust is three-pronged. First, it is argued that imprisonment, far from being intended as a soft option, was envisaged as a deliberately tough and terrifying penalty - as tough and as terrifying as death itself - and consequently as being a sure answer to the problem of crime. Secondly, a point which is closely linked, the development of imprisonment was seen not so much as an alternative to the infliction of death as, rather, a desirable policy in itself. Very little consideration was given to the relative scope of imprisonment and hanging, at least prior to the 1820's, by which time the prison was firmly established as an additional place of punishment. For the most part, the question of the role of the gallows was simply left to one side. Imprisonment was developed as an additional tier of punishment, a means of extending
social control to greater numbers of malefactors. Finally, a commitment by the legislature to the development of the prison along these lines was what initially counted for most. Even the details of the construction and management of the new institutions were a matter of only secondary importance. The ideological entrepreneurs of the late eighteenth century saw themselves as abolishing crime, in the interest, at least ultimately, of greater profits. For all their criticisms, they simply were not particularly concerned with the precise scope of hanging, as another form of punishment. Given the enduring importance - it was more than just symbolic - of late eighteenth century enactments on imprisonment, the last part of this section, devoted as it is to an examination of the Penitentiary Act in particular, also leads naturally into the final section of this chapter.

The third section, "Imprisonment as a Newly Implemented Punishment", is focused on Gloucester Penitentiary, because this served as the principal model for other counties, from the 1780's through into the 1820's. Indeed, Gloucester Penitentiary was even used as a model when Millbank, the long delayed "national" penitentiary, was finally built. In the first place, attention is concentrated on Gloucester Penitentiary as a new kind of institution, and, in particular, on the relationship between the ideals of Sir George Paul, godfather to the new prison, and the compromises and problems which developed. Secondly, the impact of Gloucester Penitentiary upon traditional local patterns of social control is analysed.

1. G. Holford, An Account of the General Penitentiary at Millbank (London, 1828), p. 82; "We had no model to work by... except that at Gloucester".
SECTION 1: THE EIGHTEENTH-CENTURY PRISON: USERS' AND CRITICS' VIEWS

Prison administrators and penologists have joined hands down the years in agreeing that the "unreformed" prison of the eighteenth century was an absolutely vile place. Sir Lionel Fox, Chairman of the Prison Commissioners for England and Wales, wrote in 1952 that, two centuries earlier:

It was good business to make everything as pleasant as possible for those who would pay, and equally unpleasant for those who would not. Such were the gaols in which it was written "that disease, cold, famine, nakedness, a contagious and polluted air, are not lawful punishments in the hands of a civil magistrate, nor has he a right to poison or starve his fellow creature". Poison indeed, for they were forcing houses not only of lechery, debauchery and moral corruption, but of a contagious pestilence. The gaol fever had been known at least since 1414. In 1750 a Lord Mayor of London, an Alderman and two judges were among the victims. At this time it was computed that every year one quarter of the prisoners were thus destroyed, and none who has read contemporary accounts need doubt it.  

That would seem to be damning. In passing, however, certain points may be noted. The first - contemporary - quotation within this passage indicates not simply that prisons were places of poison and starvation, but, instead, a belief that prisons should not be places of torment. It may be that the eighteenth century prison was a place of lechery, debauchery, and moral corruption, but this can seem true of any society or institution. That needs no footnote to Durkheim, nor surely does the inevitability of a certain incidence, of, say, homosexuality or masturbation - especially within the single sex institutions of the kind which superseded the eighteenth century prison - need a reference to Kinsey. The gaol fever statistic is not infallible, either: an estimate of 25 per cent

mortality must be suspect in the first place because, prior to 1777, no one had any adequate idea of how many people were in prison anyway, and also because when Howard established the first reliable statistics, it was his estimate that the number of those who died from gaol fever bore some numerical relationship to the number executed; even if the proportion was as high as 2 : 1, which on Howard's estimation must be considered unlikely, that would give a mortality rate of 3 per cent per annum.

Views of the kind propounded by Fox are still the order of the day. Condemnations continue as colourful as ever. In 1979, Donald West generalised with panache:

Different categories of inmate, debtors, persons awaiting trial, juvenile and adult convicts, though theoretically subject to separate rules, were all too often herded into one seething mass, subject to the arbitrary dictates of exploitative, corrupt and often extremely brutal keepers, and exposed to the perils of filth, starvation and jail pestilence as well as the bullying hierarchy of fellow prisoners. 2

Certainly the eighteenth-century prison was not always characterised by rigid classification. On the other hand, classification is surely less relevant to a transit camp with high turnover – and no instrumental aim other than safe custody – than to latter-day institutions officially geared to making some impact upon their inmates. In other words, the criticism is ahistorical, and socially inappropriate. That "seething mass", with its "bullying hierarchy" and "brutal keepers" sounds unpleasant enough. Arguably, though, such words might be applied as readily to the prisons of the 1970's as to those of the 1770's – quite the opposite conclusion from that of Donald West. For him, only a few minor improvements are still

needed to perfect the institutions of today. Such a perspective is reminiscent of that of Lionel Fox, who ended his book with a quotation to the effect that the system of which he had charge was, at least in part, "something to be proud of".1

Fox and West are only the last in a long line of prison administrators and penologists who have lauded the prisons of their own day at the expense of those of the past. To the Rev. John Clay, the long-serving prison chaplain at Preston in the mid-nineteenth century, and defender of the "separate" system of imprisonment, it was quite clear that, before Howard's time, "the state of English prisons was horrible and disgusting".2 Likewise, for George Chesterton, governor of Cold Bath Fields Prison, and proponent of the rival "silent" system, in the gaols of former days:

cleanliness scarcely seemed a necessary requirement; safeguards even on modesty were ruthlessly cast aside, and shameless profligacy unashamedly prevailed. The lowest order of men only applied to dispense the functions of a gaol, whilst the name itself was an evil omen... 3

That was the all-important difference: to men like Chesterton and Clay, as later to Fox and West, their prisons were not simply taken for granted - which they were - but, additionally, constituted cause for congratulations. As John Ward, writing in the influential Edinburgh Review, put it in 1837:

There can be no more striking mark of the advance of European civilisation, than the transition from the dungeons and fetters of the middle ages, to the penitentiaries of modern times. 4

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That was the consensus: whether its proponents favoured the "silent" or the "separate" system mattered not to them, in the last analysis. Institutions, however, can only live up to what is expected of them at the time, and what such views ignored was the fact that, prior to the close of the eighteenth century, the prison held a far more marginal place in society, and was seen in a very different light. To these earlier attitudes and expectations, about prisons and prisoners, attention can now be turned.

For much of the eighteenth century, the various gaols were viewed, in time-honoured fashion, even on the part of most members of the ruling class, simply as places of temporary detention. A contemporary wit could refer to the prison as an "ante-room, to the New World - or the next." In the more measured words of Richard Burn, author of the standard handbook for magistrates, "the gaol is intended, in most instances, for custody, and not for punishment." John Villette, echoing the account of an earlier ordinary while editing the Annals of Newgate, or Malefactor's Register, wrote of John Tranham, during one of his several periods in Newgate (he was eventually executed in 1721):

While he was there, he was, as he said, so often disturbed in his sleep, with dreams of halters, hangmen, gibbets, prisons and devils, that he took up a resolution to reform his manners, if ever he obtained his liberty. But the vows of men in distress are seldom regarded after their deliverance, and vicious habits are not easily forsaken. This resolution vanished with his danger; he presently returned to his old courses, and made a large addition to his former catalogue of sins.

Because few people cherished any hope of reforming prisoners, there was, indeed, a general sense of pride in the limited extent to which

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men and women were incarcerated. In the words of an anonymous poet:

The robber's fate promiscuous chances doom,
Branded, or pillory'd, or exil'd from home;
Calm, lenient sentence, that at once relieves
The murderer's horrors, and remorse of thieves!
All crimes but debt the hand of mercy spares,
Nor suffers penance for successive years. 1

In a country which had set a pattern for the rest of Europe in abolishing torture, without yet making systematic use of imprisonment, patriotic writers could enthuse effortlessly over "our Compassion for convicted Criminals". 2

The prison was looked on with great suspicion, as a matter of principle. In a society which was as critical of monasteries as of all other kinds of "popish" practices, the two institutions, the prison and the monastery, were often bracketed together, to their common disfavour, as for instance by Dr. Johnson. 3 It was axiomatic so far as David Hume was concerned that "Celibacy, fasting, penance, mortification, self-denial, humility, silence, solitude and the whole train of monkish virtues... are everywhere rejected by men of sense." 4 Even the prison could not confer legitimacy upon such practices: its position in society was too marginal for that. Complaints about the "licentiousness" of prisons, though sometimes made, fell upon stony ground. This was not the case with another kind of complaint: that prisons were "incompatible with a free constitution" and that they conflicted with a liberty on which Englishmen prided themselves. As the case against imprisonment was summarised by a lawyer:

It may be objected, that death is inflicted in England to prevent slavery, and that the destruction of criminals is preferable to a scene of slaves, which in process of time would magnify enormously... 5

Whereas in the late sixteenth and early seventeenth centuries efforts had been made to put petty offenders to work in so-called "Houses of Correction", in the eighteenth century, by contrast, there was so little enthusiasm for such a measure that the distinction between gaols and houses of correction became merely technical - if, indeed, it was recognised at all. Occasional proposals to exploit felons as a source of labour, rather than execute or transport them, failed to command support: in 1752, the House of Lords rejected a Bill to put felons to work in the docks "because twas too severe", as the Gentleman's Magazine observed at the time.

If the prison was looked upon with abhorrence, the act of committing someone to gaol was seen in a correspondingly serious light. As in the late eighteenth century many ideological entrepreneurs complained, there was a general reluctance on the part of the property owner to commit theoretically "eligible" malefactors to prison, particularly where minor offences were at issue. In his spring 1776 survey, Howard found only 653 petty offenders in custody, either before or after - summary - trial. Strikers, vagabonds and other petty offenders were sometimes duly incarcerated, but this provision was treated by employers as a matter of last resort. For the most part, offenders against work-discipline were still dealt with face to face, and treated as individuals. If a jury's verdict is anything to go by, hasty recourse to imprisonment was seen as cause for condemnation. In a trial at the Old Bailey in 1776, an

2. Gentleman's Magazine, February 1752, p.82; see above, p.137.
4. Howard, Prisons, 1777, p.35.
employer who had his apprentice confined in Bridewell for a fortnight, during which time the lad had fallen ill with subsequently fatal results, was found guilty of manslaughter, and sentenced to be burnt in the hand and himself imprisoned. Clearly the jury was influenced by witnesses who saw the employer as "responsible" for his apprentice's well-being. An interesting point which may well have told heavily against him was that the apprentice had served 17 days, not 14, in Bridewell, where they were "expecting his master would come and pay the fees." Committal was no light or easy process for those who had recourse to it: it thrust obligations upon them which they were expected to heed (though after three extra days, the apprentice was released without any fees being paid on his behalf). ¹

The prisoner as a person, like the prison as an institution, was seen in a totally different light in the eighteenth century as compared with the twentieth. This applied whether he was a debtor or a felon, a petty offender or untried. Once behind bars, his offence was largely forgotten: he was a suffering individual. One classic statement of this point of view was made in the London Magazine in 1766:

Prisoners always have been, and always will be deemed objects of charity, and to prevent the multiplying of such objects is the duty, and ought to be the care of every society, therefore it is ridiculous as well as imprudent in any society to have such laws or to inflict such punishments, as tend to create such punishments. ²

The result was that, in the eighteenth century, as Alexander Wedderburn retrospectively observed, prisoners figure not as people in need of being systematically "reformed", but as the occasional victims of "oppression" by certain jailers - any complaints being "mostly grounded on individual sufferings in particular jails". ³ These

"individual sufferings" in some cases actually became the subject of enquiry by parliamentary committees, a clear sign of the priority accorded to such problems. The most notable such investigations were those in 1729 of the Fleet prison (where Bambridge was notorious - and, by implication, exceptional - as a tyrannical jailer) and in 1752-53 of the King's Bench Prison where the keeper proved upon investigation to be rather more compassionate. In these inquiries, prisoners were allowed to speak, in person, directly to members of the legislature, in contrast to nineteenth - and twentieth - century practice, whereby civil servants are used as intermediaries - and censors.1 Prior to John Howard's State of the Prisons of 1777, which set a new tone, investigators of the prison scene did by and large concern themselves with the plight of prisoners as this was seen and experienced by the prisoners themselves. Even in 1776, only a year earlier, William Smith, describing the London prisons, allowed the inmates of the King's Bench Prison to speak for themselves in a letter which some of them wrote to Lord Mansfield, complaining that senior prisoners were monopolising the charity upon which they all depended, turning "a prison, intended for confinement only, into an almshouse for their support", and so depriving others, forcing some to sleep in the chapel, for want of affordable space, and so on.2

Allowing prisoners to be heard in their own words was but one more reflection of the way in which malefactors were seen as individuals, rather than as "criminals", mute and faceless.

Although prisoners were seen as individuals, deserving of charity, provision for their welfare was not left entirely to chance. Charity was in part institutionalised. By 14 Eliz. 1 c.5 some of the revenue from the poor rate - it came to be known as "martially money" - was assigned to meet the needs of prisoners.3 This enabled

at least a supply of bread, which felons indeed received by right, to be provided for most prisoners: sometimes further items, and coal for fires, were provided in addition. Begging grates, from which prisoners would appeal to passers by, were a feature of many prisons: at Ludgate Prison, a debtors' prison, where the arrangements for controlling and redistributing such alms are exceptionally well documented, the procedures for allocating the money were not only elaborate, but were the responsibility of the prisoners themselves. The actual cadging was undertaken by a group of prisoners called "box men", whose task it was "to bellow aloud in the most moving terms they can invent", as another prisoner put it. It is in the context of responsible self-help of this kind that the custom whereby newcomers to a prison paid "chummage" - or "garnish" as the ideological entrepreneurs, who were highly critical of the practice, liked to call it - should be seen. In some cases, inmates were allowed to go out, at least on special occasions to beg in the street, or to offer matches and other trifles for sale. In addition, collections might be made on their behalf: in London, the Lord Mayor organised collections of money and of provisions at Christmas and at Easter for those held in the gaols of the capital. If this kind of arrangement seems erratic, it should be remembered that, in a more traditional society, festivals or feast days were the regular counterpart to intermittent periods of seasonally-determined scarcity. Since, likewise, death was better integrated with life - rather than just a secluded "family affair" - charitable bequests to the living, when wills were being

5. Ibid., p.361.
drawn up, were correspondingly more significant in their extent than is the case today. Prisoners were often long as well as short-term beneficiaries: many such bequests are carefully noted in John Howard's *State of the Prisons*.

The actual condition of the user as inmate is even less clear than the views and behaviour of the user as prosecutor, actual or potential. For this, again, responsibility must lie in part with later prison administrators and penologists. They themselves echoed the outlook of late eighteenth - and early nineteenth - century ideological entrepreneurs who were concerned to shift prison control away from inmates and even staff to higher authorities. Perhaps the first point to make is that conditions undoubtedly varied considerably from place to place, and time to time. Accordingly all generalisations must be treated with caution. Detailed studies of particular prisons are needed to show what life inside them was really like. To date, there is only one substantial study of an eighteenth century prison, Eric Stockdale's *Bedford Prison*, and this is written primarily from an administrative standpoint.1

The anonymous ex-inmate who described Ludgate Prison at the beginning of the eighteenth century, in perhaps the most illuminating account of a prison of that period, suggested that it would show that "Imprisonment is not so exceedingly dreadful as some imagine, nor so slight a Misfortune as the severe part of Mankind account it."2 Epidemics, combined with lack of nourishment and of warmth, periodically killed many prisoners, sometimes in batches. For instance at Ludgate in 1710 "there died about thirty of a raging Fever".3 Such mortality, however, should be put in perspective. Prisoners were not conspicuously more at risk than soldiers in barracks or sailors at sea. Typhus, scurvy and other such diseases were scourges common

3. Ibid., p.67.
to them all in the eighteenth century as in earlier times. Certainly Dr. Johnson believed that prison conditions were superior to those at sea. It is important not to look at "medical" matters in isolated terms. Social and psychological adjustment, then as now, was the critical variable for the inmate population.

Prolonged imprisonment in an eighteenth century prison was nothing to relish. Most prisoners, however, only had to put up with short periods of incarceration; not for them the thirty year sentences, so hard to come to terms with, of today. More importantly, still, prisons were virtually "little republics" as Archenholts put it, and prisoners could get on with organizing their own lives very much for themselves. Debtors enjoyed the greatest degree of autonomy, but even Newgate had its inmate "President". Eighteenth century Newgate was, to say the least, a lively community. Goldsmith, in his Citizen of the World, put words of contentment into the mouth of an old soldier awaiting transportation: "as agreeable a place as ever I was in, in all my life. I had my belly full to eat and drink, and did no work; but alas, this kind of life was too good to last for ever!" In an eighteenth century prison the effective constraints were largely those which the prisoners placed upon themselves: there was usually not only an inmate hierarchy but also some system of pressures and public sanctions for ensuring conformity. At Ludgate, the senior inmate, the Steward, laid down a multitude of rules for the prisoners, "such as against

3. Debtors were occasionally an unlucky exception to this rule. Stockdale, Bedford Prison, p.47.
5. O. Goldsmith, The Citizen of the World, 2 vols. (London, 1762), vol. 2, p.219. A visiting Frenchman was equally enthusiastic: "English prisons are very wholesome places... the prisoners are well treated... Most of them live together, they have a fire in winter, and are as happy as it is possible to be when deprived of one's freedom." J. Marchand ed., A Frenchman in England: 1784 (Cambridge, 1933), pp.120-21.
Prophane Swearing, Drunkenness, or pilfering from, or abusing their fellow Prisoners by Word or Deed, and divers others, proper for their Civil Government, the Breaches whereof are punishable with Stocks, Irons or Fines.¹ Social organisation of this kind allowed prisoners, like those outside the walls, to develop some kind of a sense of responsibility, if not of justice, of a type nowadays less likely to flourish in modern prisons where inmate society and leadership is ignored if not actively prohibited. Equally, with hardly any restraint upon alcohol, with fairly open access to visitors of either sex, in short, without "contraband", there was not the same opportunity for "barons" to emerge in control of illegal trafficking. Simply the fact that the prison was far less closed off to the outside world in the eighteenth century than it now is, must have done much to stabilise it socially in line with the wider society. At the same time visitors contributed to the "economy" of prison, by tipping, by buying drinks and even, occasionally, by paying for sexual favours. At Clerkenwell, there was one regular visitor - a family man - who, by way of getting into the swing of things, would have himself loaded with chains, and be "abused, insulted and beat", of course, for a little extra payment. Little wonder that at Clerkenwell at least, one woman prisoner was reluctant to leave:

She protested, she never lived better in her life, for she lay in bed, having four Admirers, she never was merrier, or ever met, as she said, with civiller Company. ²

Extreme though her case may have been, it none the less may serve as a useful reminder that prisons have not always been the "mortifying", puritanical and authoritarian places that they are today.

If a balanced view of the eighteenth century prison is to be sustained, it is important not to over-romanticise. While it is necessary to discount many of the criticisms made by ideological entrepreneurs — criticisms which coloured the views of later prison administrators and penologists — it is also important to explore avenues of criticism that were left untouched. Being concerned to overturn the "notion, that convicts are ungovernable", such entrepreneurs tended to gloss over the problems of holding men in confinement, problems which did sometimes come to the surface in the eighteenth century. However low the profile of the keeper and his staff, the eighteenth century prison was still occasionally the scene of "riot". Of course, these were sometimes ritual in form, as in Newgate, where there were regular disturbances the night before men and women were shipped off for transportation. At Maidstone, in 1765, however, the prisoners seized control and met counter-attacks with gunfire. At the Old Bailey, besides occasional cases against prisoners for stealing from visitors, there were also a few cases involving escapes or riots. After one incident, a warder was charged with murder, only to be acquitted — helped by a judicial ruling on necessary force.

If the power of the law was capable of being directed against the misbehaviour of prisoners, it was also, on occasion, used on their behalf, against any conspicuous malpractice by their keepers. The impression has often been fostered by historians that the eighteenth century gaoler was able to behave in a completely arbitrary manner, without any chance of being held to account. This was not exactly the case. Perhaps by way of illustration to E.P. Thompson's rule-of-law thesis, Thomas Bambridge, the exceptionally oppressive Warden of the Fleet Prison, was by act of parliament deprived of

that office, and indeed disbarred from any other office,

for wilfully permitting several Debtors to escape... for
being guilty of the most notorious Breaches of his Trust
and the highest Crimes and Misdemeanors in the execution
of his said Office, and having arbitrarily and unlawfully
loaded with Irons, put in Dungeons and destroyed Prisoners
for Debt put under his Charge... "

This was behaviour which the eighteenth century legislature -
despite nodding through sanguinary laws and conniving at some
corruption - simply could not tolerate. In the provinces, gaolers
probably had even less of a free rein. Eric Stockdale who observes
that the Webbs "perhaps did less than justice to those magistrates
who did their utmost to effect improvements", notes how, in 1737
for instance, a Bedford prisoner had his keeper bound over to
behave properly towards himself and the other inmates - this
particular gaoler shortly afterwards not being allowed to continue
in office. 2 Disparaging comments by historians about gaolers
settling down to "a lifetime of well-rewarded and undemanding
extortion", blithely keeping appointments in the family - Ignatief
actually instances Bedford where, as he puts it, "the keepership
of the jail passed through three generations of the Howard family...
from 1760 to 1814" - should not be taken at their full face value
(quite apart from the fact that this particular unbroken "reign"
began in 1763, not 1760). At Bedford, as Stockdale emphasises,
although the one rather extended family did provide the gaoler for
about seventy years, spread out over the wider period 1711 to 1814,
it tenure was periodically severed, and "the post did not go
automatically to them. A number of citizens were concerned about
the appointment of the jailer by the incoming High Sheriff each
year". 3

1. Thompson, Whigs and Hunters, pp.258-69; 2 Geo. II, c.32
   (1729).
3. Ignatief, Just Measure of Pain, pp.37-38; Stockdale,
   Bedford Prison, pp.x, 49.
For much of the eighteenth century, the English ruling class had no particular vested interest in the prisons of the day—and no brief for their defence either. It was happy to entrust them to particular individuals, who could be—and were—held responsible for their good running. When subsequently prisons were "improved", and systematic use was made of them, it became more rather than less difficult to hold to account those individuals still theoretically "responsible" for them. The criticisms of particular institutions tended to be construed as attacks upon imprisonment as a form of social policy and, as a result, simply brushed aside. At the beginning of the nineteenth century, Thomas Aris, governor of Cold Bath Fields Prison—one of the new cellular constructions—who was perhaps quite as brutal and corrupt as Bambridge, was able to ride out a whole succession of parliamentary and other investigations, for this very reason.1 Thereafter, prison governors had little cause to fear being held to account by the courts, even if something happened of which the outside world got to learn—and this in turn became ever less likely. Their subordinates, however, were not always quite as fortunate.

Stark though the contrast is, in broad terms, between the way prisons were seen in two successive centuries, there were a few people—in fact, their numbers increased dramatically towards its end—who, even in the eighteenth century, dissented from the prevailing sympathy for the prisoner as a pitiable individual. Complaints were levied from time to time against the "licentiousness" of particular prisons—by Bernard Mandeville in 1725 against Newgate, and by Jacob Ilive in 1757 against Clerkenwell House of Correction, for instance—only to fall on apparently deaf ears.2 Imprisonment

was occasionally seen as a "resource" which might be utilised for the benefit of society or, rather, its inferior elements but even then imprisonment was characteristically commended as an adjunct to execution rather than as an end in itself. The anonymous author of *Hanging Not Punishment Enough* (1701), and Bernard Mandeville, some quarter of a century later, both suggested that those awaiting execution should be held in separate cells, "to humble them, and bring them to a Sense of their Condition", along with those still due to be tried. ¹ The idea of using cellular imprisonment by way of punishment was recommended, as Howard later noted, by Bishop Butler in 1750, by Samuel Denne in 1771, and by Jonas Hanway in 1775.² None of these three, however, did much more than broach the idea in vague terms, and their interest seems to have been a passing one, with the partial exception of the last few years of Hanway’s ever changing life of agitation (1775-1786). John Howard himself did not at first see prisons as a resource: his initial involvement with prisoners, in 1773, as High Sheriff of Bedfordshire, was very much of the traditional kind, the charitable relief of distress.³ Only gradually did he come to present imprisonment first in 1777 as a form of punishment and then, in 1784, as its dominant mode.⁴ Indeed, the first 1777 edition

4. Ibid., p.42.
of The State of the Prisons is undoubtedly characterised both by the time-honoured concern to ameliorate the condition of the prisoner and by a new interest in achieving something through imprisonment. To John Howard, in 1777, the "irregularities" of prisons were simultaneously "sources of misery, disease and wickedness."¹

Ideological entrepreneurs from the late eighteenth century onwards consistently exploited the traditional concern for the prisoner as a suffering individual. Discussing "Distress in Prisons", Howard bracketed the lack of food, water, sewers and air along with the failure to classify different categories of prisoners separately; listing "Bad Customs", he linked together garnish, gaming and the loading of prisoners with heavy irons.²

Indignation was reinforced by sympathy. The building of new prisons was invariably justified on grounds both of health and of morals: at Gloucester, for instance, the existing prison was condemned in 1783 by a grand jury, which, acting in accordance with "humanity and wise discrimination", stated as its belief:

That not only the sickness of the prisoners, but also the general increase of immorality and outrage is in a great measure owing to the useless state of the Houses of Correction and the indiscriminate mode of confinement in the County Gaol. ³

At Oxford, at the same time, where the magistrates were moving to build a new prison, Martin Wall asserted in similar fashion, in a letter to the chairman of the quarter sessions:

2. Ibid., pp.7-34.
3. Paul, Considerations, unpaginated.
That the mode of confinement in many of our prisons is productive of disease and immorality, often most injurious to the health of all the prisoners, and destructive of every moral principle in young and newly initiated offenders, is a truth universally known and universally lamented. 1

Howard, himself - whose sights and standards were high - observed towards the end of his life that while, to his delight, the gaol fever had been virtually eliminated, many debtors had been released, and other tangible improvements had been made thanks to "the liberal and humane spirit which engages the public to alleviate the sufferings of prisoners in general", that at the same time the "still more important subject, the REFORMATION OF MORALS in our prisons" had not everywhere attained a comparable pitch of improvement. For John Howard "the philanthropist", as he was remembered, "philanthropy" meant both relief work and "reformation". 2

The intermittent diseases, the lack of regular nourishment and, by later standards, the generally "inadequate" conditions of the archetypal eighteenth-century prison, were, as we have seen, exploited retrospectively as well as prospectively. Joshua Jebb, Surveyor General of Prisons, quoted the third report of the prison inspectors: "the earliest steps" - a nice metaphor of progress - which were taken to improve prisons, originated in Howard's "public exposure of the deplorable condition of our gaols." 3 On another occasion, Jebb, responsible as he was for some of these "improvements", quoted the chaplain of Pentonville:

An improved state of society will not tolerate that inmates of our gaols shall perish by hunger, wet, cold and frightful disease every year in prison in thousands, as used to be the case when Howard began his reform of prisons. 4

Where Jebb led, others — historians, penologists and prison administrators — followed: a neat illustration of how little the prison system has changed at least in its point of reference. The disingenuousness of those supposed "thousands" of deaths was easily transposed into new forms of disingenuousness, such as the claim that prisons existed to reform the lives of criminals. What had altered was the number of those incarcerated: the prison population quadrupled between the 1770's and the 1840's.

SECTION 2: THE PRISON AS THE ANSWER TO CRIME

The ever-growing number of those who, towards the close of the eighteenth century, advocated the use of imprisonment by way of punishment, were clear in their own minds as to what they were doing. They were proposing a form of sanction which, combining hard labour with incarceration in an individual cell, would simultaneously reform and deter. This combination of aims was more than an axiom: it was an article of faith. It was on this basis that the new model prison was advocated as being the answer to crime. Latter-day liberals or disciplinarians who want prison to be a place either of reform alone, or simply of punishment, can only be said to be questioning the prison, as originally conceived, in fundamental terms, usually without even realising that this is what they are doing. Equally, the fact that prison is seen by some as too tough, and by others as too soft, is an indicator that this general conception of imprisonment, as both punitive and reformatory, commands a still unchanging hegemony.

There was no doubt in the minds of late eighteenth-century proponents of imprisonment that they were advocating an extremely powerful and unpleasant kind of medicine. This was certainly reflected
in the press. John Fothergill, later appointed a supervisor under the 1779 Penitentiary Act, who in an article in the *Gazetteer* (30 September 1776) recommended the employment of convicts at such tasks as stone-cutting, asserted forcefully: "It is not merely to punish, but likewise to deter others by example from committing crimes, that is the object of the legislature." Although, at least by implication, it was argued by Fothergill and others that deterrence would be more effectively promoted through imprisonment than by hanging, Fothergill was quick to defend the retention of hanging for "murderers, incendiaries, and others who commit acts of cruelty, whether in houses or on the road", a formula later followed almost word for word by John Howard.¹ Imprisonment was contrasted favourably with hanging not so much to the denigration of the latter as to emphasise the efficiency of imprisonment as an additional form of punishment which would complement the gallows, and confer an enhanced legitimacy upon it where it was still used. Even Sir William Meredith, an M.P. who in 1777 vainly opposed any further extension to the "sanguinary laws", as he was quoted in the *Gentleman's Magazine*, only criticised the application of the death penalty to property offenders. He then went on to say:

> as the end of all punishment is example; of the two modes of punishment, I shall prefer that which is most profitable in point of example. Allowing, then, the punishment of death its utmost force, it is only short and momentary; that of labour permanent; and so much example is gained in him who is reserved for labour, more than in him who is put to death, as there are hours in the life of the one, beyond the short moment of the other's death.

The idea was to deal more effectively, more systematically - as Meredith complained, the existing mode of criminal justice, of which pardons were an essential element, fostered too many hopes of impunity - and more severely, with property offenders. Like Madan or Fielding, Meredith took heart from a vision of Anglo-Saxon England as a land where, under the tithing system, "property became the guardian of property; and all robbery was so effectively stopped that... in a very short time a man might travel through the kingdom unarmed with his purse in his hands."

Imprisonment opened up new vistas of security. It was precisely because it was so severe a punishment that it would deal effectively with malefactors. "E.P." who in 1784 contributed a piece to the Gentleman’s Magazine, was prepared to defend the sanguinary laws if only they were effective in deterring men, while he criticised the "pernicious" manner in which they were never properly enforced. It would be better, he felt, to reserve the death penalty for "incorrigible" offenders, and, for the rest, to introduce a "more certain" and better proportioned punishment - certainly not a softer one.

Confinement and an obligation to labour is, to those whose crimes arise from idleness and dissipation, a punishment as severe as can well be imagined; the dread of it therefore will have a powerful influence in deterring men from incurring it; and as to those who may incur it, the forced submission to a temperate and regular method of life will, no doubt, have a happy effect in bringing them to a voluntary sobriety.

Whenever punishment was dealt with in the Gentleman’s Magazine, which was quite frequently, the same kind of line was always propounded. In 1785, it was asserted that, because of its inherent degradation, hard labour in confinement would be a more active deterrent than

death itself for malefactors to whom "to preserve a certain rank in society, and to continue the enjoyment of vicious indulgences, to which they have been too long habituated, appear... to be the motives...".¹ A year later, "Agricola", while admitting that the death penalty would always be necessary for murderers and incorrigibles, was convinced that by making criminals work in captivity, "many might be so much purified in the furnace of punishment and adversity, as to become the ornaments of that society of which they had formerly been the bane."² A month later, the advantages of "separate labour" and the "separate cell" were being extolled in equally optimistic terms, as a punishment of awesome severity which would "clear the land of its present stream of villainy, that bears down all sense of honest principle before it." This was a sanction which "would break down the boasted bravery of the most determined criminal; and tears and solitude would flitter away the faint ray of boasted courage with which his vanity had once flattered him."³

Nor was the press alone in seeing imprisonment as the most unbearable of punishments that could possibly be devised. Pamphleteering and book-writing ideological entrepreneurs were just as certain that they had found in the prison an answer to the problems of their society. They too trusted in imprisonment to reform and to deter, in that it was a truly formidable punishment, at least as formidable as death itself. John Noorthouck, in his New History of London of 1773, made out a fierce case for imprisonment as a means of preventing offences:

A state of slavish labour for life, or for other terms proportioned to the crimes of which they are convicted, would be the severest punishment the profligate could be doomed to. When men are hanged, their sufferings are

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¹ Gentleman's Magazine, January 1785, p.29.
² Gentleman's Magazine, February 1786, p.163.
momentary, and they are quickly forgotten; but when condemned to hard, unwholesome, or dangerous labour, unfit for innocent men to exercise, they live striking examples of the consequences of doing evil to others. 1

Jonas Hanway in 1775 suggested that "the humane rigour of solitary confinement and labour" would "clear the land" of villains both by reforming them through habituation to industry and as the most productive method of disseminating "the terror of the law". 2

Following close behind Jonas Hanway came John Howard, the most famous and important of the individual ideological entrepreneurs. He knew that in advocating imprisonment, even as tentatively as he did in 1777, he was calling for an extremely severe punishment. Describing the fifteen individual cells built at Newgate "a few years since", to house prisoners awaiting execution, he related with evident approval that

criminals who had affected an air of boldness during their trial, and appeared quite unconcerned at the pronouncing sentence upon them, were struck with horror, and shed tears when brought to these darksome solitary abodes. 3

While he was concerned for the physical well-being of prisoners, Howard at the same time was quick to point out that

with respect to the more humane treatment of the prisoners in the articles of food, lodging and the like, I venture to assert that if to it be joined such strict regulations in preventing all dissipation and riotous amusement, as I have inculcated, confinement in a prison, though it may cease to be destructive to health and morals, will not fail to be sufficiently irksome and disagreeable, especially to the idle and profligate. 4

3. Howard, Prisons, 1777, p.152; see above, p.192, note 1.
To Howard, imprisonment was very far from being a soft option. It is in this bleak context that his proposal for separate cells should be seen, so significant a proposition that it must be quoted in full:

I wish to have so many small rooms... that each criminal may sleep alone. If it be difficult to prevent their being together in the day-time, they should by all means be separate at night. Solitude and silence are favourable to reflection: and may possibly lead them to repentence. 1

Howard wanted stern, unyielding, even-handed justice, on a systematic basis. Not only was he critical of over-frequent pardons, 2 like so many others, he also had absolutely no desire to dispense with the death penalty. In public, he reiterated Fothergill's line, advocating the restriction of capital punishment to a few extremely serious crimes. Privately, his attitude towards the gallows was even more reverent: asserting that thieves could be deterred by capital punishment, he then added, "far be it from me to plead for sanguinary laws, yet a line should be drawn; there is a justice due to the injured, [and] above all a care to prevent the honest being plundered." 3

This memorandum, besides indicating where Howard's sympathies lay, also points to his adherence to the belief so prevalent then and thereafter that it was actually possible to prevent "the honest", as he so beguilingly called them, "from being plundered".

A central concept of the ideological entrepreneurs was the principle of "reformation", which was of at least equal significance for many of them to "deterrence". They did not see any conflict between the two concepts, a point that has already been put forward. Crime being seen as the result of idleness, "reformation" was simply another way of continuing a war otherwise carried on through "deterrence". Those put inside prison would be "inured to industry"

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1. Howard, Prisons. 1777, p.43.
and schooled in morality, coupled with religion. It was not envisaged by the ideological entrepreneurs that this would be the least pleasant. That they were confident of succeeding is no doubt a reflection of the prevailing optimism, at a time when the industrial revolution was getting under way, that people could be made amenable to the novel kind of discipline necessary in the factories. It was a belief which found application outside them as well. This manipulative outlook is epitomised by Robert Owen, who, in the course of a piece entitled "Observations on the Effect of the Manufacturing system", observed:

It is evident that human nature can be improved and formed into the character which it is for the interest and happiness of all it should possess, solely by directing the attention of mankind to the adoption of legislative measures judiciously calculated to give the best habits, and the most just and useful sentiments to the rising generation. 1

Human nature was completely pliable. By the same token, people were not innately wicked. If they had drifted into delinquency, as was held to be the case long before Matza set it out complete with ethnomethodological trappings, this was a process which could easily be reversed.

This - reversible - domino theory was so absolutely commonplace that de Quinoy incorporated it into his satirical piece, "On Murder Considered as One of the Fine Arts".

If once a man indulges himself in murder, very soon he comes to think little of robbing; and from robbery he comes next to drinking and Sabbath-breaking, and from that to incivility and procrastination. Once being upon this downward path, you never know where you are to stop. 2

A caricature of this kind implies that the reader would be expected to be familiar with the notion being held up to ridicule. John Brewster in his *Sermons for Prisons* of 1790 provides a typical example of the theory from the more usual standpoint of doctrinaire capitalism. "The history of almost every offender commences with a recital of small transgressions", so he declared. He listed Sabbath-breaking, drunkenness and "neglect of public instruction" as examples. The next stage was reached when dissolute companions exercised their evil influence, while eventually growing sinfulness culminated in robbery. 1 John Howard exhibits the same approach.

Corrupt as our nature is, robbery and murder are seldom, if ever, the first crimes of the unhappy wretches who commit them: but once persons have entered upon evil courses, they commonly advance by steps, till they become totally depraved and abandoned to all kinds of wickedness. 2

If criminals were made, or drifted into lawlessness, rather than born, they could equally well be unmade. Even the worst offender was a "rational and immortal being", who might redeem himself. Difficult as the task might be "of reforming criminals and inuring them to habits of industry; yet, when it is for the public good, we ought to make experiments." 3

Just how closely in harmony "reformation" and "deterrence" were considered to be is made quite explicit by countless ideological entrepreneurs. Both "reformation" and "deterrence" had a common end, "the prevention of future crimes", so William Turner asserted in the introduction of a paper read to the prestigious Manchester Literary and Philosophical Society. The punishments "of shame, hard labour, coarse diet and solitary confinement", properly proportioned, would tend to "reform" the offender, by "counteract the effects of idleness and luxury, and by prevent the influence of bad companions". At the same time, the "certainty" of hard labour would

be more likely to "deter" than the "bare probability" of death. 1
"Reformation" and "deterrence" were bracketed together quite as
blithely by John Brewster, who in one all-embracing sentence
defined the purpose of punishment in the following terms:

First, that the perpetrator himself may be made sensible
of his fault, and endeavour to atone for it, by becoming
for the future a more useful member of the community;
and secondly, that others deterred by the example of his
suffering may refrain from the commission of the like
offence.

This two-fold objective, drawn in this instance from a pamphlet
entitled On the Prevention of Crimes and on the Advantages of
Solitary Confinement, is symptomatic of the new enthusiasm for
punishment which gripped the ruling class and, hanging on to its coat-
tails, the middle class. 2 At a stroke, punishment had acquired a
new rationale, the "reformation" - or as it would now be called, in
more secular terms, the "rehabilitation" - of the offender. Punish-
ment had been consecrated anew, and, by the same token, extended in
range rather than restricted.

The repeal of the "sanguinary laws" which took place principally
in the period 1823-1837 and which, when later consolidated in 1861,
explicitly reduced the scope of the death penalty to murder alone
(plus treason), has generally been seen as one of the great humanitarian
reforms of the nineteenth century. 3 Sir Leon Radzinowicz exemplifies
this outlook to perfection, seeing the acts of repeal as the eventual
outcome of the "slow but steady" development of "social consciousness
in the penal system", and as the "crowning achievement of a process
that can be traced back into the middle of the eighteenth century." 4

the Manchester Literary and Philosophical Society, vol. 2
(1785), p.296.
3. 24 and 25 Vic., cc.96-101 (1861).
Arguably, however, any rejoicing over this aspect of the nineteenth century "reform in criminal law" is rejoicing over a non-event. While Radzinowicz assumes that the crucial development was the "reform of the criminal law" in the shape of legislative restriction of capital punishment, arguably the real reduction, in terms of the number and proportion of convicted offenders executed, took place quite as much in the eighteenth century - when, as Radzinowicz himself concedes, in a footnote, the number of executions was "steadily decreasing" - as in the nineteenth. ¹ In the eighteenth century, after all, hanging had been abolished in some European countries - for instance, Russia, Tuscany, Austria - and had been the object of considerable criticism in England, where, as has been pointed out, it was considered by many to be a less effective punishment than imprisonment. Looking at the matter from one angle, the nineteenth century saw "progress": the number of those executed fall to around a quarter of their original number, as becomes apparent if one compares the executions for 1805–10 (the first years for which reliable national statistics are available) with those for the years 1905–10.

<table>
<thead>
<tr>
<th>Year</th>
<th>Number executed</th>
<th>Year</th>
<th>Number executed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1805</td>
<td>68</td>
<td>1905</td>
<td>17</td>
</tr>
<tr>
<td>1806</td>
<td>57</td>
<td>1906</td>
<td>9</td>
</tr>
<tr>
<td>1807</td>
<td>63</td>
<td>1907</td>
<td>10</td>
</tr>
<tr>
<td>1808</td>
<td>39</td>
<td>1908</td>
<td>13</td>
</tr>
<tr>
<td>1809</td>
<td>60</td>
<td>1909</td>
<td>18</td>
</tr>
<tr>
<td>1810</td>
<td>67</td>
<td>1910</td>
<td>16</td>
</tr>
<tr>
<td></td>
<td>Average</td>
<td>59</td>
<td>Average</td>
</tr>
<tr>
<td></td>
<td></td>
<td>13.8</td>
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</tr>
</tbody>
</table>


From these figures it is apparent that the nineteenth century achieved something, but also that considerable numbers of people were being executed even after a hundred years of "progress" had elapsed. The nineteenth-century achievement looks still less novel or impressive if one takes into account the major reduction in the use of the death penalty that took place in the eighteenth century, as shown by the exceptionally complete Home Circuit figures:

**TABLE IV: Capital Convictions, Home Circuit: 1689-1718; 1755-1784; 1784-1814**

<table>
<thead>
<tr>
<th></th>
<th>Average number capitally condemned annually</th>
<th>Average number executed annually</th>
<th>Percentage executed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1689-1718</td>
<td>38</td>
<td>20</td>
<td>52.6</td>
</tr>
<tr>
<td>1755-1784</td>
<td>46</td>
<td>13</td>
<td>28.3</td>
</tr>
<tr>
<td>1784-1814</td>
<td>74</td>
<td>19</td>
<td>25.6</td>
</tr>
</tbody>
</table>

**SOURCE:** Parliamentary Papers 1819, vol. VIII, p.4 (Report from Select Committee on Criminal Laws). The Committee was not able to procure data for the years 1719-1754.

While by the end of the eighteenth century the proportion of those executed had dropped to a fairly low plateau, this has to be set against an enormous increase, from the late eighteenth century onwards, in the number of those who were being incarcerated. By 1805, of 2785 persons convicted at Assizes and Sessions, 1680 were sentenced to imprisonment as part of their sentence, as against 350 capitally condemned, of whom only 68 were executed. In other words, by the beginning of the nineteenth century, execution was already a

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comparatively infrequent punishment, within a much more extensively used arsenal of punishments. A modern spread of sanctions - certainly that characteristic of the nineteenth century - had been attained. Yet this preceded the repeal - begun in 1808 - of even the first of the sanguinary statutes.¹

Paradoxical as it might appear, the development of imprisonment in the late eighteenth century may actually have helped to sustain capital punishment at a time when it was fast losing credibility. It is particularly revealing to take a look at the way executions found a new place within society: a place which clearly demonstrates that the gallows was given an altogether new kind of legitimacy by the prison. Prior to the late eighteenth century, hanging took place either at the scene of the crime, or, more usually, at some convenient open place, such as Tyburn. Either way, the criminal had the benefit of a potentially "triumphal" procession. Whether or not he died "hard" or gamely - and many went to their deaths as bravely as to a wedding, as if for which they were sometimes dressed - execution day was a festive if not boisterous occasion.² Bitter exception was taken to this kind of event by many ideological entrepreneurs, for instance by Mandeville, Fielding and Howard.³ Their criticisms, by implication at least, added extra weight to the then mounting criticism of hanging generally. To criticise even the way something is done is to undermine its legitimacy. Had executions been stubbornly carried on in this time-honoured fashion, there can be little doubt that they would have been abolished altogether much sooner than was actually

1. By 48 George III c.129 (1808), the death penalty was abolished for the offence of stealing privately from the person. This was Romilly's first "success".
the case. Instead, what happened was that from the late eighteenth century onwards, the venue of hangings rapidly became the prison. First, for a time, they were carried out in front of it, on a special platform, or on some front part of the prison buildings themselves. Then, from 1868, they took place more discreetly still, inside the prison. The abandonment of Tyburn in 1783 in favour of more solemn and, in theory, intimidating proceedings to which the grim and massive facade of a recently rebuilt Newgate served as back-drop, followed a similar switch in Dublin. As a correspondent to the Gentleman's Magazine explained,

The method of executing criminals at the prison wherein they are confined, whereby a very disagreeable procession is avoided, was taken up in Dublin about three years since: and not long after the present new building had been completed, and the former [Dublin] prison of Newgate taken down. This mode has at length been adopted in London.....

The use of prisons as the venue for hanging occurred at precisely the same time as imprisonment was first being used as a major form of punishment – and very much with the approval of prison "reformers". A not unusual practice in the period in which executions took place in front of prison was for the inmates to witness the punishment being carried out. James Neild, Howard's "successor", described with approval how at Dorchester Prison executions took place "in view of all criminal prisoners, who are brought out of their cells for that purpose; the church bell tolling solemnly...". Dorchester was a typically "Howardian" prison: such a custom drives home the point that the development of imprisonment contributed to the perpetuation of capital punishment quite as much as it facilitated the campaign which resulted in formal legislative restriction upon the extent of its application.

If the newly built prisons of the late eighteenth and early nineteenth century lent themselves to the reconsecration of the death penalty - after 1868, complete with reverential silence inside the prison at the moment of execution - this is less surprising in that the ideological entrepreneurs who floated the idea of imprisonment did not oppose capital punishment on principle. As has been pointed out, many even of the more important of them, such as Howard or Fothergill, were quite content to see the death penalty retained for exceptionally serious or "incorrigible" offenders.¹ This was also the view of Sir William Blackstone, who, besides being the author of the Commentaries on the Laws of England, long the lawyer's bible, was closely involved in the drafting of the 1779 Penitentiary Act.² Even those who, like Madan or Paley, took a more positive view of capital punishment, were quite willing to restrict its scope, so any divergence was limited to matters of practical detail.³ The ideological entrepreneurs all believed in the one and same goal, the prevention of crimes. They shared the belief that this could be achieved if only law enforcement became more systematic. This being so, the precise relative scope of imprisonment and capital punishment was only a secondary consideration, often referred to in somewhat vague terms. What mattered was simply that the two penalties should be applied in a constant and uniform way. As Jonas Hanway put it, speaking as one who was opposed to "breaking with the laws from mere compassion" through the use of the pardon, while at the same time he was a staunch advocate of the solitary cell, "We must become ferociously sanguinary, or more determinately humane and

¹ See above, p. 176.
³ See above, pp. 156-58.
consistent." By this he meant, in the double-speak characteristic of the way the discussion was conducted, that offenders should be systematically incarcerated, or, alternatively, hung without mercy.

One reason the ideological entrepreneurs felt so little need to tackle the issue of capital punishment was that they - fondly - imagined that crime would be virtually eliminated by an all-round improvement in social control, in which the new prisons would be backed up by Sunday schools and other institutions. It is significant that Howard was interested in schools and hospitals, as well as prisons. 2 The biographer of a notorious offender called Patrick Madan observed in 1781 that "theft itself might almost be abolished, if proper attention was paid to the education of the infant poor." 3 Robert Raikes of Gloucester, "founder" of the Sunday schools, hoped that through these "the lower class of people, in a few years, would exhibit a material change of character, and justify that superior policy, which tends to prevent crimes, rather than to punish them." 4 Howard likewise trusted that Sunday schools would have this effect. 5 What the ideological entrepreneurs had their sights trained on was the abolition of crimes, rather than of punishments. If an era of orderliness - a capitalist millennium - was at hand, there was little point in bothering very much about the sanguinary statutes, so many of which were never implemented at all. As for those which were in occasional use, they would be made still less important by the successful use of imprisonment. Such was the spirit of optimism prevailing at the time the first new "Howardian"

2. Especially in the late 1780's, in the last years of his life, Howard concerned himself with other total institutions besides prisons; as is reflected in his last work: Howard, Lazaretios.
prisons were being erected that Alexander Wedderburn, previously Attorney General at the time of the 1779 Penitentiary Act, could in 1793, as Lord Loughborough, suggest in all seriousness that these prisons had been "erected on too large a scale: the success of the reform will render a part of those buildings useless."¹

Each and every pronouncement of the ideological entreprenuers should not be taken at face value, even if some of their ideas seem to have been borne out by events. After all, many of them— for instance, Ollyffe, Eden, Howard and Paley— were consistently quite as quick to raise objections to transportation as to the "sanguinary laws".² Yet transportation, suspended in the late 1770's, when the Americans rebelled, was reactivated in the late 1780's, using Australia. Indeed, between these two dates there was even a short-lived attempt, largely forgotten, to transport convicts to Africa.³ In matters of detail or accentuation, the ideological entreprenuers were not always "right" about subsequent developments. To the extent that they did speak for their class and their era, it was in general terms. They, as much as any of their kind, socially, were gripped by the sense of panic— then becoming so general— about "crime". They reiterated the need for "crime" to be dealt with appropriately, that is, systematically, and without leniency. They did much to channel the panic about "crime" into enthusiasm for the prison, on which they conferred a lasting seal of guaranteed approval. In their legitimation of imprisonment, they ascribed to it "humanity", a virtue on which England in the eighteenth century—a "humane century", as one of them put it— prided itself.⁴ The humanity was inherent not so much in the treatment of inmates, which was to be virtually as deadly as death itself, as, rather, in imprisonment as a form of social policy and a means of dealing with

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³ P.P. 1819, vol. VIII, pp.34, 53-54 (Report from the Select Committee on Criminal Law).
offenders. The two were separate matters, even if the distinction
was blurred on occasion. It was as an institution, rather than for
any outstanding conditions inside, that Howard praised Bodmin
Prison, one of the first of the new type, as a "monument to humanity". Secure in the name of "humanity", the scene was set for the prison
to become both in itself, as later as the driving force to which
other "improvements" were geared, of a vast extension of social
control. Of this, the first, largely declaratory stage will now
be examined.

The importance of the 1779 Penitentiary Act, 19 George III
1. c.74, as the cornerstone of the modern prison system, has not
hitherto been properly grasped. Characteristically, this measure
has in the first place been seen by historians as the outcome of a
short-term crisis, the ending of transportation to America, following
the colonists' rebellion. Thereupon, it has been dismissed as an
unimplemented failure, perhaps an inevitable corollary, given that
transportation was successfully re-started, using Australia, after
little more than a decade. Historians who have described the
Penitentiary Act as the product of "a moment of acute crisis in the
administration of criminal justice", and as a "failure" which "never
became operative" have however betrayed their limitations by
perpetuating a string of errors. Both Radzinowicz and Ignatieff
have described the Penitentiary Act as being "drafted by Howard,
Eden, and Blackstone". Influential as Howard may have been, he
certainly had nothing to do with the drafting of the Penitentiary
Act: it is clear from a letter of 13 July 1779, from Blackstone to
Eden, that Howard had not personally been connected with the active
formulation of the scheme in any way until - after it had reached
the statute book - he was invited to become one of the three
commissioners charged with its implementation. Further correspondence

2. Ignatieff, Just Measure of Pain, p.79; Radzinowicz, Criminal
3. Ignatieff, Just Measure of Pain, p.93; Radzinowicz, Criminal
Hampton L. Carson Collection of the Free Library of Philadelphia
between Blackstone and Eden confirms Eden's ministerial responsibility as Under-Secretary of State, and Blackstone's more detailed involvement: at the same time, Blackstone's complaints make it clear that his version was substantially altered by a parliamentary committee, of which Sir Charles Bunbury was the chairman.¹

Both the events leading up to, and the subsequent outcome of the Penitentiary Act are of such complexity that it is little wonder there has been some confusion. The involvement of men with such complicated - not to say twisted - personalities as John Howard and Jeremy Bentham has not helped, either. Sir Leon Radzinowicz has failed to appreciate the distinction between the 1779 Penitentiary Act and an earlier measure which lapsed with the 1778 summer recess: it was this 1778 bill which was the subject of Jeremy Bentham's View of the Hard Labour Bill, not the 1779 Act.² The 1778 bill differed in many ways, for instance in not incorporating the word "penitentiary" which was not coined until 1779, by Blackstone, and also in making provision for a whole network of prisons, "houses of hard labour", throughout England and Wales, as opposed to the two experimental penitentiaries envisaged by the 1779 Act.³ Once passed, the Penitentiary Act became the onerous responsibility of, in the first instance, two successive commissions, each three strong: there were never four commissioners working together, as explicitly stated by Michael Ignatieff.⁴ Disagreements as to the choice of site may have hamstrung the first commission (1779-1781), but they did not,

⁴. Ignatieff, Just Measure of Pain, p.95. George Whatley, Ignatieff's fourth commissioners, was in fact dismissed following Howard's resignation, which itself followed the death of John Fothergill, the other of the three original commissioners. Thereupon a fresh trio was appointed. This sequence is clearly confirmed by an exchange of letters between Howard and Whatley; see J. Field ed., Correspondence of John Howard, the Philanthropist (London, 1855), pp.66-68.
as Michael Ignatieff suggests, undermine the second. This was crippled, instead, by a financial failure of nerve first on the part of the Treasury, and then by the judges responsible for supervising the commissioners.¹ This, in 1783-85, came at a time when it was hoped to redevelop transportation, as a cheap alternative. It still did not mean the "abandonment of the penitentiary plan", as Ignatieff suggests.² Instead, the Penitentiary Act, originally valid until 1784, continued to be renewed every few years, as necessary.³ In the period 1792-1811, Bentham came close to taking over the project as a commercial venture. His "panopticon" was little more than a new word for "penitentiary". The underlying principles were similar; indeed, the 1779 Act allowed the governor both to make contracts and to profit from the labour of the inmates.⁴ Even Bentham's radial architecture, enabling prisoners to be supervised discreetly but efficiently, was not the innovation it has been made out to be, for instance by Ignatieff: it simply took existing precedents a little further. The winning entry, by William Blackburn, in the architectural competition organised by the penitentiary commissioners in 1782, had the governor's house "so admirably contrived, that the first appearance of riot or idleness could not escape his notice, he being able to see the whole without being perceived by the culprit".⁵

In the early nineteenth century, when the construction of national penitentiaries was duly undertaken, first with Millbank, and then with Pentonville, all those concerned saw themselves as implementing, at long last, the 1779 Penitentiary Act. In 1810,

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2. Ignatieff, Just Measure of Pain, p.96.
3. 19 Geo. III, c.74 was renewed by 28 Geo. III, c.24, then by 34 Geo. III, c.60, then by 39, Geo. III, c.51, then by 42 Geo. III, c.28, and finally by 46 Geo. III, c.28 (1806). See below, p.
4. 19 Geo. III, c.74, clauses xviii, xxi.
Sir Samuel Romilly, in a speech which marked the resurgence of parliamentary interest, emphasised that he was simply concerned to implement a measure already on the statute book "upwards of thirty years". In the debate which followed both the Home Secretary and the Solicitor General accepted the well established "principle" of penitentiary houses and conceded that it was a "great reproach to the legislature" that it had been so long neglected. George Holford, the M.P. who undertook responsibility for Millbank, began his Account of this "national" project by referring back to the 1779 Penitentiary Act, not only discussing it in some detail, but giving a substantial quotation. William Crawford, in his influential Report on the Penitentiaries of the United States (1834) was at pains to demonstrate that the kind of individual confinement he favoured had its origins in the 1779 Penitentiary Act, as well as in later American ventures. Similarly Joshua Jebb who as Surveyor General of Prisons presided over the construction of Pentonville (and later as the first Chairman of the Directors of Convict Prisons shaped the growing national system) emphasised that the "Separate System of Discipline" had been "the subject of legislative action so long ago as 1779". In countless - important - details, the "model" prison which he so carefully designed paid tribute to the Penitentiary Act of 1779: the cells, thirteen feet by seven, or thereabouts, followed fairly precisely the provisions of the 1779 Act (10-12 feet long, 7-8 feet wide), and at the same time set a widely imitated pattern.

The 1779 Penitentiary Act, in the words of Sir George Paul, who saw himself as implementing it on a local basis in Gloucestershire, "first created a system of punishment by the mode of confinement, by labour and a modified seclusion; a system of penal imprisonment as a substitute for punishment by death or transportation". The key passage of the Act, as quoted for instance by George Holford, is so epochal that its reproduction, once more, needs no apology:

If many offenders were ordered to solitary imprisonment, accompanied by well regulated labour, and religious instruction, it might be the means, under Providence, not only of deterring others from the commission of the like crimes, but also of reforming the individuals, and inuring them to habits of industry.

This one sentence made it clear that imprisonment had officially come of age as a leading method of punishment, which would serve as a supplement to the death penalty. Clause xxviii specified that the penitentiaries might even be utilised for those convicted under capital statutes but subsequently pardoned. Blackstone hoped that this new form of imprisonment might prove so effective, and so devastating, that eventually "such a reformation may be effected in the lower classes of mankind, and such a gradual scale of punishment may be affixed to all gradations of guilt, as may in time supersede the necessity of capital punishment, except for very atrocious crimes." Not only had he no doubt as to which section of the population was to be disciplined, he was also as clear as any ideological entrepreneur as to the terrifying nature of the kind of punishment proposed. It was a more terrible and a more constructive sanction than death itself, as he described it to a grand jury:

1. Sir G.O. Paul, Address to His Majesty's Justices of the Peace for the County of Gloucester, Delivered at their Epiphany General Quarter Sessions, 1809 (Gloucester, 1809), p.20. (Hereafter cited as Paul, Address at Epiphany).
Imagination cannot figure to itself a species of punishment in which terror, benevolence and reformation are more happily blended together. What can be more dreadful to the riotous, the libertine, the voluptuous, the idle delinquent, than solitude, confinement, sobriety and constant labour? 1

This was a punishment which could fittingly take its place alongside the gallows: it could reach out in ways the scaffold could never emulate.

The 1779 Penitentiary Act, in opening the way for an additional tier of punishment, was designed as a response to what was seen as a crisis of disorder of national dimensions. Implicit in the Act is the vision common to the various ideological entrepreneurs of a land which, while on the verge of being overrun with malefactors, could still, if it exerted itself, clear itself of them and make itself secure for industry, for profits and for exploitation. It was because the crisis was seen to be nationwide that the counter-measure was envisaged in the same extended terms, and under the control of the state, rather than of local individuals. As Blackstone puts it, "this Experiment, being national, must be carried into Execution (if at all) under the immediate Direction of Government". 2 As Blackstone had commented in 1778, in a background paper to the abortive Hard Labour Bill, the existing sanguinary laws did not lend themselves to dealing effectively with a crisis as threatening as this appeared to be. The problem as he saw it, like other ideological entrepreneurs, was that while on the one hand the "habitual Relaxation" of the laws was "undesirable and mischievous", strict implementation, on the other hand, "would exhibit a scene rather of Massacre and Carnage, than of Justice and due Restraint".

The need for extrication from this impasse was, he felt, made ever more urgent by the mounting crisis: some system of penal labour was
certainly much wanted; for though the generous Nature of our Countrymen rarely permits them to perpetrate Acts of Cruelty, it must be confessed that daring Violations of Property (subject, and justly so, to the severe Control of law) have, during the present Century, been as numerous perhaps in England as in any Nation of the World. 1

The 1779 Penitentiary Act was the first official response when "crime" began to be the object of concern of unprecedented intensity and nature. The suspension of transportation may have served as the final stimulus, but its effectiveness had long been seriously doubted. 2 Indeed, Blackstone argued that "as the Intercourse of Mankind over the different parts of the Globe has now become so general, as to put an End to all the Terrors formerly connected with the Idea of Exile, this Consideration has led to the Increase of Capital Punishments." 3 Clearly, there was a deeply felt need for a punishment which, in being more deadly than either transportation or the sanguinary laws, would have a greater impact in the fact of what was felt to be a crisis.

While fuelled by panic and alarm, the enactment of the Penitentiary Act also reflected capitalism's other essential characteristic, confidence. The building of penitentiaries was simultaneously a gesture of faith and a novel way of tackling delinquents which was grounded on the idea — quite at odds with transportation or hanging, each of which served to rid the community of the offender altogether — of turning them into amenable workers. As Blackstone emphasised, he had chosen the term "Penitentiary Houses"

2. See above, p.159.
with some care, "as well to intimate the Hope of Reformation which may be indulged from the Establishment and so as to distinguish them more effectively in common Speech from provincial Houses of Correction". In an age of economic ferment and expansion, the penitentiaries were envisaged on one hand as beacons to illuminate the way ahead and on another more practical level as the anvil on which reluctant elements of the workforce might be hammered into a more pliant shape. The Act made provision for all convicts to be employed, so far as they were able, at work "of the hardest and most servile kind", so as to inure them to labour. In addition, it provided for an incentive astonishing by later standards: whereas nowadays a society which expects little that is constructive from its prisons does even less for their inmates on discharge, the 1779 Penitentiary Act stipulated not only that each prisoner, on release, was to receive decent clothing plus a sum ranging between one and three pounds, but also that a similar bonus was to be paid a year later to those who had kept themselves in respectable employment. The value, then, of three pounds was considerable: just how substantial can be gauged from the fact that at that time scarcely any labourers and only a minority of craftsmen earned more than one pound a week. Those who framed the 1779 Act could perhaps "afford" this kind of generosity, metaphorically speaking, in that they confidently anticipated that, as industrial enterprises, the penitentiaries would prove so profitable that the salaries of the governors and task-masters would "totally, if possible, or at least in great measure, arise from the profits of the work that shall be done...". This was a society which was confident of growth and prosperity: not one gripped by the spectres of over-production or

2. 19 Geo. III, c.74, clause xxxii.
3. 19 Geo. III, c.74, clause xxxvii.
5. 19 Geo. III, c.74, clause xviii.
unemployment. As yet, capitalism was an ideology of almost undiluted success.

The extent of the commitment to the penitentiaries, as enshrined in the Act, is well illustrated by the highly detailed provisions it made as to the running of the establishments. Arrangements for staffing; and for proper salaries; for outside inspection and for disciplinary procedures for staff and inmates; for the classification of prisoners in accordance with a progressive system of three successive stages; for their diet, clothing and medical care; for their work, their exercise and their religious instruction: all these matters were carefully regulated. The complexities of running the kind of prison still in operation today were amply grasped; indeed, an initial stamp was put upon their configuration. Two points perhaps the most vital of all may be singled out. First, much reliance was placed upon individual cells. These, which were at least to be heated by flues, as later at Pentonville, would be where the prisoners would spend most of their time, by themselves, even at work, whenever "the nature of their several employments will permit". When they did associate, they were to be carefully supervised. The convicts' environment was at all times to be a tightly controlled one, at least in theory, so that a new man might be made of the delinquent. Secondly, provision was made for that essential feature of "reformative" imprisonment and, indeed, vital management ploy in the effective control of any prison regime: "parole", as it would now be called. In this particular scheme, it was the judges who, at the prompting of the commissioners, were empowered to order early release, whether with some proviso, such as service in the armed forces, "or without any condition, as shall seem meet". Any

1. 19 Geo. III, c.74, clause xxxiii.
historical analysis of indeterminate sentencing must start not with the ticket-of-leave system of the mid-nineteenth century, but with the 1779 Penitentiary Act or, in other words, at the very moment when imprisonment first became a major form of punishment.¹

If the Penitentiary Act represented a watershed in its detailed regulations, it also broke fresh ground in being the first comprehensive criminal justice "package" of the kind now familiar. It was directed not at a particular kind of behaviour, or even cluster of offences, like the Black Act of 1725,² the most terrible of the "sanguinary" kind, but was designed to structure the processing of "many offenders" — of all kinds — the pickpocket along with the highwayman, the murderer with the forger. Instead of discriminating between these or any traditionally differentiated categories, it attempted to rationalise, if not to bring into being, a whole interlocking system in which offenders no longer counted as individuals, whether within the system, or to those outside it. This was a general measure, in response to a general panic whipped up about criminals of all sorts.

The Penitentiary Act, as a criminal justice "package", dealt not just with the introduction of one particular measure, imprisonment, but directly or indirectly, with virtually the entire range of punishments which the eighteenth century ruling class had at its disposal. Previously, even the most important Acts dealing with the punishment of offenders had merely adjusted the scope of existing laws in some particular way, or made some alteration to the manner in which a particular penalty was enforced. The

¹ 19 Geo. III, c.74, clause xlix. Similar provision also existed with respect to the hulks, as provided for in 16 Geo. III, c.43 (1776). At the time, however, the hulks were only intended as a temporary expedient. See below, pp. 310-11.
² 9 Geo. I, c.22.
Penitentiary Act was far more comprehensive and also, significantly, much longer: 74 clauses as opposed to the 9 of the 1717 Transportation Act, which regularised transportation for half a century. The 1779 Act re-sanctioned transportation "to any parts beyond the seas", in the first place; both West Africa and Botany Bay had been recommended to Sir Charles Bunbury's committee, and each was duly tried out, the latter, of course, more successfully. The use of hulks, introduced temporarily in 1776 following the suspension of transportation to America, was also re-sanctioned for "the more severe and effectual punishment of atrocious and daring offenders". Incarceration in the hulks, with hard labour on the River Thames, was seen, with imprisonment in a penitentiary, as an appropriate measure for those who might otherwise have been transported. The supremacy of transportation as a "secondary" punishment - the efficacy of which had so long been doubted - was clearly at an end. Both alternatives were also, like transportation, authorised as substitutes for the death penalty: an ambiguous but potentially open-ended provision. The length of each kind of sentence was synchronised: incarceration on the hulks was to be of between one and seven years (originally, in 16 George III, c.43, longer terms of between three and ten years had been stipulated), the same as for males confined in the penitentiary houses. Seven years imprisonment at home was to correspond to fourteen years transportation overseas. Finally, as if these measures had not sufficiently altered and extended the arsenal of punishments, the Penitentiary Act also gave a new lease of life to the use of corporal punishment.

1. 4 Geo. I, c.11. The whole business of transportation, under this Act, was left in the - unsupervised - hands of private contractors.
3. 19 Geo. III, c.74, clause xxvii.
4. 19 Geo. III, c.74, clause xxviii.
5. 19 Geo. III, c.74, clauses xxiv and xxvii.
6. 19 Geo. III, c.74, clause xxiv.
The 1779 Penitentiary Act marked a major change in the imposition of corporal penalties: a switch from public to private infliction, which had the effect of re-legitimising whipping, just as capital punishment was re-legitimised when its location was switched to the prison. At first sight, it is tempting to follow the well-established view, as formulated by Michael Ignatieff, that "the rise of imprisonment indicates a growing scruple about the morality of punishing men by abusing their bodies". After all, as he points out, the Penitentiary Act does appear to exemplify such a trend, in that it ended the practice of burning in the hand, as by then carried out only occasionally, and in a half-hearted fashion.\(^1\) Further examination, however, suggests a more complex picture. Great Britain, perhaps the first country to develop imprisonment on a significant scale, was one of the last western societies to dispense with corporal punishment. Nor, even now, does this practice lack for adherents. As a penalty under the criminal law, flogging, by the cat or with the birch, was not abolished until 1948, while as a sanction within prisons, it was not finally ended until 1967.\(^2\) As late as 1932, 35 of those convicted at the Old Bailey were sentenced to be whipped, a substantially greater number than was the case in, say, the early 1740’s. This kind of playing with figures exercise has a serious point: the Cadogan Committee which reported on corporal punishment in 1938 was clear that it was dealing with what was still a very important punishment, one which was not on the decline, yet which was employed in Great Britain at a time when most comparable countries had long abandoned it.\(^3\)

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1. Ignatieff, Just Measure of Pain, pp.90-91.
2. 11 and 12 Geo. VI, c.58 (Criminal Justice Act 1948); 15 and 16 Eliz. II, c.80 (Criminal Justice Act 1967).
If flogging enjoyed a new lease of life in nineteenth and twentieth century Britain, this was because it was conducted in private, usually in a prison (later, in the case of juveniles, in a police station or court building). Eighteenth-century ideological entrepreneurs took exception so much to whipping itself, as to its infliction in public, which they considered degraded or stigmatised both spectators and those chastised.  

The Penitentiary Act, as part of the same clause which proscribed burning in the hand, for the first time expressly permitted courts to order that offenders be "privately" whipped, not "publicly", as had long been the custom, and the cause of such criticism. A new pattern was set, and confirmed by a clause which stated that whipping could, as before, be imposed as part and parcel of a sentence of imprisonment, a provision which was later enshrined in many other statutes, including some of those which abolished the death penalty for particular offences. The practice of combining whipping with imprisonment not only re-legitimated it: it also veiled its precise extent, to the point where even the official punishment statistics, as first gathered in the early nineteenth century, conceal the incidence of whipping, when combined with imprisonment, or with a fine. All that can be said with certainty is that considerable numbers of people continued to be whipped, if in slightly smaller numbers proportionately, then in greater numbers absolutely. In London and Middlesex, of 15,611 people convicted in the seven year period 1825-1831, 522 were sentenced to be whipped, an unstated number being additionally whipped as part of a sentence of imprisonment. From a different set of parliamentary papers it


is evident that, by the early 1830's, only a handful of offenders were still being publicly whipped in the metropolis - only one, indeed, in each of the years of 1831 and 1832. Secure behind prison walls, whipping regained lost prestige; significantly, it was provided for in two measures which particularly reflected the fomenting of public indignation in the Victorian era - the 1842 Treason Act and the 1863 Garrotters Act.2

The 1779 Penitentiary Act not only reconsecrated whipping, behind prison walls, as a judicial punishment; it also provided for whipping as a means of enforcing prison discipline (along with close confinement in a dungeon for three days, on bread and water). Of course, prison inmates had always been liable to sanctions, sometimes corporal, either at the hands of their fellows or of their keepers, usually, however, as a matter of last resort only. What the Penitentiary Act did was to place the threat and exercise of punishment, as a means of regulating the lives of inmates, upon a regular and highly detailed footing, of an altogether new kind. It marked the launching of the strange semblance of a legal system peculiar to prisons:

And be it further enacted, that the Governor of each of such Penitentiary Houses shall have the power to hear all complaints touching any of the following offences; that is to say, disobedience to the orders of the House; assaults by one person confined in such House upon another, where no dangerous wound or bruise is given; profane cursing and swearing, or indecent behaviour; absence from chapel, or irreverent behaviour there; and idleness or negligence in work, or wilful mismanagement of it. 3

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2. 5 and 6 Vic., c.51 (Treason Act 1842); 26 and 27 Vic., c.44 (Garrotters Act 1863).
3. 19 Geo. III, c.74, clause xlvi.
More serious breaches of the prison regulations could be referred by the governor to the commissioners, whose role in this higher capacity compares interestingly with the judicial function of latter-day boards of visitors. The commissioners could punish offenders still more severely, by "repeated whippings", by close confinement for a month, by re-classification with loss of privileges and, not merely by denying remission, but by extending the total original term of imprisonment, within certain limits. This was a blueprint for the disciplinary machinery of the modern prison system, within which mechanism, in Britain, flogging long continued to occupy a central and officially cherished position - upheld indeed by the Cadogan Committee of 1938 - a century or so after it had been abandoned by many European countries. It was part of a scheme of discipline designed to regulate the lives of prisoners forcibly, and in the most intimate of ways, a scheme now a little softened, but essentially unchanged, and always liable to capricious or abusive infliction. One example must suffice, of the kind of punishment to which the Penitentiary Act marked the point of transition. At Aylesbury Prison in 1832, William Kingston, aged 19, was ordered by the visiting magistrates to be flogged. His offence: "Playing with dice on a Sunday."

As a comprehensive package, the Penitentiary Act was intended to set the scene for the development of imprisonment not only directly under the auspices of the state, but also on a more local basis. Neither the state of transport and communications nor hallowed custom were such as to make possible, at a stroke, a fully centralised system.

1. 19 Geo. III, c.74, clause xlvii.
Consequently at this date no conflict was envisaged between a national development and its application locally. The Bunbury Committee, which launched the Penitentiary Act, explicitly looked to provincial magistrates, collectively, to respond on a nation-wide basis to a crisis felt to be threatening them all:

Your Committee hope that the attention shown by Parliament to this important Object of Police, and the alarming evils with which the community is threatened, from the practice of crowding in incommodious Gaols great numbers of filthy, idle and abandoned Criminals, will raise a general Spirit of Reformation, and excite the Vigilance of Magistrates throughout the whole Kingdom...

The Penitentiary Act itself provided that judges might sentence offenders to local prisons as if to penitentiaries. As appropriate, convicts might be

imprisoned and kept to hard labour, for the several terms aforesaid, within each respective county; which houses of correction, or other proper places, shall, during such time, be deemed and esteemed penitentiary houses, to all intents and purposes, within the meaning of the act...

Judges were quick to act upon this provision, as Sir George Paul noted in 1784, whether or not suitable places of confinement existed. They continued to expect that penitentiaries, national or local, would be brought into use. At the Lent Assizes at Bedford in 1783, William Johnson, convicted of grand larceny, was ordered "to be publicly whipped until his body be bloody, and also to be imprisoned and kept to hard labour in one of the penitentiary houses to be erected for one year; and in the meantime to be kept to hard labour in the house of correction for this county." There he languished some years. It could be said that he had the worst of both worlds.

2. 19 Geo. III, c. 74, clause xxvi.
elements of punishment old style, the public whipping in particular, being combined with the new sanction, imprisonment, compounded by unusual indeterminacy, even for it.

By the mid 1780's, some counties were already busily engaged in developing their own penitentiary prisons. The most important of these, as a model both then and through into the nineteenth century, was that at Gloucester, with which the final part of this chapter is concerned. Gloucester Penitentiary's most interesting precursor was the prison at Wymondham, in Norfolk. The magistrate most closely linked with it, Sir Thomas Beevor, habitually referred to it as, interchangeably, "a Bridewell, or Penitentiary-House", perhaps the first time the term "penitentiary" had regularly been applied to an actual prison, following its initial appearance in the 1779 Act. Beevor emphasised that the prison was run in accordance with rules which, "If they appear severe... are the severities of the legislator, not of the compiler." All were founded, he then added, either on an Act of 1782 for regulating houses of correction, or, particularly in the case of regulations concerning the use of individual cells, even during hours of work, on "the act of the 19th, called the Penitentiary Act". As such, the rules "had met with the entire approbation of the gentlemen of this county, as well as that of the judges of the assize." Of the prisoners, Beevor gloated: "This solitude is found to affect the most unfeeling and hardened of them, beyond fetters or stripes...". In other words as "places of real punishment", prisons were more terrifying than whippings or any other corporal sanctions, although, of course, provision did also exist for these to be inflicted on prisoners, in the interests of discipline. Beevor had a further boast to make, on the basis of an early set of recidivism statistics:
The effect of the solitariness and mechanical regularity of the place is such, as to render them so contrite and subdued, that it not only promises fair for a lasting reformation in these poor unfortunate wretches, but, what is still better and more pleasing consideration, that it may prove a preventive of crime in others.

Only one prisoner had recidivated, while the general level of commitments had dropped by a third since the new regime had been implemented and the new cells built. As Beevor hastily and triumphantly concluded, "this preventive, so preferable to punitive justice, most fully evinces the propriety and humanity of the undertaking." This was one of the first of many subsequent experiments which have, at first, augured so well, but which, eventually, have shown themselves unable to deter or reform criminals.¹

Wymondham "Bridewell, or Penitentiary-House", with its solitary cells, was commended by John Howard, by then so famous an ideological entrepreneur, thanks to newspaper and magazine publicity, as to be a household name to those who had households to speak of.² It would have been surprising if he had pronounced otherwise, the prison at Wymondham being modelled so closely on those envisaged by the Penitentiary Act: for Howard was one of the various "experts" consulted by the Bunbury Committee, responsible for the Act.³ In other words, the Penitentiary Act was an early example, the first in the field of social control, of that familiar circular process whereby measures are justified by their proposers as being in line with the recommendations of "expert witnesses", and subsequently approved of by these witnesses in so far as they have conformed to their original prescriptions. As their stock-in-

trade, these "experts" were presumed, like others of their kind, to be privileged with particular insight, which could be utilised by others for purposes of policy. Along with the hearing of experts went a reliance on statistics: the Bunbury Committee, as originally constituted in 1778, had before it a return of all those transported in the period November 1769 to November 1776. A year later, it had the benefit of a list of all those held under sentence of imprisonment in London and the Home Circuit counties, with details as to their various offences and conditions in prison. The Committees of 1778 and 1779 consulted a significant set of people: precisely the kind of interested parties who would be invited nowadays. The list included a number of doctors with knowledge of conditions in prisons and on the hulks; travellers familiar with places to which convicts might be transported (such as Joseph Banks, botanist accompanying Captain Cook, who recommended Botany Bay in lyrical terms); Duncan Campbell and others concerned with managing the convicts on the hulks; and, in both years, John Howard, who drew attention to the poor condition of English prisons in contrast to the best of those on the Continent, in addition to making criticisms of the hulks. Several witnesses - Richard Akerman, Keeper of Newgate, Edward Hall, Keeper of Clerkenwell Bridewell, and Duncan Campbell - praised the effects of "solitary confinement", which they asserted, was "much dreaded" by prisoners when used as a punishment. Duncan Campbell also reported that "holding out hopes of Pardon [i.e. early release] to them" was a useful form of control.

The gathering of such advice by the Bunbury Committee, in this kind of way, so novel then, was symptomatic of the official emergence

of a new outlook on crime and punishment, an outlook which is evident in so many ways in the Penitentiary Act, the first of countless measures enacted to solve the problem of crime. Crime, the object of general panic, and seemingly a threat to the nation at large, was to be combated in what was designed to be an appropriately systematic fashion. Two opposing lines of battle had been drawn up, by those on one of the sides, for a struggle still without end. The scene was set for the first great programme of prison construction. To this, as epitomised by Gloucester Penitentiary, the remainder of this chapter will be devoted. If there were some who suspected from the beginning that the 1779 Penitentiary Act was "liable to become an engine of severe oppression", Gloucester Penitentiary, as the first significant attempt to apply the provisions of the Penitentiary Act in practice, showed the extent to which their suspicions were justified.

SECTION 3: IMPRISONMENT AS A NEWLY IMPLEMENTED PUNISHMENT

In the south aisle of Gloucester cathedral is the tomb, in white marble, of neo-classical design, of Sir George Onesiphorus Paul, who died in 1820. Its inscription proclaims:

A man... who claims this mark of local respect by having first reduced to practice the principles which have immortalised the memory of Howard. For to the object of this memorial it is to be ascribed that this county has become the example and model of the best system of criminal discipline in which provident regulation has banished the use of fetters and health been substituted for contagion, thus happily reconciling humanity with punishment, and the prevention of crime with individual reform.

The inscription, however adulatory, is broadly correct in indicating that Gloucestershire set a pattern for other counties. Regrettably neither Paul nor the prison for which he personally was responsible have been the subject of an adequate study. The two that exist are highly uncritical. E.A.L. Moir, explicitly following the Webbs, views Paul as an archetypal eighteenth century justice of the peace, of the "best" kind, while J.R.S. Whiting’s *Prison Reform in Gloucestershire 1776-1820* shows total ignorance of the development of imprisonment as a form of social control, as A.E. Bottoms has noted.¹ In this section, a necessarily brief attempt is made to place Gloucester penitentiary in the kind of perspective it needs, using prison documents now housed in the excellent local archive and Paul’s own publications.

Starting in 1783 when the county gaol was made the subject of a presentment by a grand jury of which he was the foreman, Paul fought successfully to persuade Gloucestershire to construct a prison system in miniature, securing the support of a county meeting of local worthies, and steering plans through endless committees, besides obtaining in 1785 a special act, 25 George III c.10. By the end of 1791 four houses of correction or "magistrates’ prisons" were in operation in different parts of the county, while in Gloucester itself a carefully subdivided gaol-cum-bridewell-cum-penitentiary was in use.² On the recommendation of John Howard — Howard’s name and works had been included in the grand jury’s citation — William Blackburn had been appointed as architect: his death before construction

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was anything like complete meant that Paul was "left in the sole direction of the work" in every conceivable aspect, so that he found himself coping with builders as well as drafting rules and regulations for the prisoners. Paul, however, was the kind of single-minded man who revelled in such a position of authority; in this he resembled John Howard, by whom he was clearly inspired. To Howard, he declared, "all future reformers are indebted for seeing what they see, and feeling what they feel." If Gloucestershire did not "have the benefit of previous experiment to correct it", and to complement the theories of Howard, who had died in Russia in 1790, Paul's own personal role was clearly enhanced: "on me rests the blame of advising the Commissioners, in all cases, to adopt what appeared to be improvements on the original design."

Paul's conception of prison reform was a far-reaching one, clearly relating to broad national objectives of social control:

By reform I mean nothing less than a general and entire correction of the principle of prisons; as well as those for the lesser crimes as for the greater crimes, the police of those prisons when built, and the plan of superintendence afterwards; for nothing less... can produce that reform of manners, that return of good order and obedience to Law, which are so essential to the general interests of civil society.

Paul was thoroughly alarmed by what he saw as "the rapid increase of crimes in the very teeth of the severest dispensations of Justice", and it was in this context that he welcomed imprisonment as a better if not infallible method of dealing with crime. Significantly the grand jury presentment had condemned the old county prisons as being "in great measure" productive of "the general increase of immorality and outrage". Like Eden or Madan, Paul hankered after the day when

1. Ibid., p.29.
the rich could exploit the poor with impunity. This was how he pictured proper law enforcement. "His" prisons were the "necessary means whereby to enforce the law, with every degree of discrimination which the laws presume"; laws which, as he put it, were designed to ensure "the protection of every man in every station", in other words to uphold the status quo.¹

The Gloucestershire Prisons Act, 25 George III c.10, thus had the same ultimate objective, locally, as the Penitentiary Act of 1779, on which it was explicitly grounded. The two Acts together formed the basis for the important 1791 Gaol Act, 31 George III, c.46. These three measures, as Paul later explained to the 1819 Select Committee on the State of the Gaols "first created by mode of confinement, by labour, and modified seclusion, a system of penal imprisonment, as a substitute for the punishments by death and transportation."² As Paul pointed out in 1784, the judges were sentencing those formerly liable to transportation to imprisonment in "penitentiary houses" instead, under the 1779 Act, irrespective of whether the necessary places "for solitude and labour" had actually been provided by the local authorities.³ Gloucestershire was in effect the first county to take action under the local option clause of the 1779 Penitentiary Act, and Paul was always keen to see that its efforts should not remain isolated. The problem was a national one which needed to be tackled, ultimately, by "a general Bill of Regulation": then only "a perfect national police must be the important and unavoidable consequence", as he saw even as early as 1784:

We have the undeniable evidence of Mr. Howard's reports that these defects [in the prisons] are not peculiar to any one district; the enormous excesses that daily increase through the Kingdom are sufficient indications that the consequences are universal.⁴

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¹ Paul, Proceedings, pp.48-49.
³ Paul, Considerations, pp.47-48, 68; see above, p.226.
⁴ Ibid., pp.84-87.
Like other local magistrates, such as W.M. Pitt in Dorset or T.B. Bayley at Manchester, it was because he had such a clear and strong picture in national terms that Paul felt impelled to act at a local level.  

It was the whole criminal justice system that Paul wanted to change, the object being to achieve the restoration of offenders, whenever possible, as "better members of society". The existing system was proving totally inadequate, so that, to Paul's chagrin, criminals were close to being tolerated as an inevitable feature of the social landscape. This state of affairs was not one which he wanted to continue.

The defect in number and respectability of the Commissioners of the Peace; the impunity arising from the expense of prosecution, from the distant situation or non-existence of prisons for the smaller crimes, and from the connivance of Parish Officers to screen the Poor Rate [from the cost of supporting the dependents of those held in prison]; the inadequate appointment, and total relaxation amongst the inferior Officers of Justice, and a consequent disuse, or ineffectual application of the lesser corporal punishments, are grievances evident to the simplest observation.

The problem was deeply rooted: its solution was a reform on the most extensive scale. If the prisons could be transformed, other elements of the criminal justice system might likewise be amended: wide repercussions were envisaged, and Paul was concerned only that they should be beneficial, as will be discussed later. Paul emphasised the need to bring about "a total change of that system which has hitherto been suffered to exist."

New prisons, new regulations, and a new attention to their operation; nothing less can establish a police, prevent pestilence, and produce an amendment of minds.

1. T. Percival, Biographical Memoirs of the Late Thomas Bayley (Manchester, 1802); with respect to W.M. Pitt, see below, p. 305.
2. Paul, Considerations, pp. 19, 86.
3. Ibid., p. 66.
Paul was in effect proposing to re-write elements of Britain's unwritten or uncodified constitution, as he himself was aware. If Paul had a vision of a new system turning out obedient workers almost like a machine producing sausages, this vision was shared by fellow members of the English ruling class: with the building of Gloucester penitentiary, one of their great obsessions had for the first time taken root. From the other side of the Channel, this peculiar trait stood out in its idiosyncratic glory to L.P. Baltard, author of a book about the social aspects of prison architecture: "The English bring into all their works the genius for mechanics which they have perfected, and they thus want their buildings to function like a machine worked by a single motor". Time and time again, Paul emphasised the systematic nature of the change over which he presided.

If you look to our special law for giving effect to this public sense 25 George III, c. 10; it is still more explicitly shown, that it was my purpose (in which the public fully accorded) to adopt a System of modes, and degrees of modes, in the imprisonment of the subject; that in fact it was intended to institute a commitment by System, a control of Keepers by System; a management and coercion of prisoners by System. 3

Discussing the internal operation of the new prisons, Paul explicitly compared the various sets of rules to "the principle of motion in a machine". 4

Paul's conception of the kind of order he wanted to achieve in the penitentiary was extraordinarily mechanical. Even the governor - and Paul quoted with approval Howard's recommendation that the post be filled by a half-pay officer - was to behave in a clockwork fashion:

besides being humane and patient, he was to be guided by "a sense of order, which is method, which is mechanical rather than reflective, and which few may obtain but by long habits of resignation and obedience." The Gloucestershire Prisons Act bracketed together the discipline expected of the inmates with that expected of their supervisors: a common set of rules was provided for, "as well for enforcing amongst prisoners, cleanliness, temperance and a decent and orderly behaviour, as for securing to them a just and humane treatment by the gaolers and their servants." In Paul's view of things, not just the basic-grade officers but all those concerned with the prison system were to lead humdrum lives with little or no scope for personal initiative. The rules for all the prisons provided that "decent submission to the officers" was "indispensably required" of all inmates, adding that "Refractory and obstinate conduct must be opposed by adequate punishment, until subdued." A carefully graded tariff of punishment was set out, culminating in solitary confinement in a dark cell or even, if necessary, in whipping, while the use of irons on difficult prisoners was also authorised. A shaven head, "coarse uniform apparel" and an iron collar round the neck or leg provided the final dehumanising touches for the prisoners. The human dignity of the officers was however almost as attenuated: they were required on no account to hold conversation with any such prisoner [convicts sentenced to the penitentiary], but shall confine themselves to giving the necessary commands, and relieving their wants in as few words as possible. If the officers were required to distance themselves from the inmates so that their authority should not be undermined by familiarity, they were also subject, of course, to the same routine, to a closely ordered timetable punctuated as necessary by the ring of a bell, as in a monastery.

1. Ibid., pp.47-50; Howard, Lazaretto, p.274.
2. 25 Geo. III, c.10, clause xiii; quoted, Paul, Address at Epiphany, pp.20-21.
4. Ibid., p.70.
In this institution there was not meant to be any dictotomy between reformation and control. Both were intended to form overlapping parts of the one process. The prisoners were to be separated by sex and according to the reason for their being in prison, both to prevent "contamination" and to bring them under authority. Each inmate had his own cell: in the case of penitentiary prisoners, the regime was close to one of solitary confinement, a condition which Paul viewed as "the most sovereign corrector of a hardened heart". It was "the legal means" of subduing the prisoners: "By separation, in their worst designs they are within the power of their keepers." Work was meant both to "rehabilitate", as it would be called now, and to occupy the prisoners' minds, as something to keep them from mischief, and "beguile the hours". 1 Paul specifically emphasised that work should be an integral part of solitary confinement as undergone by the penitentiary inmates, a regime which he was sure would "reform the most hardened criminal, but without such occupation and attention, it ought never to be applied." 2 The inculcation of religion also dovetailed with the management of the prisoners.

Attention to religious duties can by no means be an indifferent part of regulation. The terrors of a future world are essential to the Reformation of men, who have learnt to brave the powers of this. The Law has expressly declared its attention to this object, by the liberal appointment of a Chaplain: but the most arduous labours of the most zealous Christian will be in vain, if his views are not seconded both by the construction of the prison and the regulation of its police. 3

The chaplain was allotted "such share of temporal authority as shall make his spiritual advice respected." He was expected to be able to

1. Paul, Considerations, pp.31-33.
3. Paul, Considerations, p.36.
work amidst "scenes of misery in solitude and suffering". 1 This was a tough regime, but it was one in which, so Paul felt, everything had its purpose, yet nothing conflicted.

Although in theory compounded of interlocking reformatory and disciplinary elements, both equally important to each other, in practice, in the day to day running of the prison, the need for security and good order tended to monopolise the governor's energy. To this his journals, which survive from 1795 onwards, bear eloquent testimony. From the first opening of the prison, security was the leading concern of the local magistrates also. When the prison had been completed, the sheriff, who everywhere had authority over the county gaol, came and inspected the place "and having expressed his Satisfaction with the Security of the same, the Keys of the New Gaol were surrendered to him." 2 Again when Paul reported at the Epiphany quarter session 1792 how things had been in the first few months, his comments were entirely related to matters of order and discipline. His opening remark was that "The prisoners in general have not behaved with due respect to rule;" the problem was, as he saw it, that the indulgences of the old regime had so corrupted the prisoners as to foster their "Resistance to Rules of Order and Sobriety, to which they were destined to submit." Paul's first response was to blame outside agitators, his second to suggest the introduction of a more elaborate system of privileges to which prisoners might aspire as a reward for good conduct. He could not avoid confessing, however, a greater problem.

It seems that the Governor has not the Authority of Opinion amongst the Prisoners, which is necessary for the due Government of such Men. This arises on the one hand from a doubt in himself of not properly understanding the Rules, which makes his Orders uncertain, and on the other, there is certainly a Want of Respect for his Orders in the Inferior Officers of the Prison.

Paul concluded by advising the magistrates to stand by the governor for a little longer: in fact only a few months later he was succeeded by his son, who proved better suited to the task.  

Paul's sense of priorities proved exactly the same when at the Easter quarter sessions he reported back about the smaller, short-term houses of correction, for petty offenders sentenced by the magistrates, at Northleach, Lawford's Gate, and Horsley. At Northleach he had found, to his regret, that the governor lacked the necessary clear idea of "the rules of Seclusion and Silence". At Lawford's Gate, "the discipline [was] much relaxed, or perhaps not understood", while undue familiarity existed between the keepers and the kept. Visitors were being admitted indiscriminately "in defiance of Positive Rules". 

I must again repeat that correct attention to Rules and total Silence and Reserve to Prisoners is absolutely necessary to preserve to the Keeper the respect and esteem of his Prisoners...

Only at Horsley was Paul rather more pleased. "The Rules are exactly adhered to; in consequence the Keeper is respected by his Prisoners, who are ordered and resigned." Gloucester prison continued to present problems: "There is still a want of that Authority which arises from reserve, Silent and equal Deportment and adherence to Discipline." 2 Paul's concern was always for discipline and good order: this may have been an aspect of the kind of behavioural change which he was attempting to engineer, but he did not even touch on the extent to which, generally, "reformation" was being attained.

These were of course early days. But there are other indicators that the concern of Paul and the other magistrates connected with the

prison was less with reformation than they had originally intended. While the Penitentiary Act of 1779 and, following it, the Gloucestershire Prisons Act of 1785 made provision for those who, on release, showed evidence of good behaviour for a year, and could obtain a certificate to this effect from their employer, as of 1804 "only one has stepped forward to claim it." This surely is some indication that the uptake of rewards for rehabilitation and, by implication, rehabilitation itself, was not encouraged as strongly as it might have been.

Paul's overriding concern for discipline shows through when in 1819 he appeared as a witness before the 1819 Select Committee on Gaols. He claimed loftily of Gloucester Penitentiary that it was within his own "personal knowledge that many have returned from this prison to obtain a livelihood by honest industry", and even provided some re-commitment statistics, but he did not really enter into the measurement of recidivism in any detail. His reserves of enthusiasm were retained for describing the strict militaristic discipline achieved at Horsley by the gaoler, William Stokes:

I think the keeper an extraordinary instance of the effect of application of a simple mind to a duty which is mere attention to rule. I think him the best keeper of a house of correction I have met with. He was taken from the regiment of Horse Guards Blues, as have been all the present keepers of our houses of correction; this man, far advanced in years, with his wife (as matron), keeps forty prisoners in a state of perfect obedience to the rules, with no more assistance than a porter at the gate. 2

It is hard to avoid the conclusion that the attainment of order had become an end in itself for Paul, divorced from wider considerations relating to the rehabilitation of the prisoners.

The view of things from inside the prison, as reflected in the governor's journals, is clearer still, and fully demonstrated that considerations of security and control were paramount, while any interest in behavioural change was of little evident concern. Day after day, when all was going well, the entries show that discipline was the one aspect that mattered above all else. For 15 April 1795 the entry ran "Prisoners quiet and orderly", for 16 April, "all quiet and orderly", for 17 April, "Prisoners very orderly", for 18 April, "Prisoners quiet", for 19 April, "Prisoners very orderly", for 20 April, "Prisoners very orderly and quiet". ¹

Short entries were always of this kind. Longer ones spelt trouble, a Presbyterian prisoner who did not want to attend chapel, someone straying from their section of the prison. Usually punishment followed as at 18 June 1795: "Put John Lockey in Solitude for talking in a very insolent manner to Edward Green, a turnkey."²

Women and debtors were particularly troublesome: they were less inclined to accept the regime of the "total institution".

7 September 1795:

Put Phoebe Walter and Sarah Wise in Solitude, degree the 1st [dark cell] for calling to each other when locked up in their Cells at night, and for calling in a very indecent manner to some soldiers who were standing upon Barbizan Hill. ³

The ultimate threat to security was represented by escape attempts, about which Gloucester prison's governor was clearly as concerned in the 1790's as were prison governors in the 1970's. On 17 February 1797, "Good information" was received of a planned breakout: the ringleaders were put in solitary, with irons.⁴ For 30 May 1798, the journal again records the discovery of an escape attempt, involving a scaling ladder. An exceptionally long entry records how the whole

¹. Gloucs. R.O., Q/Co.3/1, folio 3.
². Gloucs. R.O., Q/Co.3/1, folio 10.
³. Gloucs. R.O., Q/Co.3/1, folio 21.
⁴. Gloucs. R.O., Q/Co.3/1, folio 85.
prison was then searched, "Knives, Tobacco and many other things were found". The search continued the next day, with the prisoners locked in their cells. The work rooms were "cleared out, and a number of things found in them. Prisoners quiet". The whole procedure is reminiscent of troubled days in Albany or some other "dispersal" prison of the present day.

If, internally, the management of the prison was one long holding operation, designed simply to achieve security, a rather different picture was presented to the outside world, to encourage the commitment of offenders. The need to do this was made greater by the publication of pamphlets critical of the austere regime of largely cellular labour, especially since, "of the several libels published on the Gloucester prison, two only of the most atrocious have been prosecuted by the County." Charges addressed to the grand jury regularly emphasised how the penitentiary would turn out better citizens, without subjecting them to undue hardship. As the Rev. John Foley declared in 1797, before the Easter Sessions:

The internal police of the Gaols of the County, Gentlemen, still continues such as to merit, and indeed surpass the warmest commendations I can bestow upon it. The one great design which pervades and animates the whole, is to amend and reform; and this by means most congenial to human nature, and most efficacious, instruction and good usage.

Foley emphasised that "the hardest labour required from the most atrocious criminals, has its proper intervals of rest and refreshment; that the allowance of food, though plain and simple, is nutritive and amply sufficient...". In short, as Foley presented Gloucester prison, "the man is never forgot in the prisoner": it was so good a place that "it becomes, on their return to Society, a difficult matter to determine whether their moral or natural constitutions are the most amended and improved."
He might have been describing a school or a hospital, rather than a prison.

Foley need not have worried. The chance to commit offenders to the new model prison at Gloucester, or to the smaller houses of correction so conveniently dotted around the country, was one which prosecutors and magistrates grasped with eagerness, as Paul had intended in the first place when he had lamented, in 1784, the prevailing reluctance to commit people to the old county prisons. By 1809, however, he was not sure that this eagerness had not got out of hand, in some ways. As Beaumont and Tocqueville were later to note in America, the first effect of the introduction of improved prisons was to generate large numbers of inmates. Paul was particularly apologetic about the use of "his" prisons to confine "lewd" women unable to prevent their bastard children from becoming chargeable to a parish, under the statute of 7 James I, c.4.

Since the opening of these prisons sixteen years ago, there have been more women punished on this unmanly clause, than for a century preceding; there are probably more annually on our calendars than on those of any other county of England, more certainly than in London and Middlesex, where I am informed that the Act is dormant and disregarded. And, if by being instrumental in providing the lodging, I have been the cause of inviting the tenant, I have an injury (done by me) to society to repent of, and a compunction to relieve.

Paul was also critical of the free-handed way magistrates committed suspected offenders to prison as a matter of course, to soften them up and give them a taste of punishment. He frankly conceded that "the increase of this practice may possibly be a consequence of the extent of prison accommodation provided by the reform." Again he

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1. See above, p.182.
apologised: "it is with no small degree of compunction I feel that I may be a remote cause of an effect which... I consider as a great infringement on the constitutional right of the subject."

This practice was however still increasing, and indeed by 1809 had become, "I may almost say, popular". 1

To a great extent, however, Paul welcomed the use of the new prison facilities on as wide a scale as possible. It was a fundamental point about the new prisons that they were intended to cut crime by providing a means of dealing with offenders who would otherwise have escaped with a private admonishment. Paul was sure that the Gloucestershire prisons were indeed being used in this way.

He who has the patience to peruse the registers of prisoners cannot fail to be convinced that the lesser crimes have met the magistrates' attention. That the greater have thereby been prevented, is a consequence we can only allow ourselves to hope. 2

That hope may not have been so reasonable as Paul thought. Even Paul could not help noticing one arbitrary element in the pattern of commitments: the distance which prosecutors, constables and witnesses had to travel was having a noticeable effect. The old practice of "making up" still to some extent continued, but in a patchy way only.

Look at your register of commitments to the Bristol prison, for breaches of the peace and felony; not one half of the prisoners so detained for further examination, have been committed to Gloucester [prison] for trial. Numbers of these have been discharged, on account of no prosecutor appearing... And, as to misdemeanours in general... the number provisionally confined at Bristol has been nearly double that which has ever appeared at Gloucester for trial, from all the Bridewells of the County. What other cause can we assign for this fact, if not, that neither the constable, prosecutor or witness, like the trouble of going to Gloucester; and more than half the crimes are compounded between the parties. 3

1. Ibid., pp.19, 114.
2. Ibid., p.125.
3. Ibid., p.46.
Likewise, Northleach bridewell, which had a wider catchment area than the other houses of correction, had "fewest prisoners, relative to population". As Paul conceded, it was unlikely that the Northleach area was simply more law-abiding than the other rural areas. "I conclude, then, that the greater frequency of commitment is caused by the greater facility to commit."¹

This was the prison which, more than any other, set a pattern in the late eighteenth and early nineteenth centuries: a prison which facilitated a new way of processing offenders en masse. It was Gloucester prison which served as the leading institution of its kind for the 1811 parliamentary committee chaired by George Holford, and also the 1819 gaol committee. Gloucester also influenced other counties, or served as a prison to emulate: Paul found himself corresponding with and advising the magistrates of other counties, such as Wiltshire and Dorset. Gloucester showed that Howard's ideas were practicable: it also showed their underlying implications.²

¹. Ibid., p. 47.
CHAPTER 5

INSTITUTION WITHOUT END

This chapter is concerned with the consolidation of imprisonment in the first half of the nineteenth century. The analysis is geared not in terms of the administrative history of an institution, but rather in relation to the part played by the prison in sustaining the feeling that crime was a dire problem for society, though at the same time one which was capable of being resolved successfully. The consolidation of imprisonment was as much the consolidation of a way of thinking as it was the completion of a network of cellular prison buildings. England, even in the early nineteenth century, was a country where the question of the proper punishment of the criminal was taken very seriously indeed. Mountains of books, newspaper articles and parliamentary papers bear testimony to that obsession, quite as much as the prisons which still so many of them survive. As Lionel Fox noted with his administrator's eye, "by mid-century the outlines of the situation to be faced were sufficiently clear... Imprisonment had ceased to be a 'secondary punishment': it was the one potentially effective instrument at the disposal of the penal system."¹ It could well be said that this had become clear still earlier in the nineteenth century. For instance, in 1820, one social commentator, noting with disgust the lack of churches in the new cities - "an evil which has arisen with the commercial prosperity of the country" - singled out the prison with the factory as the types of building which typified the new era. "Our forefathers built convents and cathedrals; the edifices which we have erected are manufactories and prisons, the former producing tenants for the latter."²

Respected or not, the prison came to be seen in the first half of the nineteenth century as the front line in a war against crime. It was both a visible war, in which battalions of men and women were subjugated and made to suffer, and a "phony war", a war of propaganda in which capitalism found full expression. The endemic panic over crime which had first mushroomed towards the end of the eighteenth century was amplified in the nineteenth century through the systematic use of imprisonment as a form of social control. The sending of a ceaseless stream of people to prison served as a constant reminder of the need to sustain a hard-fought struggle, and so achieve that great object of punishment, the repression of "crime". The building of prisons was a commitment to a belief that crime could be suppressed. The prison was a "success" on an ideological plane by being a "failure" on an instrumental one. The continuing application of the criminal process to offenders was the most effective method to hand of demonstrating that the road to social salvation lay only through unremitting individual exertion, and that nothing but suffering would be the lot of those who failed to conform as upright and useful workers. The whole tenor of the new penal system, in a society obsessed with crime and its punishment, clearly presupposed that every man was to be responsible for himself, to himself, and by himself - alone. This was a society in which the redistribution of wealth even in the shape of welfare provision was unthinkable except in the most limited of terms.

The first of the two sections which together make up this chapter, "Imprisonment Comes of Age", examines the maturation of a prison system embracing the whole country. It sets about this from an ideological perspective: the focus is upon the way the new system was accorded its necessary legitimation. Briefly, the prison was
legitimated by being presented as the answer, or a large part of the answer, to "crime". It was because the prison lent itself to the punishment of criminals on an enormously extended scale that it found favour. Imprisonment reached those delinquents which other forms of punishment failed to reach so effectively or in such large numbers. Imprisonment gave expression to a heightened desire to punish. At the same time, in commending the prison the nineteenth-century ruling class indicated the kind of society of which it approved: one in which others knew their place and worked long, tedious hours without complaint. In a society organised for the exploitation of machine-linked labour, the prison with its treadwheels or hand-cranks symbolised the determination of the ruling class to grind the poor into submission as if they, too, were but another form of raw material. All this could be and was done in the name of crime and its repression.

While this is no place for the history of the nineteenth century penal system, it is illuminating to consider the workings of that system in certain selected aspects. Two have been singled out. First, the growth of the prison population: contrary to what has been presumed, the use of imprisonment reached its greatest extent at a comparatively early date in the nineteenth century, long before the ending of transportation, for which it was clearly more than a mere substitute punishment. Second, changes over time and place in the rate of conviction: these indirectly emphasise the ideological significance of imprisonment. These two aspects of the consolidation of the penal system have been singled out for the way they illuminate the development of imprisonment as an ideologically-rooted response to perceived disorder.
The second and concluding section of this chapter, "The Prison and the State", examines the expansion of the prison system in relation to the part played by the state. The term "state" is used in its nineteenth-century sense as an umbrella term covering all aspects of central as opposed to local government, a distinction then far more clear cut and significant than now. It is now widely assumed that the state is the fundamental if not unique bulwark of "law and order". The new American conservatives or retributionists, such as James Q. Wilson and E. Van den Haag, are particularly explicit about this. The latter has gone so far as to assert that it is the paramount duty of governments "to provide a legal order in which citizens can be secure in their lives, their liberties, and pursuits of happiness... these rights can be secured only by government."¹ Criminologists in socialist countries have made precisely the same claim.² In Britain, too, an identical outlook prevails. It is the state which is in the front line in the "war against crime", while private security rather than the state system is more often seen as a sinister phenomenon. Token efforts are occasionally made to persuade citizens to "have a go" at certain kinds of offender, but, for the most part, it is assumed that the ordinary individual is of no account in the "war against crime", even if it is, supposedly, fought for his benefit. The forces of "law and order" are highly centralised, and subject to only limited local influence. This is particularly true of the prison system: perhaps no other state apparatus, with the exception of the armed forces, is so completely centralised.

The supremacy of the state as the monopolistic agent of social control is nothing new. From the late eighteenth century onwards,

2. See, for instance; E.R. Buchholz et al, Socialist Criminology (Lexington, 1974).
the state has enlarged its role in this area by leaps and bounds. This has taken place at the expense of the autonomy of the individual, and to the detriment of any feeling of mutual responsibility. The state's involvement in the development of the prison system was a complicated process. The state operated both indirectly, by steering the local authorities, and directly, on its own account. To talk as the Webbs did, of the administration of English prisons "passing in 1877 from local to central government", can only be misleading. The exertions of the state, even prior to 1877, those exertions with which this section is concerned, were far greater than is commonly realised. In the first place, the state did a great deal to clear the ground ideologically for the development of imprisonment, not least by way of permissive or "model" legislation of symbolic significance. Imprisonment had, as it were, the blessing and the spiritual oversight of the state. This was particularly crucial in that the prison system was above all an ideological apparatus. Secondly, from the late eighteenth century onwards, with the introduction of the hulks as a form of floating prison, the state was directly involved in the setting up and administration of a closely-knit prison system within the wider and more loosely knit network of institutions. This provided a base from which the Home Office gradually enlarged the scope of state operations to the point of monopolising control. With the passing of the 1877 Prison Act the local authorities retained only token involvement in the prisons, in the shape of visiting justices. 1877 was no watershed: of this one illuminating indicator is the use of the new prisons throughout the nineteenth century - as first at Gloucester - to house the state's own "political prisoners" even when these prisons were still in theory under local control.

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2. See below, p.299.
Significant as administrative changes were, the state also had an important behind-the-scenes role. The expansion of the prison system necessitated changes to the whole criminal justice process and, not least, to the sentencing structure, changes which reflected the growing reliance on imprisonment, as at the same time as they underpinned it. It was the state which co-ordinated the various aspects of the development of the new, systematic processing of offenders.

SECTION 1: IMPRISONMENT COMES OF AGE

In the late eighteenth century, the prison had been presented by particular ideological entrepreneurs as the answer to a mounting threat of lawlessness. A start was made on the construction of this new kind of institution, in a number of counties. In the nineteenth century, the idea of the prison as a means of eradicating crime became so securely enshrined among the received ideas of the time as to be beyond question. Through its concern to build proper prisons, the ruling class made plain to all its need for an orderly, submissive society, and its belief that such a society could be attained. Men could be made to conform en masse, whether by being "deterred" or by being "reformed". In putting great trust in prisons, the nineteenth-century ruling class gave particular expression to this general proposition, in a way that could not be ignored by anyone. The prison made sense in the context of, and in its turn reinforced prevailing beliefs and theories about the way in which society functioned. Such, at least, was the basis of the legitimacy so widely ascribed to the prison. It may be helpful to
consider the succinct way in which this point about legitimation is made by Berger and Luckman:

Legitimation 'explains' the institutional order by ascribing cognitive validity to its objectivated meanings. Legitimation justifies the institutional order by giving a normative dignity to its practical imperatives. It is important to understand that legitimation has a cognitive as well as a normative element. In other words, legitimation is not just a matter of 'values'. It also implies 'knowledge' as well. 1

Accordingly the idea of the prison as securely ensconced in this seemingly pure realm of "knowledge" becomes the object of the following analysis. Possession of such knowledge can be seen as one of the attributes - indeed, the defining characteristics - of the nineteenth century ruling elite.

The problem as it was seen by this ruling group was simply one of finding the right way of achieving the given end, the repression of "crime". The result was a self-confessed "Century of Experiments", to borrow a phrase from the title of a pamphlet written in 1865 by C.B. Adderley, former chairman of the 1850 House of Commons investigation into methods of prison discipline. There was an answer, everyone including Adderley was convinced, if only it could be found and applied. 2 Each self-appointed expert tended to favour a particular form of prison regime as the solution to the problem of "crime". Silence and separation, productive work and unproductive "hard labour", incentives in the shape of cash earnings or of probationary "marks", all these and many other practices had their particular adherents. Punishment had to be "exemplary", without being "cruel". The criminal had to be punished,

without the public being shocked. It was no easy task to strike the right balance. By trial and error, parameters emerged. It was established on how little food a man might be maintained without undue risk of some wasting disease; how long he might be kept in an individual cell without developing hallucinations, and how many feet of ascent he might be made to perform on the treadwheel without heart attack or hernia. Means were developed of preventing recognition (for instance, by wearing masks), of enforcing silence (by threat of punishment), of inducing good behaviour (by early release, or, until 1837, by promoting certain prisoners to positions of authority, \(^1\) or by the development of systems of progressively more pleasant "stages"). The results of these experiments were carefully scrutinised by examining the level of re-committals or "recidivism", or, at least, by making a show of so doing. It was permissible to question particular practices. It was, however, unthinkable to challenge the basic assumptions common to them all. A stock of knowledge existed of which all had to take account, and with respect. As Francis Gray reflected at the beginning of his comparatively iconoclastic treatise of 1848:

The extensive and systematic inquiries and experiments, which have been made in this country during sixty years past, in relation to Prison Discipline, have given to our accumulated knowledge on this subject almost the character of a science. Many general conclusions are established, and many questions, once the occasions of violent controversy, are now determined in a manner which commands universal assent. \(^2\)

Debate was confined to matters of detail.

The closest anyone in ruling circles came to challenging the basic idea that crime would be repressed through properly devised

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1. 7 Will. and 1 Vic., c.13 (1837).
prisons was by suggesting that even the best prison needed to be complemented by other forms of state apparatus, as a back-up. Frederic Hill, an exceptionally open-minded prison inspector, pointed out in his "Report" for 1850 that "the number of prisoners in any case is affected by other causes than prison discipline", and then referred to Norwich city prison, where:

it will be seen that, at a prison conducted neither on the separate system nor silent system, where there is but little work, little instruction, and little supervision, where many of the prisoners congregate to their general corruption, in idleness and unrestrained conversation, the number of prisoners during the last ten years has steadily decreased, and is now but little more than half what it was.

Norwich was the absolute antithesis of the kind of prison favoured in the nineteenth century. Had this not been the case, "Had such a result been obtained in a prison under some peculiar system", as Hill put it, at a time of bitter argument between the respective merits of the "silent" and "separate" systems, "conclusions would probably have been drawn highly favourable to its effects". Such were the principles of the new science. In making this comment, Hill was coming dangerously close to questioning the fundamental premise that prisons were a means of doing away with crime. As he certainly appreciated, he was on the verge of heresy. So he then added, perhaps to cover himself, perhaps to justify his place and his efforts in the prison system, and in any event, so as to make it clear he had not thought the unthinkable:

I should be sorry if by the foregoing remarks it were supposed for a moment that I undervalue the importance of prison discipline, or think it impossible, or even very difficult, to devise a good and very effective system. Such a conclusion would not only be at variance with the truth, but with the whole tenor of my long series of annual reports. But in giving full value to good prison discipline as a means of diminishing crime,
it is necessary to keep in mind other operating powers, such as education, the general condition of the country, the poor laws, police, and the state and administration of the criminal law.

Even if the prison was felt not to be able to operate unaided, as some came to realise might be the case, it was still held to be the "truth" that, by one means or another, with the prison still very much to the fore as an instrument of policy, "crime" could yet be conquered.¹

The viability of checking crime was an article of faith even with the inspectors' sternest critics. To Peter Laurie, a superintending magistrate at Cold Bath Fields Prison and champion of the "silent system", the inspectors were wildly over-optimistic.

Their main errors are supposing that crime is to be put down inside instead of outside a prison; that thieves carry on their operations singly, instead of in a necessary combination, and above all, after a reformation, real or simulated, has been effected by their discipline, that nothing is required, beyond a prisoner's own exertions, to return to a course of honest industry.

But even to Peter Laurie, who complained of "the appalling fact of the daily increase in crime", crime was a specific and concrete threat to society which could be "put down" by the combined effect of improved police, increased reliance on transportation, and, not least, greater use of the "silent system" in British prisons: "of the excellence of that mode of discipline", he was, he stated, "convinced".²

Crime was a menacing problem: it could still be isolated and dealt with. This tenet was the basic proposition on which the nineteenth century ruling class grounded its theories of prison

discipline, theories which still find their echo in present-day views and practices. The very phrase "prevention of crime" gradually became more and more habitual, to the point where legislative enactments, first described as Criminal Law Acts, and then as Criminal Justice Acts, could actually be called Prevention of Crime Acts.¹ The dream of Paley, of Eden and of other late eighteenth century ideological entrepreneurs had become a three-word shorthand formula. At the beginning of the nineteenth century, the idea was still one which had to be laboured and driven home with vigour. This explains the lengthy but revealing title of a work which in one year alone, 1818, went through at least five editions: Thomas Fowell Buxton's Inquiry whether Crime and Misery are Produced or Prevented by our Present system of Prison Discipline.² It was at this period that the idea of using imprisonment as a means of checking crime became firmly established in the public mind. 1818 saw the first report of the newly founded Society for the Improvement of Prison Discipline: this suggested that there was no cause "more fruitful of crime, and baneful in its effects", than "the present state of our prison discipline."³ The first government prison, Millbank, in which half a million pounds had been invested, was at this time nearing completion.⁴ By 1820 Joseph Gurney was able to reflect:

Now public attention is awake... and the true principles of prison discipline are beginning to be generally understood. It is granted on all hands, that if we would diminish crimes, we must give our punishments a tendency to reform criminals, and that, in our prisons, this tendency can no otherwise be promoted than by a regular system of inspection, classification, instruction and employment. ⁵

¹ Contrast 7 Geo. IV, c.64 (An Act for Improving the Administration of Criminal Justice in England, 1826) with 34 and 35 Vic., c.112 (Prevention of Crimes Act, 1871).
² T.F. Buxton, Inquiry Whether Crimes and Misery are Produced or Prevented by our Present System of Prison Discipline (London, 1818).
Gurney concluded the third of three linked pieces by visualising a prison which would be "as perfect as possible", complete with individual cells, firm management, hard work, classification, the minimum of creature comforts and the most careful provision of religious instruction: in short, everything which he believed to be conducive to "the habits of order, sobriety and industry":

A prison so built and so regulated, would indeed fulfil the ends designed by it; its almost inevitable consequence would be the moral improvement of offenders, and by means of that improvement the decrease of crime - the peace of Society.

From such a prison, delinquents would emerge ready "to adopt the character of useful, harmless and industrious members of the community". In case the message still had not sunk in, Gurney's final comment was that then, at last, "the punishment of criminals", would "terminate, as it ought to do, in the prevention of crimes."¹

Crime was a general threat to society, or so it was authoritatively established: the way to deal with it was through use of the prison. In ruling-class circles, assent was general to this beguiling proposition which, as has been indicated, formed the basis of a whole body of knowledge. Within the broad framework of this paradigm, however, the optimum way of gearing an emergent prison system to its appointed task was never agreed on with unanimity. Endless debates as to the right balance between punitive and educative elements, between "deterrence" and "reformation", served two important functions. In the first place they obscured the extent to which prisons actually were inherently unpleasant places, and so made it easier to use them on an increasingly extensive scale throughout the first half of the nineteenth century. Secondly, by concentrating attention on the means of attaining a given end, "the prevention of crime", the debate about means reinforced the credibility of the

supposed ultimate end. Each of these two functions of the way the discussion was pitched, within the parameters of the new science of crime prevention, now demands some attention.

A long-standing reluctance to commit offenders to prison, already pointed out in the previous chapter, was one formidable barrier to the expanded use of imprisonment. Gaols had to be made to appear better suited to the incarceration of the offenders sent to them than was sometimes still the case in the early nineteenth century, if this reluctance were to be overcome. By then, however, in contrast to the situation in the late eighteenth century, the prison was much better established as a means of checking crime, not only in terms of the development of the first generation of advanced institutions, but also ideologically, as a corpus of seemingly scientific knowledge crystallised around the use of the prison. Imprisonment had become an unanswerable proposition. Such was the assent which this proposition commanded by the years 1815-20 that it could be effectively played upon as a means of making sure that prisons did actually measure up to expectation: they could then be used as necessary by those with power, with full confidence. Magistrates were not without heart-strings. In 1818 a report on the local prisons - commended in the Eclectic Review - was presented at the Michaelmas quarter sessions for the West Riding of Yorkshire. In it, emotional and ideological considerations were interwoven with aplomb.

When we consider the description of faults (crimes they cannot be called) for the commission of which we are daily called upon to send persons into confinement, such as quarrels between masters and workmen, misbehaviour of apprentices, disobedience of orders of bastardy, and several other such, how can be justify to ourselves the leaving the

1. See above, p. 182.
prison so wanting in the opportunities of separation, that these persons must be exposed to pass their periods of confinement in the society of accused and convicted felons and of vagrants? And what must be our feelings when we are called upon to pass the sentence of the law upon a criminal perhaps not yet grown to manhood, or but just beginning a course of vice, if... we are... in fact consigning him to an imprisonment, during which it is almost certain that all the good principles still left in him, will be destroyed, and that he will acquire those acquaintances and lessons, which will fit him for other and more atrocious crimes? 1

The implication is clear. Only when prisons seemed fit places, with separation, classification, instruction and all other hallmarks of good discipline, did it become easy and natural to send criminals to them to be dealt with.

It went almost without saying that physical conditions in prison had to be sufficiently good to ensure soundness of limb and mind. Questions of hygiene and nourishment were as closely interwoven with matters of a more overtly correctional or punitive kind as ever they had been in the days of John Howard. Here the press played an important role. Deaths and derangement were targets for merciless criticism and exposure. As Joseph Adshead lamented, even the Times turned against Pentonville, the government's "model" prison, in 1843 and 1844, criticising the separate system as practised there, in one leading article after another, on the grounds that the inmates were tending to show signs of insanity. 2 Daniel Milhill, governor and chaplain of Millbank, was every bit as sensitive as Adshead on this score. While concerned that prison diet should be as meagre and as unappetising as possible, he had to concede the need to err on the side of caution.

Though, in the order of Providence, crime draws after it a train of indirect evils, and the loss of health is often one of them, yet the public are particularly sensitive upon this point. Were an epidemic to break out in any prison,

and could that epidemic be traced to scantiness of food, woe to the reputation of the persons charged with the responsibility of its management. ¹

So long as no one - or, at least, not too many people - died or went mad, the magistrates and their public were satisfied, and felt able to sanction the sending of ever larger numbers of offenders to prison, without the slightest qualms, indeed, without even realising quite what they were doing. Suffice it to say that, as will be further discussed later in this chapter, the number of those held in prison increased enormously. The daily average prison population of England and Wales rose from less than 8,000 at the beginning of the nineteenth century to nearly 25,000 in the 1850's, the same figure as that for the late 1950's, when the intensity of the "war against crime" reached new dimensions. ²

The willingness of judges, magistrates and juries to send offenders to prison in ever greater numbers for the relatively trivial "faults" of the kind mentioned in the West Yorkshire document was only reinforced by their inability to recognise the "pains of imprisonment" at anything like face value. Imprisonment was "good" for those subjected to it - too good, so many of the ruling class felt. The condition of the prisoner, it was often asserted, was better than that of the labourer. As Charles Western, an M.P. and a member of the Society for the Improvement of Prison Discipline, complained in 1825:

The truth is, that our Gaols and Houses of Correction are generally considered by offenders rather as a sure and comfortable asylum whenever their better fortunes forsake them, and from whence they look forward with increased appetite for plunder whenever they shall come out. ³

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². See below, pp. 271-79.
Whether offenders were really so appreciative of their "sure and safe asylum" (the equivalent metaphor today would be "holiday camp") must remain a matter for doubt. What is important is that the ruling class feared that this was the case. Consequently, it became standard practice for anyone interested in "improving" the system to make some play on this matter in the course of their argument. The Third Report of the Inspectors of Prisons, which forcefully preached the gospel according to the separate system, complained that the prisoner tended to be "well clad, well fed, and well housed", and to enjoy "congenial" company, while not even having to work as hard as "honest artificers". Captain Maconochie, the famous proponent and publicist of his own special "mark" system, who saw this new form of prison discipline as an infallible means of turning out "active, efficient, industrious and well-disposed Free men", was deeply critical of the way "fixed rations are issued to all prisoners, irrespective of any effort made to deserve them." The "industrious poor", he asserted, had to earn their living while, in prison, "a bounty is almost directly offered to crime and indolence." This was a cast of mind which made it extremely difficult to appreciate that prison involved any meaningful privation whatsoever. Precisely because such high expectations were held of imprisonment as a means of curing criminals, prison, so it was felt, could hardly be much of a punishment if the same people returned to it again and again. Daniel Nihill, who believed that "prison discipline is yet in its infancy", and that some day under "a mature system" criminals really would be cured of their criminality, listed the existing deprivations only to make light of them.

The sum of them is this, the prisoner is deprived of his liberty, restrained from a variety of customary gratifications, some harmless and some immoral, compelled to work, forbidden to converse, but provided with food, clothing, lodging and other necessaries far beyond his desert.

"On the whole", he went so far as to admit, "the change is cheerless and depressing to an individual habituated to the comforts of a peaceful home." But he then confidently asserted that the majority of offenders "have no peaceful home to contrast with it." Indeed, prison supplied them with "many" - unspecified - "comforts which they found it difficult to procure elsewhere". It was true, he conceded at the last, that they "hate its restrictions on their vices", yet even that did not really count, for "they find a perverse consolation in eluding them."  

The kind of approach adopted in discussion about the various prison regimes of the day not only provided reassurance that no harm could come of sending people to prison: it also lent credibility to the proclaimed objective of penal policy, "the prevention of crime". This ultimate aim was elevated beyond reach of criticism. The only recognised problem was how it might best be attained, by what combination of different elements. From the late eighteenth century, as has already been stated, prison was envisaged both as "deterring" and "reforming". The answer to crime lay, it was felt, in combining these two approaches. It was a high endeavour to attempt to provide the right solution. If success was elusive, hope always seemed to spring eternal. To Alexander Maconochie, who professed his faith in "a science of reforming men through suffering", it was just a matter of placing greater emphasis on "reformation", by making it a more central concern than was customary.

We cannot have worse success by seeking to gain the minds of our prisoners, than has been hitherto achieved by seeking merely to fetter their bodies; and, on the other hand, we may thus solve a problem which all concur at present in pronouncing difficult... how we may so constitute punishment that we may check crime, and yet recover criminals. Nor could we possibly propose to ourselves a higher, or more statesmanlike object of ambition, or exhibit any charity that would be more satisfactorily repaid. 1

This was the "problem"; it was a knotty one, "difficult" but not however impossible. It was, of course, the subject of endless policy appraisals. In these, the respective emphasis placed on "reformation" and "deterrence" tended to fluctuate. Yet even the 1863 House of Lords Committee, chaired by Lord Carnarvon, which committed itself in exceptionally strong terms to the "deterrent" effect of imprisonment - to "hard labour, hard fare, and a hard bed", as recommended to it by Sir Joshua Jebb - still showed a strong concern for "reformation":

The possible reformation of offenders is an object which successive committees of both Houses have had in view. The House of Lords Committees of 1835 and 1847 both refer to it; the House of Commons Committee of 1850 recognises its importance in marked terms. The committee fully admits that it forms a necessary part of a sound penal system, but they are satisfied that, in the interests of society and of the criminal himself, it is essential that the other means for the reformation of offenders should always be accompanied by dire and effective punishment. 2

Members of the Carnarvon Committee made it plain to witnesses that, as Lord Salisbury put it, "the deterrent influence upon society of the infliction of punishment" offered most in terms of "the prevention of crime". The feeling was that, if the last criminal had not yet been deterred, this was merely because existing penal regimes were "not sufficiently deterrent": it was simply taken for granted that

2. *P.P. 1863*, vol. IX, pp. 9, 12 (Report from the Select Committee of the House of Lords on Gaols and Houses of Correction).
crime could be prevented. It only remained for the Committee to declare that "They do not consider that the moral reformation of the offender holds the primary place in the prison system."\(^1\)

To the Carnarvon Committee, as to other parliamentary committees before it, the only problem was the correct weighting to be attached to "reformation" and "deterrence". In that its Report was securely located within the framework of an agreed "science", it was scarcely even necessary to state explicitly that "reformation" and "deterrence" were mutually compatible.

The mutual viability of "reformation" and "deterrence" as a means of preventing crime was not always left unstated in the nineteenth century: instead of leaving it to be taken on trust, it was often explicitly spelt out by those who addressed themselves to the question of punishment, in the books and periodicals written for the edification of the ruling class and those who looked up to it. The Bishop of London, in the published version of a sermon originally preached before the Society for the Improvement of Prison Discipline, in 1828, felt it to be "no longer necessary to prove by argument that the true end of punishment is the prevention of crime." This was to be achieved by "the correction and reformation of the criminals themselves", never forgetting the importance of establishing "in the opinions and expectations of the people, a certain uniform connection between the offence and its appropriate penalty." Admittedly, imprisonment as a form of social control was to be further supplemented by "the religious and moral improvement of those classes which are most exposed to temptation."\(^2\) Another leading cleric, Richard Whately, the Archbishop of Dublin, also emphasised the extent to which a common theory commanded agreement:

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1. Ibid., pp. 14, 92-93.
The theory of punishment, viz., that is inflicted for prevention, and not for retribution, is, in the abstract, understood and admitted by almost everyone, and is distinctly recognised in our legal enactments.

Punishment needed to be "formidable", so that it would tend as much as possible "to deter men from crime" (without actually causing any "useless suffering") and also "corrective", or productive of "moral improvement". Such a combination, so Whately concluded, represented "the truest humanity". 1

Where prelates led, periodicals followed. In 1824 a leading Tory publication, the Quarterly Review, carried an article, conceded by its rival the Westminster Review to be fully representative of "the opinions... of the ruling powers in this country", concerning prison discipline.2 As was also noted in the Westminster Review, the writer in the Quarterly had advanced precisely the same aim as that favoured in the Westminster Review, a more "radical" periodical:

The end of all enquiries concerning prisons, as concerning anything else, ought to be, the discovery of the means by which they may be made the instrument of the greatest good to the community. That the writer in the Quarterly Review has proposed this end to himself, we have no reason to doubt. We shall content ourselves, therefore, with examining whether the principles which he lays down are, in all cases, the most conducive to that end. 3

If prisons were inherently "good" for the community any disagreement between the two Reviews reduced itself to questions of detail, of which the most important was whether or not prisoners should receive any form of payment for their labour, in other words to the question whether such payments were conducive to "reformation", or tended, instead, to devalue the "deterrent" quality of imprisonment.

1. R. Whately, Thoughts on Secondary Punishment (London, 1832), pp.6-7, 14, 23.
Each of the two Reviews tried to balance these two matters. In the words of the Quarterly Review, prison had to be "a place of terror to those without, of punishment to those within", yet at the same time there was a need to "reform criminals" which was "imperative in the obligation". The Westminster Review, for its part, grouped the "purposes... to which prisons are applicable", under the triple heads of "Safe Custody, Punishment and Reformation". The common concern of both periodicals can best be summed up in a phrase taken from a third, the Edinburgh Review: the need to devise "that judicious system of management which may tend in reality to deter and reform the prisoner." 

Debate among the "experts" as to the relative importance of "reformation" and "deterrence" was echoed in the press, popular as well as elite, which on the one hand demanded that criminals be punished effectively, and on the other hand that they should not be treated cruelly. George Combe, writing in 1854, suggested that the press contributed strongly to that "wavering between severity and humanity, between punishing and reforming, which marks our criminal code." Since this wavering took place within fairly narrow limits, it would be just as appropriate to see the impact of the press as, broadly, a stabilising and conservative one. Of this Combe was well aware.

In conversing with Magistrates and Governors of Prisons, he has heard the remark frequently made:- "We are convinced by experience that the present system of prison discipline has great imperfections, and we should be glad to endeavour to devise and administer a better... we are paralysed by the state of public opinion. At one time the press complained of prisons being made too comfortable, and thereby attractive to the criminally disposed, and then it calls loudly for severity; at another, it denounces our discipline as cruel and barbarous. We are thus placed in a state of constant embarrassment, and are greatly discouraged in attempting improvements. 3

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Two different examples of press criticism, in the previous year, 1853, were noted by Combe. On the one hand, following the lead set by the *Daily News*, the press had denounced Lieutenant Austin of Birmingham Prison for enforcing discipline to the point where a lad committed suicide, thereby precipitating Austin's public trial and dismissal. On the other hand, when, a few weeks later, a number of cases of "barbarous treatment" of women by their husbands came before the courts, "a large portion of the press then complained of the inefficient lenity of the law, and called for flogging as an addition to the punishment of the men."¹ It is nothing new for the press both to call for tougher sentences (as recently with muggers) and yet to castigate barbaric prison conditions (as in the case of detention centres).² It is an oscillation as old as the popular press itself.

If the press played up the supposed epidemic of garrotting in the early 1860's, spurring parliament into passing a harsh legislative counter-measure,³ it also did much to bring about the appointment of the Gladstone Committee in June 1894. This was fully acknowledged in the opening page of the Committee's *Report*, of 1895.

We could not but be cognisant of the circumstances under which the inquiry was instituted. In magazines and in the newspapers, a sweeping indictment had been laid against the whole of the prison administration. In brief, not only were the principles of prison treatment as specified by the Prison Act criticised, but the prison authority itself, and the constitution of that authority, were held to be responsible for many grave evils which were alleged to exist.

¹. Ibid., p. 1.
The Gladstone Committee, further adding that "when we came to take evidence, we found that the opinions of nearly all the witnesses bore directly on the questions which had been publicly raised", used the "sweeping" nature of the criticism to justify a correspondingly "comprehensive" examination of the prison system, although this went beyond its remit.1

It might appear from this that the press was an extremely positive force, capable of shaking the prison system to its roots. In practice, however, the "comprehensive" response to the "sweeping indictment" was far from marking any drastic new departure in the treatment of prisoners. Instead, it was one more example, a classic one, of the perpetual reassessment of the prison system in terms of the well-established "scientific" principles of "reformation" and "deterrence". It was yet another attempt to find the holy grail as represented by "that judicious system of management which may tend in reality to deter and reform the prisoner", to cite the formulation of the Edinburgh Review of 1837.2 This is a point worth emphasising because penologists have seen the Gladstone Report as a turning point, and as opening the way to a focus on rehabilitation. This holds true not only of orthodox criminologists, such as J.E. Thomas and Roy King and Kenneth Elliott, but also of even the most recent radical ones.3 Mike Fitzgerald and Joe Sims suggest that the prison system has been "in a perpetual state of crisis since the Gladstone Committee report of 1895.4 Yet the Gladstone Report itself, as has been indicated, was a response to crisis. Crisis, at times more intensive than at others, has been endemic since the initial introduction on a systematic scale of imprisonment as a form of punishment. Expectations have perpetually been raised

2. See above, p.266.
in terms of "deterrence" and "reformation" without their being satisfied. The Carnarvon Committee of 1863 was set up as a result of a "crisis" relating to the release on "ticket of leave" of those who would formerly have remained in Australia, once transported.¹

Nor is it the case, as Fitzgerald and Sims assert, that the Gladstone Report "was the first official endorsement of the belief that prisoners are sent to prison not for, but as punishment, and that efforts should be made to prepare them to lead good and useful lives on their return to the outside world."² On the contrary, even the relatively "hard-line" Carnarvon Report, as quoted earlier, itself viewed reformation as "a necessary part of a sound penal system", while acknowledging that other parliamentary committees had placed still greater emphasis on reformation, notably the 1850 House of Commons Committee which had "recognised its importance in marked terms".³ Indeed, the Committees of the 1770's had done much the same. Not that any of these committees ignored deterrence, either. The Gladstone Report was simply one more attempt to discover how both "reformation" and "deterrence" might be maximised so as to foster the prevention of crime. The Gladstone Committee was as much concerned to turn the clock back as to initiate any new policy. Although it commended the uniformity achieved since 1877 and the "nationalisation" of the prison system under the stern direction of Sir Edward Du Cane, and rejoiced that certain "bad prisons" of former times had disappeared, it was also careful to emphasise that:

The best prisons under the former regime, while comparing satisfactorily in point of order and discipline with the prisons of today were managed on lines in all probability more likely to produce a healthy moral effect of a permanent kind on the prisoners. ⁴

³. See above, p.263.
The Gladstone Committee showed a great concern with the past. It listed and leaned upon some 21 official inquiries carried out between the years 1863-94. The "Appendices" to its Report contain historical analysis and material, including a lengthy letter of 1842 written by Sir James Graham, the then Home Secretary, about the kind of regime to be introduced at Pentonville. This letter, so the main section of the Report emphasised, indicated that Graham was "as keenly anxious to devise the best methods of treatment in the interest of prisoners themselves as the most ardent prison reformer of the present day."¹

In the view of the Gladstone Committee, what had happened since mid-century, and, in particular, since 1877, was that prison conditions had been made so deadeningly punitive in the course of centralisation as to have become counter-productive in terms of deterrence. Excessive severity merely caused "that bitterness and recklessness which lead on to habitual crime". The Committee devoted a section of its Report to the question "Is the present Prison System sufficiently deterrent?", remarking that an affirmative answer, which it duly delivered, was necessary before any changes could be recommended. This approach was forced on it by the need to conform the well established stock of knowledge. "Crime, its causes and treatment, has been the object of much profound and scientific enquiry", so the Committee observed. As with the Carnarvon Committee, recidivism statistics formed the litmus paper with which the experiment was judged: "Recidivism is the most important of all prison questions, and it is the most complicated and difficult."² Where, however, the Carnarvon Committee had discerned in a seemingly low rate of reconvictions the deterrent influence of punishment,³

¹ Ibid., pp.5, 31, 687.
² Ibid., pp.9-13.
³ P.P. 1863, vol. IX, p.93 (Report from the Select Committee of the House of Lords on Gaols and Houses of Correction).
the Gladstone Committee saw in an apparently higher, indeed ever-increasing rate of recidivism irrefutable proof of the need to place greater emphasis on individual flexibility and reform-
ation. Like Daniel Nihill in 1839, 1 or any other adherent of "reformation", the Gladstone Committee was confident that if only a start were made with a policy more favourable to rehabilitation, a crime-free future lay ahead:

It may be true that some criminals are irreclaimable, just as some diseases are incurable... But criminal anthropology as a science is in an embryo stage, and while scientific and more particularly medical observation and experience are of the most essential value in guiding opinion on the whole subject, it would be a loss of time to search for a perfect system in learned but conflicting theories, when so much can be done by the recognition of the plain fact that the great majority of prisoners are ordinary men and women amenable, more or less, to all those influences which affect persons outside. 2

The rhetoric of rehabilitation rings eternal. The fact that the Gladstone Committee looked to the future with confidence did not necessarily imply any great changes.

Those concrete changes which the Gladstone Committee advocated were neither novel nor extensive. There was no lack of precedents. The Committee recommended that "unproductive labour should be abolished whenever possible." However, the employment schedule for local prisons for 1892-93, indicated that of 13,874 prisoners, only 504 were engaged in "non-productive labour", fewer than the 729 who were occupied in seaming mailbags, a practice which survived into the 1970's. The Committee did not regard oakum-picking, as carried out by men, as "unproductive": the switch by ships from sail to steam, rather than any official recommendation, brought this to an end.

1. See above, p. 261.

Constructive and sometimes highly profitable work had been undertaken in the past on an extensive scale in many local prisons, particularly before the 1877 Prison Act: the Gladstone Committee showed its awareness of this in recommending that at every prison there should be an official holding a position "somewhat similar to that of 'manufacturer' prior to 1878, for the purpose of directing the prison industries."¹ Again, the Gladstone Committee's suggestion that prisoners might be trusted to associate together and even to talk, for purposes of work or as a privilege, was less novel than it might at first appear. In the convict prisons, the inmates, after an initial period, had always worked together, on construction projects. Any rule of silence had been observed in the breach. The Governor of Dartmoor Prison, when questioned by Herbert Gladstone as to whether convicts were "condemned to continue silence" had replied: "No, practically it is not so; besides, they must talk about their labour; they must necessarily talk to the officers or instructors about their work". It was, no doubt, more realistic to recognise that prisoners would always find ways of communicating, and more effective in terms of control to make talking a "privilege" to be awarded to those who "conducted themselves well". If this was a concession, it was made in the unchanging context of the cellular prison: indeed, the first recommendation of the Gladstone Committee opened to the effect "that there should be a larger margin of separate cell accommodation in the London and certain of the provincial prisons...", so as to avoid the disruption inherent in overcrowding and multiple occupation of single cells. The idea that the Gladstone Report set up strains in the disciplinary role of the prison officer rests on unjustified assumptions about the Victorian prison officer. His effectiveness, like that of his twentieth century successor, rested on his close personal relationship with those under his charge, on qualities to be associated more

¹ Ibid., pp.83, 49, 636.
with social work than with soldiering. One small incident illustrates this continuity to perfection. Colonel Garsia, on taking charge of a then somewhat disturbed Wormwood Scrubs Prison in December 1891 found that he had to issue an "order for all officers to have their truncheons with them when on duty, and to carry them when supervising the exercises of prisoners", because he found that "the officers left their truncheons at their homes, instead of having them in the pocket provided in their trousers for the purpose." In the prison system, little ever changes: officers today are, of course, just as reluctant to carry their truncheons.

The Carnarvon Committee, the Gladstone Committee, indeed all the innumerable inquiries into the prison system in both the nineteenth and the twentieth century have all served the same purpose, that of allowing the legitimacy of imprisonment to be reasserted and represented afresh. The pattern which Fitzgerald and Sims discerned in the twentieth century, that "pattern of crisis-partial inquiry-crisis-partial inquiry" held good in Victorian times as well. Legitimacy was established then, as it still is, by reference to a hallowed stock of knowledge, to theories of deterrence and reformation. Sometimes, as in the case of the Carnarvon Committee, the balance is tilted in favour of deterrence; at other times, as in the case of the Gladstone Report, reformation receives new attention. Whichever way the emphasis falls - never is one aim favoured entirely to the exclusion of the other - the public is given official reassurance that the prevention of crime is being promoted. The Carnarvon Committee, when it came to make its crucial recommendation for greater emphasis to be placed on deterrence, cited with approval the answer given by Sir Walter Crofton "whose experience on this subject entitles him to much consideration", to the question whether there was a need for a still more penal element in prison discipline:

I am quite satisfied about that, and now more than ever, because nine years since we established reformatory schools at a great cost of money and time: and I think when we do so much to prevent crime, and to train these youths up, so that they shall not pursue criminal vocations, we are bound, on the other hand, to be more stringent in the punishment of those who still pursue a course of crime in spite of what we have done for them; and I am quite satisfied that the managers of reformatory schools would consider their hands to be strengthened by the prisoner knowing that pursuing a course of crime would lead to really stringent punishment... 1

Crime could and would be prevented: this could and would be achieved through the penal system, once some adjustments had been made. This was duly done, much as had been recommended. The results were no more satisfactory. The Gladstone Committee was appointed to take another look at the problem. It made a slightly different set of recommendations in a spirit of what can only be described as cautious optimism:

We put forward these recommendations in no over sanguine spirit. We have suggested many changes, but it is not expected that marked improvement in the criminal records of the country [i.e. in the extent of crime] will at once be shown. But we believe that the adoption of an improved system of general administration and the careful and progressive application to prison government of the reformatory methods which already in varying degree have been tested by experience, will be rewarded by an increasing measure of success. 2

Crime would be conquered after all, and this could be done by sending criminals to prison. Apparently this needs to be reasserted periodically, so that "crisis" may be averted - and the whole archipelago of prisons perpetuated. So, perhaps, ad infinitum.

This chapter is concerned with the legitimation of imprisonment, or with what Nils Christie has analysed in terms of changes in penal values. By the early nineteenth century, so it has been argued, prison was seen as the infallible answer to "crime". Consequently it was possible to use imprisonment as a means of punishing people to an ever increasing extent, and on an unprecedented scale. As Christie points out, changes in the size of the prison population are a revealing indicator of changes in penal values. 1 Prison as it was talked about by the ruling class - as an instrument of deterrence and of reformation - existed in the realm of "knowledge": the use that was made of it was rather different. The prison was a way of punishing the working class in great shoals. All the talk about solving the problem of crime served to disguise and legitimate this so successfully that the ruling class did not realise fully what it was itself doing. It flattered itself into thinking that it was dealing with criminals less cruelly than had previously been the case. In the boastful words of John Ward, "There can be no more striking mark of the advance of European civilisation than the transition from the dungeon and fetters of the middle ages, to the penitentiaries of modern times."2 To take this kind of comment at face value is out of the question. The change was largely cosmetic. The "dungeon and fetters of the middle ages" in fact simply became the "dark cells", the reduced diet, the "handcuffs and irons" of the Victorian prison. In 1840, when the daily average prison population of England and Wales was less than 16,000 (omitting the convicts in the hulks), 75,170 punishments were ordered to be imposed: "handcuffs and irons", in 352 cases; whippings in 158 instances; dark cells in 9,948 cases, and solitary ones on a further 11,139 occasions; "stoppages of diet" in 49,638 instances and also 3,935 other unspecified punishments. 3 Instead of taking some punishments to be more humane than

others, it is more fruitful, as Nils Christie suggests, not to accept the presumption of steadily increasing humanity:

One can then regard the struggle for penal reforms as a continuous series of efforts to bring criminal punishment into accordance with the basic values that at any particular time are recognised by articulate pressure groups in the community. The values will alter with the passage of time... the study of the means of punishment employed reveals that values predominate at all times among those actually exercising power in the community in question. 1

The nineteenth century consummation of earlier changes in penal values has an enduring significance: nowadays, however, these same values appear timeless.

The consolidation of imprisonment in the nineteenth century may at first sight appear to have been retarded by the continued use of transportation to Australia, as instituted in 1788, throughout the first half of the nineteenth century. The first Penal Servitude Act, which abolished transportation eo nomine, was not passed until 1853, while a handful of convicts continued to be sent overseas until the late 1860's. 2 Prominent among those who have asserted that there could not have been a "penal system, strictly so-called", as long as there was "a policy of débarras, under which all offenders against the law were shipped off to the Colonies", can be found the name of Sir Evelyn Ruggles-Brise, Chairman of the Prison Commission:

Although historically our Prison System may be said to date from the Prison Act, 1778 [a mistaken reference to the 1779 Penitentiary Act], a long, dismal history of ill-considered administration was destined to intervene before the principles of penal science, as now understood, obtained expression. It is probable that the discovery

of Australia by Captain Cook [actually a succession of Dutch explorers "discovered" and partially mapped Australia in the seventeenth century] was the mesure de circonstance which determined the prison history of this country for nearly fifty years [a curiously selected time-span: Cook reached Australia in 1770]. The easy methods and means of transportation which this great Colony afforded, relieved Parliament of the necessity of inventing any new and wise methods for the punishment of crime. 1

It has already been emphasised in this chapter that the "science" of "crime prevention", as applied in prisons by a proper combination of "deterrence" and "reformation", was firmly if not definitively established in the first half of the nineteenth century. Likewise it is easy to show that under local control, imprisonment had developed into a system of massive proportions - a national system in all but name - well before the demise of transportation. From Graph I (see below, p.278) it is apparent that although the number of those held in prison reached a peak of 30,000 in the late 1870's, it had reached the 20,000 point as early as 1832. The rate of growth, or the growth curve, was also fairly constant throughout the first three-quarters of the nineteenth century: it did not increase with the "ending" of transportation. From Graph II (see below, p.279), which measures the daily average of prisoners per 100,000 population, it is clearer still that the use of imprisonment reached its maximum extent comparatively early in the nineteenth century or, in other words, while transportation was still flourishing. The number of prisoners per 100,000 population peaked in 1832, at 142.7. After a short-lived drop (due to a temporarily accelerated programme of transportation) it then settled down at a remarkably constant level: in the years 1840-1880, while fluctuating irregularly, the number of prisoners per 100,000 population was never greater than 137 nor less than 116. From the 1880's onwards, the figure dropped dramatically: it was against this background

GRAPH I: AVERAGE PRISON POPULATION, ENGLAND AND WALES, 1775-1975
(For Sources, see below Appendix 2, pp. 332-35).
GRAPH II: RATE OF INCARCERATION PER 100,000 POPULATION, ENGLAND AND WALES, 1775-1975.

For sources, see below, Appendix 2, pp. 332-35.
of a falling prison population that the Gladstone Committee made its token recommendations for the amelioration of the system, noting that "an actual as well as a relative decrease" had taken place. Taking the number of those held in prison relative to the total population, rather than the absolute figure, as the best guide to the felt need to punish, it is clear that the ending of transportation was a minor, not a major variable in terms of its impact.

If, in measurable terms, transportation was a kind of self-contained sideshow, to a large extent, while, at least over the long run, imprisonment, the principal theatre of punishment, flourished independently, there was, perhaps, a subtle connection. In the years when imprisonment was first being applied, it was officially annexed to the lesser kinds of offence, the more "trivial faults". With both the death penalty and whipping, besides transportation, still in operation throughout the nineteenth century, albeit on a reduced scale, Britain never made a straight switch from one set of punishments to another type altogether. Instead, Britain created a peculiar scale of punishment in which, in official terms, imprisonment was seen as being comparatively painless. Imprisonment was very much a "secondary" punishment, inferior not only to death, but also to transportation, at least in the eye of the law. It may well be the case that this has had a permanent effect on the way imprisonment is seen in this country. As is well known, the United Kingdom has the highest ratio of prisoners to total population of all West European countries barring the Federal Republic of Germany. Possibly one reason for this is that imprisonment was originally instituted as a punishment for comparatively trivial offences. In other words, imprisonment got off to a poor start,

in some respects. It was always liable to reproachful comparisons: this was one more reason why it was so easy to incarcerate so many offenders in such large numbers. Their's - officially - was only a minor punishment.

By the same token, since there was a tendency for imprisonment not to be fully recognised as the formidable punishment it was and is, extraordinary efforts had to be made to ensure that the image of imprisonment was sufficiently tough to satisfy even the likes of Sydney Smith. Britain was the first European country to develop imprisonment on a systematic scale. With the possible exception of the United States - and officials such as the prison inspectors in Britain were always keen to deny any transatlantic precedence - the "first industrial nation" was also the first country to develop the modern prison. Just as Britain's early industrial start in the long run tended to slow it down, in comparative economic terms, so too its early but consequently incomplete switch to imprisonment must in part explain why Britain was later so slow to abandon hanging and whipping altogether. Where other countries, ready to imitate Britain in many respects, were able to see in imprisonment a punishment which had proved itself in Britain, as in the United States, and sent a stream of delegations to both Pentonville and Philadelphia, Britain suffered from being a pioneer. Old forms of punishment were still cherished alongside the new one, imprisonment, which had to be made more formidable than was found necessary by other countries, later. Britain alone compelled its prisoners to perform conspicuously unproductive labour, on the treadwheel. Obsessive attention was devoted to ensuring that nothing should devalue the image of the prison as a place of punishment apart from society. The Second Report of the Inspectors of Prisons, for 1836, complained, for instance, that at Devizes House

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Two prisoners are often employed in cultivating the land around the prison under the guidance of an officer. It has been stated to me that prisoners are employed occasionally in a field near the gaol appropriated to the governor's use, and that they also occasionally tend his cows. Whether this is true or not—and I trust that, if it has happened, it will not occur again—it is a violation of good discipline to employ prisoners on any pretext outside of the walls of a prison. Once outside, they can be familiarly seen by others and can see others in turn; it is a return to comparative liberty for the moment, and restores that communication with the external world which it is one of the objects of a prison to cut off. 1

Relentless enforcement of prison discipline in this kind of way gave Britain, deservedly, a well-established reputation in Europe for taking the punishment of offenders extremely seriously. As Ruggles-Brise wrote in his report on the Brussels congress of 1900, there was, internationally, "a general idea that our punitive methods are harsh, if not barbarous". He thought this unjust, of course, but then proceeded with unconscious irony to boast that Britain did indeed dragoon prisoners in a manner all its own:

The comparatively few foreigners who had a personal acquaintance with our Institutions did not conceal their admiration for the order, method, discipline, and exactness which characterise our methods of dealing with crime... 2

Ruggles-Brise, Chairman of the Prison Commission, seems almost to have been unable to see that he was punishing people in a degrading and dehumanising fashion. He was simply "dealing with crime", and, to that end, took it for granted that iron discipline was necessary in the prisons over which he presided. He failed to see himself as what he was: the heir to Britain's peculiarly punitive response to crime, as expressed through use of the prison system.

No other punishment lent itself more conveniently to the felt need to punish than did imprisonment. The continued use of transportation had only a marginal impact on the rate of growth of the prison population. The new science of crime prevention was a science specifically adapted to imprisonment. Transportation only fitted into this schema with difficulty. Considerations of cost, convenience and colonialism alone ensured its survival into the second half of the nineteenth century. Ideologically, it had little appeal. The 1838 Report of the Select Committee on Transportation, under the chairmanship of Sir William Molesworth, came out with substantial criticisms. Among its members was Lord John Russell, then Home Secretary: in 1839 he wrote a succinct "Note on Transportation and Secondary Punishments" which is extremely revealing of the mentality of those in power. Transportation was examined through spectacles borrowed from a prison reformer, and, naturally, found wanting:

Crime is not punished as crime, although certain criminals are treated with much severity. The question of colonial profit and loss mixes with the award of justice. A man is estimated by his capacity as a colonist, not by his crime as a felon.

The purpose of punishment - and its justification - was to prevent crime. This was the fundamental axiom of the new science underpinning imprisonment. The "two objects of secondary punishment" were, so Russell added, "to deter and to reform". If the need to avoid "any very extravagant increase of the public burthen" meant that transportation could not be dispensed with too hastily, in the meantime it was to be made to resemble imprisonment in terms of its guiding principles. Here Russell's leading mentor, whom he quoted at length as to ways in which transportation could be improved, was Captain Maconochie:

Government having undertaken both processes (punishment and reformation), ought not to perform either in a slovenly manner; it should consider that there is a science of each; and that no pains should be spared to bring into practical operation whatever principles may be established in them.

Russell concluded not only that transportation would have to be reconceived in the image of imprisonment, but also that, in the United Kingdom, a new generation of government prisons was needed by way of supplement "on the system of Philadelphia". ¹ Pentonville, the first of those, which went into operation three years later, was utilised, significantly, as a "portal to the colonies". Like other traditional forms of punishment, transportation was only gradually superseded by imprisonment altogether, the final shipload of convicts being sent to Australia in 1867. It survived, however, at a price, that of being made to resemble imprisonment. In the years 1839-40 the hallowed system of assignment – of servitude in freedom – was ended, while an increasingly prosperous New South Wales was abandoned in favour of more forbidding locations, with gang labour in seclusion. ² In other words, like the death penalty or corporal punishment, transportation was legitimised anew by imprisonment even as it was partially superseded by it. New and old punishments flourished alongside and in addition to each other. The prison set the tone for penal values generally.

Every well-filled prison needs a busy court. Behind the growth in the prison population lay far greater numbers of convictions. The change in penal values was reflected in changes within the ambit of the courts as much as in the growth of the prison population. In the course of the nineteenth century, prosecutions were deliberately

facilitated both by a policy of reimbursing expenses, as signalled in 1818 by 58 George III, c.70, which at the same time abolished the erratic parliamentary reward system, and also by a series of changes to court procedure, designed to make it simpler and speedier. Previously, prosecution had been quite as demanding of time and effort as of money. Additionally, the police in due course began to take over a growing share of a burden which they at the same time increased for themselves. Changes of this kind, for all their significance, are however less illuminating than certain concealed changes in the pattern of convictions, changes which illustrate the growth of the prison population in terms of the increasing hold of the new ideology.

Both contemporaries and more recent historians have talked of the growth of the prison system as if it took place almost in a fit of absence of mind, always a convenient disclaimer. There has been a tendency to see the expansion of imprisonment as simply a response to the repeal of the sanguinary statutes, as carried through in parliament in the 1820's and 1830's. In this view, the rhetoric of the parliamentary struggle between the "reformers" of the criminal law and their opponents is taken at face value, while parliament itself becomes the fulcrum of change and the centre of events, another comforting notion. This approach is exemplified in Part V of the first volume of Radzinowicz's History, to the point where men in parliament, such as Romilly and Mackintosh, are seen as leading the public, as well as setting legislative changes in motion. "Though the practical success of the reformers in the years 1819-1821 was insignificant, they prepared the mind of the public for change by discussion and debate." A concomitant of this view, an argument which indeed was often deployed in parliament by the "reformers", was that until the sanguinary laws had been abolished, there was going to be a marked reluctance to proceed against offenders. In the words of J.E. Tobias:

Capital punishment for offences other than murder was generally thought undesirable, even if we leave out of account the views of those who were in principle opposed to capital punishment for any crime. Most people thought that the death penalty tended to promote crime, believing that it did not deter the criminal... but that it did deter prosecutor, magistrate, jury and judge, who were tempted to strain the law to avoid the risk of what was felt to be an unjust penalty.

Once carried through, "the removal of capital punishment from a wide range of offences increased willingness to put the law into operation!" In other words, the increase in prosecutions and convictions was a not unwelcome result of the repeal of the sanguinary laws, and this had to be fought for in parliament first of all.¹

The view that increases in the number of prosecutions and convictions — increases which filled the prisons as never before — were simply a side-effect of the heroic triumph of law "reformers" in parliament notably underplays the importance of capitalism, this essentially vindictive ideology, oriented towards the disciplining of the working classes. There was a pre-existing determination to punish. Prosecutors and jurors, all men of property, were combining to convict offenders, both absolutely and proportionately, to an extent that was quite without precedent, well before parliament succeeded in "reforming" the criminal law. This rise in convictions took place with little or no prompting from the legislature: as Radzinowicz has emphasised, "When Romilly died in 1818, criminal law was still in the same state in which he had found it." Even in the 1820's, the repeal of capital statutes occurred only to a limited extent. Capital punishment remained in "wide use" until 1837.² Both trial juries and grand juries were

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alike affected, clear evidence of a general change in attitudes towards lawbreakers, a change which was itself rooted in a wider ideological shift. The alteration in the rate of convictions puts even the rise in prosecutions - as measured by committals - in a different light. Both developments stand together as indicators of a new and more punitive outlook towards crime. Together they show that what counted in the first instance was not what happened in parliament, which was characterised by stability if not by inertia, but that structural changes, as mediated through the ascendant ideology, were of supreme importance in determining the way men acted.

The reluctance to convict traditionally shown by juries became startlingly less evident in the early nineteenth century, far in advance of the extent of parliament's repeal of the sanguinary laws. Table V (see below, p.288) shows that in the period 1805-31, the rate of convictions rose from around 60 per cent to some 70 per cent. The biggest and most important acceleration took place in the years 1815-19, both absolutely and proportionately. In five years, the number of committals nearly doubled, soaring from 7,818 to 14,254. At the very same time, the rate of convictions also rose steadily from 65 to 67 per cent. This was at a time when the great mass of sanguinary statutes was still almost completely intact. In other words, juries were losing their long-standing reluctance to see men sentenced to death. This took place, significantly, at precisely the same time as the number of offenders being made to stand trial was increasing by leaps and bounds. It was as if juries responded qualitatively to the quantitative increase in the number of offenders committed for trial. Of course, it could be argued that juries anticipated reprieves, and these were indeed used more liberally. It is doubtful, however, whether juries felt able to count on reprieves to a greater extent than had previously been the case. The number of executions, to which they were probably more sensitive, rose sharply. In the seven years 1805-11 the average number of
TABLE V


(For Sources, see below, Appendix 2, pp. 328-34).

<table>
<thead>
<tr>
<th>Year</th>
<th>Number committed</th>
<th>Number cleared by Grand jury or not prosecuted</th>
<th>Number acquitted by jury</th>
<th>Number convicted</th>
<th>Per cent convicted</th>
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<tbody>
<tr>
<td>1805</td>
<td>4,605</td>
<td>730</td>
<td>1,092</td>
<td>2,783</td>
<td>60.4</td>
</tr>
<tr>
<td>1806</td>
<td>4,346</td>
<td>766</td>
<td>1,065</td>
<td>2,515</td>
<td>57.9</td>
</tr>
<tr>
<td>1807</td>
<td>4,446</td>
<td>801</td>
<td>1,078</td>
<td>2,567</td>
<td>57.7</td>
</tr>
<tr>
<td>1808</td>
<td>4,735</td>
<td>886</td>
<td>1,126</td>
<td>2,723</td>
<td>57.5</td>
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<tr>
<td>1809</td>
<td>5,330</td>
<td>887</td>
<td>1,205</td>
<td>3,238</td>
<td>60.8</td>
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<tr>
<td>1810</td>
<td>5,146</td>
<td>858</td>
<td>1,130</td>
<td>3,158</td>
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<tr>
<td>1811</td>
<td>5,337</td>
<td>940</td>
<td>1,234</td>
<td>3,163</td>
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<tr>
<td>1812</td>
<td>6,576</td>
<td>1,169</td>
<td>1,494</td>
<td>3,913</td>
<td>59.5</td>
</tr>
<tr>
<td>1813</td>
<td>7,164</td>
<td>1,291</td>
<td>1,451</td>
<td>4,422</td>
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<tr>
<td>1814</td>
<td>6,390</td>
<td>992</td>
<td>1,373</td>
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<tr>
<td>1815</td>
<td>7,818</td>
<td>1,287</td>
<td>1,648</td>
<td>4,883</td>
<td>62.5</td>
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<tr>
<td>1816</td>
<td>9,091</td>
<td>1,410</td>
<td>1,884</td>
<td>5,797</td>
<td>63.8</td>
</tr>
<tr>
<td>1817</td>
<td>13,932</td>
<td>2,198</td>
<td>2,678</td>
<td>9,056</td>
<td>65.0</td>
</tr>
<tr>
<td>1818</td>
<td>13,567</td>
<td>1,987</td>
<td>2,622</td>
<td>8,958</td>
<td>66.0</td>
</tr>
<tr>
<td>1819</td>
<td>14,254</td>
<td>2,109</td>
<td>2,635</td>
<td>9,512</td>
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<td>1820</td>
<td>13,710</td>
<td>1,881</td>
<td>2,511</td>
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<td>1821</td>
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<td>1,826</td>
<td>2,501</td>
<td>8,788</td>
<td>67.0</td>
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<tr>
<td>1822</td>
<td>12,241</td>
<td>1,684</td>
<td>2,348</td>
<td>8,209</td>
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<tr>
<td>1823</td>
<td>12,263</td>
<td>1,579</td>
<td>2,480</td>
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<td>66.9</td>
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<td>1824</td>
<td>13,698</td>
<td>1,662</td>
<td>2,611</td>
<td>9,425</td>
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<td>14,437</td>
<td>1,685</td>
<td>2,788</td>
<td>9,964</td>
<td>69.0</td>
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<tr>
<td>1826</td>
<td>16,164</td>
<td>1,786</td>
<td>3,271</td>
<td>11,107</td>
<td>68.7</td>
</tr>
<tr>
<td>1827</td>
<td>17,924</td>
<td>1,950</td>
<td>3,407</td>
<td>12,567</td>
<td>70.1</td>
</tr>
<tr>
<td>1828</td>
<td>16,564</td>
<td>1,672</td>
<td>3,169</td>
<td>11,723</td>
<td>70.8</td>
</tr>
<tr>
<td>1829</td>
<td>18,675</td>
<td>1,800</td>
<td>3,614</td>
<td>13,261</td>
<td>71.0</td>
</tr>
<tr>
<td>1830</td>
<td>18,107</td>
<td>1,832</td>
<td>3,470</td>
<td>12,805</td>
<td>70.7</td>
</tr>
<tr>
<td>1831</td>
<td>19,647</td>
<td>2,094</td>
<td>3,723</td>
<td>13,830</td>
<td>70.4</td>
</tr>
</tbody>
</table>
executions annually was 57. In the succeeding seven years, 1812-18, it was over 90. This was the bloody backdrop to a steady rise in the proportion of capital convictions to the total number committed for trial from 1 in 13 in 1805 to 1 in 11 in 1818.¹

It seems an incontrovertible conclusion that the early nineteenth century ruling class and its social satellites, whether in the guise of jurymen, grand jurymen or prosecutors, was concerned to make criminals suffer for offences that might earlier have been dealt with informally, if at all. This tendency was steadily apparent, so Table V shows, throughout the first third of the nineteenth century. By 1832, as has been shown in Graph II (see above, p.279), the number of those held in prison proportionate to the total population reached an all-time high of over 142 per 100,000. The years 1815-19, or thereabouts, was the time when the process was most strongly apparent. Two decades later, this period still remained firmly in the memory of the prison inspectors. "In the year 1815", as they recalled, "the extraordinary increase of juvenile prisoners strongly arrested the public attention." This had been probed by the Society for the Prevention of Juvenile Delinquency, precursor of the Society for the Improvement of Prison Discipline and for the Reformation of Juvenile Offenders as it became in 1818. The inspectors noted that while many "painful and appalling facts" had been brought to light by the Society, "Nothing, however, transpired to prove that there were any new or extraordinary circumstances in the condition of society to account for the increase which had taken place in the number of juvenile commitments." They concluded that the increase had been "overrated":

¹. P.P. 1819, vol. XVII, pp.314-15 (Number of Persons Charged with Criminal Offences). A table gives the ratio of those capitally convicted as compared with the total number of those committed for trial, capitally or otherwise, for each of the years 1805-1818. The ratio was 1 in 12 for the period as a whole; it was 1 in 13 for each of the years 1805-1807, but increased to 1 in 10 or 1 in 11 for each of the three last years 1815-1818.
We are of opinion that the augmentation of the numbers of juvenile prisoners may be attributed partly to causes which do not necessarily imply an actual increase in crime. Hundreds are now sent to gaol who some years ago were not subjected to judicial punishments.¹

Given that in the early nineteenth century the courts were only just beginning to discriminate between "juvenile" and "adult" offenders, continuing instead to treat both alike throughout the course of criminal proceedings, indeed on occasion even sending both to the gallows together, it is arguable that the inspectors' point about the increase in the number of juvenile prisoners is equally applicable to offenders of all ages. The inspectors had a particular brief for juveniles, and were that much more sensitive to the way these had increased in numbers. If the inspectors half regretted the growing number of juvenile offenders being convicted, they still saw them as "a legitimate subject for penal correction." Not to punish them would be "to make but little distinction... between those who commit and those who abstain from crime." The essential point, as the inspectors saw it, was that "every violator of the law, whatever be the age of the offender, should be subjected to a public tribunal, and that the execution of the sentence belongs exclusively to the state."² In other words, there was nothing undesirable about the growth in the number of convictions. Those punished in such shoals were "criminals" and did not deserve to be dealt with as if they were anything else.

Changes in attitudes towards crime and in the handling of offenders first became apparent in the courts. In parliament, members long continued to cherish a death penalty which, in practice, was fast being supplanted by imprisonment as the mainstay of the new enormous and anonymous criminal justice "system". When William Swart

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² Ibid., p.111.
in 1832 moved for leave to bring in a bill to abolish capital punishment in cases of horse-stealing, sheep-stealing, cattle-stealing and burglary without intimidation, he was opposed—unsuccessfully, as it proved—by Sir Robert Peel. Peel asserted that no change should be made "until the whole question respecting secondary punishments was reviewed, to the end that it might be, in some degree, altered." Lord Althorp also stressed the need for a better system of secondary punishments. This kind of talk took no notice of the fact that a formidable system of imprisonment had already come into use, while the death penalty as a form of punishment was becoming proportionately rarer. The level of imprisonment relative to population was already, in 1832, at an all-time high. The gallows had been overtaken by the prison. In 1828, for instance, of 456 persons sentenced to death for the four categories of offence which Ewart sought to make non-capital, only 10 were actually executed. In finally removing such offenders from the capital list, parliament was simply rationalising a change that had already taken place. Not infrequently, even this rationalisation needed the prompting of petitions from bankers, manufacturers and other such respectable groups. Parliament at a national level did little more than endorse changes already made at a local level, where the authorities were busily disposing of offenders—"criminals"—to the new institutions which they had erected up and down the country. Members of parliament and county magistrates were fired by the same enthusiasm, animated by the same ideology. It was just that the ball was in the magistrates' court: parliament had a habit of relegating itself to a quiet kind of supporters' club.

The importance of the ideological underpinning of the new system of criminal justice becomes still more obvious when regional

disparities in the level of convictions are taken into account. This differentiation was apparent even to contemporaries. Samuel Redgrave, the Home Office statistician, noted in the introduction to the 1839 Criminal Tables:

The numbers acquitted were, on trial, 4,609; no Bills found, 1,662; not Prosecuted 316; making a total of 6,588, or 37.1 per cent [of the 17,832 convictions]. In thirteen English Counties the Acquittals have been much below this proportion. They are:

<table>
<thead>
<tr>
<th>County</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bedford</td>
<td>21.3</td>
</tr>
<tr>
<td>Warwick</td>
<td>24.5</td>
</tr>
<tr>
<td>Nottingham</td>
<td>25.6</td>
</tr>
<tr>
<td>Lancaster</td>
<td>28.5</td>
</tr>
<tr>
<td>Leicester</td>
<td>29.6</td>
</tr>
<tr>
<td>Middlesex</td>
<td>30.5</td>
</tr>
<tr>
<td>Derby</td>
<td>30.6</td>
</tr>
<tr>
<td>Chester</td>
<td>31.4</td>
</tr>
<tr>
<td>Kent</td>
<td>33.7</td>
</tr>
<tr>
<td>York</td>
<td>35.2</td>
</tr>
<tr>
<td>Surrey</td>
<td>36.6</td>
</tr>
<tr>
<td>Norfolk</td>
<td>37.0</td>
</tr>
<tr>
<td>Lincoln</td>
<td>37.1</td>
</tr>
</tbody>
</table>

Of the Counties where the procedure shows the greatest proportionate number of Acquittals the following stand the most prominent:

<table>
<thead>
<tr>
<th>County</th>
<th>Proportion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dorset</td>
<td>67.0</td>
</tr>
<tr>
<td>Stafford</td>
<td>57.9</td>
</tr>
<tr>
<td>Bucks.</td>
<td>57.7</td>
</tr>
<tr>
<td>Hereford</td>
<td>57.3</td>
</tr>
<tr>
<td>Monmouth</td>
<td>56.0</td>
</tr>
<tr>
<td>Cumberland</td>
<td>53.7</td>
</tr>
<tr>
<td>Berks.</td>
<td>53.5</td>
</tr>
<tr>
<td>Hertford</td>
<td>48.2</td>
</tr>
<tr>
<td>Northumberland</td>
<td>46.3</td>
</tr>
<tr>
<td>Oxford</td>
<td>45.7</td>
</tr>
<tr>
<td>North Wales</td>
<td>58.5</td>
</tr>
<tr>
<td>South Wales</td>
<td>46.8</td>
</tr>
</tbody>
</table>

Redgrave did not attempt to offer any explanation for this remarkable spread of figures. He simply noted that much the same pattern had been evident in the Criminal Tables for 1837, and that "of the Nine Counties then pointed out as those in which the number of Acquittals bore the smallest proportion to the Convictions, seven of the same Counties occupy a similar position in the present calculation."

These seven were Warwickshire, Lancashire, Nottingham, Chester, Leicester, Bedford and Middlesex (the other two were Gloucestershire and Wiltshire). Perhaps the reason Redgrave did not offer a

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suggestion as to why these seven counties should have had consistently higher-than-average rates of convictions was that he was in no position to discern a pattern. The variations were not explicable in terms of a polarisation between urban or industrial counties and rural ones, or, at least, not exactly: Bedford had a high rate of convictions, although a rural county, but Northampton, Southampton and Sussex, more developed counties, all had comparatively low rates. Nor did the presence or absence of police offer a clue: outside London, the first proper county police forces only began to be established in the course of 1899. The pattern of variation in the level of convictions becomes easier to understand if analysis in structural terms is complemented by an ideological dimension.

Victorian England, as historians such as G.S.R. Kitson Clark have emphasised, was a Christian country. Consequently the prevailing ideology had a strong religious colouring, while denominational differences made for a degree of ideological variation – complicating and, indeed, retarding the development of a national system of education, for instance. Not until the 1850's, however, when the 1851 census and the 1858 return of Sunday School attendances provided proper statistics, did it become apparent just how strong the hold of Dissent was. Those counties in which the Dissenters were actually in a majority were fourteen in number. Two were rural: Bedfordshire and Huntingdonshire. The remaining twelve were urban and mining ones: Cheshire, Cornwall, Derby, Durham, Lancashire, Leicester, Lincoln, Monmouth, Northumberland, Nottingham, Staffordshire and Yorkshire. Eight of the thirteen counties with

the highest level of convictions in 1839 figure in this list of predominantly Dissenting Counties. So, more significantly, do five of the seven counties with above-average rates of convictions in both 1837 and 1839. Only one conclusion is possible: the remarkable variation between different counties as to the level of convictions is to be explained, at least in part, in terms of differing denominational affiliation. Seen in this light, Bedfordshire's position at the top of the convictions table for 1829 becomes more understandable. It is ironic that John Howard's adopted county should have achieved this eminence: ironic but very much in character, for Bedfordshire had been a stronghold of Dissent since the seventeenth century.  

We are looking at the variation between counties of opposing denominational affiliation. It should not be thought, however, that the supremacy of the established church, where it continued to prevail, was inimical to the consolidation of the prevailing ideology. It was a minister of the established church, the chaplain of Pentonville, who stated that

His experience every year more strongly fixes in his mind the persuasion of the immense value of true Christianity in its general acceptance in promoting amongst men of a degraded stamp the feeling of order, respect for authority and law, industrious habits, and regard for the rights of others.  

Christianity is the highest and most economical power in the world unquestionably for these purposes...  

It was just that, broadly speaking, Nonconformism very marginally had the edge on Anglicanism in terms not only of "vital religion" but also of vital capitalism, as expressed in intense moral effort for the "improvement" of society - while keeping the working classes in their place. Dissent was, after all, the professional trademark

of big business, in denominational terms. Even in the House of Commons of the mid-nineteenth century, the "great capitalists", thirty to forty in number, were "Dissenters almost to a man". 1 If denominational differences were not only clear cut, but carried social implications, it is little wonder that these expressed themselves ideologically in varying levels of convictions as well as, say, differing arrangements for the provision of schooling for the poor. Both these forms of social control were essentially ideological rather than directly repressive. That was their importance, and that was why the lack of uniformity with which each was promoted is best explained with reference to ideological factors. If the variations in the development of these new forms of control are to be explained in terms of ideological differences, there can be little doubt that the basic impulses are best understood in the light of the underlying ideological unity.

SECTION 2: THE PRISON AND THE STATE

The growth of the prison system was closely matched by its centralisation under the direction and control of the state. While there were variations in the way prisons were run - some continuing almost unchanged - the overall pattern of development was steady enough. The vituperation with which "unreformed" prisons were assailed in the nineteenth century owed more to their symbolic importance than to their place in the criminal justice system. This explains why Newgate was so often singled out for attack, as

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for instance in the early reports of the inspectors, in the first half of the nineteenth century: it was the most famous prison in the country, though for the most part it was merely a "holding" prison, for those awaiting trial, or transportation, or execution. The "unreformed" prisons were mainly tiny, like the "unreformed" American local prisons of the twentieth century. They were pawns in a war of propaganda.

Propaganda campaigns were conducted on positive as well as negative fronts. The state's first important taken of its commitment to imprisonment was the 1779 Penitentiary Act. Although, as it turned out, the two penitentiaries originally envisaged near London never got off the drawing board, the project for a central prison or prisons serving the whole country was never officially killed off. There is no doubt that the Penitentiary Act inspired much local effort, for which it specifically provided. The Act remained on the statute books, where its continuing existence enabled Bentham to propound his Panopticon plans with every expectation of success: the Act of 1794 designed to enable their implementation was explicitly grounded on the 1779 Penitentiary Act. In 1810 when Romilly proposed the reactivation of the penitentiary scheme, its purpose was so well known that he felt able to disclaim any need "to go over the grounds at any great length, upon which he thought this measure ought to be adopted." The plan, which he attributed to Howard as well as to Eden and Blackstone, "held out a better prospect of reforming criminals and of attaining all the other objects of all penal laws, than any which has hitherto been found practicable." Deftly, he then linked the failure to build penitentiaries with the "increase" of crime, which he painted in the blackest of colours, the classic, misleading combination:

1. 34 Geo. III, c.84 (1784); for further discussion of the 1779 Penitentiary Act, see above, pp. 211-27.
That plan, however, has remained on the statute book for upwards of 30 years, without any effectual step having been taken to carry it into execution. In the meantime, the want of it has been severely felt, and all have confessed that the inconvenience and inefficacy of other punishments have rendered but too sensible the impolitic and injurious tendency of the present system.

However reluctant the Home Secretary, Ryder, was to tie the government to major expenditure on penitentiary houses, he concurred "so much in the general principles laid down on the subject of penitentiary houses" that he could not but accept Romilly's motion, while adding that it would be best, at that late stage in the parliamentary season, not to rush into a new scheme, but to wait until parliament met again. The idea of building penitentiaries was too well established in the minds of the ruling class to be openly rejected even by a ministry conducting a war of world-wide dimensions. At the end of the debate a motion was carried without opposition when it was agreed that, early in the next session, parliament would "take into consideration the means of most beneficially carrying into effect the Acts of the 19th and 34th years of his Majesty's reign, for the establishment and regulation of Penitentiary Houses". It was clear from 1779 onwards that penitentiaries would in due course be built by the state. As Bentham stated in 1791, in his Panopticon treatise, "What I have all along been taking for granted is, that it is the mere dread of extravagance that has driven your minister from the penitentiary-house plan - not the love of transportation that has seduced him from it."

Where central government pointed the way, the local authorities took the direction indicated. At the same time, they also did much of the initial experimentation for the state. In deciding what kind

of regime was best, the parliamentary committee which investigated penitentiaries in 1811 under the chairmanship of George Holford was able to benefit from a wealth of "local" experience. It was with reference to the kind of county-run prison instituted at Gloucester and at Southwell that the committee came out against Bentham's proposals for "private enterprise" prisons. As Holford reported, "In both these systems of Penitentiary confinement as well as in the 19th George III, the reformation of the offender... is contemplated as the primary object, to the accomplishment of which every regulation or arrangement is to be made subservient."¹ It was under local impetus that the penitentiary scheme was most readily tried out on a nation-wide scale, thereby saving a still skeletal state the problems and the expense of developing purpose-built prisons from scratch. A little unevenly, perhaps, the local authorities paved the way. Holford noted that when a Home Office circular of November 1810 had been sent to the Lord Lieutenants of the counties of England and Wales asking what steps had been taken to implement 19 George III, c.74 under the local option clause, the replies had indicated that

The principles laid down in the 19th George 3 are now imperfectly pursued in the gaols and houses of correction of several counties, under the authority of the general acts which have since been passed, relative to the employment and treatment of criminal prisoners; that in many of the other counties there are gaols and places of correction capable of being used as Penitentiary houses; and that in some counties, gaols are now building, parts of which may without inconvenience be appropriated to that purpose. ²

In other words, the local authorities created the basic infrastructure which the state was then able to bring under its control.

There were good reasons for letting the local authorities set the

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² Ibid., col. xci (31 May 1811).
pace at first, quite apart from the fact that the administration of the country generally was still for the most part in their hands. As Holford noted, "local" prisons had several advantages over central ones. They were preferable in view of the need to keep travel expenses within bounds, also to avoid discharging prisoners far from home, in London, and to increase the number of places for prisoners to as high a level as the individual counties might desire. As communications improved, and as sufficient prisons were once built to house vast numbers of prisoners, these objections ceased to apply with such force. The government was then able to intensify its grip on the "local" prisons and to benefit from their experience, having encouraged and regulated their development in the first place. George Holford, when superintending the first "national" prison, Millbank Penitentiary, stressed a debt to Gloucester Prison in particular.

If the state only strengthened its grip on the prison "system" once this was fairly complete, it was quick to use the new prisons as a resource for dealing with its own "political" offenders. The first proper penitentiary, Gloucester, was no sooner completed than employed to this end. The political prisoners sent there may have been few in number, but their significance was of wider proportions, as Sir George Paul bitterly complained:

I do not dispute the legality, but I deny the justice, as well as the policy, of marking, particularly, any provincial prison as a place of confinement for state offences; and thereby making the County of that prison, a party in a war with printers, in which it has no particular concern.

There was indeed little Sir George Paul could do. Although Gloucester and all other "county" prisons were administered by the sheriff and

1. Ibid., cols. xci-xcii (31 May 1911).
3. Paul, Address at Epiphany, p.27.
magistrates, they were still under the Crown's authority. When in 1799 the radical M.P. Sir Francis Burdett attempted to visit Cold Bath Fields Prison where Colonel Despard was held on suspicion of treason, he was not allowed to enter after the Duke of Portland as Secretary of State sent a letter to the Governor and the various Middlesex authorities refusing Despard access to what was described with pointed exactitude as "His Majesty's Prison in the Cold Bath Fields". Although 1877 was still a long way off, and the prisons were run on the loosest of reins, Cold Bath Fields, widely known as the "Bastille" or the "Stile" from its grim conditions, and its intermittent use as a place of detention for political prisoners, was still one of "His Majesty's Prisons", the same styling as that in use today.

In the nineteenth century the state punished "political" offenders, as they were called even officially, on an unprecedented scale. Where previously the pillory had been employed - it was abolished in 1837 after falling into gradual disuse earlier - as infrequently as it was unreliable, the prison offered itself as an infallible way of silencing objectionable critics, without any need to depend on popular support. If juries were generally more ready to convict when the likely or inevitable punishment was imprisonment, this was true a fortiori where political offenders were concerned. In prison, as the Home Office was always quick to ensure, they were treated as "misdemeanants first class" and allowed such privileges as the right to wear their own clothes, to avoid work, to read and to write (though not to communicate freely with the outside world). For the period 1808-20, the Return of Individuals Prosecuted for Political Libel and Seditious Conduct, since 1807 tells its own story. In the Court of King's Bench, where 42 people were convicted,

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2. See, for instance: P.P. 1840, vol. XXXVIII, pp.615-22 (Correspondence between the Home Department and the Visiting Magistrates of York Castle, respecting the Treatment of Feargus O'Connor).
all were sentenced to be imprisoned, some being also additionally punished by fines. In all other courts, there were 101 prosecutions; 7 alone were acquitted, 14 fined or discharged on recognisances and 12 transported for 7 years, while as many as 68 were sent to prison for varying terms. Later in the century still greater shaols of political offenders were on occasion imprisoned. In 1839, for instance, "Political Offences... connected with Chartism" resulted in 237 prosecutions: of 198 convicted, 159 were sent to prison.

If prisons were a new resource for the state which it was quick to exploit, they also needed its protection throughout the nineteenth century as, intermittently, in the twentieth. Prisons were an inevitable target for popular demonstrations: occasionally, sometimes with success, efforts were made to storm them. Most prisons had their armouries, while some, such as Preston, mounted "large pieces of ordnance yawning on the main artworks of the place". They were not, however, in a position to withstand determined assault without outside help. Here they depended on the armed might of the Crown. At Tothill Fields Prison in 1850, W.H. Dixon noted, beside "several stands of arms", a number of rockets. These "would be an instant convey intelligence to the Horse Guards, and to the barracks in St. James' and Hyde Parks, of any attack, and two or three thousand men could be concentrated on the spot in half-an-hour." Nor did Dixon see this as an unnecessary precaution: "It is quite as well, under the circumstances of the time, that these little facts should be made known to the public." As he added, "all the great London gaols are well provided for their defence, in case of need." The existence of arrangements for co-operation

1. P.P. 1821, vol. XXI, pp.399-401 (Return of Individuals Prosecuted for Political and Seditious Conduct, since 1807).
3. For instance, in 1831 a crowd successfully attacked the Borough Gaol at Derby, and attempted to seize the County Gaol. P.P. 1831-32, vol. XXXII, p.244 (Gaol Returns, 1831).
5. Ibid., pp.250-251.
with the army, like the provision for—special status—political prisoners, is another reminder of the active involvement of the state with the prisons long before they officially became its responsibility.

In many ways it proved, at first, surprisingly easy to run the new total institutions as self-contained units, without recourse to the elaborate arrangements for co-ordinating policy and resources which are now customary. The prison system, after all, had to be built up in particular places before it could be consolidated nationally. While there were disturbances, the overall picture was one of order and good discipline. As Elizabeth Fry observed, it was "easier far to run a prison than to run a family." Certainly official prison reports tended to present an optimistic picture. At Horsemonger Lane Gaol, a cellular prison, the chaplain in his 1831 report was well pleased:

> Everything within the walls of the prison, so far as is observable, and with only few exceptions, is orderly and regular. In the chapel, the appearance of the congregation (and it is a large one) has the face of seriousness, attention and devotion; he has no other congregation like it, none so attentive, in any other place. In the wards too, and the outward yards of the prison, as the wardsmen from time to time report to him, there is the same daily order and decent conduct and behaviour.

Although in the first half of the nineteenth century this kind of well-regimented routine was achieved in many "local" prisons without the need for much involvement by the state, the state was nonetheless directly concerned with superintending and monitoring them in certain crucial respects, particularly from the 1820s onwards. One way in which this took place was through the construction and manipulation of statistics by the Home Office. Another was through the use of a centrally organised inspectorate to oversee the various "local" prisons. Together inspectors and statistical tables

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supplemented the impact of Home Office circulars and acts of parliament. It would be wrong to see the local authorities as narrow-minded, or needing to be coerced. On occasion they may have been obstinate, or tight-fisted, but in general they were remarkably compliant, sharing much the same outlook as Westminster to crime and its control. In Bedfordshire, where Eric Stockdale has examined the county prison records in exceptional detail, "the magistracy substantially complied with the requirements of both [the 1823 and 1824 prison] Acts and without any pressure from the Home Secretary."

Just as newspapers served to reorientate people in their view of law-and-order problems as national rather than local in extent, so likewise did statistics about crime and punishment. Previously people had only been aware of offences committed in their own neighbourhoods, and of their local prison. With the dissemination of statistics as well as newspapers in the early nineteenth century on a scale virtually as extensive as that today, people's consciousness of crime as a phenomenon encompassing and threatening the entire county was finally confirmed. No doubt the 1819 Criminal Laws Committee had the press in mind when it made a comment along these lines, but it is just as relevant to the impact of the kind of statistics which it published itself on an unprecedented scale:

By publishing the circumstances of all crimes, our modern practice tends to make our age and nation appear more criminal than in comparison with others it really is. 2

Through the publication of national statistics - the 1819 Criminal Laws Committee listed all prosecutions and punishments for indictable crimes for England and Wales for the years 1805-1819, besides tracing data back through the eighteenth century for some areas -

the ruling elite was made aware of a far greater spread of crimes than would previously have been the case, thereby fuelling the general panic about crime. The impact of published statistics in almost literally enlarging men's horizons is demonstrated by the case of John Howard. In 1773, wanting to demonstrate to the Bedfordshire magistrates that some other counties paid their gaoler a regular salary, he had actually to set out on horseback to visit a large number of counties in person, as this was the only way to acquire the necessary information. By the 1820's this information could be obtained simply by consulting parliamentary papers, which were full of such statistics. The information which they provided filtered through to other sources in a way too subtle to be appreciated at the time.

Law-and-order statistics came in two main types: those concerned with crimes and courts, and those concerned with prisons. From 1835 onwards both were published together annually in the Criminal Tables, which were succeeded in 1857 by the even more comprehensive Judicial Statistics. From 1805, as mentioned, the number of offenders prosecuted, and the sentences passed on them, was carefully collected: the 1819 Criminal Laws Committee found it difficult to build up anything like a complete set of comparable statistics for the period before 1805. Local archives, even then, had large gaps, indicating the lack of interest in the presentation of such records. National prison statistics had their origin in Howard's journey to enquire about gaolers' salaries: his various publications quantified many aspects of prisons and their administration for the first time for all to read. As the prison system expanded, it became increasingly difficult for even the most

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2. Both Criminal Tables and Judicial Statistics were always included each year among the published Parliamentary Papers.
determined individual to cover the whole country. The only person to emulate John Howard was James Nield, whose *State of the Prisons in England, Scotland and Wales* (1812), followed the pattern of Howard's surveys as closely as it imitated the title.\(^1\) Already, the Home Office was building up statistical data on prisons. It was a local magistrate, W.M. Pitt, actively involved in running a penitentiary at Dorchester, who showed appreciation of the Home Office's first venture in building up a complete picture of the nation's prisons:

Much praise is due to Lord Pelham, Secretary of State in 1802, for having first required accounts to be transmitted to his office from the several prisons, and to the gentleman who framed the returns which were circulated in that year.\(^2\)

Annual gaol returns, known as "Schedule B's", were required of every county by act of parliament in 1823; these were thereafter published among the parliamentary papers.\(^3\) They constituted an important, accessible source of information, nationally. In fact, however, they gave a false impression, since the least conscientious counties had a habit of failing to send in their returns: in other words, the "best" prisons were over-represented.

The reliance placed on statistics is underlined by the prison inspectors' obsession with them, from the mid-1830's onwards. One of the inspectors' main concerns was the construction of a fresh set of even more extensive prison statistics, and an improved scheme for their tabulation. The "Schedule B's" were effectively eclipsed: like these, the inspectors' compilation was published annually, as part of their report to parliament. The idea under-

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3. The "Schedule B's" formed part of the always rather incomplete *Gaol Returns*, eventually supplanted by the more accurate *Reports of the Inspectors of Prisons.*
lying the creation of the inspectorate, as recommended by the House of Lords committee of 1835, was to improve uniformity up and down the country. One of the witnesses to this committee, a Bedfordshire magistrate, explained the need for them in these terms:

They would be able to ascertain that the prisons throughout the country were upon an assimilated plan. The common talk of discipline is very general throughout the country, and men that have been committed to prison very frequently discuss the comparative discipline of different prisons, and say they would rather be in such a prison than another. Three months in one prison may be a more severe sentence than six months in another. 1

The inspectors were instructed by the Home Secretary to examine all aspects of prison government and internal discipline. Among those facets on which he laid particular emphasis were construction, security, means of separation "and especially the night apartments or sleeping cells." 2 The inspectors wrote almost as if they were dealing with the one unified system under direct state control. Indeed, their reports are actually more detailed than any now officially available. They dealt in generalities as well as in details, emphasising, for instance, that "prison discipline occupies the middle point between education and police on the one hand, and the system of patronage and emigration for ex-prisoners on the other." 3 The inspectors were highly influential in the sphere of policy: they used their reports as a platform for the advocacy of the "separate" system, the triumph of which over the "silent" system owed much to their efforts. A copy of part of what was to become their Third Report was sent to the Home Office, and is now preserved in the Public Record Office. There is a pencilled note

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on the back which is very telling: "Home Inspectors. Separate System. Excellent. Inform them Ld. J[ohn] R[issell] thinks the remarks made by them in this report very sensible and just."  

The state, besides steering the "local" prisons, also had its own prisons: it had, as it were, its own quite important sector in a mixed economy over which it had much influence generally. The state sector consisted, at first, of the hulks, floating prisons set up as a long-lasting "temporary expedient" following the suspension of transportation to America in 1776.  

These hulks, which at times housed up to four thousand men and more, were important in two ways. First they allowed the state to build up the experience of running a prison system of no mean size: previously even the business of transporting convicts to America had been farmed out to private contractors. Secondly the hulks were a useful bargaining counter enabling the state to exert considerable leverage over the local authorities. This was because a sentence of transportation could mean three very different things. A male sentenced to transportation could be sent to Australia (or anywhere "beyond the seas"), ship-space and other facilities permitting; he could remain in a local prison; or he could be sent to a government prison, such as the hulks or, later, Millbank or Parkhurst. Obviously it was to the advantage of the local authorities in terms of money saved and trouble avoided to pass these long-term prisoners on to the state as rapidly as possible: to this end, they had to earn its good will, for the state could not be compelled to receive such prisoners. At Gloucester in 1787, while the new penitentiary was still being built, the magistrates were particularly keen to do this due to the inadequacy of the old gaol: the need to hold men and women liable to transportation being "a circumstance not only attended with considerable Expence".

1. Quoted in Stockdale, Bedford Prison, p. 147.
but also that it greatly endangers the general Security of the Prison." Accordingly Sir George Paul had a meeting with Lord Sydney, the Home Secretary:

Having stated the spirited exertions of this County to promote a general reform of Police [by building the penitentiary], I... proposed to his Lordship that... we might be allowed to remove all our present convicts... and that at the five following Assizes we might remove all Convicts immediately on Conviction.

Paul was duly enabled to report back to his fellow magistrates that it was the intention of the government to accept this commitment; "in consideration of the laudable exertions of the County", while an order was sent forthwith "to remove the female Convicts to the Ships for Botany Bay", as proof of the government's resolve. 1 This kind of negotiation did much to ensure co-operation between the Home Office and the local authorities.

The existence of government prisons enabled the state to become an executive sentencing tribunal in its own right, effectively by-passing the judiciary. This was a point made by one of the witnesses before the 1819 Criminal Laws Committee, who complained that "under the sentence of transportation, the punishment actually experienced may vary considerably... by the discretion of the executive government." He was particularly worried by the fact that in those cases where a judge recommended that a sentence of transportation should mean imprisonment at Millbank, the request was not always heeded. He had to admit, however, that there was "no doubt that any representation made to the executive government by those who have concurred in the sentence, always receives the most prompt attention." 2 However well-considered the actions of

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the state may be in regulating the prison system, the fact remains that the vast scope for discretion which it has always exercised itself from the late eighteenth century in particular has made it an overmighty power in the land, immune from personal or local influence, and thus destructive of any sense of individual or local responsibility. This untrammelled discretion can well be seen as the central characteristic of the state.

The grip of the state over the prison system was gradually intensified over the period 1776-1877: no one date can easily be singled out as marking the emergence of the state system. The 1877 Prison Act, which transferred the control of the local prisons to central government was just another stage in a long-drawn-out process. It was not the abrupt measure of "rationalisation" it has often been made out to be.\(^1\) The Gladstone Committee saw the 1865 Prison Act as being at least equally important:

The year 1865 may be regarded as an epoch in prison legislation... The Act of 1865... set up separate prison jurisdictions in the counties and towns and other territorial divisions... By the Act, the prison staff was constituted, the duties of the different classes of officials were laid down, and by several clauses, supplemented by 104 regulations in a schedule, the general government of prisons, and the treatment and discipline of the prisoners, were elaborately provided for.\(^2\)

The 1877 Act still left the local justices with something of their already diminishing stake in running the local prisons, in the shape of "Visiting Committees", bodies still in existence. Nor did the 1877 Act actually amalgamate the "non-government" local prisons and the government's "Convict" prisons; these long continued to be separately administered by the state. Not until the 1898 Prison

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2. *P.P. 1895*, vol. LVII, p.6 (Report from the Departmental Committee on Prisons).
Act was anything like a common code of rules introduced governing both "Local" and "Convict" prisons. To some extent, indeed, the distinction between "Local" and "Training" or "Dispersal" prisons is still important today, a reminder of the complexity of the process whereby the state came to exert control. Likewise the uniformity pursued so avidly by the Victorians continues to prove elusive, even within supposedly similar institutions, such as the "Dispersal" prisons, let alone on any broader scale.

The importance of the role of the state even by the early nineteenth century appears yet more clearly when certain aspects of sentencing are taken into account, in particular pardoning and the differentiation of juveniles. Pardoning took place on a mass scale, in various contexts. Prior to the repeal of the sanguinary statutes, a large proportion of those capitally convicted had their sentences commuted: commutation took the form of a conditional pardon, the offer of which could in theory be refused. In 1818 less than one hundred were executed out of 1,254 condemned to death: the usual alternatives were imprisonment and transportation. Pardoning also took place in the shape of early release from the hulks or from prison, as a reward for good conduct to which at the same time it induced. Arguably this use of the pardon constitutes, as with parole, which it resembles, a form of executive re-sentencing. Then as now, while helping to make

2. The standard formula as developed by 1787 for those released prematurely from the hulks referred to the favoured prisoners as "having during their confinement behaved very orderly and obediently", and proceeded to remit the remainder of their sentences "in Consideration thereof and also of the Punishment they have already suffered for their past Offences and of the Signs they have shewn of Reformation." London, Public Record Office, H.O. 13/6, p.19. This clearly indicates that parole, as now understood, is as old as systematic, mass imprisonment itself.
prisoners amenable, it also provoked tensions and grievances: at the Old Bailey in 1781 a prisoner charged with having escaped from the hulks on the Thames claimed in extenuation that he had been promised a pardon if he behaved well: he had received a three year sentence and for over two years had indeed behaved "extremely well", so the master of one of the hulks testified. Pardoning was a royal prerogative, though in practice its extent was controlled by the Home Office: pardons were given by Warrant under his Royal Sign Manual, countersigned by one of his principal Secretaries of State.  

Differential sentencing - and thus "treatment" - of juveniles was another way in which the state changed and, indeed, enlarged the role of imprisonment in society. As has been mentioned in the previous section, the inspectors were very keen that all offenders "whatever be their age", should be "subjected to a public Tribunal", and that the carrying out of the sentence should belong "exclusively to the state." While there were some people who believed that the best idea for dealing with juveniles, especially if prosecutors were not to be discouraged, was to develop privately-run charitable asylums, the inspectors were strongly opposed to these. Parkhurst was then under construction: the inspectors recommended that it should be supplemented by other such "juvenile prisons". Although Parkhurst was not in the event followed by the construction of similar prisons, it nevertheless set a much admired pattern for the separation in confinement of juvenile offenders. In 1850, W.H. Dixon, a lawyer and an extremely popular author, showed great enthusiasm for it, describing it, significantly, as "a prison and yet hardly a prison... It is a farm, a workshop, a manufactory... it is an experiment... for juvenile offenders." In practice,

2. 7 and 8 Geo. IV, c.28, clause xiii (1827).  
however, Parkhurst was a prison much like any other, as the "Governor's Report" for 1839 made clear.

The treatment of the prisoners in Parkhurst Prison partakes of both penal and instructional character, the blending of which desiderata in their most beneficial forms for the prevention of crime among the unconvicted, and for the reformation and punishment of the convicted juvenile offender, is the object sought. 1

This kind of analysis, framed in terms of reformation and deterrence ("prevention of crime among the unconvicted"), or of treatment combined with punishment, was standard for discussing imprisonment generally. The "penal discipline" at Parkhurst was represented by deprivation of liberty, by special prison clothing, by "a diet reduced to its minimum, by the enforcement of silence, by uninterrupted surveillance", and by the wearing of irons. In ghastly parody of the old practice, rare even in the eighteenth century, of removing irons from rich prisoners on payment of a fee, at Parkhurst a few of the lads had their irons struck off as a reward for good behaviour.2 Parkhurst was the first attempt to have different types of prison for different types of criminal: women were next to be differentiated. This type of allocation made it appear that punishment was being tailored to the individual, and thus enhanced the legitimacy of imprisonment: it also made people less reluctant to prosecute, for little did they know the real meaning of a sentence of imprisonment for these "special" types of prisoner.

The state also set the parameters within which judges and also local magistrates sentenced prisoners – the latter, of course, were responsible for far greater numbers of offenders being sent to prison, if for shorter terms – besides doing much to establish

2. Ibid., p.640.
a new pattern of sentencing generally. It did this most
conspicuously by repealing the sanguinary laws, and introducing
as a "substitute" penalty transportation or imprisonment. It
also set a trend towards longer sentences. It did this in two
ways, one more subtle than the other. In the first place it
couraged, with the sanction of the legislature, the use of
stretched sentences for recidivists. An 1827 statute specifically
provided for this:

Whereas it is expedient to provide for the more exemplary
Punishment of Offenders who commit Felony after a previous
Conviction for Felony... Be it therefore enacted, that... such Person shall, on such subsequent Conviction, be liable,
at the Discretion of the Court, to be transported beyond
the Seas for Life, or for any term not less than Seven
Years, or to be imprisoned for any term not exceeding Four
Years, and if a Male, to be once, twice or thrice publicly
or privately whipped (if the Court shall so think fit), in
addition to such imprisonment. 1

This rigid approach to punishing the offender in terms of his past
record, instead of punishing for a particular offence, is now taken
for granted generally, not just by the judiciary, yet it is
effectively no more than one-and-a-half centuries old. It certainly
presupposes or makes necessary an organised system for tagging
offenders of precisely the kind which was consolidated in the course
of the nineteenth century, with the setting up of police forces.
This statute also confirmed in its existence what the Victorians
called the "criminal class", a class which might more exactly be
called a "prison class", since its members were, for all practical
purposes, those who spent their lives passing into and out of their
successive Majesties' Prisons, in an operation resembling that of
a revolving door in slow motion.

1. 7 and 8 Geo. IV, c.28, clause xi (1827).
The use of longer sentences for recidivists allowed sentences for first-time offenders to be shortened. This gave Victorian magistrates and juries cause for congratulation, and further enhanced the legitimacy of the prison system. Parliament was enabled to reduce the whole tariff of maximum sentences, as occurred in a succession of nineteenth century statutes, while the Central Criminal Court Act of 1846 removed all minimum periods of detention right across the board. Crimes which at the beginning of the nineteenth century had carried a mandatory death sentence fifty years later often received sentences of a year or less. Naturally this appealed to the "liberal" sentiments of the age. M.D. Hill, Recorder of Birmingham, emphasised at the time of the garrotting crisis in 1863 the sensitivity of all concerned with imposing the criminal justice system:

The administration of even secondary punishments on the scale of severity which universally prevailed when I began to practice in criminal courts forty years ago, would after the lapse of twenty years from that date have filled the audience with disgust and even consternation; while prosecutors, witnesses and juries would, by their reluctance, and in many instances by their absolute refusal to act, have so impeded the course of justice as to compel a relaxation of vigour. And now, after a second interval of twenty years, punishments awarded at the commencement of that second interval, with the approbation of society, would shock the sensibilities of all classes, even while this epidemic of anger and alarm is still raging.

This apparent growth of moderation in sentencing which J.E. Tobias, taking at face value, attributes to "the general reforming and liberalising spirit of the age" appears in a less favourable light when set against the growth of the prison population. Over those self-same years when M.D. Hill detected the shortening of sentences, 1823-63, the prison population of England and Wales rose from some-

1. 9 and 10 Vic., c.24 (1846).
thing of the order of fifteen thousand to over twenty-five thousand, while the rate of imprisonment, though dropping slightly overall, held fairly steady at over 110 per 100,000 population. Of course, magistrates and juries did not confront these aggregate statistics: all they could observe was the shortness, the growing shortness, of individual sentences, particularly as applied to first-time offenders.

The state also led the way in developing the use of extremely long prison sentences. Here Millbank Penitentiary was used as a testing ground, from 1819 onwards. Interestingly, Howard's views were cited by way of justification, though even this did not commend the practice to the Quarterly Review:

Imprisonment in the penitentiary is a substituted punishment; those who have been capitally convicted are imprisoned for ten years; those who have been sentenced to transportation for fourteen and seven years respectively, are confined for seven and five years... The reason assigned for this, is an opinion sanctioned, or first pronounced by Howard, that no penitentiary imprisonment could be availing for its object in less than five years.

There was considerable criticism, even within ruling-class circles, of the use of such long prison terms, which the Quarterly Review saw as being "at all times, attended with unavoidable evils." Charles Western, an M.P. who wanted punishment to be "severe and painful" - and saw in imprisonment a way of "deterring from the commission of crimes, and thus affording protection and security to the virtuous part of society" - was still critical of what, from the standpoint of the mid-1820's, looked like a general tendency towards the use of longer sentences combined with an element of "training", as at Millbank:

1. See above, pp. 277-79.
The long duration of imprisonment, where the discipline is less severe, renders it perfectly familiar, and in consequence, not only destitute of any useful influence, but obviously productive of the worst effect; yet this is the present practice, and I indeed think, criminals are now sentenced to a longer period of confinement than formerly. 1

Faced with this kind of criticism, it was the custom of George Holford, the chairman of Millbank's supervisory committee, to quote Howard verbatim on the need for sentences to be substantial in length. 2 The health of the prisoners, however, was never satisfactory: one epidemic actually forced the prison to be shut down for a while. 3 Sentences were shortened, and the diet upgraded, but Millbank still had its problems. In 1839 its superintending committee noted that Millbank was exceptional, with 467 inmates serving three years and upwards, while in all the remainder of England and Wales there were only 76 prisoners whose terms were of comparable length. The "embarrassing considerations" of ill health, mental and physical, "connected with long imprisonment", led the committee to pose a question which is still unanswered, "whether long imprisonment be so unhealthy as to amount to a cruel and inadmissible penalty, even for serious crimes...". 4 One answer, however, was provided by the state simply through the continued use of long-term imprisonment. As this became routine, and as a number of deaths was reduced, the idea of locking men up for five or ten years gradually became so familiar as to be beyond question - while at the same time its use also became increasingly widespread.

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By directing the local authorities, by developing its own system-within-the-system, by modifying the parameters of sentencing, and by various other practices, the state, even in the first half of the nineteenth century, did a great deal to orchestrate the way that people generally, and the ruling class in particular, thought about punishment - imprisonment - as well as about crime. It did this most effectively of all, perhaps, where there was least awareness of the hidden persuasion that was taking place, as in the presentation of copious statistics in national terms. The battle was already half won when "crime" had come to be seen as a threat to the country as a whole: if the problem was of nation-wide dimensions, the solution, obviously had to be sought in an equally comprehensive response. The "criminal", suitably invoked, brought "society" together, uniting ordinary citizens, local magistrates and the bureaucrats of central government against him. A new scheme of things was suggested, in which the prison had a prominent place, as an institution from which, as the inspectors put it, "The public and the criminal should recoil with more or less of dread." Punishments were to fit the crimes to which they were annexed; they were to be as tough as necessary, though not so savage as to arouse "the commiseration of the public: but they should be enforced by the recollection that the fears of the criminal are the safeguards of society." ¹

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CHAPTER 6

THE PRISON AND THE MYSTIFICATION OF CRIME:
CONCLUSIONS AND IMPLICATIONS

This thesis has explored the genesis of present-day attitudes to "crime", and has examined how these attitudes have found expression in the development of the prison as the ultimate instrument intended to deal systematically with crime. It has been shown that, on the one hand, there is nothing new in our current view of crime as a serious and specific social problem and, on the other hand, that this outlook reflects problems which only came to engross the ruling class, for the first time, at a particular stage of economic development. In a British context, this stage can be said to have been attained first, precariously, in the course of the eighteenth century, and then, with greater certitude, in the early nineteenth century.

For much of the eighteenth century, as has been shown in Chapter Two, those confronted with lawbreakers still continued, by and large, to respond to them on an individual basis in the time-honoured way. The setting in which this interaction took place was, in practice, an uninstitutionalised one, recourse to the courts being a comparatively rare option. Men and women, collectively or by themselves, took decisions guided by their own interpretations of their personal responsibilities, responsibilities which were socially conditioned rather than simply haphazard. The leading types of lawbreaker, for their part, not being overshadowed by the massive impersonal apparatus of social control that has since come into existence, had their own variously differentiated codes of conduct. For both parties, lawbreaking was not so sharply differentiated from other forms of misconduct as is now the case. This considerably eased both face-to-face encounters and the way in which people came to terms with deviant acts without seeing themselves as a class of unfairly and
incomprehensibly afflicted "victims".  

Although malefactors were still being dealt with on a personal basis in eighteenth-century England, capitalism as an all-embracing ideology was starting to become more clearly defined and more influential. Chapter Three, then, is devoted to this last development. As part of this general process, crime was being viewed increasingly in certain quarters as an object of panic and as the leading symptom of social unrest. In particular this kind of theme can be found in the columns of the press, with the ordinary of Newgate's Account of 1745-46 pointing the way. The press depicted crime as a national problem, menacing the country as a whole. This was the origin of an enduring obsession with national crime statistics. The publication of lists of men executed and the dissemination of accounts of far-flung crimes, via the pages of the eighteenth-century press, began a general, public itemisation of crimes and punishments which is nowadays taken for granted. A succession of ideological entreprenuers propounded comparably framed solutions to a problem which was being identified in increasingly generic terms in the latter part of the eighteenth century. Whether they wanted fewer pardons for condemned criminals or the development of imprisonment or some other new form of punishment or, as was usually the case, a combination of these options, their ultimate concern was the same: to deal more systematically with lawbreaking. They presumed that to abolish crime it was only necessary to find the right formula: that it was possible to deal with crime once and for all, none of them really doubted.  

Chapter Three having looked in fairly wide-ranging terms at the development of capitalism as an ideology and at various manifestations of it in the press and on the part of certain individual "ideological entrepreneurs", Chapter Four is more

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1. See above, Chapter Two, pp. 18-77.
2. See above, Chapter Three, pp. 78-171.
closely focused on the promotion of the prison as the ideal solution to the problem of crime. Prisons of a kind already existed in the eighteenth century as before: these were discredited as a first step to replacing them by a far more ambitiously conceived type of institution. By developing this new sort of prison it was envisaged that the country could be made safe for the secure pursuit of profits: the working class would be forced, either directly or indirectly, to behave itself in a suitable manner, or to "reform" itself. The new prison was meant to supplement rather than replace the gallows, although it was hoped that, as it was brought into operation, the number of executions would diminish rapidly. In practice, as became apparent at Gloucester, the first of the new breed of institutions, it proved difficult to gear the regime to reshaping the inmates for their return to society: yet so much was invested, ideologically and financially, in this expensive penal programme, that no one involved was willing to proclaim it anything other than a success, whatever reservations they may in fact have had. The scene was thus set for further changes in the whole pattern of social control. The ground was being cleared for the machine-like, bureaucratic system dominant today. 1

The final consolidation of imprisonment, so that it came to be seen as absolutely essential to dealing with the problem of crime, occurred in the course of the nineteenth century. This is examined in Chapter Five. If crime remained unconquered, this, so it was felt, was simply due to a need for some fine tuning of the way the prisons were run: the deterrent aspects or, alternatively, the reformatory ones, needed further emphasis. Prisons existed for the prevention or repression of crime: and on this basis a veritable science of control developed. The state, growing space with one of its key apparatuses, lent the seal of approval to the proliferation of prisons, as the cutting edge of a whole system

1. See above, Chapter Four, pp. 172-245.
of social control. It also intervened to an ever-increasing extent in what had been largely local and personal affairs. It ran some prisons directly while keeping a watchful eye on those in the care of the local authorities. The net result of these various changes was that far more offenders than ever before were subjected to prolonged punishment - to enthusiastic approbation.¹

The desire to develop imprisonment as a new form of punishment, fostered from the late eighteenth century onwards, reflected the long-running panic about crime associated with its presentation as a serious problem menacing the country as a whole.

This anxiety about crime, this panic, once disseminated, has never shown any sign of abating. Even now, crime continues to be invoked as a threat to the nation, with great effect, not least electorally. Crime is still seen in terms similar to those articulated by eighteenth-century ideological entrepreneurs. The state continues to wage a unilaterally declared war on crime, with the aid of an ever-expanding bureaucratic apparatus of which the prison is still very much the anchor point. The basic presuppositions which inform official thinking are the same as they were one hundred, even two hundred years ago. At most, minor variations are played on time-honoured themes. The idea that with better or more modern prisons criminals might be reformed is, obviously, nothing new at all. Perhaps recent research has begun to discredit this notion, at least slightly. Other hydras, however, continue to rear their heads. If prisons are not reforming or even deterring their inmates, then, it is claimed, they are reducing

1. See above, Chapter Five, pp. 246-317.
the problem of crime in other ways, by deterring those who might otherwise become offenders, or by incapacitating detected criminals.\(^1\) If crime is still a serious problem this, it is then argued, is because the social control apparatus as a whole, rather than just the prison system, needs tightening up. If too many criminals are "getting away", this, as one often rehearsed explanation has it, is because their rights are treated with too much delicacy, or alternatively, because the police lack sufficient resources to catch them all. It is just a matter of devising the appropriate, rational, bureaucratic solution and, at least in the end, crime will be conquered, or so people are led to believe.\(^2\)

So securely rooted is this sort of belief about the kind of threat posed by crime that countervailing arguments, even if supported by empirical evidence, tend simply to be ignored. The official statistics are quoted to show that crime is rising to ever worse levels. There may be problems relating to the compilation of statistics, or so it is sometimes conceded, but the general validity of the whole exercise of collecting figures is not doubted for one moment. No one sees anything strange in the aggregation of extraordinarily different occurrences selected in contrasting and haphazard ways. Armed robbery and arson, bag-snatching and buggery are blithely added together. Life may have become more unpredictable or more hazardous in certain places or even in some more general aspects, in the period since the last war, but to use the general trend of the "crime statistics" as the basis for a value judgement about an enormously worsened crime problem, as is done all too frequently, has the effect of obscuring the isolated, exceptional and specific nature of those

occurrences which, in police jargon, have been "crimed". Even forgetting the essentially problematic nature of the way the statistics are compiled by the police, a fairly basic point, the statistics are vitiated by their failure to reflect numerous other variations, such as changes in the law, in the level of wealth, in the situation of women, or in the racial balance of society. The current process of assembling statistics only makes sense when it is seen as the continuation of an exercise co-terminal with panic about crime. The business of enumerating crimes had its origin in the anxiety stimulated by industrialisation with its associated changes in methods of production and by increased urbanisation. The same ritual of counting incidents now serves, as it has done ever since, to heighten latter-day anxieties still further.

Also, to an ever-increasing extent over the last two hundred years, the ordinary individual has been excluded from personal involvement with an immense and impersonal, remote and even incomprehensible criminal justice system. Not only has this had the effect of alienating "victims", heightening their sense of helplessness and neglect, but it has also made the exercise of catching and dealing with "criminals" far more mysterious to uninvolved people. Juries, their scope of action much eroded by the growth of guilty pleas, represent the final - threatened - area of unprofessionalised participation in the processing of "criminals" in society. Increasingly, the "lay" magistrate is tending to become a professional, distant from those with whom he deals. It is ironic but little known that even the more "serious criminals" usually end up in the dock because their identity has been apparent from the time of the original incident to some ordinary member of the public, rather than because of assiduous detection work on the part of the police. ¹ There are indeed limits to the competence of

such necessarily isolated and unsupported investigators, however "professional". The "thin blue line" of professionals, of police, prison officers, probation officers and others, each kind numbered in their thousands and their tens of thousands, serves to insulate great realms of behaviour from the remainder of everyday life, of which they were once an integral part. Beginning in the late eighteenth century with the disbarrel of the public from the first "advanced" prisons, and their entrustment to the supervision of disinterested disciplinarians, this insulation of the punitive process through professionalisation has served, like the dissemination of statistics, to mystify "crime" and its control and to perpetuate panic about it. ¹ It is the historical background to this process - itself worthy of further investigation - which has been explored in this thesis.

To turn to other ways in which, as has been discussed in this thesis, the panic about crime is underpinned, it is clear that the press, if at times unintentionally, has played a major part for more than two centuries. It did so at first simply by reporting crimes up and down the country, crimes which once would have been a matter only of local knowledge and concern. The publication of crimes in this way was not infrequently accompanied by lamentations about the number of crimes overall, and their increase, a sorrowful or angry complaint which has been perpetuated ever since. Today as in the past, the media in general, and the press in particular, are a vital source of popular information about the extent of crime. In a major American survey, when respondents were asked their grounds for thinking that the level of crime had altered, "A preponderant majority said they got their information

¹. The rules for Gloucester penitentiary not only stipulated that the public in general were barred from the prison at all times, but also placed severe restraints on visits to prisoners by family and friends. Paul, General Regulations, pp.32-33, 70.
either from the news media or from what they heard people say". Obviously what is said by people may itself reflect their reading of newspapers. Additionally, the press fosters panic in more subtle ways. It habitually links the incidence of crime to other disturbing events as part of a composite picture of a society - a precarious social and economic order - under threat. Finally the press is a major arbiter of the parameters within which the theatre of punishment is staged. It is true that the press, if it judges that the plight of convicted criminals is such as to disturb conscience; or, at least, to retain the attention of its readers, may actually endeavour to mitigate the rigours of the system; more often, however, it is to be found demanding greater severity or some new form of punishment of a more "effective" kind.

Finally, the kind of prison system which has been built since the late eighteenth century by its continuing existence has contributed so as to make the ultimate, significant and subtle contribution to the mystification of "crime" and the perpetuation of panic about it. It is true that the police have steadily gained in public prominence and national discourse about "community" policing in being "linked to crime in much the same way as doctors have been to illness." In the last resort, however, in terms both of its greater age and also of its nature as the final reference point of the criminal justice system, it is the prison which gives meaning to "crime", as a generic term and as a fearsome social problem. The police act simply as gatekeepers for the prisons, gatekeepers at one remove, in the shape of the courts. Even in

recent police serials on television, "courts and prisons [retain] a central, but absent, function in plot construction." By academics, the symbolic significance of prison is not infrequently alluded to, though almost invariably in vague or whimsical terms. On the basis of what has been written in this thesis it is possible to be rather more decisive.

The prison system endows "crime" with a generic identity of a threatening kind by virtue of the way it so effectively groups together acts done by quite different people for highly dissimilar reasons. It does this by processing them all in the same strange fashion. If there are variations between one prison and the next, the state is extremely reluctant to acknowledge these, except as they relate to the overall "development", the on-going "modernisation" of the system as a whole. "Crime", in the popular view, is misbehaviour of a kind committed by people who have acted in a manner resulting in their receiving sentences of imprisonment. As such, "crime" is not something which the man in the street sees himself, his family or his friends as committing, despite the fact that he breaks the law from time to time, perhaps quite seriously. He is not "a criminal." Criminality is relegated to a sphere remote from his own everyday life: it is a distant and distasteful characteristic. The isolation of incarcerated convicts from the ordinary world with all its familiar features makes "crime", with which prisoners are commonly associated, more threatening than might otherwise be the case; for imprisonment is mysterious and hard to comprehend - harder even than hanging.

2. For instance, one academic has raised "the interesting question of whether all we need to preserve of our older prisons is the facade, to permit the sight of the delinquent going through the gates." P. Nokes, "The Evaluation of Penal Systems", in L. Blom-Cooper ed., Progress in Penal Reform (Oxford, 1974), p.75.
APPENDIX 1

GENTLEMAN'S MAGAZINE: CONTENT ANALYSIS

As was argued in Chapter Three (see above, p. 131), the eighteenth-century press helped transform problems that had been local, even personal, into national ones. Essentially, this was a qualitative process: so, too, is the thrust of Chapter Three. However, there was also a slight tendency, not actually significant, for the press, as exemplified by the Gentleman's Magazine, to devote an increasing amount of space, both absolutely and proportionately, to what would be termed "crime news". The following table illustrates for the "Historical Chronicle", as the news section of the Gentleman's Magazine was called, the number of column inches devoted to "crime", and the percentage of such coverage.

<table>
<thead>
<tr>
<th>Years</th>
<th>Number of Column Inches on Crime (Five year periods)</th>
<th>Crime News as a Percentage of All News</th>
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<tbody>
<tr>
<td>1744-48</td>
<td>168</td>
<td>6.6</td>
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<tr>
<td>1749-53</td>
<td>434</td>
<td>16.9</td>
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<tr>
<td>1754-58</td>
<td>254</td>
<td>11.1</td>
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<tr>
<td>1759-63</td>
<td>365</td>
<td>11.2</td>
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<td>1784-88</td>
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Source: Gentleman's Magazine ("Historical Chronicle"), 1744-88.
APPENDIX 2

SOURCES FOR GRAPHS I AND II AND FOR TABLE V


GRAPH II: Rate of Incarceration per 100,000 Population, England and Wales, 1775-1975 (p.279).


The sources for the two Graphs are necessarily extensive; their complexity no doubt explains why such an index of prison population has never previously been constructed for England and Wales. The figures for the earlier years, in particular prior to 1856, should be taken more as close approximations. Convicts held in hulks in England are included. Unfortunately, as explained earlier (see above, p.305), the early nineteenth century Gaol Returns do not constitute an acceptable source of data. A further unavoidable problem is represented by the fact the year for calendar, census and prison purposes often begins in a different month: this is an inescapable but strictly limited source of error. The need to avoid estimates, however carefully constructed, for the earlier years, explains why the data has been arranged by selected years rather than in the shape of, say, moving averages. Only those years for which reliable figures were available have been utilised: from the mid-nineteenth century, when this ceases to be a problem, every second year has been employed for the purposes of Graph I, and every fourth year for Graph II. The information presented in Graphs I and II is given below, in tabular form, followed by the documentary references.

This information is followed by the sources for Table V.
### Tabular Data

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**GRAPHS I AND II: TABULAR DATA (contd.)**

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<td>1975</td>
<td>39,820</td>
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(1) Sources for the Prison Population, Relevant Years


1788: J. Howard, An Account of the Principal Lazarettos in Europe... together with some further Observations on some Foreign Prisons and Hospitals and Additional Remarks on the Present State of those in Great Britain and Ireland (Warrington, 1789), p.245.


(2) **Sources for the Population of England and Wales**


Sources for Table V


Parliamentary Papers 1826-27, vol. XIX, p. 186 (Summary Statements of the Number of Persons Charged with Criminal Offences, who were committed to the different Gaols in England and Wales, for trial, during the last Seven Years).

Parliamentary Papers 1831-32, vol. XXXIII, p. 3 (Number of Persons charged with Criminal Offences in England and Wales, 1825-1831).

APPENDIX 3

PUBLISHED PAPERS

These published papers, which follow hereafter, comprise three articles and one book review: they are listed immediately below, by year of publication, with page numbers.


John Howard and the Discovery of the Prison
By MALCOLM RAMSAY

John Howard lies buried beneath the deadweight of two centuries of hagiography. The devotional works in which he has been enshrined have reduced him to a mere do-gooder, concerned simply to ameliorate the squalor of the eighteenth-century prison. Even more rigorous historians have scarcely appreciated the importance of the prison reform movement in the late eighteenth century. Forgetting that it is always a natural tendency for one generation of reformers to play down the successes of its predecessors, they have readily accepted the Victorian reformers' critical verdict, itself a judgment fair only in terms of the metropolis, where substantial change was delayed until the nineteenth century: Howard, as he himself acknowledged, made his impact chiefly on those gaols outside London. Howard the discoverer of the cellular prison as the mainstay of the penal system—a discovery built around his conception of the prisoner as an individual capable of change and improvement—has been forgotten. It is in this light that an attempt will be made to present him, and to indicate the social problem widespread awareness of which left his contemporaries so very willing to seize the solution he seemed to offer.

In part, this problem was one of social order in general, in the context of a rapidly developing society. When Henry Fielding (1751, p.11) anxious to explain the level of crime which he saw as rising fast, pointed to the spread of irreligion and dissipation from which it was vital to preserve "the useful part of mankind", he was only one of many who were coming to perceive with increasing clarity that private prosperity depended on public order and welfare. In the same year, Isaac Maddox, Bishop of Worcester, in a sermon before the Lord Mayor, aldermen and hospital governors of London, emphasized that "prodigious resources for manufactures and commerce, for fleets and armies, must continually arise, with great superiority, where a prudent and prolific police really takes place." (Maddox, 1751, p.xxxii) By the latter eighteenth century, an awareness of the need for a more ordered, hard-working, God-fearing and decent society was as widely diffused as the feeling that such a society could actually be promoted. However, it is perhaps significant that Howard's closest confidant and financial backer was one of the new breed of industrial entrepreneurs: Samuel Whitbread the elder.

Alongside this interest in social control went a sense of benevolence, or compassion, which was for many a national characteristic to be proudly upheld. These two traits, control and compassion, rested in uneasy equipoise. This was evident even when discussion focused on that aspect of social control which was considered of prime importance—and must also form the starting point for any examination of Howard's achievement—the penal system and its re-structuring. A quotation from the Gentleman's Magazine of October 1783 reflects particularly well this combined sense of alarm and concern:
Eleven malefactors were carried from Newgate and executed at Tyburn. It is really a melancholy reflection on the police of this country, that, notwithstanding the boasted leniency of our laws, more people are cut off annually by the hands of the executioners than in all Europe besides. The papers are filled with little else but robberies and villainies of one kind or another, not confined in a manner, as formerly, to the metropolis, but practised all over the country, where the ends are full of felons (p.891).

Conflicting emotions are articulated here: both alarm at the growth of crime, and a desire to do something about it—whilst at the same time avoiding "cruelty". The dilemma is not unfamiliar. It is that of a society which wants, but knows it lacks, a system both humane and effective for dealing with its criminals. At the time, however, the problem was fresh enough. Crime had not always been perceived as a threat to the community of quite such magnitude. Let it be recalled that earlier in the eighteenth century, Daniel Waterland, a leading divine, saw criminals as God's agents, sent to chastise men, or simply to test them, a perspective which, in being "appreciative", compares interestingly with that of some radical criminologists today. (Van Mildert, 1843). But, in the course of the eighteenth century, mounting intolerance towards crime led to its being seen increasingly as a pathological entity, and in environmental terms, as by Fielding or Maddox. Their linking of crime with social dysfunction, even if with little sophistication, as a matter of gin-shops and failures to observe the sabbath, offered at the same time the consoling hope that crime was something "the cause of which being once known," as Samuel Denne (1771) put it, "the means of removing it may soon occur."

Despite the fostering of an environmental approach by the reformers, the measures of social hygiene which they advocated never aroused much enthusiasm. An answer to the crime-problem continued to be sought in an improved penal policy. Until the 1780s, when Howard's message began to carry weight, discussion centered on the use of the death penalty. As a "secondary" punishment, the prison was almost invariably written off as a place of correction. Fielding (1751, p.63) complained of a reluctance on the part of magistrates to commit offenders, but he himself admitted that those who were sent to gaol emerged "more idle and disorderly than they went in." Imprisonment, other than for short periods, was not a customary punishment. Minor offences were more often accorded physical punishments—such as burning in the hand—carried out in public. It was as a mark of unusual severity that Patrick Madan and his associates, found guilty in 1775 of a major breach of the peace, were sentenced to five years apiece in Newgate. "They all begged hard for transportation [although the customary minimum term was seven years], but this was thought by the court an indulgence too lenient in nature to be granted to such daring and formidable wretches." (Anon, 1781, p.31) The principal secondary punishment was transportation—to the American colonies—but this had few supporters. William Eden (1771,p.33) voiced the customary objection when he condemned the practice as beneficial to the criminal, but injurious to the community. When in 1776 transportation ceased, this lent fresh urgency to the debate on the traditional corner-stone of penal policy, the death penalty.

This debate has come to be seen through the eyes of Sir Leon Radzinowicz (1948) in terms of a polarity between "reformers" and "advocates of severity", with the corollary that a rearguard action by the latter was delaying criminal law reform. Such a schema is understandable given Radzinowicz's
belief that the history of the criminal law is the history of progress: it is however a surprising tribute to the sway of his œuvre that his perspective has but recently been unheeded by Douglas Hay (1975) in a work of avowedly radical history. Indeed, Hay simply and literally transfers the "alphas" which he notes were granted by Radosinowicz to the reformers for their success and moral grandeur, to the "conservatives"—as the advocates of severity are now re-christened—for the cunning with which they conspired to maintain the hegemony of the ruling class (p.51).

However, the conception of a struggle between, on the one hand, enlightened and humanitarian reformers such as Eden and Romilly, and, on the other, advocates of severity (or conservatives), such as Ollyffe, Madan and Paley, involves severe distortion. All these protagonists in fact shared their fundamental assumptions in common. If Romilly assailed Madan in 1786 (or Paley in 1810), the acerbity with which he did so was merely that which characterises any in-fighting among fellow crusaders, be their Jerusalem what it may. Both "reformers" and "conservatives" were all, in sociological terms, "moral entrepreneurs" (Becker, 1963). The enterprise which united them was that of Fielding or Maddox—the promotion of a more tightly ordered, crime-free society. Madan was far from dismissing the measures of social hygiene advocated by Fielding: he simply considered that they were not themselves sufficient in the face of a more desperate situation (Madan, 1785, p.79).

In harking back to "the days before the Conquest, when it was said a child might go from one end of the kingdom to the other, with a bag of money in his hand, without fear of having it taken from him..." (ibid, pp.17-18), Madan's vision of society matched that of Eden (1771, p.351) to whom "under a good penal system, they who offend against the law, and they only, have reason to fear; whilst those happier members of society, who deserve security, enjoy it to the full perfection to which the rectitude of their conduct hath entitled them." King Alfred's tithing system of collective responsibility commended itself in turn to Fielding, Madan and Romilly. Reformers and conservatives alike agreed that their object was to prevent crime rather than to exact retribution: if they disagreed over the extent to which capital statutes were to be relied upon, the difference was only one of degree. For Romilly and Eden were content to retain the death penalty for the more serious crimes, whilst Madan was willing to contemplate a reduction in the number of capital statutes. It is true that, following Ollyffe, Madan (like Paley, who will be considered later) argued for a refined calculus of deterrence, but it was on the grounds that this would save lives, and he made as much play as any "reformer" over the number of executions, which he considered "so numerous as to shock the humanity of every man that has not lost all feeling" (Madan, 1785, p.70). 1

Neither in point of humanitarianism nor in terms of objectives can "reformers" and "conservatives" be differentiated. All were aware that increasing employment of the pardon—itself reflecting a growing humanitarianism—was ruining the basis of the existing penal system. It was not the case, as Hay would have it, that resistance to law reform and to a more extensive use of the pardon went together: on the contrary, Madan (p.120) shared Eden's dislike of the pardon. But then, in the words of the lawyer John Touchet (1785), discussing Madan in the Monthly Review, "that the lenity with which our criminal law is administered tends to encourage the commission of crime... has long been the opinion of persons whom there is no reason to suppose of a sanguinary disposition." Touchet was worried by this lenity, and hankered
after a vigorous justice, but he also feared that to curtail use of the pardon would discourage prosecutors. Torn in different directions by the twin considerations of compassion and control, Touchet concluded with evidently unavoidable lameness: "There are certainly great difficulties of both sides of the question."

John Howard

Howard, whose *State of the Prisons in England and Wales* first came out in 1777, and whose last works appeared in 1789, was never interested solely in prisons. His outlook was in many ways comparable to that of Fielding or Maddox, Madan or Eden: like them he was involved with the problem of social order in its widest aspects. His *Account of the Principal Lazarettos in Europe* (1789) dealt not only with these, and with prisons, but even with hospitals and charity schools. In the same year he also published both a translation of the most "advanced" penal code of the period, that drawn up by the Grand Duke of Tuscany, as well as an enlightened defence of the rights of the poor written by his friend Dr. Aikin. In his home village of Cardington he built model cottages and provided free schooling. In return, he expected his tenants to observe the sabbath, though he left them the choice of church or meeting-house. In matters of religion, Howard resembled the early evangelicals in his fervour and in the optimism of his "moderate Calvinism". He straddled the divide between Dissent and the Church of England: by upbringin an Independent, he was yet happy to attend the established church, to which both his wives belonged. He respected Wesley in particular—a veneration which was fully reciprocated (Moore, 1824-5, vol.2, pp.434-6).

Howard resembled others in his hesitancy over the death penalty. He noted with equal enthusiasm the rarity of executions in Holland (1777, p.120) and the infrequency of pardons in Spain (1784, p.153-4). Privately, he acknowledged that crime would not increase where thieves knew they would die for their crimes, adding, "far be it from me to plead for sanguinary laws, yet a line should be drawn; there is a justice due to [the] injured, [and] above all a care to prevent the honest being plundered." He thought, like Fielding, that executions were best carried out with great solemnity—and heartily approved the abandonment of Tyburn in 1783 for "tidier" proceedings in front of a forbidding Newgate. But the most important consideration—and here he actually quoted Fielding—was that the waste of life appeared less necessary "by reflecting that, with proper care and regulation, much the greater part of these wretches might have been made not only happy in themselves, but very useful members of society, which they now so greatly dishonour in the sight of all Christendom" (1784, p.42).

Fielding, despite his despair over existing prisons, had pointed to the hope of reforming offenders by shaping environmental forces, at least in the case of the young. Howard was also able to acknowledge that others before him—Bishop Butler, Samuel Denne, and Jonas Hanway—had indicated the potential of solitary confinement: yet their proposals had been as tentative as the pamphlets expressing them had been flimsy. Hard labour schemes of various kinds had been propounded in greater numbers. George Olyffe (1731, p.16) had called for "a contrivance of some very laborious work", which, he hoped, would not only deter at little cost, but, "by obliging criminals to think and strive suitably to answer the end of their being, might cause them to be co-partners with
the better part of mankind . . . " This emphasis on the bettering of men through labour and religious or moral indoctrination was a theme developed by English writers in particular: the idea that men might be made "better" by work was unknown to Beccaria (1764). When the Italian went so far as to advocate the abolition of the death penalty, it was in terms of the greater deterrent power of hard labour sentences, quite literally, for life.

Howard's *State of the Prisons* appealed to a well-developed climate of opinion. But it was in itself a work without precedent. The society that had abandoned all hope of its prisons being places of correction was ignorant even as to the number of those confined in them: Howard's "discovery" was literal as well as figurative. Dr. Johnson, contributing to the *Idler* on January 6, 1759, estimated that the gaols held over 20,000 debtors alone, a figure which has been accepted without criticism by at least one modern authority (Radzinowicz, 1948, p.339n). Howard revealed the number of prisoners with a novel precision: 4,084 throughout England and Wales, at the beginning of 1776. Of these, 2,437 were debtors; the remainder, with gaol delivery normally occurring only twice each year, were doubtless in the main those awaiting trial. The prison-by-prison description which was Howard's *forte* also incorporated further statistical data relating to fees, allowances, and salaries. Howard acknowledged that the total number of prisoners was lower than some would expect, but he hastened to add that dependents were not to be forgotten, and, by allowing two apiece, he arrived at the figure of 12,252—the overall "number of the distressed"—who were many of them dependent on their parishes (Howard, 1777, p.35).

For the first time, a major social problem had been presented statistically at the national level. Carefully assembled detail worthy of a work of natural history buttressed a manifesto that was all the more effective for the less obviously being one. If Howard's approach was outwardly as empirical as any other Fellow of the Royal Society might have wished, it was, at the same time, tellingly prescriptive. Not surprisingly, Howard was seen by some Victorian social reformers as setting the pattern for the long line of inquiries in which an industrializing nation grappled with the side-effects of unregulated growth. W.A. Guy (1848) comparing Howard's survey with the 1844 *Report of the Health of Towns Commission*, affirmed that there were few things in history more remarkable than the parallel between the two. He pointed out that the problems, as described, were in many ways highly comparable (lack of cleanliness, inadequate buildings, the prevalence of disease), as were the solutions, which in both cases involved the statutory provision of inspection. The hallmark of this kind of work was—and is—its apparently straightforward practicality and attention to detail: an approach unknown to Howard's predecessors who, in contrast to him, were the most speculative of closet-bound philosophers.

Howard later apologised for adopting, in the 1777 edition of his *State of the Prisons*, "the language of a complainant": It was the most carefully and cautiously presented of complaints, even when most strongly warranted. Of Petworth Bridewell, where in the winter of 1775-6 the only food was a penny loaf daily, weighing a mere 7½ ounces, Howard noted: "Thomas Draper and William Godfrey were committed the 6th of January 1776: the former died the 11th, the other the 26th of the same month. William Cox, committed the 17th January, died the 23rd. None of them had the gaol fever. I do not affirm that these men were starved to death: it was, however, extremely cold weather." (p.231) No blame was apportioned; rhetorical flourishes were as...
firmly eschewed. Howard simply added that the bread allowance had subsequently been doubled, thanks to “the kind attentions of the Duke of Richmond”. Starvation was, however, a less usual affliction than the gaol fever, or typhus, the ravages of which, as Howard was quick to point out, were never confined to the prisons which fostered the disease. He also observed that “many more prisoners were destroyed by the gaol fever than were put to death by all the public executions in the kingdom” (p.17).

The Principle of Reformation

Howard was certainly concerned with the condition of the prisoner, whom he wanted to see healthier, better fed and more humanely housed in cleaner and more effectively ventilated gaols. Undoubtedly his works constituted an appeal to humanitarian sentiment. But even when he was most evidently addressing himself to the plight of the neglected prisoner, Howard never ceased to emphasize that improved prison conditions were not simply an end in themselves. A prisoner well treated was a prisoner made amenable. “Great care should be taken to prevent infection; to keep prisons clean and well aired; and invariably to adhere to strict values of sobriety and diligence, in order to correct the faults of prisoners, and make them for the future useful to society” (1777, p.72). Dirt, disease and deficient nourishment aroused Howard’s concern, but he was equally shocked and alarmed by the harm done to the morals of prisoners indiscriminately herded together without any occupation. Lord Thurlow in his capacity as Lord Chancellor described how “Mr. Howard had assured him that the deepest dungeon in the most loathsome gaol he had ever entered abroad, was nothing to the corruption and dissipation which prevailed in every one of our prisons, to the disgrace and scandal of the kingdom . . . ” (Cobbett and Hansard, 1816, vol 26, cols. 1203-4).

Howard was not unwilling to appeal to moral indignation against criminals, as when he argued for the prohibition of the “tap” not just because it led to “drunkenness and midnight revels”, but more specifically because gaolers might be prompted by its existence to “caress dishonest debtors, who take shelter in a prison, in order to live there upon the property of their creditors” (1777, p.49-50). Howard was well aware of the unpopularity of this proposal; he quipped to his friend Dr. Lettsom “it is well you have not made a statue of wood of me, for it would certainly be burnt by the people.” Yet, before Howard is condemned for a preoccupation with social control, it should be remembered that this was the counterpart of the social awareness which led him—and with him, others—to investigate the plight of men like Thomas Draper and William Cox, of Petworth, together with the innumerable victims of the gaol fever, who would otherwise have been ignored, as they had been for so long. In the third edition of The State of the Prisons, Howard could declare: “In 1782 I did not find a single person labouring under that disorder throughout the whole kingdom” (1784, p.468). This reduction of the gaol fever, directly and indirectly, was the result of his own labours, and was itself no small achievement.

Matters medical, and matters moral, were finely mixed in Howard, as with other late eighteenth-century prison reformers, many of whom, such as Dr. Fothergill, Dr. Lettsom and Dr. John Jebb, were medically qualified. Each abuse of any kind that Howard managed to reveal was a blow struck for reform, and against the “seminaries of idleness and vice”. Under the heading “Bad Customs in Prisons”, Howard moved by careful juxtapositions from
“garnis’hi to gaming, from the use of irons to judicial delays, and
thence to the undesirability of women in male prisons; appropriate autho-
rities such as Beccaria and Eden being cited when possible (1777, pp 25-34).

The prison which Howard took the trouble to expose at greatest length
was, significantly, one of the most “comfortable”: the Fleet, a debtors’
prison. Here he was irked that the prisoners played at skittles, tennis and
other games, at which they were often joined by members of the public (a
practice which he criticized as tending to lessen all dread of confinement);
that there were wine and beer clubs; and that a large number of prisoners
were out on parole in the “Rules”, while the prison itself was thronged with
many a soi-disant wife. But worst of all was the fact that the Master’s-side
prisoners were self-governing, with their own President and Committee. This
was accustomed “to raise contributions by assessment, to hear complaints,
determine disputes, levy fines, and seize goods... they are to take from a
new-comer, on the first Sunday, besides two shillings garnish to be spent in
wine, one shilling and six pence to be appropriated to the use of the house”
(1777, pp.156-64).

This was the antithesis of the reformed prison: a complex, self-governing
inmate hierarchy—decked out in the tattered remnants of an aristocratic
tradition—which, in its corporate character, appeared to a reformer such as
Howard to be a profane, self-indulgent and bacchic slough. That its ways were
immortal was the very heart of the matter: for Howard the bettering of
men meant the re-fashioning of individuals who, in so far as they were suf-
fered to associate, were to do so on terms comparable to those of the new
industrial workforce. The well-directed prison—for the governorship of which
Howard thought none more suitable than half-pay officers—was to mirror in
its “regularity, decency and order” the society for which Fielding and
Maddox, Madan and Eden were all of them spokesmen.

By themselves, many of Howard’s proposals were not particularly contro-
versial: measures of hygiene were not incompatible with prisons in their
time-honoured guise as places merely of safe-confinement. But, as Howard
argued, “to reform prisoners, or make them better as to their morals, should
always be the leading view” (1784, p.40). To this end, he called for “so many
small rooms that each criminal may sleep alone. If it be difficult to prevent
their being together in the day-time, they should by all means be separated at
night. Solitude and silence are favourable to reflection; and may possibly lead
them to repentance” (1777, p.43). With this, the cellular prison was launched.
Howard did not ignore the administrative convenience of separate cells, but
their real value lay for him in their suitability for men whom he thought of as
perfectible, and worth taking the trouble to perfect. Even the worst offender
was a “rational and immortal being”, possessed of free-will, intelligence and
the possibility of earning a passage to heaven. This concept of reformation—
of which that of rehabilitation is a secularized descendant—was but the logical
outcome of perceiving crime in terms at once environmental and pathologi-
cal: criminals were made, not born, and, following this highly integrated con-
ception of crime and punishment, they could equally well be un-made.
“Corrupt as our nature is, robbery and murder are seldom, if ever, the first
offences of the unhappy wretches who commit them: but once persons have
entered upon evil courses, they commonly advance by steps, till they become
totally depraved and abandoned to all kinds of wickedness” (1789, p.193n).
Within the tightly controlled, highly specific environment of the prison, the
domino effect could be reversed, although Howard emphasized the need not
to under-estimate the difficulty "of so arduous an undertaking as that of reforming criminals." The criminal was no longer the romantic hero fated to die; he had become a deviant to be brought into line. In full command of the rhetoric of the age, Howard argued: "We have too much adopted the gothic mode of correction, viz by vigorous severity, which often hardens the heart; while many foreigners pursue the more rational plan of softening the mind in order to secure its amendment" (1789, p.226).

Howard was sure-footed when articulating the basic concept of reformation. But when he turned to the actual process, he became more circumspect, if not, on occasion, opaque. Each prisoner was to have his own cell; but was his confinement to be "solitary"? The answer depends on the passage one selects. Wymondham Bridewell, where the prisoners worked as well as slept on their own, was praised by Howard in the warmest of tones (1789, pp.153). Elsewhere, he argued that "absolute solitude is more than human nature can bear"; only he then turned the rest of a long sentence into one of his many reiterations of the importance of work (1789, p.169n). The need "to inure prisoners to habits of industry" was clearly central to him—yet, he was always vague not only as to the extent to which prisoners could work in common, but also as to how they were best employed, and whether they and their keepers were to be remunerated. It was the same with religion as with work: controversy was avoided. Fielding was quoted as to religion alone being capable of correcting the morals of men, and the best continental prisons—those of the Low Countries—were praised for "the constant attention that is paid to impress the prisoners with a sense of religion, by plain, serious discourse, catechising and familiar instruction from their chaplains, together with the influence of a good example, both in them and the keepers" (1789, p.226). But neither the time-tableing nor the relative importance of religion and work were discussed. Nor, most certainly, did Howard allow himself to be drawn anywhere near issues of doctrinal dispute.

This open-endedness, which greatly enhanced Howard's impact, matches that of the other classic of prison reform literature, Beaumont and de Tocqueville's (1833) account of the penitentiary system in the U.S.A. If Sir G.O. Paul (1784, p.6), creator of the first reformed or "Howardian" prison system, that of Gloucestershire, could say of Howard "to him all future reformers are indebted for seeing what they see, and for feeling what they feel", this was not least because so many differing interpretations could be sustained. Securely rooted in this "ambiguity", Howard's appeal enjoyed all the power that came with universality and unexceptionability, and from the fact that, in the words of Lord Lansdowne in the Gentleman's Magazine of May 1791, "His merits were of such a general and fundamental nature as to serve for an example to all ranks, professions and nations" (p. 396). Howard could be praised by Wesley, and by Burke (1781). He could draw the plaudits of the leading poets of the day or be the subject of a successful play. In short, he stood for social reform elevated to a new peak—that of fashion. It comes as no surprise to find an image-conscious Josiah Wedgwood prominent in the printed subscription lists opened to honour Howard, matching the guineas of Pitt and Wilberforce, the Bishop of Llandaff and the Duke of Portland.

Parliamentary and Local Action

With the help of such wide support, Howard was well placed to promote appeal at two levels: parliament, and the county magistracy. He dedicated
his State of the Prisons to the Commons, whose formal thanks he had received as early as 1774. Historians have tended to write off the prison regulations enacted by late eighteenth-century parliaments, but Howard, whilst he appreciated that there was an enforcement problem, could note even in 1777 (p.54) "I had the pleasure to find a chaplain appointed to most of the county gaols in consequence of the Act made in the 13th year of his present Majesty." Of the various Acts associated with Howard, the most significant and the most misunderstood is the 1779 Penitentiary Act, 19 George III, c.74. In the words of Sir G.O. Paul (1809, p.20), this "first created a system of punishment by mode of confinement; and a system of penal imprisonment as a substitute for punishment by death or transportation."

The Penitentiary Act was a modified version of another measure, which had been promoted by a parliamentary committee of the previous year: in its original form, the Bill had died with the ending of the session.8 Howard had appeared before this committee of 1778 as the star witness and a fierce critic of the hulks which had been introduced "temporarily", following the suspension of transportation to America.9 In the first place the Penitentiary Act re-sanctioned transportation, now "to any parts beyond the seas"; but this took 10 years to achieve. Clause III represented a watershed in terms of minor punishments—the transition from punitive public degradation to preventive justice in the "interest" of the offender. "And whereas the punishment of burning in the hand... is often disregarded, and ineffectual; and sometimes may fix a lasting mark of disgrace and infamy on offenders who might otherwise become good subjects, and profitable members of the commonwealth...", private whippings, or fines, or imprisonment, were to be allowed as substitutes.

Nor was this the kernel of the Act: that lay in the provisions relating to two experimental national penitentiaries. "If many offenders", ran Clause V, "were ordered to solitary imprisonment, accompanied by well regulated labour, and religious instruction, it might be the means, under Providence, not only of deterring others from the commission of the like crimes, but also of reforming the individuals, and inuring them to habits of industry." Clause XXVIII ruled that the penitentiaries could be utilized for those sentenced under capital statutes. This allowed Blackstone (1783, vol.4, pp.371-2), who in large part drafted the measure, and who was, with Eden (now a leading member of the government) and Howard, its joint father, to hope that capital punishment might in time be superseded, "except for a few very atrocious crimes."10 Regulations were enacted in detail. There were to be large salaried staffs, themselves subject to outside inspection. Convicts promising in their behaviour were to be released early—a measure urged by Howard (1777, p.123) and subsequently very much the hallmark of reformative imprisonment. On release, all were to receive "after-care" in the form of cash and clothing: good behaviour during a subsequent "probationary" year was to be rewarded by an extra bonus.

His vision of the ideal prison thus consecrated by parliament, the actual establishment of the penitentiaries mattered rather less to Howard. Appointed one of the three members of the supervisory committee, he nevertheless resigned as early as January 1781, abandoning a project beset with considerable financial and administrative problems. Like other reformers, Howard, a decided individualist, was perhaps more concerned to sell the "great and useful" plan he had "recommended to the notice of the public", than to provide an "after-sales" service. But the failure was in any case by no means absolute.
Alexander Wedderburn, Attorney-General in 1779, later reflected that although the penitentiaries had not been built, "yet, by the progress which that plan had made, much benefit had arisen to the public from Mr Howard's exertions, as well as from the information he had with such diligence collected" (Wedderburn, 1793, p.8). Here there can be little doubt that Wedderburn was thinking of the stimulus to local magistrates created by the national commitment—even one that was to remain unfulfilled at that level for 40 years—to build penitentiaries.

The lead was set by Gloucestershire, under the impetus of Sir George Paul, who was exactly the sort of fellow-magistrate to whom Howard looked. Starting in 1783, and adhering closely to Howard's guidelines, Paul saw his programme through grand juries, a county meeting, endless committees, and the enactment of a special Act, 25 George III, c.10. By 1792, four small houses of correction and a carefully subdivided gaol-cum-bridewell-cum-penitentiary in Gloucester itself were in operation. Gloucester Penitentiary, of which Paul observed that it has succeeded in its effects "far beyond my most sanguine hope", was to serve as the basis on which the nineteenth-century prison was built. Paul was, for instance, the principal witness before the 1819 Select Committee on the State of the Gaols: before it he reiterated that the Gloucester Act of 1785, itself merely the Penitentiary Act modified to suit one particular county, had afterwards been made general by the important 1791 Gaol Act, 31 George III, c.46. These three measures, he explained, "first created, by mode of confinement, by labour, and by modified seclusion, a system of penal imprisonment, as a substitute for the punishments by death and transportation" (Paul, 1809, p.48). He further emphasized that "many have returned from this prison to obtain a livelihood by honest industry." George Holford, M.P., responsible for the first actual national undertaking, the Millbank Penitentiary, later acknowledged: "We had no model to work by... except that at Gloucester" (Holford, 1828, p.82).

Paul influenced nineteenth-century reformers: he also set a pattern for other counties in the late eighteenth century. This applied not only to the nature of the prison—cellular and "Howardian"—but also to the way in which it was established, by the efforts of interested local magistrates. To these, the prison appeared as a major new bulwark of authority. Howardian constructions mushroomed up and down the country as so many extraordinary witnesses to the strength of this feeling. By 1789, Howard was able to record that 42 new prisons—nearly a quarter of the total, but accounting for a larger proportion of prisoners—had been or were being constructed afresh (Howard, 1789, p.268). The more parsimonious counties, and the City of London, did at least make efforts to improve conditions within existing prisons. In the successive editions of The State of the Prisons the "notes of censure" become progressively rarer. The foundation stone of Salford Prison, laid in 1787, showed in the concluding flourish to its inscription that the name of Howard had become something to invoke with reverence: "that there may remain to posterity a monument to the affection and gratitude of this county to that most excellent person, who hath so fully proved the wisdom and humanity of separate and solitary confinement of offenders, this prison is inscribed with the name of JOHN HOWARD" (Aikin, 1795, p.201).

The Significance of the Howardian Prison
The modern prison is some two centuries old. It is now difficult to appre-
late to the full the heady atmosphere in which prison reform was first pro-
moted, during an astonishingly compressed period of time. The "boom" only lasted from the late 1770s to the early 1790s. By 1793, Wedderburn (then Lord Loughborough) could comment that the new prisons "have been erected on too large a scale; the success of the reform will render a part of those buildings useless" (1793, p.21). Wedderburn's point was on occasion borne out, but it ignored the way in which, as Paul for one acknowledged, a greater facility to commit led to a greater frequency of com-mitment. It also overlooked the implications of a much lower mortality rate among prisoners: if Gloucester's austere regime of cellular labour caused two or three suicides, the total number of deaths, at 19 out of 2,715 persons confined, over the first 16 years, was an immense improvement—and one which left society with far more criminals on its hands (Paul, 1809, pp.47,65).

The latent significance of the Howardian prison lay not only in its some-
what double-edged quality, but also in the way in which its construction en-
abled England's rulers to unite in concerted action, and to be seen to do so.
The point of prison reform as promoted by Howard was not least that—to adapt a phrase by Durkheim—it brought together upright consciences. Those who interested themselves in prison reform showed thereby their fundamental unity—and both a common righteousness in the face of crime and a shared sense of concern. Here the historian must tread with circumspection: it is all too easy to view prison reform simply as a new way of keeping the masses in order. No doubt the reformed prison did serve as a more efficient tool of repression. But it was also, perhaps primarily, much more than that: a symbol and a manifestation of England's extraordinary self-confidence in the late eighteenth century and, more particularly, once the American disaster had been so rapidly transcended, in the 1780s. It was as such that prison reform flourished in a period when social and political tension was far less evident than it was to become in the course of the 1790s. Howard was a landed gentle-
man, and "a friend to subordination, and all the decorums of regular society", but he was also a dissenter and an opponent of government policy on the American colonies. In the 1780s those who concerned themselves with the development of the prison included such radicals as Dr. Jebb and Capel Lofft of the Society for Constitutional Information, both friends of Howard. Indeed, Lofft (1786, p.x) could identify with the various prison acts as "one of the happiest characteristics of the age".

The concept of the prison as outlined by Howard actively presupposed a substantially self-confident society, in various ways. In propounding the reformability of offenders, Howard was articulating a major tenet of the emergent industrial society: the malleability of men. To this not least, he owed his success. But then, the son of a successful London upholsterer, and the friend of the Whitbread, he was well placed to speak for the new order. Further, Howardian prisons would have been unthinkable in any society unable to offer the ex-convict a future and, above all, employment. Here, significantly, the reformers were able to indulge in an optimism not always so well known in the nineteenth century. The new prisons were built despite the need for considerable financial outlay: that at Gloucester cost £25,000, whilst even the running of that at Dorchester constituted "the greatest single item of county expenditure, coming to nearly a quarter of the whole" (Weinstock, 1956, p.109). These prisons bore monumental testimony to the sense of confidence prevalent in late eighteenth-century England, as well as to the wealth behind this attitude. As such, they were objects of consider-
able local pride, well worth a mention in a guide. At Hereford, "East from the Shire Hall, was the old County Gaol; but a very extensive building, upon Mr. Howard's plan of solitary confinement, is just finished, on a eligible situation, at the foot of Aylestone's Hill. This building is from a design of the celebrated Mr. Nash..." (Price, 1796, p.72).

The choice of so prominent an architect neatly illustrates the way in which the prison had become something in terms of which society, following its leading section, could orientate itself. It was but a measure of Howard's success that, in the process, he undercut other attempts to capture a part of the governing consciousness. In particular, Howard took the wind out of the sails of the Society for the Discharge and Relief of Persons Imprisoned for Small Debts. Founded in 1772, this also appealed to "the age and kingdom of philanthropy". Apart from rescuing large numbers of "useful members of the meaner but essential branches of trade and commerce", the Small Debt Society campaigned for the reform of the law on the imprisonment of debtors. Its case, however, was very largely founded on prisons as places of illness and ruin (Anon, 1790). So, with every improvement in prison conditions, the prospect of law reform was delayed. One turning point was the defeat in the Lords in 1787 of the Insolvent Debtors Bill. In a long speech earlier quoted in part—Thurlow emphasized that the first priority was to improve prison discipline instead. Citing Howard's disgust at the debauched condition of the debtors in the King's Bench Prison, he went on to stress that "the great object ought to be, when it became necessary to imprison a man for debt, to take care that he came out of prison no worse a man, in point of health and morals, than when he came in" (Cobbett and Hansard, 1816, vol 26, col. 1203). This was the language of Howard: if he was not himself altogether in favour of the imprisonment of debtors, it says much for the success with which he had promoted prison reform that it could be made into the means of delaying another reform (Howard, 1789, p.234).

If prison reform was double-edged in its implications, this is scarcely surprising given that the movement was sustained by the conflicting priorities brought to the problem of social order. The balance of pressures was never constant. By 1789, Howard was stressing even more vigorously than before the reformation of morals—"that still more important subject"—as against further improvement of physical conditions (p.233). By 1790, the year of his death, prison reform had found a new sponsor: the Society for Giving Effect to His Majesty's Proclamation against Vice and Immorality. To judge from its Second Report, of that year, it was then as much occupied with prisons as with anything else—in terms both of "sound policy" and of "humanity", but with the emphasis very much on the former (Anon, 1790a). This most exalted of pressure groups dispatched vast numbers of extracts from Howard's State of the Prisons to "the Judges, Sheriffs, Gentlemen of the Grand Juries, Magistrates, Clerks of the Peace, and other such persons, in the different Counties and Towns of England and Wales." But, whatever the exact configuration of the Proclamation Society's objectives, even it could not avoid positing a conflicting multiplicity of functions to the prison: "The use of imprisonment is to correct those who are vicious, to deter others from becoming so, to confine such as are suspected of crimes till their guilt or innocence is proved; and lastly, to secure the persons of debtors for the benefit of their creditors" (Howard, 1789a, p.xii).

Rehabilitation, deterrence and security: now as then these in their incompatibility put a question-mark against the viability of the prison. In the late
eighteenth century, however, any contradiction was easily brushed aside in the initial enthusiasm for the prison. Nowhere is this more evident than in the case of Paley who, if anyone, spoke for his age in representative terms, in his Principles of Moral and Political Philosophy (1785). By no means the mere advocate of maximum severity and defender of the death penalty depicted by Radzinowicz, Paley leaned heavily on Howard when considering the penal system. Taking as his ruling principles both “amendment” and “example” he looked with hope to the prison. “Of the reforming punishments which have not yet been tried, none promises so much success as that of solitary imprisonments, or the confinement of criminals in separate compartments.” Paley, like other reformers, was talking, in a manner undoubtedly Howardian, of “treatment”: but, even more emphatically than Howard himself, he expected the prison, as an instrument of penal policy, to achieve a bewildering variety of objectives. Imprisonment was to “augment the terror of punishment”; to seclude the convict from moral contamination; to foster “such bitter and continued penitence, as may produce a lasting alteration”; and also to “reconcile the idle to a life of industry” (Paley, 1785, pp. 446-2).

Imprisonment, over two centuries, has not proved a win-all ticket. Expected to confine, to rehabilitate and to operate as a deterrent, starved of funds and largely forgotten by society, the prison has performed so poorly as to leave it with few defenders against its more radical critics, whose hostility towards it is fundamental. Meanwhile, mere “humane containment” commands growing support as official policy (Home Office, 1969, p.7). However, over time, this resort to warehousing is likely to bring diminishing satisfaction, if only because no form of confinement leaves the released convict the same person as at his first reception. This Howard and his fellow reformers fully appreciated, even if their outlook did not encompass prisoners’ rights in any full sense. All societies, depending as they must on the maintenance of “boundaries” to preserve even their sense of identity and values, sustain a collective need to deal with transgressors; but the methods adopted need constant re-examination. Perspectives alter. The constituents of “coercion” are never constant: equally, criteria for the effectiveness of penal policy need continual revision. Imprisonment now appears to be more painful to those subjected to it and less valuable to society than at other times. In no way is the prison as expressive as it was in the late eighteenth century of all that is forward-looking in society. Treatment within the community offers greater hope. But, in some form, supervised confinement is always likely to persist—and in a fashion that will at least draw upon Howard’s original principles. Prison reform has adapted to periods of controversy before now. Indeed, by 1809, following the use of imprisonment for “political” ends and the Cold Bath Fields scandal, besides changes in the wider political climate, Paul (1809, p.83) had come to reflect: “were Howard now in existence, it is probable he would be libelled as an oppressor for those very acts on account of which the most distinguished honours were bestowed on his life and memory.” Gone even by then was the near-wild enthusiasm Howard had aroused for the prison as a means both humane and infallible of cleansing the country of crime. To the strength of this original feeling and to the “ambiguity” manifest in its incautious lack of clarity, the dissenting minister Samuel Palmer testified in his memorial sermon, The True Patriot (1790, pp.30-1):—

Another Howard this country cannot hope to see. Nor is one, altogether his equal, now needed. He laid a foundation, on which it is comparatively easy to build...If
but a few other men of fortune and influence had a spirit and a concern equal to their
power, what a blessed country would Britain become; the poor would be more happy
and less burdensome: the idle and profligate would be reclaimed. Crimes would be
prevented instead of being punished. Our prisons in time would scarcely need human
visitors, but would often be almost empty; at least those confined in them would be
useful to the community, and not dangerous to it when discharged. Many would go
out reformed, and would become good members of society. Thus Englishmen, who
vainly boast of their liberty, would enjoy liberty: would rest in their beds, and travel
by night, without fear of being murdered by their own species.

NOTES

1 Similarly, George Ollyffe (1731, p.4) wrote, "It must be acknowledged very shaking
to see so many lives taken away, as since the late and other sessions".

2 John Aikin's tract was first published in its only surviving form in the Gentleman's
Magazine, Jan. 1788, pp.40-1, over the signature, "Philander"; that it was printed for
Howard is evident not least from a printer's bill preserved in Howard's papers,
Bodleian Library, Oxford, MS. Eng. Misc. e. 333 (57). This work is not mentioned in
the standard bibliography (Baumgartner 1959).


4 Quoted in Pettigrew (1817) vol.i p.192. The point of this remark was that in 1785-6,
while Howard had been abroad, an appeal had been launched through the Gentleman's
Magazine to create a monument to him. £1,500 was raised before Howard, hearing of
the project, put a stop to it. This money was later put towards a memorial in St.
Paul's—Howard providing the first instance of the variety of commemoration.

5 The issue of remuneration was linked to that of the profitability of prison labour. In
the 1777 edition of The State of the Prisons (p.73), Howard declared that this might
very largely defray all running costs; but by the time of the third edition in 1784
(p.41), his expectations were rather more cautious.

6 Burke's words were later considered for the inscription to Howard's monument in St.
Paul's. Appreciative poets included William Cowper (in "Charity"), Erasmus Darwin
(in "The Botanic Garden"), and Robert Merry of Della Cruscan notoriety. The play
was by Elizabeth Inchbald (1788).

7 One list is in the British Museum, Add. MSS. 26,055, fo. 10. Another is in Pratt
(1786) at pp. 53-6.

8 This first version was examined by Jeremy Bentham in his View of the Hard Labour
Bill (1778). The two measures were quite distinct—the first provided for a more ex-
tensive building programme, but was otherwise less ambitious—despite the contrary
assumption that has been made: e.g., in Sprigge (1968, p.90n).


10 Blackstone's important role in the efforts culminating in the Penitentiary Act is
illuminated by a number of letters to Eden in the Auckland Papers, vols iv and v,
British Museum, Add. MSS. 34, 415-6. For a generous acknowledgement to Howard
on the part of Blackstone, see Add. MSS. 34, 416, fo. 199.


REFERENCES

Aikin, J. (1795) Description of the Country from Thirty to Forty Miles around Man-
chester, London.
Anon (1781) The Life of Patrick Madan, London.
Anon (1790a) Brief Statement of the Origin and Nature of the Society for Carrying into Effect His Majesty's Proclamation against Vice and Immorality, together with the Second Report of the Committee, London.
Burke, E. (1781), A Speech at the Guildhall in Bristol, relative to his Parliamentary Conduct, London.
Fielding, H. (1751), An Enquiry into the Causes of the Late Increase of Robbers, London.
Guy, W.A. (1848), "1774 and 1844, or the Prisoner and theLabourer", Fraser's Magazine, 37, 42.
Howard, J. (1789), An Account of the Principal Lazarettos in Europe... together with further observations on some Foreign Prisons and Hospitals and Additional Remarks on the Present State of those in Great Britain and Ireland, first edition, Warrington, Lancs.
Howard, J. (1789a), An Account of the Prisons and Houses of Correction in the Norfolk Circuit, printed with an Introduction for the Society giving Effect to His Majesty's Proclamation against Vice and Immorality, London.
Inchbald, E. (1788), Such Things Are, London.
Madan, M. (1785), Thoughts on Executive Justice, London.


Paul, Sir G.O. (1809), *Address to His Majesty's Justices of the Peace for the County of Gloucester*, Gloucester.


Price, J. (1796), *An Historical Account of the City of Hereford*, Hereford.


Discipline and Punish: The Birth of the Prison by Michel Foucault. Translated by Alan Sheridan. (London. Allen Lane. 1977. 333 pp. £7.50.)

The stature of its author has already ensured this book widespread attention. It received academic accolades (e.g. the Times Literary Supplement, Sept. 26. 1975) following its initial publication in French. It has been commended internationally, in such widely circulating papers as Le Monde (Feb. 21, 1975), Time Magazine (Feb. 6, 1978) and the Sunday Times (Nov. 4, 1977). This reflects the fact that Discipline and Punish is only the latest in a challenging sequence of historically-situated books in which Foucault has attempted to explore the relations between institutionalised coercion, as in clinics and asylums, and conventional knowledge.

Foucault, who deals in the verbal alchemy so typical of French philosophers, makes great demands on any unprepared English reader. It is no criticism of Alan Sheridan to say that Foucault only translates with considerable difficulty. Nor does Discipline and Punish lend itself to summary. If, however, a central theme may be singled out, it would be the growth of normalising and disciplined society, of which the prison is not only a symbol but the leading edge. So far as Foucault is concerned, the prison can only be understood in terms of the society which gave birth to it: a society in which various institutions were being designed, with ever increasing sophistication, in order to facilitate the surveillance and control of their inmates. It was in these that the soul — in one of Foucault's many paradoxical phrases — first became "the prison of the body" (p. 30).

Discipline and Punish is divided into four parts. The first of these, "Torture", describes those punishments which were superseded by the prison. Here Foucault's grasp is least secure: concerned only to write "the history of the present", his feeling for "the history of the past" is not as strong as it might be (p. 31). Blow by blow accounts of death under public torture — the most horrendous being that two which the opening pages are devoted — are little compensation. The next part, "Punishment", deftly introduces the reader to changes in "the economy of illegitimations", and to the competing proposals of different reformers for the redistribution of "the economy of the power to punish". It is here that Foucault repeatedly sets out his central historical problem: the need to explain how "the coercive, corporal, solitary, secret model of the power to punish" triumphed over its rivals (pp. 115-6, 120, 131). Here, too, the book "takes off" (and the squeamish in particular will begin their reading). The third part, "Discipline", describes, with all the fascination attendant on a pioneering venture, some of the "projects of discipline", barracks, factories, hospitals and schools, culminating in the panopticon prison, in which the body was discovered as "object and target of power" (p. 136). This is the exciting core of the book, where Foucault expounds his critical epistemology: power not only excludes, but "produces domains of objects and rituals of truth. The individual and the knowledge that may be gained of him belong to this production." (p. 194). Finally, "Prison" asks why an institutional failure should nonetheless have survived unaltered. Foucault answers by exploring the way in which prison "fabricates delinquency", sustaining its conventional meaning, and, indeed, social control in many of its ramifications.

Passionate polemicist, and breakaway pupil of Althusser, Foucault here as elsewhere stands by himself. Discipline and Punish is a long, hard read, but worth the trouble. It is typical of Foucault that he should conclude by describing the book as no more than an introduction to further studies of "the power of normalisation and the formation of knowledge in society."

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L'ÉVOLUTION DU CONCEPT DE CRIME
L'étude d'un tournant : l'Angleterre de la fin du dix-huitième siècle

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Dans les années récentes, on a constaté un intérêt considérable pour l'évolution des peines et les changements de mentalité sous-jacents aux différentes formes de pénalité. En particulier l'insatisfaction générale à l'égard des prisons a suscité des études importantes sur leur développement historique, tels Discovery of the Asylum de David Rothman et Surveiller et punir. Naissance de la Prison de Michel Foucault 2. Les changements de types d'actes criminels et, de manière plus significative, les changements du terme "crime" ont moins retenu l'attention. Il est particulièrement surprenant que les concepts de peine aient été étudiés sans référence aucune aux concepts de crime car, selon Durkheim, il est admis depuis longtemps que :

"Puisque la peine résulte d'un crime et exprime la manière dont il affecte la conscience publique, c'est dans l'évolution de crime qu'il faut aller chercher la cause qui a déterminé l'évolution de la pénalité" 3.

Durkheim était intéressé par la façon dont les changements dans la "conscience collective" amènent différentes sociétés à considérer avec horreur certains types de crime. Dans cet article, toutefois, il ne sera pas question des changements d'attitudes à l'égard de types particuliers de crime : il sera plutôt question de l'évolution de la notion même de crime, tel qu'on la conçoit aujourd'hui. D'habitude le concept de crime est celui d'un phénomène social général que l'on tient volontiers pour un des problèmes majeurs menaçant nos sociétés soi-disant "avancées". Il n'en a pas toujours été ainsi cependant. Cette conception du crime est en fait le résultat de forces particulières qui ont commencé à jouer à un moment identifiable de notre histoire. Ce processus sera étudié ici dans l'Angleterre du dix-huitième siècle. On espère que le champ d'application de cette analyse historique et épistémologique sera étendu.

Le "crime", en tant que terme générique, n'apparaît pas dans le système d'idées de l'Angleterre du dix-huitième siècle, bien que l'on constate vers la fin du siècle une sensibilité accrue à l'égard des actes criminels. Les infractions individuelles seules suscitaient l'inquiétude de certaines personnes. Dans l'ouvrage du Dr. Johnson, Dictionary of the English Language (1755), le premier du genre, le mot "crime" est simplement défini par son aspect individuel plutôt que collectif comme

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“Un acte contraire au droit; une infraction; une faute grave; un acte de perversité”. Il n’existe pas de définition plus large susceptible d’inclure l’ensemble des comportements a-sociaux; mais à l’époque un tel concept global n’existait pas. En partant de ce tableau général, on peut distinguer six conséquences décisives ou implications. Il est sans doute préférable de les énumérer avant d’examiner chacune d’elles. Première conséquence, et la plus importante, les criminels étaient considérés et traités comme des individualités et les peines étaient plus individualisées qu’elles ne le sont maintenant. Deuxièmement, il cût été impensable de vouloir éliminer le crime. Troisièmement, il n’y avait pas trace des stéréotypes répandus aujourd’hui au sujet des criminels. Quatrièmement, les crimes ne provoquaient pas de panique générale. Cinquièmement, le système judiciaire était ni centralisé, ni bureaucratique. Sixièmement, la notion de “chiffre noir” désignant les crimes non signalés était inconnue. Ces six points sont tous bien entendu liés les uns aux autres : il est sans doute de quelque intérêt de les considérer un par un. Cela sera l’objet de la première partie de cet article; dans la deuxième, j’essaierai de comprendre pourquoi et comment un concept de crime proche du nôtre commence à faire son apparition vers la fin du dix-huitième siècle en Angleterre.

1. Le criminel en tant qu’individu

Non seulement les gentilhommes du dix-huitième siècle ignoraient le concept de “crime” en tant que phénomène collectif mais aussi ils ne voyaient pas dans les “criminels” une catégorie particulière. Ce n’est pas avant le dix-neuvième siècle que l’idée selon laquelle les criminels constituent une classe distincte — et dangereuse — est fermement établie. Le mot “criminel” existait bien, mais il était étonnamment peu usité, même pour désigner les délinquants. A la place, on utilisait un vocabulaire plus précis et restreint. Henry Fielding — un magistrat de Londres, aujourd’hui surtout célèbre pour ses romans — écrivit en 1751 un traité dans lequel il examinait le problème de l’ordre dans la métropole. Il l’intitule simplement An enquiry into the causes of the late increase of robbers. D’un bout à l’autre du livre, il précisait qu’il en voulait aux “voleurs”, “larrons” et aux “personnes oisives et désordonnées, ou “vagabonds” selon le cas. Il ne disposait pas d’un terme plus large et général 4.

Les historiens ont réuni plus tard les différentes sortes de transgresseurs de la loi qu’a connues l’Angleterre du dix-huitième siècle sous le terme “criminels”. A l’époque cependant, ces transgresseurs de la loi étaient non seulement considérés comme des groupes à part, mais ils étaient organisés en sociétés soigneusement délimitées et formaient une hiérarchie reflétant celle de la Société au sens large. Chaque groupe se

Si les différentes catégories de transgresseurs de la loi étaient si étroitement délimitées à la fois par leurs membres et par les autres, il en allait de même pour les châtiments. La variété de ces derniers était extrême au dix-huitième siècle, à la différence d’aujourd’hui où l’emprisonnement est habituellement la règle pour les infractions d’une certaine gravité. Un meurtre, après avoir été pendu, était exposé en chaines “jusqu’à décomposition du corps à l’endroit ou près de l’endroit où le crime a été perpétré”. Les corps des voleurs de biens après avoir été pendus, “étaient ramenés sur le sol et enterrés sous le gibet ou à proximité”, trépas indigne dans une société ou un enterrement décènt revêtait l’apparence d’un rite social important. On déportait également les criminels vers les colonies d’Amérique — où souvent ils commençaient une vie prospère — sans oublier les châtiments publics et corporels comme le fouet ou le pilori. C’était une société patriarcale où il était particulièrement condamnable pour les femmes d’enfreindre les lois; si elles étaient coupables d’avoir assassiné leur mari ou d’avoir fabriqué de la fausse monnaie, elles étaient étranglées puis brûlées. Il n’existait pas de système différencié des peines. Les adhésions à un tel système se firent lentement malgré les propositions de Beccaria et d’autres réformateurs. En pratique, tel délit entraînait telle peine, quelquefois au caractère symbolique, mais en fait chaque peine était vaguement reliée aux autres peines et crimes. Ce n’est que lorsque le crime fut perçu comme une entité qu’il fut alors nécessaire de différencier les peines avec précision en faisant varier la durée de l’unique sanction, l’emprisonnement.

2. Une société tolérant le crime

L’idée que le crime pouvait et devait être éliminé était généralement inconnue au dix-huitième siècle. Il était évidemment impensable de vouloir éliminer quelque chose dont la représentation verbale existait à peine. De la même manière, les formes habituelles de châtiments corporels n’étaient pas destinées, cela va de soi, à réinsérer ou amender les criminels, la plupart de ces peines entraînant la mort. Aucune dissuasion n’était réellement mise en œuvre, puisque différentes infrac-
tions étaient parfois punies de la même façon. Les plus grands brigands comme les petits voleurs subissaient le même châtiment, la pendaison, même si dans la pratique l'on faisait parfois preuve, de façon discriminatoire, de clémence. Dans une société caractérisée généralement par ses idéaux limités — par un fatalisme d’essence religieuse ou philosophique — il n’était pas déraisonnable d’ “accepter” les transgresseurs de la loi. Comme Daniel Waterland, penseur religieux du dix-huitième siècle, l’expliquait, la main de Dieu était encore dans Tout, quoi qu’il advienne :

“Nous voyons beaucoup de vilanie dans ce monde et trop souvent, elle grandit, prospère et triomphe. Des hommes mauvais, ainsi, commettent des violences, volent, pillent et assassinent ; ils le font par agrément et Dieu, pour des raisons qui nous échappent, le tolère. Sans doute a-t-il décidé de châtier telle personne pour ses péchés et de mettre à l’épreuve telle autre” 6.

De plus, on pensait généralement que Dieu quand il le jugerait bon s’occuperait des malfaiteurs, si nécessaire en intervenant sur terre, soit en les dénonçant, soit en les punissant d’une autre manière. Cette pensée devait réconforter les victimes 7.

3. Le transgresseur de la loi, aventurier reconnu

Le dix-huitième siècle ne jugeait pas les criminels avec les mêmes stéréotypes que nous aujourd’hui. D’une certaine manière, cela reflétait le fait que les criminels n’étaient pas considérés comme une classe spécifique. A part cela, les transgresseurs de la loi étaient l’objet de sentiments plus favorables qu’aujourd’hui, même de la part de la presse. Cela est particulièrement vrai de la première moitié du dix-huitième siècle, mais pour un observateur du dix-neuvième siècle, Francis Place, se souvenant de ses jeunes années, il semblait effroyable que dans les années 1770-80, les vies des criminels fussent contées comme autant de “joyeuses aventures” 8. Cette opinion est pour le moins surprenante car au dix-huitième siècle les crimes étaient presque toujours dirigés contre des individus plutôt que contre des institutions : le hold-up n’avait pas encore été inventé. Même les crimes violents — la grande peur d’époques récentes — ne suscitaient guère de passions, en partie parce que le port des armes était plus répandu qu’aujourd’hui. Les rencontres entre les voleurs et leurs victimes se faisaient dans une atmosphère moins hostile qu’aujourd’hui, sans pour cela que le dix-huitième siècle fût aussi préoccupé que notre époque par la condition des victimes, en tant que groupe particulier. Parmi les brigands, remarquait un autre visiteur allemand, K.P. Moritz, “nombreux étaient ceux qui rapportaient une partie de leur butin aux victimes lorsque celles-ci étaient particulièrement en détresse” 9. Les agresseurs et les agressés entretenaient des
relations d'individu à individu, fondées sur une grande variété de sentiments. L’“Account” officiel sur la vie de William Hawke, un brigand, décrit comment :

“Un gentilhomme qui avait été agressé par lui et qui avait fait feu sur lui, vint dans la cour de la prison de Newgate après son arrestation et s'enquit de sa personne. Le gentilhomme... manifestait un intérêt pour la condition du prisonnier et lui dit qu'il venait spécialement lui exprimer ses remerciements pour la noblesse de caractère dont il avait fait preuve en ne retournant pas le coup et en l'épargnant alors que sa vie était entre ses mains. Plusieurs gentilhommes lui rendirent visite pour des raisons semblables et lui offrirent leurs services pour sa conduite civile et humaine”.

En d'autres termes, les criminels n'étaient pas jugés sans bienveillance et être victime d'un vol était considéré dans l'ordre des choses ; finalement, aucun des stéréotypes et des traumatismes qui affectent aujourd'hui la plupart des gens n'existait.

4. L'absence de panique à l'égard du crime

Le dix-huitième siècle ne partage pas l'obsession du vingtième siècle pour la “montée grandissante du crime” : on ne retrouve guère le climat de panique à l'égard du crime fréquent de nos jours. Si la sécurité des rues de Londres était déjà un sujet de graves préoccupations, ce n'était certes pas un problème insoluble. Des nettoyages étaient fréquemment entrepris et connaissaient un certain succès. Ainsi dans l'hiver 1753-4 — d'habitude une période difficile de l'année — Henry Fielding, premier magistrat de Londres, se félicitait qu'à la suite d'une série d'arrestations au début du mois de novembre "aucun meurtre, ni aucun vol de rue n'aient été commis dans le courant de novembre et en décembre". Alors que le dix-huitième siècle touchait à sa fin, de telles manifestations de confiance étaient encore fréquentes, même de la part de ceux, toujours plus nombreux, qui ne cachaient pas leur inquiétude devant la montée des crimes. Martin Madan, avait la ferme conviction que les malfaiteurs seraient pris et il remettait en question “l'idée qu'un voleur court moins de risques avec les gendarmes en Angleterre, et même à Londres, qu'en France avec le Guet ou la Maréchaussée’’. La société de l'époque estimait pouvoir se passer d'une force régulière de police ; Londres était pourtant une des plus grandes villes du monde vers la moitié du dix-huitième siècle avec une population de 575'000 habitants — un chiffre important même pour aujourd'hui —. Cette sérénité du dix-huitième, cette absence de panique sont résumées par Archenholtz qui considérait que :

"La paix règne à Londres, dans une ville peuplée d'une telle multitude de gens, goûtant les joies de la liberté... les vols et les crimes commis à Londres sont peu de choses en comparaison de l'immensité de la cité".
5. La répression, œuvre des particuliers

L’arrestation et l’inculpation des malfaiteurs sont de nos jours l’œuvre de professionnels et de bureaucrates, la raison d’être de la police et de la justice pénale. La “justice à la chaîne” est à l’ordre du jour. Au dix-huitième siècle, la situation était toute différente. La responsabilité non professionnelle des arrestations incombaient aux victimes, bien que quiconque en détresse pût compter sur l’assistance de ses concitoyens qui, à la différence d’aujourd’hui, venaient volontiers en aide. C’était une affaire hautement personnelle, comme le rapportait au tribunal un plaignant qui à l’instigation d’un passant, avait pris un voleur en flagrant délit. “De nombreuses et respectables personnes étaient là et m’arrachèrent la promesse que je poursuivrais en justice le larron” 14. Les personnes lésées avaient la lourde responsabilité des poursuites alors que de nos jours, en tant que “victimes”, elles ne représentent qu’une des parties au procès. Il n’est guère étonnant dès lors qu’à l’occasion la promesse de poursuites ait dû être “arrachée”. Il arrivait que ces personnes échauffées après s’être engagées trop avant retirent leurs plaintes : presque 10% des plaignants renonçaient à comparaître devant les tribunaux, pour faire valoir leurs droits, même si, ce faisant, ils perdaient leur caution 15. Les poursuites n’étaient pas chose agréable pour chacune des parties, comme un évêque du dix-huitième siècle le soulignait :

“Être témoin, apporter des preuves, plaider c’est toujours être dénonciateur : or ce mot sonne si mal que des braves gens sont empêchés de faire ce qu’autrement la raison et la conscience commanderaient de faire” 16.

A une époque où presque toutes les infractions graves entraînaient la peine de mort, plus d’un était effrayé par la portée d’éventuelles poursuites. Ainsi, une femme, alors qu’elle était interrogée sur l’identité d’un brigand, répondait d’une manière révélatrice de ses pensées. “Hier, j’aurais pensé que je pourrais témoigner contre lui, mais aujourd’hui si près de la mort, je pense que je ne pourrais plus le faire”. Il était embarrassant, emmuyeux et coûteux d’intenter un procès, l’issue des poursuites étant d’ailleurs naturellement incertaine. Il s’ensuivait que les tribunaux n’étaient utilisés qu’en dernier ressort et non pas de manière routinière comme aujourd’hui. En revanche, en utilisant toute une série de stratagèmes en dehors des tribunaux, ils permettaient aux criminels de continuer une existence relativement paisible dans la communauté. Une simple restitution ou tout bonnement des excuses c’était tout ce qui était exigé dans d’innombrables affaires. De tels accords en dehors des tribunaux, qualifiés d’informels étaient juridiquement cautionnés. C’était, comme un juge de l’Old Bailey de Londres l’expliquait, “la loi de ce pays, et à mon sens c’est une bonne loi, qu’aucune preuve
d'aveux ne peut être reçue qui soit procurée avec la promesse d'une relaxe” 18. Bien entendu, le dix-huitième siècle ne connaissait pas l'extorsion d'aveux, légale ou autre, comme elle est pratiquée de nos jours par certaines forces de police. Les criminels étaient condamnés soit s'ils étaient pris en flagrant délit, soit sur le témoignage d'un complice protégé par une immunité.

Une autre manière plus tragique de contouner les tribunaux était la justice expéditive et dure de la foule comme cela se produit encore aujourd'hui de façon parfois plus sanguinaire dans certains pays comme le Kenya. Les tribunaux n'avaient guère l'occasion d'intervenir : les initiatives de la foule étaient un élément essentiel de la justice au dix-huitième siècle. Les pickpockets étaient souvent ainsi traités, battus ou jetés à l'eau. Ainsi, en 1783, un pickpocket ne sachant pas nager, se noyant après avoir été jeté à l'eau : l'homme qu'il avait volé fut à la suite de l'enquête accusé de meurtre. Le juge prit cependant sa défense et dit au jury :

"Messieurs les jurés, cette commune erreur qui consiste à punir les pickpockets est une chose qui se produit, nous le savons tous, très fréquemment; ces actes ne sont pas généralement commis avec l'intention de leur ôter la vie, bien qu'il n'y ait en aucun cas de justification à punir un voleur, cependant... compte tenu du fait qu'il n'y avait aucune malveillance particulière, la peine pouvait être commuée de meurtre à celle d'homicide par imprudence...”.

Le jury se conforma à cette suggestion ; et la sentence du juge comportait simplement une amende symbolique, et six mois de prison 19. Le verdict et la sentence témoignaient que la responsabilité de l'ordre public reposait sur chaque citoyen et n'était pas comme aujourd'hui déléguée à la police.

6. La présomption que l'on arrêtait les criminels

Le “chiffre noir” des crimes non signalés est l'un des épouvantails des criminologues du vingtième siècle, tandis que même des citoyens moins avertis en matière de sociologie pensent avec effroi à tous ces crimes pour lesquels rien n'est jamais fait et dont ils pourraient être la prochaine victime. Cette préoccupation était inconnue au dix-huitième siècle. Il n'y avait pas bien entendu de police à qui signaler les crimes. Quand on se plaignait de ce que l'on ne s'occupait pas des criminels, c'était en termes de peines et de leur insuffisance. L'espoir d'une remise de peine ruinait, pensait-on, l'efficacité des “lois sanguinaires”. Les peines auraient dû être plus appliquées. Cette croyance était largement répandue : comme le faisait remarquer Martin Madan, adversaire de la grâce pour les criminels :

"Tous ceux qui ont écrit sur le sujet des lois et que j'ai rencontrés dans mes lectures, comme Platon, Ciceron, etc. chez les anciens; Montesquieu, le
Marquis de Beccaria chez les modernes – tous ont lutté pour l’application des pénalités, afin que les lois soient respectées et efficaces20.

Cette croyance tranquille présupposait que l’on arrêtait tous les criminels. L’Angleterre du dix-huitième siècle est caractérisée par cette confiance souveraine qu’un recours plus systématique à la pendaison ferait automatiquement régner l’ordre. Mais les seules statistiques concernant cette époque dont on dispose sont les statistiques des jugements. Lorsque l’on parlait, au dix-huitième siècle, d’une montée des crimes, on ne visait que l’augmentation de la criminalité légale. Quand en 1786, la cité de Londres pressait le roi de faire quelque chose au sujet de “l’augmentation rapide et alarmante des crimes et des dépéradions dans cette ville et dans ses environs, particulièrement au cours des trois dernières années”, son point de référence était simplement le nombre de journées consacrées au jugement des criminels :

“La réalité d’une telle augmentation est trop connue et trop vivement ressentie par les sujets de Votre Majesté pour être mise en doute; il suffit pour s’en convaincre de considérer le nombre de journées employées à juger les criminels à l’Old Bailey; la moyenne des trois dernières années avant 1776 atteignait moins de 46 journées; avant cette période, la moyenne générale sur vingt ans était de moins de 34 journées par an”.21

La société du dix-huitième siècle vivait des jours heureux, à l’abri du spectre du “chiffre noir” des crimes non signalés, véritable obsession de notre époque.

En Angleterre, la fin du dix-huitième siècle fut un tournant capital dans l’évolution des attitudes modernes à l’égard du crime, de la part de la classe dirigeante et de ceux qui aspiraient à en être. D’un côté, le crime en tant que phénomène spécifique, n’était pas perçu aussi douloureusement qu’aujourd’hui : en fait, il n’était pas, d’une façon générale, perçu comme “crime”. D’un autre côté, les premières mesures – ou plutôt des propositions – furent prises afin de constituer un système de peines institutionnel étroitement organisé. Ces développements bien qu’au stade préparatoire, auraient été impensables si le crime n’avait pas commencé d’être perçu comme un problème national, nécessitant une solution d’ensemble. L’époque était proche où la responsabilité des particuliers dans la détermination de la procédure pénale serait moindre. Jusqu’alors, cependant, peu de choses avaient changé dans l’organisation de cette dernière.

Sur un plan législatif, la réorientation la plus significative était contenue dans le Penitentiary Act de 1779 (19 George III c. 74). Ce texte imprimait l’espoir que :

“Si de nombreux délinquants étaient envoyés en prison où ils recevraient du travail ainsi qu’une instruction religieuse, cela permettrait sans doute, si Dieu le veut, non seulement de dissuader les autres de commettre des crimes semblables, mais aussi de les habituer au travail”.

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Cette loi fait effectivement référence au concept de prison comme la réponse la plus appropriée au crime, en des termes qui nous sont familiers aujourd'hui. À l’échelle nationale, le Penitentiary Act ne fut pas mis en œuvre avant le début du dix-neuvième siècle, mais il ouvrit la voie à de nombreux projets locaux. Le plus important de ceux-ci fut celui du Gloucestershire où, vers la fin des années 1780, un système pénitentiaire fut institué sur une petite échelle, d’après les grandes lignes de la loi de 1779 sous l’autorité d’un magistrat local du nom de Sir George Paul et inspiré par John Howard, le premier grand “réformateur” des prisons. Le régime austère du travail en cellule dans les prisons du Gloucestershire suscitait l’admiration et l’intérêt de tous. Une des conséquences inattendues du projet fut l’augmentation du nombre des délinquants à être traduits en justice, de même qu’en Amérique où un demi siècle plus tard, Beaumont et Tocqueville remarquèrent que “le système pénitentiaire lui-même, qui est supposé réduire le nombre des crimes, a pour conséquence immédiate l’accroissement des emprisonnements”.

L’existence des pénitenciers incitait les gens à se pourvoir devant les tribunaux. De même, les pénitenciers de Gloucester et d’ailleurs n’auraient jamais été construits si les propositions d’hommes comme John Howard n’avaient pas rencontré d’écho — un écho qui indiquait un changement d’attitudes à l’égard du crime. Sir George Paul était loin d’être inconscient des effets de ces nouvelles prisons. Il pensait que “si en fournissant l’habitation, j’ai contribué à inviter le locataire, alors je me repens d’un préjudice.” Les locataires “conviés” témoignent à leur façon de l’effet déshumanisant de conditions dans lesquelles leur personnalité s’atrophiait. La première série de suicides eut lieu dans les prisons, provoqués non par de mauvaises conditions, mais résultat de l’aliénation des prisonniers.

La prison fut le premier changement important dans le traitement des délinquants. De façon logique, l’institutionnalisation de la peine précédait l’institutionnalisation du rôle répressif des forces de police. La police, en amont des prisons, n’aurait guère de sens sans un système pénal auquel elle transmettrait les criminels. L’établissement de forces de l’ordre n’intervint pas en Angleterre avant le second quart du dix-neuvième siècle, soit environ un demi-siècle après les premières prisons. L’augmentation du nombre de malfaiteurs incarcérés dans le Gloucestershire et dans les Comtés qui instituèrent des prisons eut lieu sans que rien n’eût changé dans la manière de les rechercher et de les poursuivre. L’apparition des prisons n’était que le commencement. Au dix-huitième siècle, un des arguments courants à la fois contre l’emprisonnement des délinquants et l’établissement de forces de l’ordre était que la liberté, tant vantée par ce peuple libre, serait mise en péril. Avec la construction des premiers pénitenciers, une nouvelle forme d’escla-
vage fut établie et légitimée — au moment même où la campagne contre l'esclavage des noirs battait son plein — grâce aux efforts conjugués de groupes d'intérêt. L'idée de crime avait tourné la tête des gens.

Finalement, si l'on veut expliquer pourquoi une société habituée à prendre en charge les transgresseurs de la loi à l'échelon individuel se mit à traiter les criminels dans de grands ensembles impersonnels, il faut prendre en considération des forces économiques et sociales profondément enracinées : le développement du capitalisme, l'industrialisation, l'urbanisation, l'exigence de règles de conduite complètes et adaptées. Cependant, alors que ces forces dictaient aux hommes certains comportements de pensée à l'égard du crime et des criminels, elles n'entraînèrent pas une unicité de doctrine ou de point de vue. Les nouvelles prisons suscitaient de nombreuses critiques. En 1809, Sir George Paul avait de bonnes raisons de penser qu'Howard s'il était toujours en vie — il mourut en 1790 — "serait qualifié d'opresseur pour ces mêmes actions qui lui valurent tous les honneurs de son vivant" 25. Certains critiques étaient plus lucides que les autres. Au seuil de cette nouvelle société, un écrivain commentait dans la Quarterly Review en 1820 :

"Nos ancêtres construisirent des couvents et des cathédrales; les édifices que nous avons bâtis sont des usines et des prisons, les premiers fournissant des locataires aux secondes" 26.

Il n'y a rien de nouveau dans l'idée que les prisons et les usines sont étroitement liées. L'existence de l'une cependant ne présuppose pas automatiquement l'existence de l'autre. Il est possible que la prison ait été créée à l'image de l'usine dans l'idée de changer les rebelles en travailleurs obéissants et durs à la tâche, mais la décision de développer les prisons ne fut pas simplement prise pour des raisons rationnelles ou fonctionnelles. Elle fut plutôt prise parce que la classe dirigeante se sentait menacée par le crime, parce que comme disait Howard qui le ressentaît profondément, il fallait "empêcher les honnêtes gens d'être dévalisés" 27. La propriété était plus que jamais prise dans l'Angleterre du dix-huitième siècle, de la part de ceux qui étaient en position d'en recevoir le plus. Ainsi le London Magazine reconnaissait :

"Dans les sociétés civilisées où le droit de propriété a depuis longtemps été reconnu, où il existe sous de nombreuses formes et où tant de temps et de travail sont nécessaires à son acquisition, le fait d'en être frauduleusement dépourvu est ressenti comme une très grande injustice. Par conséquent, toute la sagesse des législateurs est employée à imaginer des règles et réglements qui lient les mains des oisifs et des indigents tout en permettant au propriétaire de jouir en paix de ses biens" 28.

Si la propriété semblait plus précieuse qu'auparavant, il n'est guère surprenant que le crime fût pris au sérieux. Ce changement d'attitude
appelle cependant d'autres explications. Cette transformation fut une cassure complète et non pas une simple poussée d'inquiétude. Deux facteurs, inconnus avant le dix-huitième siècle, jouèrent un rôle capital et façonnèrent les développements ultérieurs. Le premier d'entre eux est la presse, quotidienne et périodique; le second est l'emploi de statistiques nationales en matière de crimes.

**La presse**

L'importance de la presse, ce moyen grâce auquel les gens prennent conscience du monde qui les entoure, est largement reconnue. Notre perception des crimes est fortement affectée par la présentation qu'en donne la presse. Jennie McIntyre a expliqué que peu de gens sont personnellement victimes d'actes criminels graves, tandis que les incidents de moindre importance sont rapidement oubliés; elle conclut :

"Sans doute la preuve la plus patente que les gens modèlent leurs attitudes à l'égard du crime sur la base d'autre chose que leur expérience, se trouve dans leurs propres déclarations. Dans une enquête menée à Washington par le Bureau of Social Science Research, certaines personnes après avoir fait connaître leur avis sur l'évolution du nombre de crimes dans la ville, furent interrogees sur la provenance de leurs informations. Une large majorité répondit qu'ils tenaient leurs informations soit des médias, soit de ce qu'ils avaient entendu dire" 29.

Il est inconcevable d'imaginer une société sans journaux, une société où les nouvelles circuleraient de bouche à oreille et où personne ne se représenterait les événements de l'extérieur. Au début du dix-huitième siècle, pourtant, tel était bien le cas. En 1780, les journaux étaient si influents, bien que ce fût un phénomène encore récent, que le London Magazine pouvait déclarer avec orgueil :

"On a souvent observé qu'il n'y a rien de plus inconsequent, de plus disparate et pourtant de plus utile et de plus agréable qu'un journal... C'est à juste titre l'honneur du citoyen anglais, et nos héros modernes seraient bien de l'adopter comme emblème éclatant de notre pays, de notre sol et de notre constitution" 30.

Rares étaient ceux qui critiquaient cette révolution dans les communications. Fielding pensait que trop de gens perdaient leur temps à lire les journaux. James Boswell, l'ami du Dr. Johnson était plus enthousiaste : "Grâce aux journaux, la connaissance se répand dans les masses" 31.

Les crimes bénéficiaient d'une large publicité dans la presse du dix-huitième siècle dès ses débuts et, à travers la presse, dans l'esprit des gens. Les journaux londoniens de la première moitié du siècle publiaient de nombreuses annonces, "discrétion absolue", concernant la restitution de biens volés. Plus tard, cependant, la presse de province s'étant bien établie, les journaux cessèrent d'être uniquement préoccupés par
les affaires de la métropole. Comme d’autres questions, le crime fut conçu dans une perspective nationale. La mentalité des gens en fut complètement transformée. Leur communauté locale, avec ses structures stables et bien définies ne constituaient désormais plus leur unique cadre de référence : la nation au sens large, et les incessantes secousses qui l’affectaient, était au premier plan de leur champ de vision. Un correspondant du Gentleman’s Magazine se lamentait : “Les journaux ne parlent que de vols et vilenies de toutes sortes, commis non plus comme avant dans la seule métropole mais dans tout le pays, où les geôles sont pleines de larrons attendant d’être jugés”. Un autre correspondant observait que les journaux “contiennent maintenant plus de récits quotidiens et effrayants de vols et de meurtres, etc. qu’à aucune autre époque”. La situation était toute différente dans les époques antérieures, sans doute y compait-on autant de crimes, mais ils n’étaient pas recensés et présentés de façon si systématique en même temps que si effrayante que ce fut le cas des nouveaux journaux de la fin du dix-huitième siècle. Les cadres locaux et nationaux de référence se mélangent les esprits des observateurs de la fin du dix-huitième comme ils l’ont toujours été depuis. Les sermons et les traités plaidant pour des mesures sévères de répression se référaient, en guise de légitimation, aux plaintes accompagnant les faits divers de la presse. Un homme d’église qui arguait pour les Sunday Schools, en faveur d’une réaction contre “la horde de vilains, transgresseurs de la loi et débauchés qui fond sur la population”, ajoutait comme ultime argument que “mêmes les journaux commencent à clamer qu’il n’y a plus de sécurité et aucune solution contre ces désordres; bref, que c’est la fin”. De la même manière, Martin Madan, – adversaire de la grâce pour les criminels – s’estimait redevable à la presse : l’illustration la plus éclatante de ses thèses fut empruntée, comme il le reconnaît avec élégance, à la St. James’ Chronicle (9. nov. 1784) : “Si les vols continuent d’augmenter, comme il le font depuis quelque temps, le nombre de ceux qui volent dépassera le nombre de ceux qui sont volés.”

Les statistiques criminelles

La “vérité”, comme on l’admet aujourd’hui, est que nous sommes tous littéralement des voleurs, la grande majorité des gens ayant au moins une fois dans leur vie commis un larcin. Le vol n’est qu’un aspect de notre vie. Les dernières statistiques ont mis à nu la normalité du crime dans la période qui suit la seconde guerre mondiale : d’innombrables études de cas l’ont confirmé. La perception du crime de ceux qui ont conscience de ce phénomène en est affectée. Dans cette inconstance, le crime apparaît sous un éclairage moins tragique. Cependant, pour la plupart, les statistiques font du crime une menace, plus que ne le
suggéreraient l'expérience personnelle ou la simple observation. C'est précisément cette fonction qui caractérise les premières velléités de rassemblement des statistiques à la fin du dix-huitième. Les statistiques soulignaient comme de nos jours combien de crimes étaient commis et non combien de citoyens étaient encore acquis au respect des lois. Ainsi, certaines statistiques du dix-huitième indiquaient la valeur des biens volés, en chiffres absolus et non pas leur proportion dans l'ensemble des biens. En 1778, le Gentleman's Magazine était sans doute le premier journal à publier une telle estimation. "Un gentleman distingué", rapportait-elle, a calculé que "les pertes de bien provoquées par des fraudes, vols de toutes natures, cambriolages, etc. dans la seule Angleterre se chiffraient à plus d'un million chaque année malgré les nombreuses lois pénales chargées de leur protection" 36. Aucune police n'effectuant le comptage des actes criminels, le dix-huitième siècle, comme on l'a déjà signalé, n'avait pas eu l'idée d'établir des registres sur le nombre de crimes commis, encore moins sur le "chiffre noir". Ses calculs occasionnels des pertes financières attribuées aux actes criminels sous-estimaient en fait considérablement la réalité : les vols dans les entrepôts à eux seuls représentaient plus d'un million de livres. Mais de tels chiffres étaient déjà suffisamment alarmants. Il n'en était de même pour les chiffres concernant les condamnations, dont nous avons déjà donné un exemple. De manière intéressante, les tableaux de condamnations les plus largement connus étaient en appendice du livre de John Howard State of the prisons in England and Wales, publié la première fois en 1777. Lorsque Jeremy Bentham discutait avec son compagnon, le philosophe David Stewart, pour savoir lequel des deux pays, l'Angleterre ou l'Écosse, avait le plus de crimes capitaux, il se référerait sans hésiter aux tables de condamnations, peines et grâces "publiées par notre ami M. Howard" 37.

John Howard réunit un des premiers grands ensembles de statistiques sociales. Les prisons comme les tribunaux étaient pris en considération. Pour la première fois, un chiffre faisait autorité, d'un peu plus de 4000 fut retenu pour le nombre de détenus dans les prisons — la plupart attendant d'être jugés ou débiteurs — alors que quelques années plus tôt, le Dr. Johnson par exemple avait estimé les seuls débiteurs au nombre de 20'000 38. Le rapport d'Howard sur les prisons donnait des statistiques par maison d'arrêt sur le nombre des détenus et sur le niveau des frais, salaires et allocations. C'était la première fois qu'un problème social majeur était décrit de façon aussi précise au niveau national. Howard était considéré par quelques réformateurs sociaux de l'ère victorienne comme ayant dessiné le modèle de ces nombreuses commissions d'enquête par l'intermédiaire desquelles une nation industrialisée s'efforçait de prendre à bras le corps le problème des effets
secondaires de la croissance économique. W.A. Guy, un éminent statisticien comparait l'étude d'Howard au fameux Report of the Health of the Towns Commission de 1844 et affirmait qu'il y a peu de choses plus remarquables dans l'histoire que le parallèle entre ces deux textes 39. Il indiquait que les problèmes, analysés de façon si minutieuse dans les deux cas, étaient éminemment comparables (absence de propriété, bâtiments inadaptés, fréquence des maladies) de même que l'étaient en partie les solutions suggérées, notamment la nécessité d'une inspection réglementaire. Il est significatif qu'Howard qui fit tant pour que l'on mette en place des prisons ou l'on s'occuperait des malfaiteurs en masse, ait manifesté un tel intérêt non seulement pour les statistiques, mais aussi pour la présentation des données sur une base nationale. Sous cet angle, les problèmes revêtaient un caractère plus sérieux. Une connaissance statistique (en fait, connaissance relative) et le souci de traiter la question du "crime" allaient de pair.

Conclusion : le crime, objet d'une réforme sociale

Howard — de même que le "problème de crime" — doit beaucoup à la presse : sans elle, ni lui ni ses écrits n'auraient eu beaucoup d'impact. Ses livres furent commentés, ses voyages discutés et lui-même fut présenté comme une personnalité, un "entrepreneur moral" de son époque. De tels hommes ne seraient rien si les médias ne faisaient de la publicité à leurs causes; toutefois, du moins dans le cas d'Howard, cette publicité entraînait en contradiction avec l'idée traditionnelle de faire le bien modestement et dans la mesure de ses moyens. En rapportant les activités d'Howard et d'autres, la presse pour sa part remplit ses colonnes, et raffermit sa statue morale, sans mentionner ses chiffres de vente. Un témoignage de la valeur d'Howard aux yeux de la presse est révélé par la décision du Gentleman's Magazine, la plus grande publication de l'époque, en 1786, Howard étant absent d'Angleterre, de lancer une souscription pour l'érection d'un monument en son honneur — honneur d'habitude réservé aux seuls morts. En fait, Howard, ayant eu vent du projet y mit un terme, bien que 1500 livres aient déjà été réunies 40. Une nouvelle société était néanmoins née : une société obsédée par les problèmes liés de l'ordre et du "progrès", vénérant les réformateurs sociaux de leur vivant.

Lorsqu'un peu prématurément la mort mit un terme à sa vie de réformateur, l'une des oraisons funèbres concluait d'une manière éclai-rante. Si seulement, suggérait Samuel Palmer, il y avait d'autres hommes de la stature d'Howard.

"Quel pays béní deviendrait la Grande Bretagne; les pauvres seraient plus heureux et moins harassés; les oisifs et les libertins seraient ramenés sur le droit chemin. Les crimes seraient prévenus au lieu d'être punis. Nos prisons
auraient à peine besoin de visiteurs et seraient souvent presque vides; du moins ceux qui y seraient reclus seraient utiles à la communauté et peu dangereux en cas de remise en liberté. Ainsi, les Anglais qui se vantent avec vanité de leur liberté, en jouiraient vraiment; ils se reposeraient dans leurs lits et voyageraient de nuit, sans crainte d'être assassinés par leurs congénères" 41.

Cette vision d'ordre et de progrès illustre cette conception nouvelle pour l'époque, du crime qui, sans grandes altérations, a inspiré tous les "pas en avant" ultérieurs dans l'appareil judiciaire et policier. Cette vision est toujours d'actualité. Quarante ou cinquante ans plus tôt, de tels sentiments eussent été impensables. Comme nous l'avons montré, le crime faisait partie de la vie de tous les jours. Nous espérons que cette étude aura attiré l'attention sur la façon dont le crime dans l'Angleterre de la fin du dix-huitième siècle commençait à être perçu: un problème menaçant dont la société devait être débarrassée.

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Les résumés des articles sont regroupés à la fin du présent fascicule.

REFERENCES


7. Pour une illustration intéressante de ce point de vue, voir: ANON., A warning piece against the crime of murder, London, 1752.
16. MARE, F., A sermon preached to the societies for the reformation of manners, London, 1731, p. 15.
22. a) WHITING, J.R.S., Prison reform in Gloucestershire 1776-1820, Chichester, Phillimore, 1975.
24. PAUL, G.O., Address to His Majesty's justices of the peace for the County of Gloucester, Gloucester, 1809, p. 129.
27. HOWARD, J., Bodleian Library, Oxford, MS. Eng. e. 399, folio 91.
BRITISH PENAL POLICY:
THE SHACKLES OF THE PAST.

by Malcolm Ramsay

It is widely recognised that Britain's social problems, such as her poor industrial relations, and her relatively dismal performance in economic terms stem, at least in part, from a failure to slough off the dead skin of an outmoded past. Our pioneering industrial development has left us with industries and attitudes unsuited to a changing world. The empire, to the administration and exploitation of which we geared ourselves as a way of life and livelihood, is now gone while the arrogance and the imperial attitudes still persist, souring present-day race relations.

British penal policy bears the marks of the past in precisely the same way. Here, too, a legacy which is not appreciated for what it is demands a fundamental reappraisal, hitherto denied. If we suffer much from crime, this is because, as a nation, we suffer more from excessive punishment. Punishment is not the answer to crime: if it were, the war against crime would long ago have been brought to a triumphant conclusion. In Britain, this war has been and continues to be fought in a far more ruthless and vindictive spirit than in other western countries, the United States excepted, where the whole scenario is bloodier still. The only result has been to confirm deviants in their identity or, unsociologically speaking, to harden criminals in their resolve. The autobiographies of the more literate lawbreakers, such as John McVicar and Jimmy Boyle, graphically prove this point. We may not be in a position simply to dispense with punishment, but we do need to rid ourselves of the notion that mere punishment means less crime.

British penal policy still savours of the severities of the middle ages. This is not entirely the fault of the policy makers, as represented by the Home Office: it is a reflection of the climate of opinion in relation to which policy is formulated. It could however be argued that successive Home Secretaries and their advisers have not done enough to change the attitudes either of the powerful or of the public in general. Certainly no particular effort has been made to do this. In the period since the war we have gradually ceased to hang and to flog, yet nostalgia for the gallows and the cat is still too prevalent.

In the campaign before the general election of May 1979, the successful party shamelessly played the 'hanging card' which, subsequently, it adroitly trumped with the parliamentary 'conscience card' on a vote in the Commons. We have been spared the resumption of judicial murder at least for the time being. The underlying outlook is still bleak. We have a situation where an M.P.—in this instance, Graham Page, speaking at Westminster in November 1978—can assert that 'public support for corporal punishment being available to the courts has increased over the
last two or three years. It is increasing, and it will continue to increase as long as we have the upsurge of crimes of violence.'

We may not hang or flog our convicted criminals, but we do incarcerate them without mercy, for longer periods and in far greater shoals than most other western countries. The latest figures available, given in a written parliamentary answer of April 1978, demonstrate the high proportion of the United Kingdom population in prison in comparison to other EEC countries. For every 100,000 of the entire population, the United Kingdom has 87 men, women and children—some under 16—in prison. The average for all nine EEC countries is 63. Only West Germany exceeds the United Kingdom, with 92 people in prison for each 100,000 of total population—Germany, with a heritage of militarism and imperialism comparable to our own if not worse—Germany, where opinion polls, as in Britain, continually indicate widespread popular nostalgia for capital punishment. The EEC average of 63 would be far lower if it were not for the relatively enormous British and German prison populations: in the Netherlands, only 23 per 100,000 population rot in prison, while even in France the figure is only 59.

Our current penal policy is a reflection of the pattern of its development in the past. Britain, the first industrial nation, was the first country to develop imprisonment on a systematic scale, which it did in the late eighteenth and early nineteenth centuries. The first nation to innovate in the penal sphere, Britain was also the last to discard the physical torments, the hanging and the flogging, of traditional society. Such was the price Britain paid—and continues to pay—in this as in other respects. There are advantages to a 'late start'.

Britain led the way in the development of imprisonment as a form of mass punishment: and, with the United States, in the architectural and organisational perfection of model prisons. In the 1830s and 1840s Cherry Hill Penitentiary, Philadelphia, and Pentonville Prison, London, served as the leading examples for the rest of the would-be 'civilised' world. As Sidney and Beatrice Webb noted, the plans for Pentonville, drawn up by the architect-cum-engineer, Sir Joshua Jebb, were reproduced countless times throughout the world in general, and the empire in particular. Prisons were one more type of institution of which to be proud in early Victorian England, and to export, along with all the other innovations and products of an imperial and imperious nation.

Other European nations, which developed imprisonment as a mass punishment later than Britain, combined enthusiasm for the new penitentiaries with speedy abolition of capital and corporal punishment, in what was almost a straightforward swap in many cases, round the middle of the nineteenth century. In Britain, however, the construction of a full-scale prison system took place while the 'sanguinary' code, applying the death penalty in theory to even the most trivial offences, was still in force. The number of prisoners for each 100,000 of population had reached its highest ever level, at around 140, before the death penalty had been curtailed by the legislature to any great extent, by 1830: not until 1861 was
capital punishment restricted, in effect, to murder. Likewise transportation was still being practised on an extremely extensive scale; and, according to the official tariff, imprisonment was a lesser sanction than transportation. Here again Britain stood out in continuing to dispose of its criminals absolutely, instead of having to cope with them at home. France, the only other country to transport convicts overseas, never relied on this policy so heavily as did Britain. Whereas France did not institute transportation until the late nineteenth century, Britain had used it systematically from the early eighteenth century and, on a more irregular basis, still earlier. The final ending of transportation to Australia in the 1860s was presaged by a considerable furor about the release of convicts on home ground to an extent that had never happened before in Britain. Other countries had never known so tempting and so convenient an option by way of penal policy, in contrast.

If imprisonment, as first developed in Britain, was seen as a ‘secondary’ punishment (to use the official term), and then had to be made far tougher to supercede the death penalty, this goes far to explain why imprisonment has tended to be more repressive in character in Britain than elsewhere, as well as more extensively used. Sir Evelyn Ruggles-Brise, Chairman of the Prison Commission in the early years of this century, wrote that foreigners had ‘a general idea that our punitive methods are harsh, if not barbarous’. He considered this reproach unjustified but, then, with unconscious irony, boasted that Britain did indeed dragon its prisoners with a fierceness all its cold-blooded own: ‘The comparatively few foreigners who had a personal acquaintance with our Institutions did not conceal their admiration for the order, method, discipline and exactness which characterise our methods,’ he wrote.

One way in which, in the nineteenth century, British prisoners were ordered and disciplined was on the treadwheel, day in, day out, or at hand cranks. In this debilitating labour, the prisoners’ energy was usually expended simply on grinding thin air. No other country introduced these completely useless contraptions, except Britain, where they were widely admired, despite the fact that they had adverse health effects on many prisoners. Nor did they cut the crime rate. As a leading French penologist commented, the treadwheel degraded the dignity of labour. Another form of prison discipline was flogging. Other countries occasionally made provision for this, at least in the nineteenth century, but used it on a far smaller scale. In just the same way flogging was used far more extensively in the British army and navy than in the armed forces of other countries. More tellingly still, corporal punishment continues even now in many British schools when it has long been abandoned on the continent. Corporal punishment for offences against prison discipline, usually the last context in which it was employed, ceased to be inflicted, to give some examples, in Austria in 1867, in Denmark in 1933, and in Holland in 1886. In Britain, the use of corporal punishment for breaches of prison discipline ended only in 1967.

If British prison discipline rested, or was thought to rest, on corporal punishment, until so very recently, this was not unsurprising in that cor-
poral punishment as a form of sanction awarded by the courts for a range of offences, sometimes by itself, sometimes coupled with imprisonment, continued in use until 1948: its abolition had been officially recommended to the Home Secretary by the Cadogan Committee in 1938. The Cadogan Committee observed that, even then, 'as a penalty for criminal offences by adults, corporal punishment has been abandoned by every civilised country in the world except those—i.e. the British Dominions and, to a very limited extent, the United States of America—in which the development of the criminal law has been influenced largely by the example of the English criminal law'. The Cadogan Committee, it may be noted, also found that while robbery with violence in particular was often visited by judges with corporal punishment, supposedly by way of deterrence, there was no evidence that this had ever in fact had any deterrent effect whatsoever.

The Cadogan Committee stressed that 'corporal punishment is a question on which people are apt to hold strong views, and in many cases these views are based on sentiment rather than on intellectual conviction'. This is still as true now as it was in 1938. In Britain we have cut ourselves off from the remainder of the western world in our desire to punish criminals so severely. 'Hang 'em, flog 'em,' is a peculiarly British desire, to which must be added 'lock 'em up,' for long periods in antiquated institutions. In Britain, we have created a peculiar scale of suffering and thus of punishment, by comparison with other countries. Our prison population rises ever higher even if—and perhaps in part, because—we have dispensed with hanging and flogging for the time being. We are caught in a vicious circle, in which the remembrance of past vengeance stimulates the desire for the imposition of further punishment. Saddest of all is the fact that we scarcely even recognise the pains we inflict on prisoners and their families—the forced labour for pocket money (without even national insurance or the benefit of inspection under the factory acts), the denial of proper toilet facilities, the barriers to communication with the outside world (censorship of mail, six hours of visiting time a year)—as the terrible privations they undoubtedly are.

Our overflowing prisons are an indictment of our failure to shed the mentality of the world's greatest slaving nation, as it used to be. They are a sure reflection of our continuing inability to change our ways of thought and, in consequence, our policies. Whatever the fiscal and financial crisis of people and state, the 'law-and-order' budget remains sacrosanct. Yet, surprise, surprise, the crime rate goes on rising. The crime rate was thought to be disturbingly high when men could be flogged, it was considered to be alarmingly high where mere lads were being hanged for sheep stealing: sheep were still stolen, crimes were still committed. There is no answer to crime, except to come to terms with the lack of an answer. We can chip away at the problem, by providing training, work and leisure opportunities of a fulfilling kind for all who want them: and most do. We can try to make people feel that their streets and their council estates belong to them, and that they too have a part to play in making them fit places, instead of leaving this to the police and other professional agencies. To this end we could, and ought to, encourage the development of local
participation in and democratic control over the police, at present scarcely nominal. Within the parameters and constraints of our social democracy, we could do a great deal to make this a more pleasant land. But before we can hope to bring crime, its control and its punishment within less outrageous bounds, we must first free our minds from the shackles of the past.

REFERENCES

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BIBLIOGRAPHY

A. Primary Sources

1. Manuscripts

Gloucester: Gloucestershire Record Office. Q/SR1787/4a (Epiphany Quarter Sessions, 1787). Q/AG/7-11 (Minutes of Gaol Commissioners/Superintending Magistrates, 1785-92). Q/Go.3/1 (Governor's Journal, Gloucester Gaol, 1795-98).


2. Parliamentary Papers

In the absence of any established convention, these are listed below by order of date of publication. Where less than a complete volume is cited, page references are given. The words Parliamentary Papers are abbreviated to P.P.

Report from the Select Committee on the State of the Gaols, P.P. 1819, vol. VII.


Number of Persons Charged with Criminal Offences, P.P. 1819, vol. XVII, pp.305-16.

Return of Individuals Prosecuted for Political and Seditious Conduct, since 1807, P.P. 1821, vol. XXI, pp.399-404.
Summary Statements of the Number of Persons Charged with Criminal Offences, who were Committed to the different Gaols in England and Wales, for Trial, during the last Seven Years, P.P. 1826-27, vol. XIX, pp.183-200.


Number of Persons Charged with Criminal Offences in England and Wales, 1811-1831, P.P. 1831-32, vol. XXXIII, pp.133-140.


Number of Convicts Whipped by Order of Old Bailey Courts, 1830-1832, P.P. 1833, vol. XVIII, pp.657-58.


Report from the Select Committee on Transportation, P.P. 1837-38, vol. XXII.


Papers relative to Transportation and Assignment of Convicts, P.P. 1839, vol. XXXVIII, pp.741-60.


Report from the Select Committee of the House of Lords on Gaols and Houses of Correction, P.P. 1862, vol. IX.


Report from the Departmental Committee on Prisons, P.P. 1895, vol. LVI.


3. Other Government and Official Publications


Hansard, 3rd. series, vol. 2.

Hansard, 5th. series, vol. 948.


The Ordinary of Newgate, His Account of the Behaviour, Confession and Dying Words of the Malefactors who were Executed at Tyburn... 4 May 1741 - 27 May 1772.

The Proceedings on the King's Commission of the Peace, Oyer and Terminer, and Gaol Delivery for the County of Middlesex (otherwise known as London Sessions Paper), 1742-43 (mayoral year) - 1787-98.


4. Newspapers and Periodicals

Two eighteenth-century monthly magazines - the leading lights of the press of their day - have been examined above in detail (see above, especially pages 128-147):


Other eighteenth and nineteenth-century magazine articles have also been utilised. These are listed below, by alphabetical order of title of publication.

Annual Register, vol. 28 (1786), pp.87-93: Sir T. Beevor, "An Account of the Penitentiary House at Wymondham in Norfolk."


Idler, Number 38, 6 January 1759, n.p.: S. Johnson, Article.


Rambler, 20 April 1751, n.p.: S. Johnson, Article.


5. Other Printed Primary Sources


Addishead, J., Prisons and Prisoners (London, 1845).


Anon., Gloucester Bastille, Pathetic Particulars of a Poor Boy Sentenced to Suffer Seven Years Solitary Confinement in Gloucester Gaol (London, 1792).


Anon., *Thievery a la Mode, or the Fatal Encouragement* (London, 1728).


Brewster, J., *Sermons for Prisons* (Stockton, 1790).


Burton, J., *Principles of Religion the only Restraint from Wickedness*, a Sermon Preached at the Assizes... before the University of Oxford... August 7, 1746 (Oxford, 1746).


Field, J., ed., *Correspondence of John Howard, the Philanthropist* (London, 1855).


Foley, J., *Charges Delivered to the Grand Jury of the General Quarter Sessions of the County of Gloucester* (Gloucester, 1804).


Guthrie, J., Account of the Behaviour, Confession and Dring-Words of the Malefactors who were Executed at Tyburn, on Tuesday the 12th of April, 1743 (London, 1743).


Hare, P., A Sermon Preached to the Societies for the Reformation of Manners... (London, 1731).


Horne, G., Sunday Schools Recommended, in a Sermon Preached... 16 December, 1785 (Oxford, 1786).


Howard, J., An Account of the Principal Lazarettos in Europe... together with some further Observations on some Foreign Prisons and Hospitals and Additional Remarks on the Present State of those in Great Britain and Ireland (Warrington, 1789).


Mainwaring, W., An Address to the Grand Jury of the County of Middlesex (London, 1785).


Mark, Sir R., In the Office of Constable (London, 1778).


Nikill, D., Prison Discipline in its Relation to Society and Individuals (London, 1839).


Paul, Sir G.O., *General Regulations for Inspection and Control of All the Prisons... for the County of Gloucester*, 2nd edn., (Gloucester, 1790).


Percival, T., *Biographical Memoirs of the Late Thomas Bayley* (Manchester, 1802).


Purkis, W., *A Sermon Preached at Wisbech St. Peter's, at the Assizes... 6 August, 1771* (Cambridge, 1772).


Townshend, S., *National Thoughts, Recommended to the Attention of the Public* (London, 1751).

Tucker, J., *Hospitals and Infirmaries, Considered as Schools of Christian Education for the Adult Poor, and as Means conducive towards a National Reformation in the Common People* (London, 1746).


Watson, R., *Christianity Consistent with every Social Duty. A Sermon Preached at the University Church, in Cambridge, at the Assizes*... (Cambridge, 1769).


Whately, R., Thoughts on Secondary Punishment (London, 1832).

White, S., A Dissuasive from Stealing, 4th edn. (London, 1769).

Wibbersley, J., A Sermon Preached at St. Nicholas' Church, in Newcastle, at the Assizes... (Newcastle, 1752).

B. Secondary Sources


2. Printed Secondary Sources


Blumberg, A.S., Criminal Justice (Chicago, 1967).


Fitzgerald, M., Prisoners in Revolt (Harmondsworth, 1977).


Hill, C., Reformation to Industrial Revolution (Harmondsworth, 1969).


McIntyre, J., "Public Attitudes towards Crime and Law Enforcement", 
Annals of the American Academy of Political and Social Science, 

McKendrick, N., "Josiah Wedgwood: an Eighteenth Century 
Enterpreneur in Salesmanship and Marketing Techniques", 

Miliband, R., "The Capitalist State: Reply to Nicol Poulantzas", 
in J. Urry and J. Wakeford eds., Power in Britain: Sociological 

(Harmondsworth, 1970).


Munroe, P.B., "The Game Laws in Wiltshire 1750-1800", in 


Patterson, M.W., Sir Francis Burdett and his Times, 2 vols. 
(London, 1931).


Plumb, J.H., The Growth of Political Stability in England 

Pollard, S., "Factory Discipline in the Industrial Revolution", 

Poulantzas, N., "The Problem of the Capitalist State", in J. Urry 
and J. Wakeford eds., Power in Britain: Sociological Readings 

Radzinowicz, Sir L., A History of English Criminal Law and its 

Ramsay, M.N., "John Howard and the Discovery of the Prison", 


Rothman, D.J., The Discovery of the Asylum; Social Order and Disorder in the New Republic (Boston, 1971).


