THE STATE AND THE CULTURE OF VIOLENCE IN LONDON, 1760-1840

by

Gregory Thomas Smith

A thesis submitted in conformity with the requirements for the degree of Doctor of Philosophy
Graduate Department of History
University of Toronto

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0-612-41316-0
ABSTRACT

THE STATE AND THE CULTURE OF VIOLENCE IN LONDON, 1760-1840

by Gregory Thomas Smith

Doctor of Philosophy, Graduate Department of History
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This dissertation provides a broad historical survey of attitudes towards violence in late-eighteenth and early-nineteenth century English society. It is the first to contextualize evidence about interpersonal violence in metropolitan London. The dissertation explores the ways in which changing attitudes towards violence relate to larger issues of legal reform and to the remarkable shift in penal practices in this period.

The dissertation combines a close study of the records of various metropolitan courts with a more general assessment of popular attitudes towards the everyday experience of violence. The records of the court of King’s Bench proved a particularly rich source for this study, illuminating both the procedures of this court, as well as the motivations of litigants in cases of interpersonal violence. The records of the quarter sessions revealed significant changes in penal practice especially with regard to the prosecution and punishment of assault. In general, the courts began to take a harsher attitude towards violence in the late decades of the eighteenth century and made use of imprisonment to punish such behaviour more seriously than in the past. This shift in penal practice reflects larger changes in attitudes towards violence in English society.

Modifications to other penal practices were also occurring in this period. Violent punishment lay at the heart of the English judicial system’s repertoire of penal strategies. But as a consequence of the political and philosophical debate over the nature and rationale of judicial punishment, in concert with more mundane changes in the physical geography of the metropolis, violence and humiliation rapidly declined as central aspects of the English penal ethos. Through its
exploration of how violence relates to these larger issues of legal reform, and the notable shift in sentiment regarding penal policy during this period, the dissertation illuminates the complexity of social reform discourses, revealing the extent to which changes in attitudes towards violence, including violent punishment, drew upon deeper cultural norms for their legitimacy and moral backing.
ACKNOWLEDGMENTS

The Department of History at the University of Toronto, boasts a rich collection of talented, intelligent and inspired people, many of whom I have been fortunate to count among my friends. Their camaraderie and friendship has been the true reward of the graduate experience, but I offer particular thanks those who offered (perhaps unwittingly) helpful advice and criticism, or who supplied references or simply convivial company: Jerry Bannister, Paul Deslandes, Elsbeth Heaman, Michelle Hendley, Ken Hoague, Tim Jenks and Katheryn Robertson, Kim Kippen, Gerry Lorentz and Margaret Zokowski, Erik Lund, Allyson May, Chris Munn, Paul Murphy and Marcia Leous, Deborah Van Seters, Jane Thompson, Sherisse Webb, and Geoff Wichert. I am also grateful to the consistently courteous and helpful administrative staff in the Department of History for their support for graduate students, especially Jennifer Francisco and her predecessor Jan Hazelton.

It is a pleasure to thank the following people who read and commented on earlier drafts of these chapters and were of invaluable assistance in the late stages of writing: Megan Armstrong, Kevin Haggerty, Jane Harrison, Stephen Heathorn, Matthew Hendley, and especially Adam Crear. As well as reading chapters or hashing out arguments, Andrea McKenzie and Simon Devereaux have been the best of friends, especially through the final stages. And Thien Fah Mah and Raja Bhattacharyya have kept us happy and sane.

Professor Carolyn Strange of the Centre of Criminology served as a secondary reader and offered a great deal of very helpful criticism, useful references and support. Her faith in my work has meant a great deal and I am truly grateful for the numerous professional and personal courtesies she has shown to me over the years. Professor Barbara Todd of the Department of History also served as a secondary reader, and I thank her for her insights, as well as for hospitality in London and many other professional favours.

The Centre of Criminology at the University of Toronto has provided the consummate atmosphere for open and stimulating intellectual exchange. It has been my true intellectual home for many years. The directors, Richard Ericson, Clifford Shearing and now Rosemary Gartner, have always made the history junior fellows feel welcome and included in all of the Centre’s activities. The faculty and staff have been most generous with their time and support and it is a pleasure to thank Professors Tony Doob, Philip Stenning, Mariana Valverde, and Scott Wortley, as well as the administrative staff, Rita Donelan, Gloria Cernivivo, and Monica Bristol. Cathy Matthews, the former head librarian and Tom Finlay the current head and their staff have provided countless favours too. Many junior fellows, both past and present, have been sources of inspiration and insight: Myrna Dawson, Willem DeLint, Kelly Hannah-Moffat, Tammy Landau, Voula Marinos, Jane Sprott, Kim Varma, Kimberley White-Mair, Jennifer Wood, and Mary-Lynn Young.

The staff at the following libraries and archives in Canada and Britain have been most helpful and patient with my requests: in Toronto, Robarts Library, Inter-library Loan, Microtext, and the Fisher Rare Book Library, University of Toronto; Centre of Criminology Library, University of Toronto; Royal Ontario Museum Library; Balfour Halévy and the staff at York University Law Library; Law Society of Upper Canada, Osgoode Hall, Toronto; in Britain, the Bodleian Library, Oxford; British Library, London; Cambridge University Library, Cambridge; the Camden Local studies and Archive Centre; Mr. Jim Sewell and the staff (particularly Vivienne Aldous) at the Corporation of London Record Office; the Guildhall Library, London; Harriet Jones and the staff of the London Metropolitan Archive; Guy Holborn and the staff at Lincoln’s Inn Library, London; Middle-Temple Library, London; the Public Record Office, Chancery Lane and Kew; the Royal
London Hospital (Whitechapel), London; Sir John Soane's Museum Library, London; Trinity College Library, Cambridge; Wellcome Institute for the History of Medicine, London.

Donna Andrew of the University of Guelph has been very supportive of my work and has supplied me with many references and suggestions. Along with many stimulating conversations about eighteenth century London generally, I am particularly indebted to her for allowing me to make use of her research on public apologies in London newspapers. I would also like to offer individual thanks to Dr. Ruth Paley of the Public Record Office. She was kind enough to point out the untapped value of the King's Bench records to me at a very early stage in my research, a source which figures largely in this study. Jim Oldham of Georgetown University Law School was equally helpful in sharing his knowledge of King's Bench procedure, and kindly commented on the relevant sections of chapter two.

The influence of John Beattie upon this dissertation will be clear to those who know him, especially those that have had the good fortune to be known as a “Beattie student.” As the consummate academic and supervisor, he satisfied each of the disparate needs of the graduate student in his roles as mentor, critic, cheerleader, advocate, colleague, and friend. Though I learned much from him about eighteenth-century England, I learned more about what it means to be passionate and committed to the historian's craft. For all of this I thank him.

Most important and heartfelt thanks go, finally, to my family. My sister Carol and brother-in-law Glenn have shown steady encouragement throughout. Paul and Joan Geraerts were always there for me in London, and provided a home away from home. Peter, Irene and Michèle Gout have also been wonderful sources of encouragement, advice, and assistance. My parents, Marg and Bernie, deserve the deepest gratitude. They have always believed in me and have backed me with unconditional love, practical advice and humour, as well as with many other more tangible forms of support. Above all, I must thank my wife Denise. She has suffered through this project, through the highs and lows, as I have, but has been nevertheless unfailing with her love and support. She has shown incredible strength and patience and it is a true sign of her own outstanding qualities as a person, a partner and a friend, that she could always find the inner strength to lift my spirits and keep us both moving forward. My deepest thanks, with all of my love, to her.

Funding for this dissertation was provided, in part, by the Social Sciences and Humanities Research Council of Canada through a doctoral fellowship, and by an Ontario Graduate Scholarship. I would also like to thank the Department of History for nominating me for a Connaught Scholarship and also the Associates of the University of Toronto for their contributions to graduate student research travel grants. My time in London was made especially fruitful through a fellowship from the London House Association of Canada which enabled me to enjoy the amenities of London House and Mecklenburgh Square.
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ABBREVIATIONS

The following abbreviations have been used in the footnotes. Other works and sources are cited in the usual manner, with full citations in the first instance of their appearance in the chapter.

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<td>Add MS(S)</td>
<td>British Library, Additional Manuscript(s)</td>
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<tr>
<td>CLHA</td>
<td>Camden Local History Library and Archives</td>
</tr>
<tr>
<td>CLRO</td>
<td>Corporation of London Record Office</td>
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<tr>
<td>Eg MS(S)</td>
<td>British Library, Egerton Manuscript(s)</td>
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<tr>
<td>Abbreviation</td>
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<tr>
<td>GL</td>
<td>Guildhall Library, London</td>
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<tr>
<td>GM</td>
<td>The Gentleman's Magazine</td>
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<tr>
<td>HO</td>
<td>Public Record Office, Home Office Papers</td>
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<tr>
<td>J.H.C.</td>
<td>Journals of the House of Commons</td>
</tr>
<tr>
<td>J.H.L.</td>
<td>Journals of the House of Lords</td>
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<td>KB</td>
<td>Public Record Office, Court of King's Bench</td>
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<tr>
<td>LMA</td>
<td>London Metropolitan Archive (formerly the Greater London Record Office)</td>
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<td>LM</td>
<td>The London Magazine</td>
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<td>OBSP</td>
<td>[&quot;Old Bailey Sessions Papers&quot;] An Account of the King's Commission of Peace, Oyer and Terminer and Gaol Delivery of Newgate, held for the City of London and for the County of Middlesex at the Old Bailey.</td>
</tr>
<tr>
<td>PALA</td>
<td>Public Record Office, Palace Court, Westminster</td>
</tr>
<tr>
<td>P.D.</td>
<td>The Parliamentary Debates, from the Year 1803 to the Present Time 1&lt;sup&gt;st&lt;/sup&gt; series (1803-).</td>
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<td>P.P.</td>
<td>[Parliamentary Papers] Sessional Papers of the House of Commons, 1801-1900</td>
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<td>PRO</td>
<td>Public Record Office</td>
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<tr>
<td>Shortener</td>
<td>Description</td>
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<td>Rep.</td>
<td>Corporation of London Record Office, Repertories of the Court of Aldermen</td>
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<td>SP</td>
<td>Public Record Office, Secretary of State Papers</td>
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This thesis is a study of attitudes towards violence in England between 1760 and 1840. It concentrates, more specifically, on changing attitudes towards violence in the metropolis of London. This study deals with violence in the past, and reveals how links between order and authority are molded and bounded by cultural forces. Sociologists and criminologists, in looking at the modern world around them, pose questions similar to those raised here, but always with the aim of explaining the society we live in. But the historical picture of violence in the past that historians can reconstruct also has implications for the decisions and policies we make regarding the regulation of violence today. Despite our consuming fascination and anxiety with violence in the contemporary world, and the public's desire to see violent crime as a quantifiable social fact, what our modern figures reveal about long-term changes in social patterns remains less clear. Relatively little is known about the degree of violence in past societies, or how contemporaries distinguished truly unacceptable behaviour from behaviour which, while violent, was tolerated or accepted. We have yet to fully develop the historical benchmarks necessary to measure or compare contemporary violence to that experienced in the past. Indeed, the importance of attitudes towards violence and the relative acceptability or unacceptability of certain forms of public and private violence are only now receiving detailed examination. This is to be welcomed, since it is clear that the study of violence reveals certain aspects of both individual and community character, and historians can provide important insights into the ways in which violence has coloured social life in the past.1

The past thirty years has seen much important work from several scholars on the social history of crime in eighteenth and nineteenth century England. However, the majority of that scholarship has been weighted towards the discussion of property offences and surprisingly little attention has been paid to those forms of violent crime—chiefly assault—that also brought men and women frequently before the law. The focus on “social crime” that came out of the emphasis on property offences in the criminal justice history scholarship of the 1960s and 1970s, led historians to posit rather narrow explanations of how most eighteenth-century men and women regarded and were treated by the law and by the legal institutions of the state. Within that rubric, the operation of the law became a tool of oppression. The law was interpreted as an instrument of ruling-class domination. Rather than constituting a universally acknowledged criminal offense, offences against property were seen as manifestations of class struggle and resistance to domination, or as the assertion of common rights and inherited traditions. Such analyses worked well to force a Marxist paradigm upon the eighteenth-century experience of criminality, especially in their explanations of property crime. But notably absent from many of those early studies was any extensive discussion of the role that violent offences played in past societies. Crimes of interpersonal violence were not usually included in these examinations; thus, it is less clear how they fit into this interpretation of how the law operated to enforce class rule in the past.

2 D. Hay et. al., eds. *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London: Pantheon, 1975) dealt mainly with property offences, as have most studies that have followed in its wake. John Beattie deals with violent offences in his *Crime and the Courts* (ch. 3) but dismisses a study of assault prosecutions on the grounds “that they do not form a category of offense that can be usefully analyzed from the court records” (75-76). For a recent study that does demonstrate the utility of such records, see Peter King, “Punishing Assault: The Transformation of Attitudes in the English Courts,” *Journal of Interdisciplinary History* 27:1 (Summer, 1996): 43-74.

The substantial expenditure of time and resources on the prosecution of violence offences by eighteenth-century Londoners has attracted little historical study, even though violent crime frequently brought large numbers of offenders before the courts. There also has been virtually no discussion of the processes by which minor acts of violence were regulated and punished during the period in which the most substantial reforms to the criminal law were realized. As a result, the story of how interpersonal violence was dealt with, how the courts punished it, and how attitudes towards violence in society changed and evolved in this important period are virtually unknown. This has been true despite the fact that the prosecution of assault continued to dominate court business in England throughout the eighteenth and well into the nineteenth century. Until recently, the bulk of attention given to historical studies of interpersonal violence has focused on homicide. But by the late eighteenth century, homicide had become a relatively rare form of crime, accounting for an average of only four convictions per year in London and Middlesex between 1749 and 1771.4 The more familiar experience of interpersonal violence came from witnessing or participating in acts of non-lethal violence, from hurling insults and (perhaps) missiles, to brawls and fights. More recent work has begun to show the significant place of the prosecution of non-lethal violence in English courts. Jennifer Davis's work on the later nineteenth century has shown that assault was the second most frequently prosecuted offence in London police courts.5 Peter King has located changes in the punishment of assault similar to those discussed in this dissertation for the same time period in Essex courts.6 Feminist scholarship has opened up the discussion of interpersonal violence through

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6 King, “Punishing Assault,” passim.
closer examination of the specific issue of domestic violence, though much of this work has concentrated on the period after 1800.7

Of course many manifestations of interpersonal violence could similarly have been read as examples of resistance to authority or as class-based defiance. But the fact that violence to the person is — by definition — personal, puts a different spin on the implications of the offence. The experience of violence often generates an added dimension of passion which becomes a key motivation behind the desire for restitution or compensation when one is victimized in this way — to a greater extent, one might argue, than in cases of property crime, and regardless of the victim's social class. The raw intensity and tactile reality of the experience of violence, and its usually more tangible consequences — from a bruised ego, to a black eye, to a broken neck — were much more likely to excite a passionate response. For many, the desire to get mad outweighed their desire, or ability, to get even. Thus, many times, the response to violence was immediate: one act of violence often led to further violence. In other cases and in other circumstances, persons of civilized habits and manners were more likely to manifest their anger in a stubbornness to see justice done and to make the offender pay — literally and figuratively. I argue that as social pressures increased to prevent or at least repress the desire to physically strike back, the courts played a greater role in facilitating strategies for containing further violence. The ways in which individuals dealt with their victimization varied widely, as we would expect them to. Thus, it would be pointless to offer some grand scheme or overarching explanation for why people responded to violence in the ways they did.

did: to do so would be to gloss over the deeply contextual nature of violence. Much of the complexity of violence lies in the unique confusion of emotion, reason and circumstance within discrete moments of daily social experience.

The place of the law in all of this is also crucial. It provided the formal expression of the boundaries of acceptable behaviour in English society. However, with regard to interpretations of the kinds of violence which form the chief focus of this study—that is, interpersonal violence—the law of eighteenth century England was curiously silent. The most serious, violent offences—murder, rape, robbery with violence—were recognized in law. But except in certain very narrow cases, lesser forms of violence to the person, most notably assault, lacked rigid, legal definition until the early nineteenth century. In other words, before the nineteenth century, the English state had not formally defined a very wide range of acts involving violence to the person as potentially serious crimes. Assault was such an offence, but was punished as a misdemeanour. This meant that unless an offender was charged with a very specific form of assault under a statute, he or she was liable only to the misdemeanor assault charge. The result was that many serious acts of violence had no predetermined punishment to mark society's broad disapproval of such behaviour. There was almost no public interest in the punishment of non-lethal interpersonal violence, generally speaking, before the late eighteenth century. But as attitudes towards violence generally began to consolidate, so too the courts came to reflect those attitudinal changes and began to take a more serious interest in punishing violence in ways that met with the will of the public generally.

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8 Infanticide was also punished under the law, although for unmarried women, after 1624, the offence with which they were charged was concealing the birth of a bastard child (21 Jas. I, c. 27).
Defining Violence

As a subject of academic inquiry, "violence" has attracted scholarly interest from a wide range of disciplines. It seems clear from historical, sociological, and anthropological studies that violence is a deeply rooted constituent of human experience. All societies rationalize or condone to some degree specific violent practices—such as the duties of a soldier, or elements of certain sports. But what does it mean when something is labeled as "violent" in the pejorative sense? We generally know what is meant by the claims that we are living in a violent society, that violent crime is up or down, or that there is too much violence in our schools, in prisons, or in the movies. In such instances, "violence" is often used as a catch-all term signifying a range of actions or behaviours which have a certain set of unwanted, or unintended consequences. Thus violence is frequently seen as an aspect of something else—a "violent" demonstration, or "violent" altercation—and when we talk about violence in these terms, most of us understand that what we mean is physical harm, or the threat of physical harm to the body.

Whether or not "violence" as some absolute entity was increasing or decreasing in early modern English society is as vexing a question to pose historically as it is for our own day. What historians have been able to discern is that even if "violence" itself is immeasurable, it is clear that from the seventeenth century onwards sensibilities about violence and the social relations that regulated its relative tolerance as a part of social life were slowly beginning to change. On the other

hand, it seems clear that the transformative power of violence is also important to note, as well as its function in defining community. Although the importance of attitudes and sentiment within the cultural history of daily life is now beginning to receive attention from scholars, the question “How violent was early modern English society?” remains largely unanswered. There has been little work done on the history of violence, and our sense of how acceptable certain forms of public and private violence were in the past, including attitudes towards violent crime, has been virtually ignored. It is impossible to say whether, by the end of the eighteenth century, England was a more or less violent society than it had been in some previous period. Other questions might also be asked too: how did English men and women of the eighteenth and nineteenth centuries speak of interpersonal violence? What constituted the boundaries between acceptable and unacceptable behaviour in their minds? When and where was violence criminal? Answering these questions provides an entry point into a broad discussion of violence in society, since variations in the prosecution of interpersonal violence and in the punishment of offenders for violent crime reveal something about broader attitudes towards the acceptability of violence in everyday life.

As this thesis will argue, violence is not a static and unchanging phenomenon; it is quite the opposite. Still, ideas about what violence comprises do share common elements over long time periods. For example, we can probably agree that violence includes the use or threat of physical force. But what is more interesting and, in the end, more relevant to a clearer understanding of daily life in the past, are the degrees of acceptability for such behaviour, revealed in the various ways that

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societies, from time to time, have reacted to and tried to deal with what they consider violent
behaviour for their time. “Violence” as an aspect of social life, is often subject to interpretation, and
its tolerability is subject to negotiation. This makes any discussion of it much more tentative and
precarious than many historical subjects. However, looked at in another way, violence is not terribly
different from other historically constructed notions, like “class” or “elite” or “plebeian,” which too
share the characteristic of constantly being revised, reconstructed, and recast as a result of the
ongoing changes in culture that give such terms their meaning. Thus my intention is less to offer a
grand definition of what violence is, than to explain what people in the past thought it was, and to
assess changing attitudes and anxieties about violence in the late eighteenth and early nineteenth
centuries.

Why and how past societies created their particular cultural boundaries around violent
behaviour are questions of cultural history. Answers to these questions, however, are bound to be,
at best, tentative—providing a series of historical snapshots. Culture conditions violence and
violence conditions culture; the relationship between the two is dialectical and susceptible to change
over time, with the result that our definitions of violence are constantly in flux.\(^\text{12}\) The specific
meaning of violence in any particular time and place is a function of a number of variables—
political, economic, administrative—all of which are constituents of the social “culture.” Violence is
therefore culturally constructed and, as a cultural construct, violence is constantly being defined and


redefined by individual and collective experience. A definitive explanation for why violence was treated as it was in the past is therefore unlikely. Fortunately, though, for the period of English history we are dealing with here, there exists considerable evidence of how those new boundaries of violence were being negotiated.

For the purposes of the following discussion, violence will be defined as the use of direct or implied physical force, to the body or to the property of another. John Beattie has proposed a similar definition of violence within a legal/judicial context, describing it as “destructive force used as a means of exerting one’s will, and the achievement of ends by the infliction of pain and the threat of injury.”¹³ But clearly, if we accept Beattie’s definition, any discussion of violence in English society must move well beyond its legal constructions.

The degree to which physical aggression among men and women was an accepted form of interpersonal behaviour is clearly an important dimension of the culture of violence. In any study of violence, we must rely on certain indicators in order to explain trends or assess the prevailing attitudes. Especially in our own day, violent crime is often taken as a primary indicator of levels of violence in society. But such conclusions are generally based on statistical models derived from sophisticated or at least more complete samples of large data pools. For the historian working in the early modern period such statistical material is much more problematic when it is available and is, in general, harder to come by.

To be sure, the legal definitions of some forms of violence had been solidified long before the eighteenth century, and an historical study of behaviour condemned as unacceptably violent could be constructed from legal records alone. Historians who have attempted to reach tentative conclusions about the level of violence in English society, at least over the past five or six centuries,

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have turned to records of homicide prosecutions as they offer the best hope for a nearly complete account of that species of violent crime. Since murder consistently aroused near universal abhorrence among all social levels, it seems to be a crime that offers a generally consistent gauge for the study of violence. But the legal definitions of homicide were also changing. The eighteenth century saw the dis-entanglement of murder from non-felonious homicide as the definition of manslaughter was refined over time and through experience. This adds a new layer of complexity to the study of eighteenth-century homicide. And although I would agree with the premise that statistical trends in violent crime may be reflective of larger changes in the incidence of violence in society, it seems clear that a complete picture of such changes cannot be constructed from looking at only one manifestation of violent crime, especially one that has been of declining statistical significance for much of the period under study here. Homicide was consistently understood as the extreme form of violent interpersonal behaviour, and worthy of not just punishment but severe punishment. According to the great eighteenth-century jurist, William Blackstone, murder was "the highest crime against the law of nature that man is capable of committing...a crime at which human nature starts, and which is I believe punished almost universally throughout the world with death." It is thus no surprise that prosecution rates were high and that it continued to be punished seriously throughout the eighteenth, nineteenth and twentieth centuries.

The grey area—when it came to defining what kinds of violence would be sanctioned under what circumstances—came in the range of violent actions short of murder. Here the cultural and

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legal discourses of the eighteenth century remained imprecise, lacked consensus or fixed determinants. Juries, moralists, parents and neighbours who confronted non-lethal violence constantly groped for poles of reference and firm thresholds of toleration to determine what response, if any, was necessary. Until the latter half of the eighteenth century homicides by accident or manslaughter were not clearly distinguished within the law. Even more vague was the blend of official and unofficial sanctions against all forms of assault. Most assaults were prosecuted as misdemeanours; only very specific forms carried statutory penalties. Before the early nineteenth century, very serious assaults—even those amounting to attempted murder—were still being prosecuted and punished as misdemeanours. A wide range of violent behaviour was neither defined nor controlled by any official state sanctions. Instead, before the early nineteenth century, the sanctions that were imposed by judges and magistrates to punish violence and physical aggression were largely of their own devising, and thus drew upon broader, popular notions of justice and a familiarity with prevailing cultural constructions of acceptability and unacceptability for their popular justification and public support.

A truly comprehensive study of violence must recognize the broad cultural and social forces that legitimate and sustain the boundaries between violent and non-violent behaviour, or between acceptably and unacceptably violent behaviour, as well as the legal and social definitions that help to contextualize those boundaries. The role of violence in the relationships between spouses, parents and children, employers and employees, and between strangers on the street are markers, or cultural signposts, pointing to where those definitional limits might lie. By analyzing the extent to which those definitions were known and understood by the vast majority of the population, within a discrete historical time frame, we can begin to arrive at a better understanding of what past societies found unacceptable, brutish, cruel or degrading, and inherently violent and, more importantly, why.
Transforming Sensibilities

The late eighteenth century is often singled out as a period of change or transition, from an old world order to something more recognizably modern. We see this in the broad transformation of the institutions of the central and local government. But there were also notable changes in the wider social and cultural world that reflected this transformation. Traditional elements of what some still refer to as elite culture, such as fashion, education, the fine arts, music, literature (both high and low), were all in a notable state of flux. In addition, as other historians have shown, more universal cultural changes in economic relationships and gender roles were both being tempered by the spread of consumerism. The last decades of the eighteenth century witnessed the convergence of diverse strands of thought, sentiment and experience, each bearing their own unique pedigree and each imparting a unique flavour to the English cultural milieu.

It is my argument that another of the subjects to be affected, both directly and indirectly, by these heterogeneous impulses was the role of violence in social life. The intrinsic nature of violence in society was not something that went unrecognized before the late eighteenth century. However, what is novel about the period covered by this thesis is that there occurred much more obvious changes in the way English men and women felt and thought about violence—not only in an abstract, or theoretical sense, but in ways that had real and detectable implications for the established thresholds of its tolerance within the framework of everyday life. Therefore this thesis argues that through a broad process of countless changes in the wider socio-economic structures and in English

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culture generally, the traditional underpinnings of the place for violence in English society were eroded relatively quickly, as violent behaviour—physical, psychological or emotional—lost much of its former legitimacy within the web of social control. Where violence was once tolerated to a large extent as a means to control and discipline others, by the end of the eighteenth century, violence in the public sphere had become disengaged from the normal and acceptable routines of everyday life. As well, violence in the private sphere—such as domestic violence, or assaults between individuals—was drawn more clearly into the realm of public concern, largely through the changing penal practices of the courts. Efforts to contain and control violence in many of its various manifestations gained wider social sanction as public admonition of violent behaviour penetrated deeper into the habitual rhythms of daily life in a civilizing society.\(^\text{18}\)

One might first suspect that such changes in the punishment of assault were the result of new legislation. However, the changes documented here preceded alterations to the law. Peter King has recently argued that changes in punishment patterns for assaults in Essex exhibited this trend towards greater severity too, but concludes that that change in penalty, in the case of assault at least, cannot be explained “purely by reference to a new repugnance toward violence, because it does not explain the timing of the change.”\(^\text{19}\) However, I would argue that such trends are representative of the broader changes in attitudes that were occurring at this time, though we must look well beyond the writings of judges and magistrates in order to detect the kinds of changes that could manifest themselves in changes in penalty.

In recent years, historians have developed a better understanding of important elements of this larger cultural shift. The expansion of the commercial world, rapid urbanization and, to some

\(^{18}\) For a similar argument which reveals an increasing “sensitization to violence” as an explanation for declining tolerance of manslaughter in nineteenth-century Philadelphia, see Roger Lane, *Violent Death in the City: Suicide, Accident and Murder in Nineteenth-Century Philadelphia* (Harvard: Harvard University Press, 1979), 67-70, 75-76.

\(^{19}\) King, “Punishing Assault,” 60.
extent, industrialization, posed new challenges to old patterns of behaviour and social interaction in ways which made the role of violence less ambiguous than it had been in the past. Violent encounters came to be considered more jarring, more out of step with what counted as proper or polite behaviour, which increasingly was gaining acceptance as the norm. Such changes in the way violence was regarded had much to do with the transformation of English culture generally, and the processes of normalization and entrenchment which came to identify the English as “a polite and commercial people.” 20 These changes in attitudes towards violence, I will argue, were reflected in a reciprocal way, in the manners and methods by which those institutions and cultural practices sought to alter the experience of violence in everyday life.

There still remained many circumstances in which the ready resort to violent behaviour was understood as a natural and even accepted response in particular situations. Violence was used to discipline and control others, from parents controlling children, to masters controlling servants, to strangers maintaining their standing, authority and honour against others. Even in situations where violence could be construed as criminal, the context and degree of violence used established the boundaries or thresholds of its punishability. However, even though violence was, as Beattie has argued, part of the “ordinary business of human relations,” the use of violence by men and women against other men and women was never condoned in all circumstances. 21

One of the central claims to be made here is that, whether or not levels of violence were rising or falling in some absolute sense, it is clear that in the second half of the eighteenth century English men and women expressed more anxiety about violence in all aspects of their social life than they had during the early and mid century. All societies are anxious to some extent about violence and disorder. What is significant about the period under examination is that it marks a point in

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20 Langford, *Polite and Commercial People*.
21 Beattie, “Violence and Society,” 41; also see idem, *Crime and the Courts*, ch. 3.
English history when the institutions of government and people at nearly all levels of society took steps to minimize, marginalize, rationalize, and regulate the experience of violence in their daily lives to a degree that was unknown in the past. The story is one of unevenness, flux, regression and progress, due in part to the different trajectories of evolving gender roles, class relations, political pragmatism, economic opportunism, and the unevenness of social change generally—all of which played upon the attitudes towards violence in society.

A more comprehensive understanding of violence in society requires greater attention to the personal experience of violence than has been shown by historians thus far. The study of a wide range of violence, particularly minor crimes of violence, is one of the ways into a broader discussion of the attitudes towards violence in society. One point of entry into the experience of violence in everyday life is through the records of the courts. For example, as we shall see, we can detect a distinct shift in attitudes towards interpersonal violence in the attitudes of the courts towards assault. The study of the prosecution of violent behaviour in the courts also helps us to establish the thresholds of acceptability regarding interpersonal violence while leading us to question the nature of the social and cultural context within which those prosecutions were pursued. Since we are dealing here with the period before regular and effective policing by a specific institution of the state, the responsibility for the regulation of violent behaviour fell largely upon the shoulders of individual citizens. Thus variations in patterns of prosecution would likely be the result not so much of short-term initiatives to “crack down” on a presumed crime problem but, I would argue, the reflection of deeper and more profound changes in beliefs and in networks of power inherent in society and culture.

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22 Charles Tilly notes a similar trend, arguing that by 1833, “the proportion of claim-making events,” which in his study refer to political rallies or work stoppages, “that included physical violence had greatly declined” (Popular Contention in Great Britain, 7).

23 The first regular, paid police force was established in 1829.
Further evidence for these kinds of changes occurring within the period 1760-1840 lies in the significant changes to penalty. Changes in both the conceptual aims of punishment as well as in specific penal practice, especially in the use of violent punishments directed upon the body, were realized within the context of longer-term changes in attitudes towards violence, and largely within the eighty-year period studied here. I argue that these changes in penal practice, and particularly in the use of whipping and the pillory, demonstrate aspects of this general trend away from public displays of violence. This deeper appreciation of the complexities of violence and attitudes towards it, forms an essential part of the cultural milieu within which the most significant changes occurred.

What explains these changes in attitude and desire is more difficult to pinpoint. The evidence for different explanations is fragmentary and scattered through a disparate range of sources. We must remember that what we are talking about are questions of degree—about thresholds, or lines in the cultural sand—between what is and what is not acceptable. One reason why there is so little evidence for these changes in degree is that they were initiated at the most basic level of social action. The kinds of changes being noted here, when broken down to components capable of historical analysis, are individually small and did not always bear a logical relationship to what came before or what followed them. In the daily practice of the law, judges and magistrates simply began to exercise the wide, discretionary power accorded to them, substituting new punishments in place of the old. Regrettably, their reasons are unrecorded. However, we may still gain important insights by historically re-constructing those patterns of judicial practice, and by asking what they reveal about more widely shared cultural boundaries, and the limits of tolerance unique to that culture. It is also instructive to try and unpack some of the possible factors which may have influenced these people to make the decisions they did.

Some shifts in the thresholds of toleration of violence were the result of structural changes to the institutions of government which had, for a long time, been assumed to be responsible for the
maintenance of public order. In particular, we may point to the criminal justice system which, by the later eighteenth century, began to exercise that power with greater fortitude. Other changes came in response to the new realities of social life, particularly in the metropolis, as the business of punishing all sorts of offenders grew more onerous. The (perhaps) unintended consequence of these myriad individual decisions regarding the control of violence was also, first, to undermine the legitimacy and probity of punishments that concentrated on the body and second, relatively quickly, to do away with those punishments that no longer seemed to "fit" with the climate of the times.

Uncovering the root of violent experience in the past is extremely difficult and so the historian must make use of those sources that are available. Records of such complex human experiences, even those which may draw greater notice because of the almost instinctive interest in events labeled as "violent," are difficult to come by; and even when documented accounts of violence do exist, they are almost always reconstructed retrospectively. Newspapers are helpful in some respects, especially in their descriptions of public violence (for example riots, or press gangs) in action. More revealing are the surviving court records, especially those that have recorded the voices of men and women from the past who were victims of violence. The legal records provide historians with a valuable resource for the study of such experiences. They offer one way of assessing the degree to which early modern England differed from later periods in terms of its violence and lawlessness.

This thesis demonstrates how the records of various English courts—some of them previously unexamined for the study of violence—may be used to provide the kind of detailed information about the raw, personal experience of violence in everyday life that fleshes out this story of cultural change. These records also reveal evidence of how the law in early modern England regarded such behavior, and how it punished it. I argue that through an examination of one of the more commonplace forms of interpersonal violence—that is, through the prosecution and
punishment of assault—we can enhance our understanding of attitudes towards violence in English society. The deeper significance of the judicial prosecution of violence can only be appreciated when legal records are integrated with other material illustrative of attitudes towards violence. The operation of the law is thus taken to be a part of a larger cultural process, and how and why the courts operate as they do is reflective of the broader culture of the society. The court’s job is to reinforce the established boundaries of toleration among violent behaviours: the formal legal definitions are played off of the cultural currents of opinion in every case that comes to court, in ways that help to contextualize the violent behaviour under examination. Once we can grasp this process of cultural dialogue, or the process by which those boundaries were established, we can begin to arrive at a better understanding of what past societies found unacceptable, brutish, cruel, or degrading.

A “Polite and Commercial People”?

The economic boom of the latter half of the eighteenth century, itself the result of various factors, led eventually to a slight increase in disposable incomes across a fairly wide section of the population, which, in turn, fed a surge in consumption. The explosion of printed material and the rapidly expanding markets of commercial activity made for an unprecedented leap in the opportunities for the average metropolite to experience and to gain knowledge of the larger social world. The rise of commercial society and the forging of new networks of sociability, in large part due to expanding economic and demographic forces, forever altered the nature of interpersonal relationships. Concomitant with these more tangible changes were an equally important collection of attitudinal or philosophical transformations which emerged partly from the challenges and

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24 See the works cited in note 17 above.
uncertainties thrown up by modern social life. Of particular importance to the subject of violence are the obvious changes in this period in popular sensibilities, in sympathetic feeling, or in sentiment for other human beings, especially for the vicarious experience of pain and suffering.25

Some might argue that the changes that can be seen in attitudes and conceptions of violence are evidence of a general trend in “humanitarianism” or in the progress of “civility,” or in “squeamishness.” Although it would be wrong to discount entirely a role for such ideas in the broad cultural changes evident in this period, I think it is important to avoid whiggish explanations that rely solely upon such ideas, and over-emphasize the degree to which they were established as the dominant cultural ethos. Rather, it seems more useful to see such ideas as part of the much more extended ebb and flow of discourse on the nature of what constituted a modern, orderly, respectable, rational, and efficient society.

How that discourse took shape, and how certain ideas emanating from that discourse became fixed in the wider cultural sphere is a complex process, and one that remains to be fully explained. One part of this explanation comes from Thomas Laqueur, who argues that at the end of the eighteenth and beginning of the nineteenth centuries, the narrative form, as a means of conveying information about life experience in much more realistic terms, experienced significant growth with the rise of the novel and the expansion of newspapers and other printed texts. Various literary forms—including novels, parliamentary inquiries, and autopsy reports—he argues, developed a new degree of sophistication and realism. With the increasing sophistication of the stories about the experience of pain and death by other “ordinary people” in what Laqueur calls “humanitarian narratives” the empathetic connections between the reader and his or her subject became more

It is easily discerned. The cultivation of sympathy lay, he argues, in the detailed stories of suffering, pain, and the corporal experience of another human being. When they were read in newspaper accounts, in magazines, or in pamphlets, these narratives shrunk the social distance between reader and subject in ways that “bridge the gulf between facts, compassion and action.” In short, these stories of pain and suffering helped to broaden the compass of sympathetic feeling. Laqueur concludes, “the extension of compassion to others and the moral imperative to act on their behalf depend on habits of feeling and theories of causation that are also the foundation of the new sorts of narrative” that developed at the end of the eighteenth century.

The development of the “humanitarian narrative” that Laqueur points to might be regarded as a more specific example of what Thomas Haskell articulated in his broad interpretation of the developing connections between humanitarian sentiment and capitalism in the century after 1750. In a seminal article, Haskell argues that the expansive worlds of the market and of conscience are coincidental. Humanitarian sensibility grew with the spread of market discipline, because the “rise of capitalism” effected deep changes in “perception or cognitive style.” Humanitarianism was thus the product of more than just altruism or “enlightened” sensibilities on the part of a vanguard of middle-class reformers. The truly fundamental forces of change were inherent in the market itself. It is not that capitalism caused humanitarianism; rather, that capitalism was the force or “precondition” behind the changes in cognition which “just happen[ed] to have been the force that pushed causal perception across the threshold that had hitherto made...human suffering seem a necessary evil.”

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27 Ibid., 179.
28 Ibid., 204.
30 Ibid., 342.
31 Ibid., 563.
The changes wrought by the spread of market capitalism encouraged new kinds of human relationships, which made new applications of morality (in Haskell’s view) or sensibility (in mine) “technologically” possible. Alterations or modifications in feeling for the sufferings of others were more easily accomplished within the new cultural milieu of the post-1750 era, because acting on those feelings could effect shifts in habitual practice that were not so far out of step with the “ordinary, familiar, and certain” rhythms of daily life. The suggestion seems to be that a greater proportion of people subscribed to those feelings, and that the advantages of doing away with “sites” of human suffering—public executions, slavery, physical torture—were far outweighed by the increasingly limited returns for their retention. Also, once inaction in the face of such suffering became more familiarly seen as a contributing cause, and as intervention seemed both possible and worthwhile, it became morally and psychologically “irresistible” to do something to alleviate the pain and suffering of others.

Though Haskell’s task was to explain the particular motivations of those interested in the abolition of the slave trade, his insights into the deeper motivations of cultural and intellectual change may be taken and applied to the history of the circumscription of violence being discussed here. For example, Laqueur’s “humanitarian narratives” might be seen in Haskell’s terms as contributions to the knowledge base of moral experience necessary in forming more complex “recipes” for effecting humanitarian reform. These came about more directly, in Haskell’s view, in the “sweeping endorsement of self-control and all the traits that accompany it” that the expansion of the ideas of market discipline engendered. What Haskell sketches for us, then, is a process: “we are not concerned with individual episodes of human kindness and decency...but with a sustained,

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12 Ibid., 358n.
13 Ibid., 358-59. For a study of literary depictions of actual “sites of suffering” in the eighteenth century, such as Tyburn and Newgate, and their impact on the process of sympathetic identification, see Van Sant, *Eighteenth-Century Sensibility and the Novel*, 54-57.
14 Ibid., 361.
collective pattern of behaviour," and one which served to expand the moral universe in fundamentally important ways.

Other ways of expanding that moral universe that were, in part, a result of the spread of capitalism have been highlighted by historians of political philosophy. Many of them have demonstrated that it was the latter half of the eighteenth century that witnessed the emergence of "civil society": that is, an advanced, commercial civilization whose networks of socialized interdependence drew less upon benevolence, social hierarchy and sympathy and more upon vanity and self interest. From at least the sixteenth century, social relationships became less dependent upon formal codes of chivalry and honour, as the popular acceptance of formal social divisions that perpetuated such codes began to break down under the weight of commercial and religious pressures. In their stead, at least in Britain, new social networks were formed within a larger cultural world of private citizens, pursuing "private vices" as Bernard Mandeville styled them, and increasingly doing so as a dissonant, anonymous society. Traditional bonds of loyalty and honour to one's clearly defined social betters were replaced by new bonds of approbation. As Marvin Becker argues, "public approval fostered by public opinion" replaced old ways and "became the cement of community." With the decline of "traditional obligations, responsibilities, and liabilities...coupled with the downsizing of the claims of an honour culture," Britain moved haltingly and not entirely smoothly into a new stage of human development. At one level, there is evidence of this transition in the new and "avid desire of individuals to express good taste in all things, from art to music to

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35 Ibid., 360.
37 Becker, Emergence of Civil Society, xix.
38 Ibid., xxii.
table to furnishings.”

Taken further, these changes were also going on at a deeper level, as new social codes and attitudes became inscribed as normal behaviour, and as what the French cultural historian Robert Muchembled called “collective sensibilities” or the “general cultural codes and rites which transmit values through norms” were fundamentally altered.

This emerging “civil society” was marked by new uses of language too, including “a lexicon of terms denoting shades of sensibility.” Indeed, the word “sentiment,” which had originally denoted only the potential to experience the senses, “now conveyed the meaning of a quick sense of right and wrong in all human actions.”

Becker goes even further, arguing that civil society brought with it a new set of rules governing social organization: “it was as if sympathy had replaced the sterner ties of duty and obligation. This was part of a process by which ties and bonds among the citizenry were being psychologized. One might argue…that a deep sea-change from empathy to sympathy was at centre stage in the eighteenth century.”

This may indeed be going too far, but the less ambitious point, that notions of sympathetic feeling and experience exhibited a new character by the latter half of the eighteenth century, seems highly relevant to the explanation of broad changes being assembled here. Also, of particular interest to this project, is Becker’s notice of the

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39 Ibid., xix; Norbert Elias also notes the connections between the penetration of ideas about market capitalism and the civilizing process. In particular, he examines how they contribute to the development of self-restraint. In the History of Manners, he argues, “restraint on the instincts is at first imposed only in the company of others, i.e., more consciously for social reasons…This slowly changes as people move closer together socially and as the hierarchical character of society becomes less rigid. As the interdependence of men increases with the increasing division of labor, everyone becomes increasingly dependent on everyone else, those of high social rank on those socially inferior and weaker. The latter become so much the equals of the former that they, the socially superior, feel shame even before their inferiors. It is only now that the armor of restraints is fastened to the degree which is gradually taken for granted by people in democratic industrial societies” (Norbert Elias, The Civilizing Process, I. The History of Manners, II. State Formation and Civilization, Trans. Edmund Jephcott, [orig. pub. 1939; Oxford: Blackwell, 1994], 113).


41 Becker, Emergence of Civil Society, 57.

42 Ibid., 58.
“declension” of the need for ritual and ceremony in the new ways of social, economic, and political bonding within the emerging civil society.

These changes in sensibility, social organization and culture identified by these economic, cultural, and intellectual historians, can be usefully examined through a discussion of the changing attitudes towards violence in society. Specifically, we can detect aspects of these changes in both the increasingly severe punishment of unsanctioned uses of violence by individuals in daily acts of cruelty and brute physicality, as well as in the state’s retreat from the use of violence in highly ritualistic, painful, physical punishments. Other historians have focused on the transformation of punishment, and the works of Foucault, Ignatieff, Beattie, McGowen, Cockburn and Gatrell, among others, have done much to fill out the story of changing penal ideas and practices from the early modern period to the modern.43 Capital punishment and the importance of public executions have been taken by many of these authors to typify the violent nature of English penal practice generally. Historians often make explicit or implicit links between punishment and the wider social context by explaining how violent punishments served a violent society.

The special place for the public execution in eighteenth-century English culture is perhaps the most paradoxical feature of the criminal justice system. In an age in which “reform” and “innovation” were not just platitudes, but objectives of social and political change, the gallows stood as a grim reminder of the permanence of old customs and of the moral ambiguity and technological limitations of the criminal law. The gallows, like its lesser siblings in the family of punishments, the pillory and the whip, were utilized because of their powerful, sensual functionality. All of these

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punishments were designed to inflict physical pain, to induce shame in the offender and his or her friends and family, and to terrify the watching crowds.

In the case of the gallows, as V.A.C. Gatrell points out in his recent study, what the crowds saw was a macabre, often brutal scene. People executed on the scaffold at Tyburn and elsewhere “did not die on it neatly.” Gatrell sets himself the task of explaining how those who experienced such punishments might have felt, and how those who watched such punishments claimed they felt. It is clear from Gatrell, and others, that death at the gallows was a death of violence and torment, but what is left unclear is the relationship between what people saw at the scaffold, and what they felt about the experience as an example of state sanctioned violence.

The carnivalesque element among the crowds along the road to Tyburn may have threatened to subvert the power dynamic between the state and the condemned convict, and anti-heroes may have been created, but why deny the validity of shock, or horror, or revulsion or “squeamishness” of others in the crowd? Does it not seem reasonable to assume that the “squeamishness” onlookers were feeling came in reaction to the violence and barbarity that they acceded in witnessing? And given that much of the English state’s repertoire of punishments relied upon violence to achieve their messages of justice and control, it is not surprising that all of these punishments came under attack at roughly the same time. The reaction to the violence of these punishments is a common theme that has not received adequate consideration from historians. Perhaps the persistence of anxieties about the scaffold scene, which continued to surface right up until the abolition of public hangings in 1868, are indicative of deeper anxieties about the display of public violence which had already been assuaged in the case of other capital and corporal punishments in the decades under examination here. Why the abolition of behaviour that perpetuated human pain and suffering

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44 Gatrell, Hanging Tree, vii.
should not be seen as a genuine end in itself, is a question often ignored by historians and social theorists seeking to assign equivocal motives to those historical figures who called out for reform.

It might be helpful to interpret the closer scrutiny and apparent decline in the level of acceptability of violence in English society as aspects of what Norbert Elias has called the "civilizing process." By this he means a pattern of shifts in cultural attitudes and ideas about how human beings interact in different spheres of activity, such as the home, workplace, street, community, and so on. The concept that Elias outlines is not a state or phase, but rather, a blind process or series of blind processes, that are reflected in the individual conduct of men and women in their daily lives, in both unconscious and self-conscious acts. My allusions to a "civilizing process" are in keeping with the kinds of changes Elias began to elaborate in his study of broad shifts in sensibilities, manners and social structure in Western society since the late medieval period. Elias's project did not deal with changes in forms of punishment as an explicit example of the civilizing process at work, but others have shown that Elias's work offers a heuristic model suitable to the study of the cultural underpinnings of penal institutions and penal practice. In particular, Elias's methodology, involving a close study of the minutaiae of table manners and the translocation of all bodily functions to the realm of intimate experience, reveals how modifications to patterns of conduct regarding the everyday rituals of life relate to significant transformations in more general phenomena. Similarly, I am suggesting here that through a close study of the techniques of privatization, suppression, and modification of certain penal strategies, we can see how "civility," or what Elias identified as the


46 The best example of a historian employing Elias's theoretical model is Pieter Spierenburg, The Spectacle of Suffering. Executions and the Evolution of Repression from a Preindustrial Metropolis to the European Experience, (New York: Cambridge University Press, 1984); For a discussion and critique of Elias and Spierenburg, see Garland, Punishment and Modern Society, ch. 10.
later-eighteenth-century manifestations, *politesse* and *humanité*, came to undermine the traditional legitimizing discourses of penal policy and forced the reconfiguration of penalty in England. 47

As the civilizing process continues, Elias argues, people “seek to suppress in themselves every characteristic that they feel to be ‘animal’.” 48 This socio-psychological process involves changes in manners, and in attitudes towards bodily functions, aggressiveness, and the potential for physical violence in daily life. Pieter Spierenburg, one of Elias’s closest followers, explains that the civilizing process should not be seen as something separate from these constituent events. The process itself—which he suggests might best be seen as processes—consists “of billions of such events in a diachronic sequence, each generation giving a new twist to them.” 49 All of these behaviours, among others, underwent profound transformations in the period from the Middle Ages to the twentieth century, and Elias describes the period between the fifteenth and eighteenth century in remarkably revealing detail. However, he does not spend much time on the issue of violence after the seventeenth century, and spends little time explicitly on the subject, relative to other issues. Even less time is spent on the relationship between the civilizing process and the history of punishment. 50

Within those modes of conduct or behaviours, he argues, we can identify the deeper social and psychic structures which govern behaviour and which are the real targets of re-classification, prohibition and repression. Examined individually, such structures might appear chaotic or banal. But when mapped and examined together, the historical trajectories of these sub-processes reveal a deeper “structural change in people toward an increased consolidation and differentiation of their affect controls, and therefore both of their experience...and of their behaviour.” 51 How and why a

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47 Elias, *History of Manners*, 84.
48 Ibid., 98.
society becomes "civilized" might therefore be explained through an examination of changes in the gradual increase in "the reserve and 'mutual consideration' of people... first in normal everyday social life." Most obviously, says Elias, manners become more refined, certain behaviours become more guarded, codes of conduct become more deeply entrenched. And when it comes to violence or aggression,

the discharge of affects in physical attack is limited to certain temporal and spatial enclaves. Once the monopoly of physical power has passed to central authorities, not every strong man can afford the pleasure of physical attack. This is now reserved to those few legitimized by the central authority (e.g., the police against the criminal), and to larger numbers only in exceptional times of war or revolution, in the social legitimized struggle against internal or external enemies.52

However, as Elias says, the aristocracy—at least in France—became "bourgeoisified," and the process spread to lower echelons of society rather quickly.53 Indeed, that the concept of civilization reflected the aspirations of the French middle class or bourgeoisie, Elias argues, was more clearly recognized in the eighteenth century, especially during the 1760s and 1770s, when the term "civilization" began to be more widely used as a "more or less fixed concept."54 By the time contemporaries became conscious of the process within which they were deeply engaged, the civilizing process itself had already long been underway.55

But as Elias makes clear in the above quote, closely tied to these behavioural modifications was the idea that the state was also gaining a greater monopoly over the legitimate use of violence in daily life. Elias's explanation of civilization presents a very top-down view of this process, at least as it occurred in Western Europe before the eighteenth century as centralized states came to control

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52 Ibid., 165.
53 Ibid., 89.
54 Ibid., 38. Though Elias focuses on France, and has been criticized for neglecting similar changes in earlier periods in Italy for example, (and even if it may be granted that France experienced the first recognizable expression of this concept) others have shown how, before the French Revolution, France set the pace for culture and refinement in Europe and how French manners were aped in England too (see Newman, The Rise of English Nationalism).
55 Elias, History of Manners, 41.
their citizens through the selective use of force. Nevertheless, the implications of Elias's model to the history of violence in our period are clear. The ways in which a society deals with violence and aggression, for example, reflect one aspect, or sub-process of the larger civilizing process.

To be sure, the changes in public attitudes towards violence were not universally shared, nor was their impact complete by the late eighteenth century. This pattern is in keeping with Elias's willingness to allow for periods of setback or de-civilization as part of the larger process. His is not a uniform, whiggish story of continuous ameliorative change. Some changes were indeed "progressive," in the sense posited by Enlightenment minds. There is little doubt that reformers and other contemporaries thought that combating public violence was a mark of progress and improvement. But vestiges of old behavioural patterns and of deeply entrenched feelings about the legitimacy of the use of violence, especially violence to the person, were difficult to shake. In addition, violence was entirely expected and tolerated in other contexts, such as warfare, self-defence, or in "nature." Nevertheless, the period under study was one in which changes in the boundaries of toleration or, as Elias has called them, "thresholds of embarrassment and shame," "thresholds of aversion" or "thresholds of repugnance" were more clearly evident in the manner of regulating violence in English society generally.56

This thesis argues that changing attitudes towards interpersonal violence may reveal to a larger extent the influence of these broader shifts in culture. Most of the evidence I present in the following chapters reveals the specificity of attitudes towards violence and the unevenness of change with regard to it. The project as a whole is best viewed as a work of cultural interpretation, specifically as it relates to the way in which violent behaviour was constrained, conciliated, modified

56 Elias History of Manners, 56, 64, 114 & 142.
or, as we shall see in some cases, abolished altogether.  

Sources and Themes

The thesis is divided into six substantive chapters. The main sources for each of these chapters are the records of the criminal courts of the City of London and the County of Middlesex. Principally, these included the London and Middlesex sessions of the peace (including those for the City of Westminster), and the Crown Side prosecutions in the Court of King's Bench for those cases pertaining to London and Middlesex. The first of these substantive chapters sets the groundwork for an understanding of the official responses to interpersonal violence in eighteenth- and nineteenth-century London. The subject of the chapter is the processes by which those who resorted to violent behaviour were held officially accountable for their actions. The procedures for the prosecution of violence in the metropolis were generally the same as for the equivalent courts in other parts of the country. However, certain particularities of London as the capital meant that prosecution strategies might vary slightly, and prosecutors in the metropolis had choices of venues that were not as readily available to those in the counties.

The courts examined here include the magistrates courts in London and Middlesex, the London and Middlesex Sessions of the Peace, the Palace Court at Westminster, the Old Bailey and the Court of King's Bench. Though scholars have made extensive use of quarter session and assize indictments for the study of property crime, those documents have not been used as extensively for the study of violent crime. The unofficial, privately printed accounts of the Sessions of Gaol Delivery and Oyer and Terminer for Newgate Prison, known familiarly as the *Old Bailey Sessions Papers*, were used for the quantification of punishments discussed in chapter 7. They were also used

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throughout for their qualitative value, as trials were usually reported in considerable detail, with verbatim testimony from witnesses, and with the comments and questions of the officers of the court. I have used the indictments of the Middlesex and London Sessions of the Peace for the study of interpersonal violence and the findings presented here offer the first general account of the prosecution and punishment of this type of behaviour in the metropolis in the eighteenth and nineteenth centuries.

The quarter session records were sampled in regular time series across the time period covered by this study to discover information relating to the prosecution of minor violent offences, chiefly assault. The key primary source here was the indictment, but information regarding the outcome of the individual case represented by the indictment was supplemented by the court minute books when necessary. A detailed account of the sources used and the sampling technique is provided in the Appendix. Unfortunately, aside from the indictment and recognizance rolls, which are fairly complete, the records of the sessions of the peace, both for London and Middlesex, are very thin for the eighteenth century, though the City's records are slightly fuller. What both record series lack, which would have been very helpful for the study of attitudes towards violence presented here, are the depositions taken upon the complaint of an alleged victim. Few such documents have survived among the records of the London and Middlesex courts of quarter session.

However, I was fortunate to have been directed to the records of another metropolitan court, the Court of King's Bench, which also heard minor assault cases and whose records are unusually rich and largely complete.\textsuperscript{58} The Court of King's Bench was one of the three high courts and had both a criminal and civil jurisdiction. However, despite its high status among English courts, the King's Bench was also the venue for the prosecution of relatively minor assault cases.

\textsuperscript{58} My thanks to Dr. Ruth Paley of the Public Record Office, Kew, for directing my attention to these records for this study.
Through peculiarities of jurisdiction, timing, and location, the King’s Bench served as a regular venue for the prosecution of the kinds of assault cases that would have been dealt with at the quarter sessions or assizes in the counties. I have looked at the criminal or “Crown Side” of the King’s Bench as many such assault cases were prosecuted there.

The King’s Bench kept very detailed records, nearly all of which have survived for the eighteenth century. Prosecutions at the Court of King’s Bench have not received detailed attention from criminal justice historians in part because the task of explaining the complex court procedures that generated the surviving records has been assumed a daunting one. With a better understanding of how and why cases were prosecuted at King’s Bench, we are better able to unpack the attitudes towards violence reflected in the rich deposition records, whose detail and whose survival is unique among London courts that dealt with assault. Building on some of the recent work on the King’s Bench in the eighteenth century, this chapter demonstrates the benefits of a clearer understanding of how and why this court’s records were produced.\(^5\) Knowing the court procedure allows us to reconstruct some of the motivations for prosecuting a case there, and reveals a good deal about the public perception of this court within the legal culture of the metropolis. It is for these reasons that chapter 2 spends some time detailing the operations of this particular court, since its records have not been used as sources for the study of violence in eighteenth-century London, despite their rich qualitative nature.

The King’s Bench records constitute an archive that has never been systematically used for the study of violent crime. The King’s Bench was the highest appeal court in England in the eighteenth century, and its records provide a marvelous window into the lives of eighteenth-century Londoners. The King’s Bench records, and in particular the affidavits—the equivalent of depositions

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in the sessions of the peace—provide the fullest details of minor instances of interpersonal violence of any eighteenth-century metropolitan court. The amount of material that has survived is overwhelming. It was necessary to sample from the affidavits across the time span of this thesis.

Much of the qualitative discussion of assault relies on the affidavits that survive in the records of this under-used archive. This dissertation therefore adds to the literature of criminal justice history by providing new evidence of the untapped richness of court records other than the much used assize courts.

The chapter also places the King’s Bench within the larger context of metropolitan courts, and explains the use of other such venues for the prosecution of violence. It is clear that following some form of violent altercation, Londoners in the eighteenth and nineteenth centuries had a fairly wide range of choices when it came to pursuing an official course of action against one another. To what extent the courts were willing to throw their full weight behind the prosecutor is another aspect of the nature of prosecution generally, and some of the possible strategies for prosecuting cases of interpersonal violence are addressed here too.

Of course the nature of prosecution of any crime depends largely upon the laws themselves. Chapter 2 surveys the major pieces of legislation dealing with forms of minor, interpersonal violence in the eighteenth century. It also traces the emergence of new legislation over the period covered by the thesis, with particular attention given to the two statutes of the early nineteenth century which did the most to re-shape the prosecution and punishment of violence—Ellenborough’s Act (1803), and Lansdowne’s Act (1828).

Chapter 3 is the first of two chapters which lay out some of the cultural backdrop to the more explicit changes in penalty being documented in later chapters. The chapter considers the circumstances behind various cases of interpersonal violence and types of assault, including bar room brawls, random public violence, and domestic violence. Though by no means comprehensive,
the chapter asks what general features of violence in everyday life may be drawn from some of my principal sources. In particular, it examines the gender and class composition of prosecutors and defendants in assault cases, and reveals some of the characteristics of interpersonal violence common in the eighteenth and nineteenth centuries.

Once a general picture of how violence was manifested in various social experiences is presented, we can begin to grasp how thresholds of toleration were created. The degree to which violence was habitual, or even an expected part of social experience in certain situations, indicates to some extent the possibility or likelihood that it will be censored or repressed. Perhaps the most common venue for the exercise of violence in order to repress or control others was the household.

That some level of domestic violence was tolerated in the eighteenth century is clear from legal tracts supporting its use, to casual references to it in popular literature, to the often severe consequences of it which (unfortunately for both the victims and for historians) only rarely came to the attention of the authorities. I have presented some of the characteristic forms of domestic violence, as well as a few better known extreme cases, in order to sketch the outlines of past violent experiences in the private sphere.

Chapter 4 looks at the experience of violence in the metropolis and argues that the nature of metropolitan life shaped the nature of violence there in particular ways. At one level, it must be conceded that there is little to characterize the violence of the metropolis as particularly metropolitan. Many of the kinds of brawls and fights experienced by people living in Wapping or St. Giles in London would be entirely familiar experiences to those living in Manchester or York, or any country village. After all, large numbers of people still lived in the heart of London in the eighteenth century. Its community structure was still based on residents rather than businesses, though it is precisely during the period under study that the process of transformation of the City began. What appears to be a parallel development among many cities experiencing this process of transition
during the eighteenth century, is the transformation of the urban public sphere from an area of “multiple jurisdictions” and traditional or customary privileges centred around neighbourhoods to the “town” where commercial activity, wealth and social status become the dominant symbols of social experience, and where old networks of honour and patronage were broken down.64

This chapter is concerned with how these changes to urban civic space helped to redefine attitudes towards violence in the public sphere. It also examines how the experience of masculine violence in the metropolis might be read as a unique kind of honour battle, and how the particular nature of the London courts afforded a suitable place for the negotiation of those changing honour codes. The connections between masculinity, violence, and honour in the past are becoming clearer now, thanks to a spate of recent scholarship. This chapter adds to that debate, with fresh evidence from the records of the English courts that suggests how the changes in urban culture were affecting the ways in which violence was controlled in the metropolis.

Chapter 5 is a case study of one particular incident of urban violence in the metropolis which, to this point, has never received detailed scholarly attention. It serves as a focal point for some of the issues raised in earlier chapters. In the spring of 1790, the London newspapers began to focus upon reports of a series of attacks perpetrated upon young, genteel women in the metropolis. At first, the attacks seemed to be isolated incidents and there was little attention given to them, except to note that they were apparently unprovoked and were committed by a man. With the publication of a number of reports of such violent attacks in the newspapers, however, the story began to gain a popular following and a sense of public alarm spread quickly across London. As the number of reported incidents began to increase, and as the severity of the attacks came to be known, interest in the case reached a new level, and soon gave rise to something of a media panic. The

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attacks were deemed to be the work of a "Monster" and calls for the perpetrator’s arrest and conviction began to surface in the periodical literature as well as in pamphlets, broadsides, and even poems and musical entertainments. Apprehending the Monster became the talk of the town, and since there was no organized police force at the time, many citizens of the metropolis made it their business to become involved in the task of detecting the man responsible.

This case is instructive for two reasons. At one level, it brings together some of the problems outlined in chapter 2 regarding the lack of generality in the eighteenth century laws pertaining to assault, and the ambiguous place for the Monster’s brand of violence within the legal definitions of violence. The case of the “Monster” is thus an ideal example of how eighteenth-century law was unable to come to terms with a violent offender of his sort. It also demonstrated how the criminal justice system was unable, at first, to convict him of the violent offence he had allegedly committed. Then, once convicted, the courts were unable to impose a punishment which satisfied public opinion. The inadequacies of the law, and, in particular, the fact that there was no punishment to fit the crime, excited public anxiety about the state’s ability to protect its citizens against such violence in the future. But at another level, the case illuminates the role of the press in shaping popular responses to violent crime and the power of the press to excite interest in the repression of violence in the late eighteenth century. The role of the press in fueling that anxiety forms a central component of this chapter, and reveals some of the deeper motivations and concerns about violence in public. The Monster’s crimes reveal larger anxieties about violence in the metropolis, and the general issues surrounding gender and the public sphere, as well as the more particular issue of violence against women. More specifically, the case marks a new level of anxiety about the role of women in public spaces, and also about public violence in “genteel” or “respectable” neighbourhoods.
Chapter 6, “Punishing Violence” examines changing patterns in the punishment of interpersonal violence over the time period covered by this study. This chapter is more empirically driven than the other chapters. It provides the first detailed study of punishment patterns for assault in the metropolis. As I have mentioned, much of the scholarship focusing on crime in early modern English society has concentrated on the prosecution and punishment of property offences. Using a similar methodology, this chapter presents a rigorous study of the changing nature of punishment of assault at the London and Middlesex sessions of the peace, while also examining penal practice at the other metropolitan courts studied here. The large number of surviving Middlesex indictments meant that significant samples could be drawn which revealed general patterns more clearly. The chapter reveals the significant change in the punishment of assault that occurred over the course of the latter half of the eighteenth and early nineteenth centuries.

For much of the eighteenth century, and indeed continuing into the nineteenth, the English courts were guided in their judgements by a culture of arbitration, which encouraged judges and magistrates to mediate cases of interpersonal violence as much as possible. What emerges from the changes in prosecution patterns, however, is that the underlying notion that most forms of interpersonal violence were private matters of little concern to the larger society or the state, was breaking down by the 1770s and 1780s. Consequently, the courts began to punish interpersonal violence more harshly. In the early part of our period, we see how the courts attempted in many cases to arbitrate these matters and to force, or at least to encourage, the parties to reconcile. The courts had wide discretionary power in cases of assault and tended to conduct these cases more as civil than criminal cases, out of the conviction that it was always best to seek some kind of settlement without a trial if at all possible. By the end of the eighteenth century, however, there was an increasing public interest in punishing offenders for assault. The expression of this larger change
is evident in the changing penal practices in assault cases described here. Most importantly, that new interest was driven by changing attitudes towards violence in general.

The final chapter turns to a discussion of violence in society in a different context. It reveals the English state's retreat from a reliance on violence for the punishment of offenders. One of the most obvious examples of the degree to which notions of discomfort and distaste for public violence had penetrated the popular psyche is revealed in the declining use and acceptance of violent public, physical punishment. This was a fundamentally important change in English culture in the late eighteenth and early nineteenth centuries. The wide scope of the changes might suggest that penal practice was undergoing a wholesale, rigorous critique from humanitarian legislators amidst a lively public debate. Curiously, though, except in the case of the death penalty, this was not the case. Like the dog that did not bark in the night, the salient feature of the reforms to English penalty is the silence under which they were realized. The fact that the reasons for this change went undocumented suggests their complexity, and challenges any straightforward or mono-causal explanation. Indeed the transformations in penal practices were extremely complex, as a number of other historians have shown; I do not mean to suggest here that the change in attitudes towards violence is to be understood as the cause of the large transformations in practice. However, the importance of the cultural context in which these changes took place, one that saw clear shifts in how violence was dealt with in other aspects of daily life, has not always been explored as fully as it might. Anxiety, both implied and explicitly stated, about the nature of punishment, were often articulated in ways that demonstrated a growing uneasiness about their violent underpinnings. Thus, since changes in violence in society are evident elsewhere, it makes sense to situate the particular

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changes to physical punishment within the larger story of attitudinal changes being presented here.

In short, chapter 7 broadens our understanding of the systems of cultural meaning operating behind the state's use of violent, physical punishment. The underpinnings of the state's dependence on judicial violence were clearly rooted deeply in a culture that accepted violence as a means of securing obedience and demonstrating power. Violent punishment permeated the legal culture of early modern England. The system of judicial administration was dominated by an ethos of state violence which made for a limited repertoire of particularly brutal penal responses to crime.

At the heart of that repertoire was a reliance upon physical pain, public shaming, and humiliation to convey the lessons of obedience and social conformity. Dramatic public hangings accompanied by long and boisterous (and occasionally riotous) processions to and from the execution site were the most spectacular and grisly of these punishments. Unsurprisingly, these events were the most common source of criticism. It is argued here that the violent punishment of criminals could only continue to work within a society that had an unambiguous attitude towards the frequent recourse to violence as a disciplinary tool. As violence came under greater restriction in other spheres of society, the place for public displays of violence, even in highly ritualized forms, grew ever more contestable.

Within the temporal scope of this thesis, and as will have been seen in chapters 2 through 6, a fundamental re-examination of the role and place of violence in everyday life was well under way by the 1780s. This change in attitudes had a significant effect upon actual penal practices in England. In particular, we can detect a growing public concern about the use of physical pain in state imposed punishments. The hints are subtle and emerge inconsistently. Generally speaking, though, it does appear that the state's dependence on violence began to change appreciably after 1780 when significant changes to the rituals of punishment were made. Also, the use of a number of other brutal penal methods, such as the pillory, public whipping, and the burning of women, fell
rapidly into disfavour. The 1810s and 20s, in particular, witnessed a campaign against certain forms of violent public punishment as imprisonment evolved as the more humane response to criminal deviance. This shift from the theatre of public violence to the closed arena of private punishment is clearly linked to the changes in popular sentiment that placed the entire legal system under strain and attack.

What has remained in dispute are the reasons behind the particular timing of these changes. Some historians have followed the theoretical arguments of others (notably Marx and Foucault) to explain the changing ideological focus of leading penal reformers at this time. Others have relied on a more piecemeal explanation that traces the emergence of successive administrative changes over a much longer period of time. However, none of these explanations has been satisfactory in explaining why it was the last third of the eighteenth century that witnessed sudden changes in penal practice and in the culture of penalty more generally. This chapter traces the influence of the general themes raised in chapters 3-5—that is, the shift in thresholds of toleration for violence in society—and asks how they influenced the transformations in penal practice that occurred in the late eighteenth and early nineteenth century. Major transformations in the history of punishment in this period are discussed with particular focus on the removal of violent and physical punishment from the public sphere; specifically whipping and the pillory. Changes in “civility” and “sentiment” and the general turn against physical violence seen in the prosecution of interpersonal violence (i.e. in the punishment of assault) are linked to administrative necessities to explain changing penal strategies.

Eighteenth-century England has often been portrayed as a society marked by violence and disorder, one in which levels of violence were thought by some, perhaps many, to be unacceptable. That this must have been true, in part, is implied by the considerable scholarship that has set out to understand the historical problem of violence in English society. Though, as I have said, much of
that attention has been focused on the forms of violence and disorder that were remarkable for their unusual nature—riots, strikes, or murders—rather than for their regularity. This thesis is an attempt to broaden our understanding of the role of violence in English society by turning our attention to the more familiar forms of violence. It asks how violence figured in the day-to-day lives of English men and women in the late eighteenth and early nineteenth centuries in order to flesh-out the ever emerging picture of attitudes, beliefs, and experiences of the past. Through a close study of non-lethal violence in various contexts which is linked to both a general picture of the uses of violence by the state in the punishment of offenders, and to an assessment of the place for violence within English urban culture generally, the following chapters present a broad historical survey of attitudes towards violence in the metropolis in the late eighteenth and early nineteenth centuries. They explore the ways in which changing attitudes towards violence relate to larger issues of legal reform and to the remarkable shift in penal practices in this period, and provide an important sub-text to the story of social and cultural change in a vibrant and perplexing era of English history.
Chapter 2

BRINGING VIOLENCE TO ACCOUNT

Violent behaviour in eighteenth-century London did not pass entirely without comment or without consequence. Although the metropolis was considered by many contemporaries as a dangerous and violent place, when incidents involving physical contact did occur, many victims took steps to seek some form of redress or compensation. Sometimes that meant immediate retribution and violence was often met with violence. However, those victims of violence who felt sufficiently wronged by the actions of another to launch a legal action had a number of formal options for redress at their disposal too. The various courts of the metropolis saw a very large number of men and women every year who complained of being the victim of unwanted physical conflict. This was not so different from other courts in the rest of the country, but there are a few differences which make the metropolitan experience of prosecuting violence somewhat unique. This chapter will introduce the various legal venues open to eighteenth and nineteenth century men and women whose lives had been touched by violence in some way, and who were determined to see that violence brought to account.

The limited amount of historical work on violent crime has led to a similar neglect of the legislation that regulated it. To be fair, there is not much ground to cover in this respect before the nineteenth century. Legislation designed to control the use of violence between individuals was limited. Over the course of our period, as we shall see, the practice of the courts began to change with regard to the prosecution of violence. And as is often the case, much of this change anticipated later reforms to the law itself. During the eighteenth century, the metropolitan courts reacted to the
pressure of increasing numbers of cases, but tried to manage its business with one eye to changing attitudes towards the offences it was dealing with. Many of those ad hoc modifications of trial procedure and of sentencing that emerged over the last decades of the eighteenth century were later reflected in the legislation of the early nineteenth. The effect of the new legislation, especially Ellenborough’s Act of 1803 and Lansdowne’s Act of 1828, was to alter the nature of assault cases coming before the quarter sessions. This chapter examines the history of that important legislation in some detail, and places it within a larger context of prosecution patterns that were being sensed by contemporary observers of the criminal justice system.

It is also important to have a clear understanding of the court procedure in cases of interpersonal violence, as prosecutors, defendants, judges and juries frequently manipulated the various stages of the process to achieve particular results. The work of other historians has explained the workings of the major London courts, especially the Old Bailey, but other lesser courts too, and the fundamental role of discretion in the prosecution process is now widely understood.1 Yet despite this body of scholarship, one of the country’s most important courts—and one based in the metropolis—is frequently overlooked. The court of King’s Bench has not attracted as much attention from historians as the courts of assize or quarter sessions, despite being one of the most prestigious and well-known courts in England and despite the richness of its archives.2 Part of the

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reason for this is the daunting character of the records themselves and the opacity of the procedures that produced them. As W. J. Jones acknowledged in his study of another of the high courts, that of Chancery, the recorded procedures of the high courts do not always fit with our preconceptions of justice and the rational process of the law.\(^3\) Judicial precedent was more a crude guide than a rigid process. Often, he says, “the law just did not develop. Instead it happened.”\(^4\) Nevertheless, the basic procedures for prosecuting assault (and other offences) at the Court of King’s Bench were well established by the eighteenth century, and in this chapter I will outline the basic steps for prosecuting a case there. This is necessary in order to gain a better understanding of the records of this court which form a new and relatively untapped source for the study of interpersonal violence, and which we will consider in more detail in the following chapters.

The opportunities for bringing cases of interpersonal violence before the notice of the courts in the metropolis were many. However, the decision to do so was complicated not only by the exigencies of the various court procedures, but was affected in such cases by the curious nature of the law itself. The dual aspect of many wrongs is a striking feature of the English law in the early-modern period. In contrast to the formal distinction between civil and criminal law that is widely understood today, the civil and criminal aspects of many wrongful acts were not always rigorously defined in English law before the nineteenth century.\(^5\) A single act or omission could, at the same time, be construed as both a criminal and civil wrong in a relatively unambiguous way.\(^6\) In this chapter we shall consider the dual aspect of one particular sort of wrong, the trespass against the

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\(^3\) The high courts included the Courts of Chancery, King’s Bench and Exchequer.


\(^5\) This distinction was clear to some legal minds in the eighteenth century but it would not be worked out fully until the nineteenth and early twentieth century. For example, Lord Mansfield declared “there is no distinction better known, than the distinction between civil and criminal law; or between criminal prosecutions and civil actions.” Atchison v. Everett (1775) 1 Cowp. p. 391, cited in P.H. Winfield, The Province of the Law of Tort (Cambridge: Cambridge University Press, 1931), 190.

\(^6\) Bruce Lenman and Geoffrey Parker argue that distinction between civil and criminal acts “was foreign to almost all European legal systems before 1800.” See “The State, the Community and the Criminal Law in Early Modern Europe,” in
person—more commonly referred to as assault. On the one hand, assault bears a criminal character. Since the violation of the king’s peace was the original offence from which the monarch derived his or her criminal jurisdiction, the assault was a prime example of a criminal breach of the peace. By violating the king’s peace, the offender became subject to a fine, payable to the king—thus the importance of the fine in assault cases. But an assault could also be (and was more commonly) prosecuted as a civil wrong and sued upon. In the King’s Bench, for example, a court with both criminal and civil jurisdiction, the assault was said to have been the result of a trespass *vi et armis* against the king’s peace. As Richard Burn explained in 1764, “wrong-doers” were “subject both to an action at the suit of the party, wherein he shall render damages; and also an indictment at the suit of the king, wherein he shall be fined according to the heinousness of the offence.” The defendant in such actions, was therefore liable to pay compensation to the victim and was also fined for breach of the peace.

Before the eighteenth century the criminal and civil contours of assault were only vaguely defined. Over the course of the eighteenth century and early nineteenth centuries, however, the act of touching another person “in anger” came to be defined and redefined both in the law itself and in its administration as attitudes towards interpersonal violence changed. In 1704, Chief Justice Holt declared in a civil decision that “the least touching of another in anger” was battery. That decision forged a link in law between the notion that any degree of violence to the person was wrong and the expectation that the courts should provide some remedy for that wrong, at least in civil prosecutions.
By the latter third of the eighteenth century, the courts would begin to take a much tougher stance on assault and battery, both in civil and criminal actions.

Assaults take on the character of a civil wrong, in part, because the fact of the offence itself is not usually the point of the dispute: the identity of the parties is usually known from the outset. Rather, the nature and context of the assault, the personalities involved, and the degree of the injury form the essential and animating elements of the case. Although many defendants deny the charge outright, it is more common that their evidence in defence consists of the relation of mitigating circumstances or, often, a counter-charge: “he hit me first.” The dispute then centres on the evidence for one party’s liability for the alleged insult or injury. The state, in fact, plays a rather limited role. And, judging from the sorts of punishments imposed by the courts (which represent the king in the application of sentences), the degree to which an assault could truly be seen as an affront to the king’s peace was minimal, at least until the end of the eighteenth century.

Over the course of the eighteenth century, the criminal as opposed to civil nature of assault was increasingly recognized by the courts. With mounting frequency, English courts supported a criminal remedy which imposed a greater degree of public sanction against a range of interpersonal violence. It was not so much that the opportunity for a civil remedy in such cases was suppressed as it was that criminal remedies were normalized, first through practice and later through legislation.¹⁰ The changes in penal practice in the last decades of the eighteenth century and into the nineteenth, give one indication of a growing interest in the suppression of public violence and in punishing such offenders. By increasing the severity of the punishment for assault, the courts signaled a general understanding of a newly emergent threshold of intolerance for interpersonal violence. And by emphasizing the criminal side of assault, the courts sent a two-fold message: first, that they were

¹⁰ By the Offences Against the Person Act (1861), in the case of assault and battery, the plaintiff had to choose one or the other remedy. See 24 & 25 Vict., c. 100.
serious about punishing violent behaviour and so deterring other wrongdoers; and second, that the behaviour itself was as worthy of correction and restraint as were other criminal behaviours such as murder, theft or fraud.

In all English criminal courts, assault prosecutions consumed a significant proportion of the court’s time and accounted for much extra- or quasi-judicial business as well. From formal prosecutions and detailed cases at the Westminster high courts, to the Middlesex quarter sessions and London sessions of the peace, to the informal negotiations worked out in parlour rooms or in the watchhouse, the mediation of interpersonal violence was a routine part of the law’s business. Over two-thirds of the business dispensed by eighteenth-century Hackney’s most active justice, Henry Norris, and over one third by Surrey justice Richard Wyatt, involved some form of assault. The Essex quarter sessions were similarly pre-occupied with assault and other minor acts of violence, as were the courts of London and Middlesex. Yet, despite the substantial expenditure of time and resources on such offences, there has been surprisingly little historical study of the forms of violent crime that most frequently brought offenders before the courts.

It is the central argument of this and the following chapters that it is through an examination of the most prevalent forms of interpersonal violence (that is, through the prosecution and punishment of assault) that we can sharpen our understanding of attitudes towards violence in English society. This chapter describes the various courts in London and Middlesex at which victims of violence pursued the prosecution and punishment of the offence: first, the smaller courts, with the daily work of the London magistrates at both the Mansion House Justice Room and the Guildhall Justice Room, as well as the weekly Palace Courts at Westminster; second, the Middlesex

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and City sessions of the peace; third, the Old Bailey; and finally, the King’s Bench sessions at Westminster or the Guildhall. The records of these courts reveal how the law regarded certain categories of non-lethal violent behaviour, and how it punished that behaviour. However, it remains clear, from other evidence, that only a tiny fraction of the incidents that were considered episodes of violent behaviour actually came to court. There were many disincentives then, (as now) to reporting certain categories of assault. In the case of domestic assault, spouses and partners were likely unwilling or unable to bring their problems to an outside arbitrator, either for want of sufficient means to prosecute the case, or for fear of reprisal. As well, in a culture that relied heavily upon deference, place and personal credit to establish and fix social standing, and where a man was expected to defend his personal honour (and a woman, her sexual honour) with force if necessary, it is possible to conceive of countless instances in which violence was employed in the defence of credit, standing or social status, with no thought given at all to the legal consequences of those actions. All of this is to say that the impressions drawn from the records of the English courts, in this and the following chapter, do not pretend to offer a comprehensive picture of all interpersonal violence. Still, when we combine the quantitative information gleaned from these courts with qualitative sources, a picture of attitudes towards violence does begin to emerge.

In drawing upon the court records for a study of assault, we can be certain that there were fewer prosecutions compared with the actual number of violent incidents that might have been prosecuted. The court records are unlikely to provide a completely accurate guide to the actual incidence of assault. The so-called “dark figure” of unrecorded crime that always vexes historians is potentially more serious in the case of assault prosecutions than for property offences because of the wide range of behaviour that could be included under the general category of assault, and because of

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13 The under-reporting of assault in present-day Britain is examined in Antonia Cretney and Gwynn Davis, *Punishing Violence* (London: Routledge, 1995).
the variable likelihood of its being reported. But this is no reason to ignore assault prosecutions altogether. There is still a very sizable body of assault prosecutions in the court records from which we can draw some general conclusions. And other quantitative and qualitative information can be extracted from the surviving court records, particularly if all courts in a given jurisdiction are included. The extensive civil court records provide other possible avenues for exploring the prosecution of this crime. Finally, other sources, such as newspapers, pamphlets and other printed ephemera, which frequently documented episodes of violent crime, are also worth closer inspection despite their irregularity, the obvious biases of authorship and their fitful survival.

Still, it is important to exercise caution when reading these sources and to maintain a critical stance. Since assault is usually an emotionally charged crime, arising in the heat of an argument or during some other moment of hot temper, the victim's recollection of the events can rarely be entirely trusted. And once a criminal prosecution begins, it is inevitable that details are distorted, enlarged, or clouded for a variety of reasons, in the furtherance of personal interests. Such problems are not unique to crimes of violence but, given the ambiguous definitions of assault mentioned above, it is important to bear them in mind.

**The Definition of Assault**

There are two large problems with the study of assault: first, its legal and social definition and, second, its potentially large under-representation in the records of the courts. In common law,

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14 Beattie argues "assault charges...do not form a category of offense that can be usefully analyzed from the court records" (Crime and the Courts, 76-77). Recent challenges to this view include: King, "Punishing Assault," passim; Clive Emsley, Crime and Society in England 1750-1900 (London: Longman, 1987), 44-47; Norma Landau, "Appearance at Quarter Sessions in Eighteenth-Century Middlesex" London Journal (forthcoming December, 1998).

15 One recent study of summary procedure in England excludes any consideration of assault due to "the evidence, or lack of it, concerning the judicial (as opposed to the personal and human) involvement in these offences." Thomas Sweeney, "The extension and practice of summary jurisdiction in England c. 1790-1860," [Ph.d. diss, Cambridge University, 1985], 168-69.
the definition of assault was open-ended. Burn's well-known and widely consulted guide to judicial practice, *The Justice of the Peace and the Parish Officer*, defines assault as "an attempt or offer, with force and violence, to do a corporal hurt to another." Most forms of physical assault were not considered felonies and, as a result, the lower courts that heard the bulk of these cases ended up dealing with a range of incidents, from those involving the mere threat of violence to others which amounted to attempted murder. In many cases, however, the degree of actual violence experienced by a plaintiff was ambiguous. For example Samuel Pearce brought a charge before the sitting magistrate at the Mansion House Justice Room against Joseph Kippin "for using towards him sundry threats whereby he apprehends that he goes in danger of his life or some bodily harm." In cases like this, it was thought proper to give the magistrates wide and arbitrary power to delve into the particulars of the case, and use their discretion accordingly. Some particular forms of assault had been very narrowly framed by statute and were subject to specific punishments. Maiming, for example, could involve very serious injury including the loss of an ear, teeth or even hands and feet. Other statutory definitions of assault were likewise narrowly constructed, such as putting out the eyes or cutting out another person's tongue. These were very specific offences, thus, the range of violent acts which escaped statutory legal definition was wide.

The absence of a formal description of assault was of no immediate legal concern to authorities in an age when violence done to another person was considered a private and local matter, best settled privately. This situation worked tolerably well in a society that was closely knit, in which mobility was restricted, and in which apologies and conciliatory handshakes still meant

16 See 6 Geo. I, c. 23.
17 Burn, *Justice of the Peace*, 22nd ed. (1814), III: 180. Battery is defined as the actual injury done in anger, no matter how slight.
18 CLRO, Mansion House Justice Room Minute Books, MJR/M 1-39.
something. Justices and judges therefore enjoyed a wide degree of discretionary power in controlling interpersonal violence within their communities. It makes sense, then, that it was not until fundamental changes in the nature of English society took place as a result of the social and economic changes of the late eighteenth century that the thinking behind legislation would start to change. On the whole, before the early nineteenth century, the major legislative initiatives designed to deal with physical violence were all introduced as a result of specific incidents. But the scope and intent behind the two acts passed in the first quarter of the nineteenth century, as well as their swift passage into law, suggest that tolerance for a wide range of violent behaviour was clearly on the wane, and reform of the law was necessary to reflect the important cultural changes in attitudes towards violent behaviour that characterized the period.

1. The Stabbing Act (1604) and the Coventry Act (1670)

Two pieces of legislation appeared in the seventeenth century that went some way to redressing this gap in the law of interpersonal violence: the Stabbing Act and the Coventry Act. The Stabbing Act of 1604 act made it a non-clericyable offence to stab an unarmed person if the victim then died as a result of the injury within six months.\(^{20}\) Interestingly, the act recognized some of the universal triggers of violence in its preamble, specifically “rage, drunkenness, hidden displeasure, or other passions of mind.” However, despite the fact that such forces could move men to disturb the “common peace and tranquillity” of society in other contexts, the framers of that legislation chose only to punish stabbing, a specific manifestation of such violence.

The second notable piece of seventeenth-century legislation was the 1670 Coventry Act. Following an attack on Sir John Coventry and his servant William Wylkes, who were maimed during

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\(^{20}\) 1 Jac. I, c.8. The act was continued by 3 Car. I, c. 4 and 16 Car. I, c. 14. Radzinowicz explains that the act was originally meant as an emergency measure to put a halt to a rash of stabbings with short daggers which had occurred between Scots and Englishmen upon James I’s accession (Radzinowicz, History, I: 630; see also Stephen, History of English Laws, III: 478).
the course of a robbery, it was made a non-clergyable offence, after lying in wait, to maim or, specifically, to “cut out or disable the tongue, put out an eye, slit the nose, or cut off or disable any limb or member.”

Any aggressive cutting, with an attempt to disfigure, could be punished under this act, as long as it could be proved that the offender was lying in wait for his or her victim. As we shall see, that provision would prove to be the act’s Achilles heel, placing a stiff legal condition upon what might have been a wide-ranging piece of legislation. Many cases must have gone unpunished because of the limitations of this act. Henry Timbrill was convicted in March 1764 of castrating his two apprentices (one aged eight, the other aged sixteen) under this act. But, since he could not be proved to have been lying in wait, he was convicted only on the misdemeanour assault, fined 26/8, sentenced to four years imprisonment and ordered to find sureties for his good behaviour. Although this was a rather stiff sentence, according to one newspaper, it was “deemed by the female Part of the Mob so inadequate to his Crime, that all the Constables of the City, the Javelin-men, and, in short, the whole civil Power were scarce sufficient to protect him from their Rage.”

2. The Black Act (1723)

Further legislation against violence came during Anne’s reign. Following Antoine Guiscard’s attack on Robert Harley in 1711, privy counsellors were protected from attack while in the execution

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21 22 & 23 Chas. II, c. 1.
22 In March 1783, John Mills was charged under the Coventry Act (22 & 23 Car. I, c. 1[1670]) for an attack on Thomas Brazier. The indictment, cited by Sir John Silvester, the prominent Old Bailey barrister, in his personal notebook, is careful to mention repeatedly that the defendant was “lying in wait” in keeping with the statute:
   “...John Mills late of London lab[our]er being a person of a wicked mind and disposition and contriving and intending one Thomas Brazier...to maim and disfigure...by lying in wait unduly and feloniously did make an assault upon [him]...with a certain knife made of iron and steel...which...he the said John Mills...held on purpose and of malice aforethought and by lying in wait then and there...did slit the nose of the said Thomas Brazier....”
Silvester adds in the margin, “In this case the gristle which divides the nostrils was cut across which was held to be a slit.” Sir John Silvester, Note on Indictment, GL, MS 425, f. 251.
23 *Public Advertiser*, 22 March 1764. Thanks to John Sainsbury for this reference.
of their office by 9 Anne, c. 16, though this act applied only a tiny fraction of society. More comprehensive laws aimed at cracking down on violent behaviour came during the next decade. By the 1720s there was growing concern among influential members of the gentry over the proliferation of poaching. Following what the government construed as some particularly heinous acts perpetrated by deer stealers in Windsor Forest and Waltham Chase, the “Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise, and doing Injuries and Violences to the Persons and Properties of His Majesty’s Subject, and for the more speedy bringing the Offenders to Justice” was passed in May 1723. More commonly known as the Black Act, it was designed ostensibly to punish deer stealing and the poaching of other fish and game. However, as Sir Leon Radzinowicz and E.P. Thompson have demonstrated, the Black Act was closer in form to an omnibus bill against disorder. According to Radzinowicz, the judges chose to interpret the act very broadly and allowed fragmentary sections of it to stand on their own, independent of other sections or subordinate clauses within the act, and seemingly independent of the legislation’s original impetus. Yet, despite its wide latitude in the prosecution of property offences, especially those that threatened or involved violence against animals, the Black Act had specific relevance to offences against the person. Most significantly, the act criminalized the offensive use of firearms, making it a felony to “wilfully and maliciously shoot at any person, in any dwelling-house or other place” (s.1). But over the course of the eighteenth century, when the act was invoked in such cases, it was necessary to prove that the shooting was indeed malicious and that it amounted to attempted murder, though neither death nor injury need ensue.

21 9 Geo. II, c. 22; The act is summarized in Blackstone, Commentaries, IV: 244-45.
26 Radzinowicz, History, I: 52, 58.
The Black Act, combined with provisions scattered throughout more than fifty other statutes, formed a hodgepodge of legislation which constituted the official statement on attitudes towards violence throughout the eighteenth century. Offences of violence against the person were subject to serious punishment only in their narrow manifestations. There was no attempt to incorporate some of the broader changes in attitudes towards interpersonal violence—changes that were growing increasingly evident, as we shall see, in the daily practice of the law—into the legislation itself during the eighteenth century. It was not until the early nineteenth century that a general statute was attempted to cover a wide range of violent but non-lethal behaviour against the person, and even that statute had its origins in a sudden concern over a particular offence, this time in Ireland, rather than an effort to systematize the laws concerning violence against the person.

3. Lord Ellenborough’s Act (1803)

The first act to take general cognizance of violence against the person was Ellenborough’s Act of 1803. This legislation had its origins in a response to a series of attacks by what were colloquially referred to as “challengers,” or “men of wit, in Ireland, who in the night amuse themselves with cutting inoffensive passengers across the face with a knife.”27 Such men, as Lord Carleton explained to the Lords, “who maliciously cut and maimed another,” were a menace to society and their offences “prevailed to an alarming degree in Ireland.”28 Interestingly, similarly “outrageous” cases before then had not raised outrage. To combat this growing evil, the Attorney General of Ireland, John Stewart introduced the Challengers bill in the Commons on 7 March. By 14 March it had passed the House and was received in the Lords. Shortly after the bill was presented, however, members of the Lords raised objections to it. Lord Auckland (i.e. William Eden, the penal reform

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28 Times, 18 March, 1803.
advocate) claimed he had “never seen a bill so defective in language and in legal precision.” But furthermore, and perhaps seeing an opportunity to make the 1800 Act of Union real, he questioned “the policy of multiplying legislative distinctions between different districts of the united kingdom” and wondered whether his fellow Lords would agree that “the provision to be adopted might not be made general.”

Lord Ellenborough, the Lord Chief Justice, also objected to the Chalking bill’s application only to Ireland and agreed with the Lord Chancellor’s criticisms of its ambiguous and redundant wording. He agreed that “every penal law ought to be applied generally to all parts of the kingdom,” including the one under consideration. The debate over the Irish Chalking bill inevitably led to comparisons with the Coventry Act. Some, including Lord Alvanley, argued that the Coventry Act had to be revamped, and there was a general feeling that a revised bill might serve as a useful corrective to that “materially defective” piece of seventeenth-century legislation (as Ellenborough called it). The defects of the Coventry Act had, in fact, been recently reiterated at the last Old Bailey sessions in the case of Nowland and Price, in which the judge was forced to acquit a man who had cruelly cut another. The Times had reported (erroneously) that John Price and James Nowland had been indicted under the Black Act for cutting and maiming Robert Pigeon who had attempted to apprehend them on suspicion of robbery. The judge, Mr. Justice Le Blanc was compelled to instruct the jury that, “in order to convict the prisoner of the capital charge laid in the indictment, they must be convinced that there was malice, and a lying in wait, for so the Act on

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29 Parliamentary Register, XI: 353.
30 Ibid.
31 The bill, said Ellenborough, “abounded with unnecessary phrases and with absurdities: it stated in one part, that — ‘whoever shall cut, wound &c. in the face, head, limbs, or any other part of the body,’ &c. Now, he would ask, where could any person be cut or wounded except in his body? Surely the law would not say that the spiritual part of man might be cut and wounded?” Parliamentary Register, XI: 355.
32 Ibid.
33 However, the description of the indictment in the Old Bailey Sessions Papers and the details of the case in the Times report itself make it clear that the two men were charged under the Coventry Act for the assault, as well as being charged with grand larceny (OBSP, [16 February, 1804]; Times, 19 February, 1803).
which they were tried stated.” Accordingly, both defendants were found not guilty. The case clearly made an impression on the public and had stuck in Ellenborough’s mind. When the opportunity arose to change the law, he was prepared.

Upon his elevation to the House of Lords, Ellenborough had quickly established a reputation as a “frequent and useful debater on questions of constitutional law and general polity.” But Ellenborough was no reformer. “To all amelioration of the criminal code,” writes one biographer, “Lord Ellenborough was a steady and active antagonist.” On 28 March, however, Ellenborough rose to inform the Lords that he was moving to postpone the Chalking bill in favour of another bill to amend the Coventry Act. But, more significantly, the new bill “had also as its object to generalize the law with regard to certain penal offences and to adapt it equally to every part of the united kingdom.” Though the bill that Ellenborough introduced on 28 March originated with a desire to address a specific offence, it grew to encompass a move towards a more punitive stance on violence against the person in various forms. In the end, the act formed the most recognizably modern, general legal statement on violence yet known.

The act dealt with the most serious forms of violence against the person. It gave concrete legal definition to a range of very serious crimes, all of which amounted to attempted murder. It sought to punish violent attempts to commit serious injury, especially when firearms or other weapons were involved or when they were used in the course of a robbery. Throughout the eighteenth century, assaults committed in the course of a robbery had been considered by the courts as a secondary aspect of the offence. Since theft from the person or attempted theft was a capital offence, it was that charge which was almost always pursued by prosecutors at the assizes or in the

34 Times, 19 February, 1803.
36 Parliamentary History, xxxvi (1801-03), col. 1245.
37 Ibid., col. 1246.
metropolis at the Old Bailey. The role that violence played in the commission of the robbery did not go unheeded by judges and juries, however. The picaresque image of the gentleman highwayman charging his wealthy victims to “stand and deliver” is a familiar eighteenth-century criminal trope. But its ubiquitous use tends to mute the feelings of fear and violation that many victims experienced when a masked stranger pointed a loaded weapon in their faces and demanded their money or jewellery. For example, after Gilbert Ovens was convicted at the Croyden assizes in August 1765 for a robbery on Margaret Castlereagh, the judge was asked to write to the King to speak to the possibility of granting Ovens a pardon. The judge, Sidney Stafford Smythe, reported how Ovens “Stopt the Coach & opened the door & came into it to her with a Stick in one Hand, & a Pistol in the other. He demanded her Money & she Gave him her Purse… He then demanded her Watch which She delayed Giving him being unwilling to Part with it, he then Snapt his Pistol near her Face which only Flashed in the Pan which Frighting her she Immediately Gave him her Watch….”

Cases in which a robber used violence or threatened violence with either physical force or with a weapon were more likely to lead to a guilty verdict than those that did not. With the 1803 act, the inherent violence of such acts was now explicitly recognized in law.

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38 PRO, SP 37 3/7/4/152.
40 Another change in attitudes reflected in the 1803 act has to do with infanticide. The act included a new provision to facilitate the prosecution of unmarried women charged with killing their unborn child. Before Ellenborough’s Act, infanticide was covered by an out-dated and ineffective statute (21 Jas. I. c.27). Since 1624, infanticide had been an offence for which a single woman could be punished, not for the homicide, but rather for concealing the birth of the bastard child. The offence frequently went unpunished, as women were able to “prove” that the child had been stillborn, and others were acquitted on the flimsy evidence that they had anticipated the child’s birth by purchasing “bed linen” or (occasionally) a bassinet or clothing in anticipation of the baby’s birth. The distressing circumstances under which many of these women chose to take such drastic actions to avoid social and financial ruin was often taken into account by sympathetic juries who found grounds to acquit. With the 1803 Act, however, infanticide was legally recast as a crime against the child and, again, the legislation recognized the violence that underlay the murder of a living being. The 1803 act still pertained only to infanticide committed by unwed mothers. Married women who killed their newborn children were still charged with murder. See R.W. Malcolmson, “Infanticide in the Eighteenth Century,” in Crime in England, 1550-1800, ed. J.S. Cockburn (Princeton: Princeton University Press, 1977): 187-209; Keith Wrightson, “Infanticide in Earlier Seventeenth-Century England,” Local Population Studies 15 (1975): PAGERAGNE; Beattie, Crime and the Courts, 113-124; Allyson N. May, “She at First Denied it: Infanticide Trials at the Old Bailey,” in Women and History: Voices of Early Modern England, ed. V. Frith (Toronto: Coach House Press, 1993): 19-49.
When the new bill was introduced, Lord Auckland expressed concern that there were already a large number of capital offences and since this legislation was to add to that number it was worthy of close consideration. However he agreed that the crimes enumerated in the bill “were such as to call for severe and exemplary punishment.” Still, not everyone was satisfied with Ellenborough’s Act. When testifying before the 1819 Parliamentary Committee on criminal laws, W.D. Evans argued that the 1803 statute had been unusually broad in scope, and the prohibition against doing another person “some other grievous bodily harm” was “an expression so extremely vague, that I think it improper to be introduced into a criminal law.”

4. Offences Against the Person Act (1828)

The first truly comprehensive piece of legislation designed to address interpersonal violence in British society was the 1828 Offences Against the Person Act, whose purpose was to consolidate and amend the disparate and uneven patchwork of legislation which had dealt with violence against the person. The new act repealed all or part of fifty-seven other statutes, passed between the reigns of Henry III and George IV (including Ellenborough’s Act) which had punished various offences against the person and consolidated current notions and attitudes into one general statement on violence in English society. As we have seen, many earlier acts were narrow in scope while, in other cases, the provisions pertaining to interpersonal violence were buried within other pieces of (often unrelated) legislation and were therefore seldom applied. The 1828 act was a triumph of clarity and simplification, consolidating disparate laws and refocusing attention upon the acts of violence themselves. Unlike previous statutes regarding interpersonal violence, the 1828 act was not sparked

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41 Times, 29 March 1803.
42 P.P. (1819) viii, 43.
43 9 Geo. IV, c. 31, “An Act for consolidating and amending the Statutes in England relative to Offences against the Person.”
in response to a particular evil.44 The act, although attributed to Lord Lansdowne, was largely the result of the combined—and notably bipartisan—efforts of Lansdowne, the Home Secretary Sir Robert Peel and the permanent under-secretary at the Home Office, Henry Hobhouse.

Evidence suggests that the bill flowed from two different tributaries of thought, drawing on larger concerns about the way in which violent crime was prosecuted and punished. The first of these streams was articulated by Lord Lansdowne, who represented those seeking to reform the laws against violence and to use this legislation to make a general statement about contemporary attitudes towards violence in society. By 1828, Lansdowne was known as a moderate Whig, whose liberality, “very happy temper” and “strong natural judgment” had already been made evident by his support for catholic emancipation, among other Whig-sponsored reforms.45 It was Lansdowne who directed the initial preparation of the bill, introduced it on 3 March 1828, and shepherded it through the Lords. In addition, in the committee stages, Lansdowne proposed subtle changes, suggestive of his attitudes towards the place for violence in everyday life. One amendment proposed eliminating the stipulation from the 1752 Murder Act that the bodies of executed criminals be passed on to the surgeons for dissection. According to some “medical men” with whom he had consulted, the “stigma of condemning criminals to dissection” did more to discourage honest people from donating their bodies than it did to amplify the terrors of punishment. Lord Tenterden, the Chief

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44 That said, there were some sections that were designed to address certain shortcomings in Ellenborough’s act. One legal periodical argued that the proposed changes, though necessary, were rather too expansive:

“The late very aggravated case, in which one Howard attempted murder by means of a blunt weapon, has induced the legislature to extend the principle of Lord Ellenborough’s act far beyond its original limits, and, as we think, beyond what public expediency, and the rules of justice can warrant. The case alluded to could not be dealt with as a capital offence, monstrous as were the circumstances under which it was committed, because Lord Ellenborough’s act...includes only cases of shooting or attempting to shoot, and stabbing or cutting, the latter of which can be applied only to sharp weapons; that it would be expedient to bring such cases as that of Howard’s within the operation of the statute, we do not hesitate to say, but we think the remedy, as at present proposed, is worse than the disease” (“Lord Lansdowne’s Act,” The Law Magazine; or, Quarterly Review of Jurisprudence 1 [June, 1828]: 129-41, quotation at 130-31). Peel had raised the Howard case when he introduced the bill into the Commons. P.D. (5 May, 1828) n.s., vol. 19, col. 352.

45 D.N.B., s.v. “Henry Petty-Fitzmaurice.”
Justice, "concurred in the amendment, and said it had been his intention to propose it." Such proposals suggest a deeper concern with the meaning of particular aspects of penal practice and seem to question the place for such compounded indignities to the human body within English penal philosophy.

The act that Lansdowne had prepared was intended to punish the whole range of offences against the person with greater severity, particularly those assaults which were in fact attempts to murder another person. It made it a capital felony to attempt to shoot any person or to try to fire a loaded gun at someone or to cut or stab persons with the intent to murder, rob, maim, disfigure or disable, or to do grievous bodily harm. The act dropped the requirement that offensive weapons be used in the commission of a violent offence against a person, a move which served to sharpen the focus of the law on the unacceptability of the violence itself and not just the real or potential physical injury that resulted. Attempts to murder by drowning, suffocation or strangulation were now considered as serious as attempts to murder by shooting, stabbing or poisoning. Shooting, attempting to shoot and wounding with intent to resist apprehension, or with intent to maim, disfigure, disable or do grievous bodily harm which, if they had caused death, would have been convicted as murder, were all made capital offences.

Once the bill passed the Lords, Lansdowne turned to Peel to request that he carry it through the Commons. Lansdowne had left the Home office in the political upheavals of 1827-28 but did not wish to see the bill die. In requesting his support for the measure, Lansdowne mentioned that he was inspired by Peel's earlier successes in reforming the criminal laws, and saw this bill as an attempt "to follow up a system of consolidation and amendment which you had commenced."

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46 P.D., Lords, n.s., vol. 18 (1828), col. 1357. Despite these indicators of a change in thinking, the proposal did not pass until 1834.
47 See sections 11 and 12.
48 BL Add MSS 40396, f. 150. Lansdowne to Peel, [?] April, 1828. My thanks to Simon Devereaux for supplying me this and the following references from the Peel manuscripts.
Peel accepted the responsibility for it in the Commons and solicited the input of Hobhouse and the Solicitor General, Nicholas Conyngham Tindal. It appears that the bill which passed the Lords, and which Lansdowne sent to Peel, was designed only to consolidate the range of laws dealing with interpersonal violence and to revise the law regarding infanticide. It was during its life as a bill in the Commons, however, that the other important component of the act was interjected.  

In January 1826, a magistrate penned an anonymous letter to Robert Peel, then Home Secretary, decrying the present state of the law regarding assaults. Through a few hypothetical examples, the letter outlined the frustrations and expense suffered by a victim of a trifling assault who chose to prosecute the case and called for changes in the law. In particular, he suggested that magistrates be given the power to hear and determine such cases under summary powers. The letter made an impression on Henry Hobhouse, who reminded Peel of it once the Offences against the Person Bill (as it was then called) made it to the committee stage in the Commons. In his correspondence with Peel, Hobhouse requested that he “give a dispassionate Consideration to the suggestion respecting common Assaults, which does not originate with myself, but with a County Magistrate.” Hobhouse told Peel that he had promised to raise the issue two years previously (when the letter was written) should legislation regarding injuries to the person ever come forward and, now that it had, the magistrate had “reminded [him] of [his] promise.”

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50 A Magistrate, “A Letter to the Right Honourable Robert Peel, Secretary of State for the Home Department, &c. on The Present State of the Law with Respect to Assaults” The Pamphleteer 26:51 (London, 1826): 459-65. It is remarkable to note how much of the magistrate’s proposal was, in the end, incorporated into the act: “The obvious remedy for these evils would be found, in giving Justices of the Peace the power of hearing and determining all common cases of assault in a summary manner. I would not give this power to a single Magistrate at his own house, but I would give it to two—perhaps even to one—at the usual place and time at which the Petty Sessions of the Division are customarily held. Then and there should the complaint be heard and determined; the Magistrates, or Magistrate, being invested with the power of sentencing the offending party to indemnify the complaint (up to a certain amount) for his loss of time, and any other expenses actually incurred, and to pay a fine either to the parish, the county, or to the King, or to submit to imprisonment” (p. 462).
The issue was raised in the Commons by Mr. Portman, who asked Peel whether there was any intention to extend the summary powers of magistrates in cases of petty assaults. He mentioned a particular case where a soldier’s wife had been assaulted and robbed and had applied to a magistrate for redress. Although the magistrate was willing to bind her over to prosecute, she claimed she was unable to wait so long as “she must follow her husband;” thus, said Portman, “the ends of justice were...defeated in her case.”

Peel replied that extending the powers of summary jurisdiction might prove objectionable to many “and great caution should be observed to guard that power against abuse.” Hobhouse had already warned Peel of this point, arguing that some would consider the extension of summary practice a challenge to the sanctity of the jury trial, but also suggesting that the real concern “is the Danger of Injustices being done by the Magistrate in private.” If the cases were to be tried at petty sessions, however, before two justices and only to the Amount of £5, that Danger is not very great, whereas it will stop in limine 9/10ths of the indictments for Assault, now tried at the Quarter Sessions, causing an enormous waste of public time, and ruin to the litigant Parties.

Responding to Hobhouse a few days later, Peel agreed that “the present mode of trial subjects the County to a great and fruitless expense and consumes much useful time.” He therefore consented to the proposal regarding the extension of summary jurisdiction, stating that in his opinion, of all Cases—this is the one in which there is the least danger of abuse of magisterial Authority. There is little chance of any personal Interest by which the Judgment of a Magistrate could be swayed—less certainly than in questions relating to Offences against property.

Indeed Peel believed that the current laws were doubly flawed, as poor prosecutors were discouraged from prosecuting and yet they did not discourage frivolous prosecution for assault.

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52 Ibid. He also suggested that this measure might encourage frivolous prosecutions and might give rise “to great animosity in cases of slight affrays, which had better be settled between the parties.”
53 BL Add MSS 40396, f. 184, Henry Hobhouse to Robert Peel, 25 April 1828.
54 BL Add MSS 40396, f. 193-4, Peel to Henry Hobhouse, 30 April 1828.
55 The same points had been raised in a petition to parliament from John Fuller in May of 1824. Fuller’s petition reminded the House
the end, a clause was inserted into the bill which extended the powers of summary jurisdiction for
magistrates in the cases of common assaults and battery.\textsuperscript{56} In such cases, as was suggested by the
anonymous magistrate in his letter, the act made it lawful

for Two Justices of the Peace, upon Complaint of the Part aggrieved, to hear and determine
such Offence, and the Offender, upon Conviction thereof before them, shall forfeit and pay
such Fine as shall appear to them to be meet, not exceeding, together with Costs (if ordered),
the Sum of Five Pounds...\textsuperscript{57}

Thus the 1828 act effected two important changes in the prosecution and punishment of
interpersonal violence. As well as consolidating the laws relating to violence against the person and
providing harsher penalties for all kinds of serious violence, it also effected a significant transfer of
cases of petty violence from the quarter sessions to summary courts. More specifically, the new
legislation granted magistrates the authority to filter the assault cases coming before them and to try
the less serious ones. Only the more serious cases were to be sent to the juries at the quarter
sessions, where the offenders were likely to face stiffer penalties. The decline in business at the
quarter sessions caused by this legislation was keenly felt. At the sittings of the Westminster quarter
sessions in September of 1829, the magistrates found their case load had been completely gutted. As
the \textit{Times} reported:

[The] sessions commenced this morning before F. Const Esq. and a bench of magistrates.
There was not a single traverse for trial, owing, it was said, to the operation of the act giving
summary jurisdiction to magistrates to dispose of assault cases without sending the parties to
the sessions. There were several of the gentlemen of the long robe in attendance; but they all
retired towards the close of the day without having been required to exert their talents in any
one instance,—a circumstance which seemed to afford themselves, as well as other
spectators, matter or amusement.\textsuperscript{58}

\textsuperscript{56} \textit{J.H.C.} 83 (1828), 316.
\textsuperscript{57} \textit{J.H.C.} 79 [7 May 1824], 337.
\textsuperscript{58} \textit{Times}, 4 September, 1829.
Much of the business was taken up by the petty sessions, especially (we might assume) in rural parishes, while the police offices in the metropolis (and later in other cities such as Manchester) would have taken up the rest. In January 1836, magistrates at the Lambeth Police office indicated in a letter to the Home Office that the 1828 Act “had ‘much increased’ their daily labours and responsibilities.”

**Prosecuting Assault**

Some historians might argue that the narrow legal construction of crimes of violence before the nineteenth century supports the view that violence was such a common feature of everyday life that it was considered generally acceptable to settle disputes between individuals either by threatening or invoking physical violence. Clearly this is an overly legalistic approach to what is essentially a social or cultural issue. Aggressive behaviour can emerge in a variety of contexts, and it is only in a particular context that any act can be identified as having transgressed the criminal-legal boundaries of what is acceptable and unacceptable. Bare-fisted boxing matches, for example, were often little more than loosely choreographed bar-room brawls, but the combatants themselves understood them as contests of honour—working-class duels—and it was only when serious injury resulted that a legal action might be initiated. Many shoves or punches arising in the context of other disputes did not lead to any formal charges that came to court, while self-defence was a justifiable excuse for violence, even if it caused serious injury or death. Thus, even though formal

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59 Lambeth Street Police Office to S.M. Phillips, 1 Jan 1836; PRO, HO 59/7, cited in Smith “Circumventing the Jury,” 412.


61 Beattie, “Violence and Society,” 47. Also, see the discussion in chapter 4 below.

62 Blackstone, *Commentaries*, 1: 4; Blackstone’s uneasiness with the mediation of disputes is evident at *Commentaries*, IV: 344.
court records will be used here for much of the evidence of attitudes towards interpersonal violence, that evidence must always be set within its larger social and cultural context.

The rationale for bringing a charge of assault to the attention of the authorities may seem straightforward at first. Many who prosecuted in cases of interpersonal violence sought some sanction or, perhaps, compensation for the harm done to them. However, the fact that a large proportion of victims of violence never initiated a formal prosecution shows that the desire to punish violence was far from universal or automatic. The question of what a prosecution might offer, besides the possible punishment of the offender, must always remain in the back of our minds. The question is more significant when we learn, as we do from examining the court records, that a significant proportion of assault cases ended without the court imposing a punishment. The interest that the state would eventually take in the punishment of assault, and thus in the criminalization of certain types of interpersonal violence, was determined almost entirely by the individual victim's response to his or her experience.

According to Sir James Fitzjames Stephen, it was not until the late seventeenth century that crimes of non-lethal violence were regarded as anything more than minor disputes largely outside of the scope of public concern. John Beattie has argued that throughout the seventeenth and eighteenth centuries, assault was regarded essentially as a private matter, and justices of the peace were involved in its prosecution primarily to facilitate an amicable settlement. This argument is supported by evidence from the early to mid-eighteenth century, when it is clear that justices were willing to send only the most serious cases, or cases with recalcitrant parties, to trial. But over the last third of the eighteenth century, England saw a remarkable transformation in the administration of the law relating to violent offences, particularly the prosecution of assault. The state appropriated

a larger and larger role in the regulation of violence, and assault, as a particular category of crime, came increasingly to be seen as a form of behaviour worthy of heavier state intervention. Although there and larger role in the regulation of violence, and assault, as a particular category of crime, came was no substantial change in the law until the nineteenth century, it is clear from the records of judicial practice—primarily sentencing patterns—that the courts became tougher in their attitude towards assault over the course of the eighteenth century, a development we shall consider more fully in a subsequent chapter. But before the late eighteenth century, in most instances of interpersonal violence, the magistrates were encouraged to settle as many cases as possible themselves, even if they involved serious injury.65

As with all crimes and misdemeanours in the early-modern period, the responsibility for initiating a prosecution for assault lay with the victim.66 In the counties, actions at law were heard by the local JP out of sessions, at the county quarter sessions, or (for the most serious felonies) at the assizes. In the metropolis, however, prosecutors were able to select from a number of additional courts in which to initiate proceedings. They did so depending on their means or the time or jurisdiction within which the alleged offence took place. For example, if the assault occurred within the geographical limits of the City of London, they might bring their case before the sitting magistrate or the Lord Mayor who sat daily in the Guildhall in his capacity as Justice of the Peace. After 1752, they might appear before the Lord Mayor in the justice room in the Mansion House. In the greater metropolis, after 1739, victims of crime could bring their claims to the police courts in

65 In commenting upon the Offences Against the Person bill in 1828, one legal periodical claimed "it is notorious that scarcely a fiftieth part of the assault cases that come before magistrates in their private houses, was ever brought before the court; in many, the quarrel was settled before the sessions; in others, the magistrate bound over the offender to keep the peace, and dismissed the complaint; and in those only where the intervention of a jury was absolutely requisite, or where the private resentment of the magistrate, or of an influential neighbour called for a public exposure, were the most extreme measures resorted to." "Lord Lansdowne's Act," Law Magazine, 139-40.
66 On the victim's wide scope of discretion, see King "Decision Makers and Decision Making,"25-38; Beattie, Crime and the Courts, 8-9, 38-41.
Figure 2.1
Courts likely to hear assault cases in the Metropolis, and their Jurisdictions, 1730-1840

<table>
<thead>
<tr>
<th>DATE</th>
<th>LONDON &amp; MIDDLESEX</th>
<th>CITY OF LONDON</th>
<th>MIDDLESEX</th>
<th>WESTMINSTER</th>
</tr>
</thead>
<tbody>
<tr>
<td>1539</td>
<td>Court of King’s Bench</td>
<td>London Sessions of the Peace</td>
<td>Middlesex Quarter Sessions</td>
<td>Westminster Quarter Sessions</td>
</tr>
<tr>
<td></td>
<td>Court of Common Pleas</td>
<td></td>
<td></td>
<td>Palace Court</td>
</tr>
<tr>
<td></td>
<td>Court of Oyer and Termer and Gaol Delivery (Old Bailey)</td>
<td></td>
<td></td>
<td>Justices of the Peace out of Sessions</td>
</tr>
<tr>
<td>1630</td>
<td></td>
<td>Mansion House Justice Room$^{67}$</td>
<td>Justices of the Peace out of Sessions</td>
<td></td>
</tr>
<tr>
<td>1737</td>
<td>Guildhall Justice Room$^{68}$</td>
<td>Bow Street Police Office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c. 1739</td>
<td></td>
<td></td>
<td></td>
<td>Justices of the Peace out of Sessions</td>
</tr>
<tr>
<td>1792</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1834</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1849</td>
<td>[Old Bailey Sessions replaced with Central Criminal Court]</td>
<td></td>
<td></td>
<td>[Palace Court Abolished]</td>
</tr>
<tr>
<td>1873-75</td>
<td>[Court of King’s Bench Subsumed by the High Court]</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

$^{67}$ The Lord Mayor had, since 1444, exercised his role as a JP from his residence, or his livery company’s hall. When the Mansion House was opened in 1752, the Lord Mayor began hearing cases there.

$^{68}$ Aldermen began regular daily sittings at Guildhall on 12 December, 1737 though less regular sittings may have been held there well before that date. See [P.E. Jones], “The City Justices and Justice Rooms,” Transactions of the Guildhall Historical Association 3 (1963), 36.
Bow Street. They might also present their case directly at the quarter sessions or even to the court of King's Bench at Westminster or the Guildhall when they were in session. Other courts, such as the Palace Court and the Sheriff's Court, also dealt with their share of punch-ups, brawls and arguments. But, because of their limited jurisdiction, these courts are clearly not representative of more general practice. Indeed, in the vast majority of cases, victims of assault (and most other offences too) initiated a legal action with a local Justice of the Peace and their important role in the prosecution of assault needs to be dealt with first.

1. Justices of the Peace

The JP or magistrate was often the first person to whom a victim of an alleged assault might turn for redress. Magistrates were usually men of some social standing within the community and thus formed a part of the natural ruling order. Indeed, their social standing alone invested them with considerable power and the deferential relationship between the JP and many of the people coming before him certainly shaped the character of proceedings before him. That the magistrate's chief function was to mediate between petty disputants with the paternalistic authority of the gentleman squire was a point restated in Blackstone. If the prosecutor (and, especially, the defendant) was reluctant to settle the matter on the spot, the JP could bind him or her over by recognizance to appear at the next sitting of the quarter sessions to prosecute the case. Since magistrates were often

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69 Beattie, Crime and the Courts, 65.
70 According to Alexander Pulling, the Sheriff's Court did not have criminal jurisdiction; however, it did have jurisdiction over "debt and all other personal actions at common law" and was divided into the Gilstpur Street and Poultry Compter divisions, and my guess is that it may well have ruled on petty assaults arising from or compounding other matters. See Alexander Pulling, A Practical Treatise on the Laws, Customs, and Regulations of the City and Port of London as Settled by Charter. Usage, By-law, or Statute (London: V. & R. Stevens and G. S. Norton, 1842), 200-201.
72 Blackstone, Commentaries, i: 8.
the first public official to be notified of any alleged offence, it is almost certain that very serious
offences were coming before them. As we have seen, the magistrates who presided over these early
proceedings had broad powers to arbitrate between the parties, and it is clear that, on many
occasions, they did so effectively.

Since there were no uniform procedures for pre-trial hearings before JPs, it was left to the
magistrates to exercise their discretion and good judgment in interpreting the applicability of the law
in each case and to advise prosecutors on the likely success of their case. The limits of their power
as JPs were formally defined by the Marian bail and committal statutes. Before 1847, the official
business of summary courts was restricted to non-indictable offences. Minor disputes, settlement
issues and dealing with individuals apprehended for drunkenness and vagrancy formed the bulk of
cases coming before them, but any cause whatsoever could originate with the JP. However, more
serious offences, such as simple larceny and assaults involving injury, were not to be tried by the
magistrate alone. The suspects were supposed to be bound over by a recognizance for trial at the
next quarter sessions of the peace. More serious offences, like murder or grand larceny, were to be sent
to the county assizes which were held twice a year in most counties. In such cases, the accused
was to be bound over by a recognizance to keep the peace or to be of good behaviour and to appear
at the next quarter sessions or, if it was a felony, at the next assizes.

Thus, whether to send a case on to quarter sessions or to try to settle it on the spot was likely
to be a decision based on such variables as the nature of the assault itself, including the degree of
violence involved, the relationship between the parties and whether they were in any way

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conciliatory. The JPs were thus instructed to act as mediators in as many cases as possible in order to satisfy the parties and also to avoid clogging the courts with "trifling" disputes. Although it was illegal for the JP to allow victims to "compound" a felony by circumventing a trial at law by accepting damages and promising not to prosecute the crime in the future, in misdemeanor cases the law was less certain and informal mediation was more readily applied.\textsuperscript{75}

Magistrates wielded enormous power in a justice system that depended upon the careful exercise of discretion. It was incumbent upon the JP to decide whether a case could be heard summarily or whether an indictment should be preferred to hear it at quarter sessions or assizes. Strictly speaking, they had no authority to try an individual for assault and punish them on their own authority, although in practice this is precisely what many of them did. Felonies clearly could not be tried by the magistrate sitting alone, but most misdemeanours could be and, indeed, it was the prosecution or informal arbitration of misdemeanours that formed the substantive bulk of the active JP's work.\textsuperscript{76} Assaults were more ambiguous. Although it was desirable that trifling matters be dismissed as soon as possible, the magistrate hearing the initial complaint usually had to bow to the wishes of a persistent prosecutor, regardless of the pettiness of the offence, and swear out an indictment. Still, settling the case at an early stage was usually desirable for all concerned, as it brought a speedy resolution to the matter, and prevented a more protracted and expensive suit at the quarter sessions. A growing body of legislation permitted that some offences could be punished summarily by the JP, usually with either a fine, whipping or by committing the offender to a term in

\textsuperscript{75} Beattie, Crime and the Courts, 39-40; Robert B. Shoemaker, Prosecution and Punishment: Petty Crime and the Law in London and rural Middlesex, c. 1660-1723, (Cambridge: Cambridge University Press, 1991), 23-4. Shoemaker notes that at the Middlesex quarter sessions in 1722 the practice of compounding for receiving stolen goods and for assault with intent to rape was explicitly forbidden (LMA, NF/SP/December 1722, no. 54, cited in Shoemaker, Prosecution and Punishment, 24).

\textsuperscript{76} Blackstone, Commentaries, IV; ch. 20. See the accounts in Henry Norris, Richard Wyatt (note 11 above), and Shoemaker, Prosecution and Punishment, 23-25, 35-40. For a recent study of the practice of summary procedure in London, see Bruce P. Smith "Circumventing the Jury: Petty Crime and Summary Jurisdiction in London and New York City, 1790-1855," (Ph.D. diss. Yale University, 1996).
the House of Correction, but assaults were not placed under the purview of summary jurisdiction until 1828.

2. Rural JPs and Petty Sessions

In rural England, JPs heard cases in their parlours or "justice rooms" with a regularity that depended on the temperament of the individual office-holder. Some JPs were very conscientious and held sessions every day. Others were more haphazard in their duties, setting a more flexible schedule. In the early nineteenth century, the diligent Bedfordshire magistrate Samuel Whitbread made himself available every day of the year (including Christmas Day) to hear complaints from the residents of Biggleswade, Clifton and Wixamtree.77 Henry Norris was equally active between 1730 and 1741. Both men heard numerous cases of assault, and most of those cases were either settled on the spot or else something was worked out privately at some later date, especially once an arrest warrant for the defendant was issued.78

Rural justices also met in pairs or in threes, often in pubs or local inns, to dispatch legal business at petty sessions. A limited number of sources has made the petty sessions a difficult court to penetrate for historians of the metropolis, at least before the mid-nineteenth century.79 Fortunately, a surviving minute book for the general and special meetings of the sessions of the peace in New Brentford from the period 1806-1823 sheds a little light on the work of justices in that corner of rural Middlesex and on their attitudes towards violent behaviour. From the records of 87 extant assault cases heard at that court, roughly 26% were bound over in recognizances or ordered

77 Alan F. Cirket, ed. *Samuel Whitbread's Notebooks 1810-11, 1813-14* (Amphill: Bedfordshire Historical Record Society, 1971), 7-8; also see generally the books mentioned in note 11 above.
79 Norma Landau found more extensive records for the petty sessions in rural Kent (The Justices of the Peace, 1679-1760, Berkeley: University of California Press, 1984, ch. 7).
to find sureties to keep the peace (table 2.1). Another 24% were dismissed or settled when the justices were able to work out some satisfactory agreement. Some cases were “settled amicably”, while others were dismissed when, in the justices’ view, “it appeared that there were faults on both sides.” Serious punishments were rare, though one man was ordered to find sureties in £40 and two guarantors in £20 each, and another man was sentenced in November of 1808 to be put in the stocks for two hours in Twickenham.

Close to 30% of defendants in assault cases heard at the New Brentford petty sessions were sent on to the quarter sessions. In a few cases, we know for certain that this was due to “the parties refusing to settle the matter amicably.” For others for which there is no hard evidence, we can safely assume that an unwillingness to reconcile played a part, while some cases were simply beyond the magistrates’ jurisdiction because of the severity of the alleged offence. The records reveal that in

Table 2.1
Known Outcome of Assault Cases at Petty Sessions in Rural Middlesex (New Brentford), 1806-1823

<table>
<thead>
<tr>
<th>Sentence/Outcome</th>
<th>Defendants</th>
<th>Female</th>
<th>%</th>
<th>Male</th>
<th>%</th>
<th>Total</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dismissed</td>
<td>10</td>
<td>6</td>
<td>30.0</td>
<td>4</td>
<td>6.0</td>
<td>11.5</td>
<td></td>
</tr>
<tr>
<td>Settled</td>
<td>11</td>
<td>3</td>
<td>15.0</td>
<td>8</td>
<td>11.9</td>
<td>12.6</td>
<td></td>
</tr>
<tr>
<td>Imprisoned as punishment</td>
<td>2</td>
<td>1</td>
<td>5.0</td>
<td>1</td>
<td>1.5</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Imprisoned for want of sureties</td>
<td>7</td>
<td>1</td>
<td>5.0</td>
<td>6</td>
<td>9.0</td>
<td>8.0</td>
<td></td>
</tr>
<tr>
<td>Bound over to appear at Quarter Sessions</td>
<td>25</td>
<td>4</td>
<td>20.0</td>
<td>21</td>
<td>31.3</td>
<td>28.7</td>
<td></td>
</tr>
<tr>
<td>Bound over in recognizance or</td>
<td>23</td>
<td>3</td>
<td>15.0</td>
<td>20</td>
<td>29.9</td>
<td>26.4</td>
<td></td>
</tr>
<tr>
<td>sureties to keep the peace</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other*</td>
<td>9</td>
<td>2</td>
<td>10.0</td>
<td>7</td>
<td>10.4</td>
<td>10.3</td>
<td></td>
</tr>
<tr>
<td>Grand Total</td>
<td>87</td>
<td>20</td>
<td>100.0</td>
<td>67</td>
<td>100.0</td>
<td>99.8</td>
<td></td>
</tr>
</tbody>
</table>

Source: LMA, Acc 5.
*IIncludes 1 discharged from apprenticeship, 2 discharged from indentures, 2 ordered to pay the Constable’s fees and to enter into recognizances for good behaviour, 1 put in the stocks for two hours, 1 bailed, 1 apprentice returned to service, and 1 ordered to pay 2/6 compensation to his victim.

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80 LMA, Acc 5, Petty Sessions of New Brentford, Minute of Sessions, 21 Jan 1806-15 April 1823. The sessions cover the areas of New Brentford, Hanwell, Greenford, Norwood, Isleworth, Twickenham, and Heston.
81 Ibid.
82 Ibid.
one case of an alleged rape of a seven-year-old girl (which was a felony), the suspect John Jarvis was bound over to appear at quarter sessions, even though the magistrates themselves believed that rape could not be proved. The surgeon who testified before the magistrate claimed he “found her parts much inflamed but no laceration & consequently no entrance could in his Opinion have been effected,” though he did agree that Jarvis had given the girl gonorrhea. Still, being an alleged felony, the case was sent on to the quarter sessions.

Finally, these figures suggest that access to the machinery of justice may also have depended more or less upon one’s gender. The practice at the New Brentford petty sessions demonstrates a pattern of behaviour familiar to other courts, with 30% of cases with female defendants being dismissed and a further 15% settled on the spot, while nearly a third of cases involving male defendants were sent on to the quarter sessions for trial (table 2.1). It would seem that violent women were more easily and readily mollified by the courts than were violent men.

3. Middlesex JPs

In Middlesex, many more men were in the commissions of the peace than in the City proper. In part this was a function of the large and growing population, as there were more and more men resident in the capital who met the minimum property qualification for the office. Many JPs only took the position for the honour and social standing that it conferred. In times of need, these JPs could exercise their privilege to open up shop and thereby collect the fees from litigants that tenure of the office guaranteed. Some men of lower social station, who had no independent means (as a member of the gentry might), made justicing their full-time occupation. Such “trading

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83 Ibid. Carnally knowing and abusing a female child under ten years of age with or without her consent was made a felony under 18 Eliz. c. 7, s. 4 (1576).
84 Norma Landau has found that in Middlesex in 1761 there were nearly 500 potential J.P.s. By 1780 there were 659 named commissioners; however, of the 1780 list, only 135 had qualified to act. For 1761, see Landau, *Justices of the Peace.*
justices”, as they came to be called, appeared to be involved in the administration of justice primarily for the fees. Partly for this reason, the Middlesex justices had a very poor reputation in the eighteenth century, though, as Ruth Paley has argued, the more substantive underlying reasons for this perception of magistrates remain somewhat difficult to gauge. She argues that the Middlesex Commission “was dominated by tradesmen and merchants”, and contemporary evidence suggests that such men were not always considered to be of the proper station for the job. Some believed they were avaricious and tried to inflate the number of cases coming before them in order to increase their income. In an anonymous letter from 1758, a contemporary author complains of the “several persons [who] have been put into the commission of the peace, contrary to the Original intention of that high office: Such as artisans and others, neither admitted nor even conversant with the Law.” He continues:

they are no sooner appointed than some of them open shops, contiguous to their trade and employments, for the Distribution of Justice...And its a well known [sic] truth, that those Gentlemen have for the sake of their two employments scouts and spies of observation either to inform or find out the poor wretches that quarrel one with another, or give in Indecent Language, the first is apprehended by a warrant for an assault; the latter into an other for the good-behaviour..."

On the other hand, some of the best known legal figures of the eighteenth century—men such as Sir Thomas de Veil, Henry Fielding and Sir John Fielding, his half-brother—were magistrates in Middlesex. They held daily sittings in the Public Office in Bow Street, which had been established by De Veil in 1739. Yet, despite the acknowledged skill and ambition of men such as

Appendix A; the 1780 numbers are from “Alphabetical List of all the Noblemen and Gentlemen who are named in the Commission of the Peace for the County of Middlesex,” LMA, MJP/L/13.


87 BL, Add MSS 33,053, f. 223.

De Veil and Sir John Fielding, or the personable nature and integrity of the High Constable turned Magistrate, Saunders Welch, there was less admiration for other magistrates. The shortage of competent magistrates by the 1780s and 1790s, combined with the erosion of faith in the ability of unpaid gentlemen to meet the needs of the metropolis in the control of what was believed to be a rapid increase in crime, were the main forces behind the passage of the Middlesex Justices Act in 1792. The Act established six more police offices in Middlesex and Westminster (besides Bow Street) and one in Southwark. Daily sittings were to be held at these other police courts before stipendiary (that is, salaried) magistrates.

But even with the establishment of salaried justices, others still found reasons to object to what they perceived as the unwarranted exercise of discretion in their administration of the law, as demonstrated in one case from 1795. A master bricklayer brought his apprentice before the sitting magistrate on a charge of pilfering a scaffolding board, valued at less than 9d. The magistrate, Mr. Bond, gave the suspected thief the choice of enlisting in either the army or navy as his punishment. The man declined both options, and Bond ordered him to join the navy. As the Morning Chronicle reported, upon Mr. Bond’s rendering his sentence, one of the spectators in the court room stood up to challenge his decision, telling him “he was acting improperly.”

“Who are you,” said Mr. B?— “I am Mr. Thompson, a Member of the House of Commons; and I tell you that you act illegally.”— “Do you tell me, sitting here as a Magistrate, that I act illegally?”— “I do; for if the boy has committed a crime, he is not to be punished arbitrarily by you, or any other Justice; it is to the laws of the land, and to them alone that he is amenable; and I say that it is a violation of the liberty of the subject.”

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Such wide discretionary power clearly rankled the liberal sensibilities of Whigs such as Thompson.

Unfortunately, few official records of the business of the Bow Street office survive. Many of these records were likely destroyed by the Gordon Rioters in 1780. After that date, any depositions or indictments that were sent on to the quarter sessions would be found among the very limited sessions papers of that court. Anecdotal evidence exists in the newspapers and in the *Weekly Hue and Cry*, published later as *The Public Hue and Cry*. After 1792, the magistrates at the Public Offices came to be known as police magistrates, and the reports in the newspapers fall under the heading “Police Intelligence.” With regard to their attitudes towards violence, it is difficult to form any general conclusions given the absence of a consistent run of court records. Qualitative examples drawn from the press suggest that these magistrates largely fell in line—in terms of their desire to arbitrate settlements and to punish serious violence—with their contemporaries in other courts.

4. The Guildhall Justice Room and the Mansion House Justice Room

In the City of London itself, a common course of action for the victim-prosecutor was to bring his or her case to either the Mansion House Justice Room or the Guildhall Justice Room. These courts might well be seen as two sides of a coin, both concerning themselves with the daily regulation and governance of the City. The justices at these venues were the aldermen of the City. By a royal charter of 1444, the mayor, recorder and all those aldermen who had “passed the Chair” (i.e., served as Lord Mayor) became Conservators of the Peace *ex officio*. Another royal charter of 1550 extended their powers over Southwark and a further one in 1608 extended those powers to

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92 *Law Times*, vol. 233, (June 15, 1962), 327-28. The records of these courts are at CLRO, MJR/M 1-73 (Mansion House Justice Room Minute Books), and CLRO, GJR/1-55 (Guildhall Justice Room Minute Books).
many additional liberties surrounding the City. In December 1737, the Lord Mayor and aldermen eligible to serve as JPs were organized into a rota whereby each would sit one day each month in the Justice Room in the Guildhall. In 1741, another royal charter made all Aldermen justices of the peace, and they then took their place in the rota. This allowed the more effective administration of justice by spreading the burden of judicial business fairly among all serving aldermen.

The Lord Mayor, as chief magistrate of the Corporation, had also sat on a fairly regular basis as a JP in the Guildhall. Later, following the construction of the Mansion House in 1752, the Guildhall Justice Room was twinued by a new justice room built directly into the Mansion House. Possibly as soon as the Mansion House was opened, but certainly from 1756, the Lord Mayor sat in a Justice Room “despatching public business” while the Guildhall Justice Room, chaired by an alderman, continued with its daily rota. There was a customary geographical division of cases arising in the City, with those arising north of Gresham Street heard at Guildhall and south of it at Mansion House. By the early to mid-nineteenth century, this arrangement must have changed slightly, as Pulling describes a system where “one alderman attends by rotation among the body, for a week at one time, in the justice-room in Guildhall, where he transacts the magisterial business of so much of

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93 Skyme, History of the Justice of the Peace, 393.
94 The calendar of rotation for the mayoral year 1751-1752 is pasted inside the minute book of the Guildhall Justice Room at CLRO, GJR/M 1.
96 In 1748, before the completion of Mansion House, the room on the main floor originally intended as the Swordbearer’s room was reassigned as a justice room ([P.E. Jones], “The City Justices and Justice Rooms,” Transactions of the Guildhall Historical Association, 3 (1963), 35). A more recent history of the Justice Room may be found in Sally Jeffery, The Mansion House, (Chichester: Phillmore & Co., 1993), 196-7, 214-17.
97 CL, MS 100, cited in Jeffery, The Mansion House, 196.
98 [P.E. Jones], Law Times, 233 (15 June, 1962), 327-28. Around the turn of the nineteenth century, the Mansion House Justice Room also became the court for hearing cases brought forward by the Water Bailiff. Such cases were clearly indicated in the court’s rough records or minute books, and the cases themselves usually concerned disputes over forms of illegal fishing, either with illegal nets or bait, or for fishing on a Sunday, as well as other disputes among persons within the Water Bailiff’s jurisdiction.
the city as lies to the westward of a line drawn nearly north and south, through Queen Street and King Street.”

The business of these courts, which met every day except Sunday, was similar to that of other magistrate’s courts. Besides taking affidavits and issuing warrants and recognizances, they heard and dealt with a range of cases, from servants refusing to carry out their duties, to husbands who had deserted their wives leaving them chargeable to the parish, to disputes between coachmen and their stingy passengers or masters refusing to pay wages. Charges against porters and drivers for restricting the flow of traffic by obstructing the streets with their carts were frequently heard, too. The magistrates also dealt with prostitutes and other vagrants, and persons “suspected of being a common pilferer.” The latter charge could land the person in the house of correction for a few days “to be corrected,” usually on their promise not to be found guilty of the same offence again. Some who came before the Lord Mayor at the Mansion House charged with theft were similarly sent to the Bridewell for “correction” for periods from a few days to several weeks.

The magistrates in the Guildhall Justice Room and the Lord Mayor in his Justice Room spent a large proportion of their time dealing with cases of minor violence, ranging from the sending of threatening letters, to breaking windows, to the more frequent cases of assault, beating and other “ill treatment.” The records of the Mansion House Justice Room that survive for the period 1784-85 suggest a busy courtroom, with an average of five or six assault allegations being made to the Mayor each day. The records also reveal that, in the vast majority of these assault cases (85%), the Mayor preferred to act as referee, settling the matter on the spot and discharging the parties often with a 1s. fine to the defendant. Many of the accused had spent the night in either the Poultry Compter or

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100 Pulling, Practical Treatise, 29.
101 See CLRO, MJR/M/1-6 (1774-1775) and GJR/M/1-55 for examples.
102 CLRO, Mansion House Minute Books, MJR/M 1-73, passim.
103 That is 184 out of 217, based on a count of all assault cases recorded between 10 November 1784 and 29 January 1785 (CLRO, MJR/M 1-3).
the Wood Street Compter, the two Sheriff's prisons, which also appear to have served as the City's holding cells for drunken and disorderly night charges brought in by the watchmen or constables.\footnote{Sheehan, "London Prison System," 97, 112.}

The aldermen sitting at Guildhall similarly heard the stories of those who had spent the night in the compters and were then brought forward the next morning to account for their behaviour. In October 1761, Mary Smith was brought from the Wood Street Compter to answer a charge by James Maxwell that she had abused him "by tearing his cloaths off his back." But the clerk noted in the minute book that "it appearing they were both in fault" the parties were discharged with a 1s fee.\footnote{CLRO, GJR/M 2 (14 October 1761).} In both Justice Rooms, the more serious cases, and those with recalcitrant litigants, were bound over to appear at the next sessions of the peace.\footnote{CLRO, MJR/M 6 (20 April 1785) for example.} Occasionally people were bound in recognizance by large sums—sometimes as much as £100, but usually between £10-40—to appear at the London sessions of the peace (also held at Guildhall) and to try the case before a jury. Thus, the procedure in cases of assault in these city magistrate's courts was virtually the same as that in rural justice rooms in Middlesex and in other parts of the country.

One possible difference between assault prosecutions before the City’s magistrates and those in a rural setting is the involvement of lawyers. Engaging the services of a solicitor to present a case to the local JPs was an expensive undertaking, and since most assault charges brought before the magistrate, as we have seen, were settled on the spot, the cost of hiring professional legal help would likely far outweigh the benefits. In the City, however, at least in the early part of the nineteenth century, there might have been a different story. The city solicitor, who was responsible for conducting all legal proceedings in which the corporation had an interest (as well as any cases he was
ordered to take on by the courts of aldermen or common council), ended up lending his professional help in a number of cases of interpersonal violence.107

In certain cases, especially those involving particularly heinous forms of violence, or in which a City officer or official such as a constable was the victim, the authorities took an interest in supporting the prosecution. From a few of the surviving solicitor’s briefs from the early nineteenth century, we can uncover some of the circumstances which lay behind the violence prosecuted at the Guildhall Justice Room and at the London sessions of the peace because of this official’s involvement. In one bizarre case, the city solicitor was ordered to prosecute a man, Thomas Robinson, for two brutal attacks on Elizabeth Peale and Ann Slaton. On the night of 20 December 1802, Peal was walking up Fleet Street when she was met by Robinson who allegedly “pushed her against the Wall put his hand round her Neck and bit her violently on the Cheek and said he’d bit her Ear off.” Robinson then ran off and Peale was left “crying in the Street” until a man came up to assist her. He asked her what was the matter, and when she told him she had been bitten, “he then said a Lady had been served in the same way at the bottom of Fleet Street and that she had better go and see.”108

The other woman was Ann Slaton. She was walking alone in the street when Robinson “came behind her, put one Arm round her Waist & the other round her Neck and without saying a Word bit her on the Cheek which gave her great pain, & she thought he had really taken a piece out.” Slaton was screaming “Murder Murder Oh! my Face I am sure he has take a piece of my Face” and drew the notice of Mr. Dixon, one of the watchmen, who led her to the watchhouse.109

In the meantime, a crowd had pursued Robinson, knocked him down and returned him to the

107 The office is briefly described in Alexander Pulling, A Practical Treatise on the Laws, Customs, and Regulations of the City and Port of London as Settled by Charter, Usage, By-law, or Statute (London: V. & R. Stevens and G. S. Norton, 1842), 122. Also see Allyson N. May, “The Old Bailey Bar, 1783-1834” (Ph.D. diss, University of Toronto, 1997), ch. 4, esp. 179-80.
108 CLRO, London Sessions Papers, Solicitor’s Briefs, Box 2 (1800-03).
109 Ibid.
watchhouse too, where both Peale and Slaton swore to him being the man who had attacked them. The next day they attended the sitting magistrate, Sir William Leighton, at the Guildhall Justice Room who committed Robinson to the Compter to await trial for the assault, and ordered William Newman, the city solicitor, to prosecute the case on behalf of Slaton and Peale.\textsuperscript{10} The City clearly was not going to tolerate these apparently random, senseless attacks and was willing to invest public resources in seeing offenders of this sort prosecuted, especially when the victims did not have the resources to mount a prosecution themselves.\textsuperscript{11}

Such detailed information is unique among the records of proceedings before magistrates. And even the records that do survive, such as the rough minute books from the Guildhall Justice Room, run only until 1796. By the turn of the nineteenth century, the records of the Mansion House Justice Room also grow considerably thinner. Whether this was because the business of the court had actually been reduced to only a handful of items each day—usually around five or six cases of all kinds were being heard at this time—or whether this simply represents poor record-keeping is difficult to determine. If cases were being heard and dismissed, affidavits being sworn and warrants being issued in the same numbers as they had been in the past, they were no longer noted in the minute books of the court.\textsuperscript{12} It is possible that the business of this court was indeed decreasing if, first, the Guildhall Justice Room or the police courts, established in 1792, took up most of this court's former business, or, second, because the population of the City itself was declining at the end of the century. Three of the new police courts—in Hatton Garden, Whitechapel and Shadwell—were near to the City.

\textsuperscript{10} Presumably the case appeared at the next quarter sessions, though I have not yet found a record of it among the indictments.

\textsuperscript{11} May notes that this was in fact another of the city solicitor's mandates. See note 107 above.

\textsuperscript{12} See CLRO, MJR/M 69-74.
5. Prosecutions at the London and Middlesex Sessions of the Peace

i. London Sessions of the Peace

In London and Middlesex, the quarter sessions met more frequently than in other counties. Given the size of the metropolis, it was simply impossible to dispense with the volume of business in only four sessions each year, thus the metropolitan courts of quarter sessions met twice as often—eight times each year—in order to deal with the volume of business. The equivalent for the quarter sessions for the City of London were the general sessions of the peace. These sessions were also held in the Guildhall before the Lord Mayor, the Recorder of London and the Aldermen.113 Sessions of the peace were also held quarterly for the city of Westminster under a separate commission, first granted in 1618.114

The principal adjudicative role for the aldermen JPs was to hear cases at the quarter sessions of the peace. Six aldermen attended at each of these sessions, at which the magistrates had the power to deal with various misdemeanours, other minor offences (including theft) and issues of county administration and regulation.115 The quarter sessions had, by the eighteenth century, become well-established as courts for the trial of misdemeanours, petty larcenies, trespases and most other minor offences. Since the Restoration, the division in business between the assize courts and the quarter sessions had been generally clear, a division in business which was solidified over the course of the eighteenth century.116 In London and Middlesex, however, the divisions between the courts was felt more sharply than elsewhere. The sessions of the peace saw many fewer property

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113 Hugh Bowler, London Sessions Records (London: Catholic Record Society, 1934). Technically there were only four quarter sessions annually, supplemented by four general sessions, each with slightly different commissions. However after the passage of 12 Geo. II, c. 29, both sessions were given equal authority effectively erasing that distinction (Dowdell, Hundred Years, p. 1, n. 4).

114 I hope to include a detailed study of the Westminster records in a future version of this study.


116 Beattie, Crime and the Courts, 283.
offences, while the sessions at the Old Bailey, the metropolitan equivalent of the county assizes, rarely dealt with simple assaults. Most serious offences involving the person, such as murder, rape, and violent assaults made in the course of committing a felony, in addition to cases of grand larceny, were sent on by the magistrates to the sessions at the Old Bailey.\textsuperscript{117} Still, because of the vague definition of assault, and the precise statutory definitions of particular variations of it already discussed, not all cases of serious violence were sent on to the higher court. This meant that at the quarter sessions, along with the very large number of minor assaults tried there, we also find a number of very serious crimes of violence.

Nearly 87\% of assaults tried at the Old Bailey in the period 1760-1800 occurred during an attempted robbery. After the passage of Lord Ellenborough’s Act in 1803, the Old Bailey began to hear more cases of serious assault, many of which amounted to attempted murder. In a sample of 126 cases of assault tried at the Old Bailey between 1760 and 1832, only one was for simple assault. Two others were for assaults defined within the context of other statutes, including two in which clothing was spoiled. One significant development in the nature of Old Bailey assault cases was the dramatic rise in the early nineteenth century in the number of prosecutions for what amounted to attempted murder. In the period between 1804 and 1832, prosecutions for this form of assault accounted for over 65\% of the assaults prosecuted at the Old Bailey.\textsuperscript{118}

\begin{table}
\begin{tabular}{|c|c|c|c|c|}
\hline
Year & Assault & Assault with intent to maim and/or murder & Assault with intent to rob & Assault with intent to ravish or carnally know & Total Assaults \\
\hline
1760-1800 & & & & & \\
Male & & & 44 & 6 & 50 \\
Female & 1 & & 3 & & 4 \\
1804-1832 & & & & & \\
Male & & 42 & 17 & 2 & 61 \\
Female & 1 & & 4 & & 5 \\
\hline
\end{tabular}
\caption{Assault CasesProsecuted at the Old Bailey, 1760-1832}
\end{table}

\textsuperscript{118} The following table is based on a quartannual sample of cases prosecuted at the Old Bailey:

\textit{Source: L.M.A., OB/SB Gaol Delivery Books (Old Bailey).}

\textit{Note: No records survive for the year 1784; 1785 was used instead. The 2 cases of assault and spoiling goods valued 24/- were excluded from this table as the assault itself was incidental to the charge under the statute.}
It is unlikely that this represents a sudden increase in the “real” number of such violent assaults. Rather, it seems to reflect the passage of Ellenborough’s act in which, as we have seen, made a range of violent offences against the person capital. The Act plugged a loophole in the laws pertaining to interpersonal violence, and aimed to offer legal protection against all offences of malicious stabbing, cutting and wounding. The effect of this legislation was to siphon off many of the most serious cases of interpersonal violence from the London and Middlesex quarter sessions. As a result, less heinous forms of assault, which would have previously fallen into the middle range of all violent offences tried at quarter sessions, would now form the top-end of cases of criminalized violence subject to the harsher punishments of the court. All of this occurred amidst a growing trend of severity in punishing assault at the quarter sessions, as we shall see in greater detail in chapter 6.

The absence of detailed accounts from the Old Bailey Sessions Paper regarding assault cases is an unfortunate lacuna in the record of interpersonal violence in the eighteenth-century metropolis. Assize records from the counties are often much richer on this point, but the peculiarities of the metropolitan court structure in our period meant that assault was virtually excluded from the Old Bailey before the nineteenth century, and the usually rich accounts of the OBSP are uncharacteristically unhelpful.

Unfortunately, the detail behind many of the cases prosecuted at the London sessions of the peace is not recoverable either, as there are very few surviving depositions from these courts. Newspapers can occasionally fill in the stories told in these courts. They relate, for example, that in 1795, John White was tried for a violent assault on J. Gardner, a toll collector of the City. Several witnesses were sworn, and it was reported that their testimony was equally persuasive on both sides. In the end, “the Recorder left it to the Jury to determine which of the two classes of Witnesses credit
was due.” After about half an hour of deliberation, they returned a verdict of guilty and White was sentenced to two month’s imprisonment in the New Compter.119

From the newspaper reports we also learn that assault prosecutions sometimes emerged from rather unusual incidents. Assaults could arise from other misdemeanours, especially when they involved street traffic and reckless driving. In November 1784, a Hackney coachman was brought before the sitting justice for “willfully driving against a corpse carrying up Fetter-lane, by which the coffin was thrown from the bearers’ shoulders, and the undertaker...was so much hurt [by trying to put off the coachman] that he was unable to attend the funeral.” The renegade driver was prosecuted for an assault, fined two guineas and costs, and made to apologize to the undertaker, “promising not to be guilty of the like again.”120

There is considerable evidence that arbitration went on regularly in assault cases prosecuted in the City sessions too, in a manner suggested by Richard Burn. The 1814 edition of Burn’s *Justice of the Peace and Parish Officer* relates what, by then, had become common practice in less serious assault cases both in the City and elsewhere:

There are frequent prosecutions at the sessions for trifling assaults; in which case it is adviseable [sic] for a defendant, not to put himself to the expense of trying the indictment, but to give notice to the prosecutor that he intends to plead guilty to the indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards the prosecutor: but before that is done, the court will admit the defendant to call such witnesses as he desires, and will examine them by way of mitigation.121

Indeed a number of assault cases ended in this way, almost before they started. The defendant simply changed his or her plea to guilty, submitted to the fine and agreed to a settlement.122 This would eliminate the necessity of binding the parties over to the next quarter sessions for a full trial or

119 *Morning Chronicle*, 16 February, 1795.
122 For an example, see CLRO 226D, London Peace Papers, 1788.
discharging them entirely if they were already bound. It facilitated a speedy settlement. Henry Argent, a defendant in one such case in the City, was encouraged to change his plea to “guilty” in order that he be discharged from a recognizance and released from all further action by the prosecutor, Samuel Wheeler. In another case, one Isaac Joseph was charged, along with others, in a case of riot and assault upon Joseph Moses. It is not clear whether Moses had been compensated for his injury but, after preferring the indictment, Moses had since “forgiven him and [was] now in court ready to declare it.” Indeed, he was willing to allow Joseph to be released from further proceedings as long as he would “plead guilty and submit to a fine at the Mercy of the Court.”

At the London sessions of the peace, people were often willing to drop their case once the grand jury had found a true bill of indictment. Once a true bill was found, the parties would then have to notify each other of their intention to prosecute. At this point many litigants would ask their lawyers (if they had one) to work a deal where the parties would abandon the case in lieu of some form of compensation. Sometimes they dropped the case for no reason discernible from the records. The prosecutor may simply have become frustrated with the case or may have cooled off and realized there was little to gain from a prosecution. Such settlements, as we shall see in a later chapter, were facilitated by mandatory breaks in the prosecution procedure. The anonymous author of the *Handbook for Magistrates* (1794) informed his readers that trying an indictment on the same day on which it was found was something “which it has been held ought not to be done in any case of civil offence.”

Felonies were tried immediately following arraignment but, in misdemeanor assault cases prosecuted at quarter sessions, it was common for the defendant to enter a “traverse” after he or she had pleaded not guilty. The traverse would put the trial off until the next session of the court,

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123 CLRO, 226D, Box 1, Peace Bundle 1789.
124 CLRO, 226D, London Peace Papers, 1788. Many examples of these kinds of releases may be found here.
allowing a period of time in which the defendants could better prepare their cases or else some possible reconciliation might be worked out.126

Once the traverse was entered, the parties were then bound over in recognizance to prosecute the traverse—that is to appear at the next sessions and try the case.127 The defendant was obliged to appear in person and, if found guilty, “a fine is set upon him in the discretion of the justice unless some special punishment is presented [in] the law for that particular offence.”128 In many instances, as Norma Landau has determined for cases arising in Kent and Robert Shoemaker has found for the metropolis in the late seventeenth and early eighteenth century, assault cases ended at the recognizance stage.129 Defendants could be bound over in a recognizance to prosecute at some future date, but they could also be held in recognizance to keep the peace and to be of good behaviour for a specified period of time. As we saw above (table 2.1), the magistrates at New Brentford dealt with close to 30 per cent of the assaults coming before them in this manner. For the purposes of this study, I have not relied upon recognizances as the basis for any quantitative arguments about punishment.130 I point to them simply to illustrate their use in the process of assault prosecution and to indicate that their use accounted for a substantial portion of judicial business at the quarter sessions.131 Sometimes the recognizance itself provides a little more detail about the alleged offence, such as when James Ross was bound over in £20 with two sureties of £10

126 Ibid, 64-65: “In cases of trespass and other misdemeanours as assaults or the like (many of which are of the more trifling nature) the defendant if he appear and traverse the indictment by pleading not guilty has only to enter into a recognizance to prosecute his traverse (as the proceeding is then called) next sessions—For to try the case the same sessions would be to try an indictment the same day on which it was found which it has been held ought not to be done in any case of civil offence.” On the traverse, see also Chitty, Criminal Law, I:484-87; Beattie, Crime and the Courts, 339.
127 At the February sessions of the peace for London, Richard Mawlsbury, charged with assault with intent to commit buggery, was ordered to appear at the next session “to prosecute his traverse.” CLRO, SFP 119, f. 142.
129 Landau, Justice of the Peace, 185-88, and ch. 6 generally; Shoemaker, Prosecution and Punishment, 95,98, 100-103.
130 The sheer volume of records makes a statistical sampling technique a methodological necessity as seen in Shoemaker, Prosecution and Punishment, Appendix I. My interests here lie in the qualitative information revealed by the court records, which, in the case of recognizances, is rather limited.
131 For example, at the January sessions of 1799, for example, there were 75 recognizances for various forms of assault alone. LMA, MJ/SR/3625 (January 3, 1799).
each for “seizing hold of [William Woodridge, the prosecutor] by the collar and attempting to strike him with a sharp instrument.”\textsuperscript{132} But usually people were bound over simply to prosecute an assault and beating, or were required to appear “for what shall be objected.” Thus, the recognizances themselves are of limited use for the qualitative information about attitudes towards assault that it is my intention to explore.

If a settlement was worked out at some point between the parties, they would usually enter into an agreement, endorsed by the court, called a general release. Although general releases were granted for all actions or suits, assaults were among the most frequent crimes for which they were used. In some cases the prosecutor would agree to a release only after a settlement had been worked out. The agreement released the defendant or defendants from the prosecution, with the parties often settling on some form of consideration. Nathan Israel prosecuted one Charles L'Oste for an assault in October 1788 but ultimately agreed to grant L'Oste a release in exchange for “the sum of five guineas being in full satisfaction” for the assault. In the same month, Guiseppe Fontana returned a receipt for £1 11s. 6d. satisfaction from Thomas Clark (who had assaulted Fontana) to the Court at Justice Hall in the Old Bailey. John Fellows, a tobacconist who witnessed the exchange, declared that the “prosecutor expressed himself full satisfied for the assault committed on him by the said Defen’t as in the said receipt is expressed.”\textsuperscript{133} A general release was necessary in cases that were discharged, Sir Thomas De Veil advised, “otherwise Actions may be brought against the Constable for false Imprisonment.”\textsuperscript{134}

Norma Landau has found that justices in rural Kent were “unfamiliar” with the release, at least compared to their urban cousins. Still, as with London cases, almost all of the recognizances

\textsuperscript{132} LMA, MJ/SR/3625.
\textsuperscript{133} Both L’Oste and Fontana cases at CLRO 226D, London Peace Papers, 1788.
\textsuperscript{134} Sir Thomas De Veil, \textit{Observations on the Practice of a Justice of the Peace: Intended For Such Gentlemen As Design to Act For Middlesex or Westminster} (London, 1749), 16.
that were released in the urban Kentish sessions were for cases "in which a plaintiff had accused the defendant of assault, mistreatment, or slander, or had alleged that the defendant had threatened his life." Virtually all of the releases which have survived in the sessions papers for the years 1760-1833, concerned an alleged assault. Yet there is no indication that the London magistrates thought that even defendants granted a release had to appear again at the quarter session. Once a release was signed, the case was over.

**ii. The Middlesex Sessions of the Peace**

The Middlesex quarter sessions met at Hicks' Hall in St John Street, Clerkenwell, eight times per year. Like the City sessions of the peace, the volume of court business in the greater metropolis also necessitated more frequent sittings. Each session lasted between six and twelve days, three to four times longer than equivalent county quarter sessions. Not surprisingly, the prosecution of assault formed a major part of the court's business there too. As we have already seen, many of the assault cases prosecuted here were sent up from magistrate's hearings, but people could and sometimes did bring actions directly to quarter sessions too.

The volume of assault cases prosecuted at the Middlesex quarter sessions escalated sharply in the first fifteen years of the nineteenth century and then dropped off in the 1820s and 1830s (see figure 2.2). The precipitous increase in the early nineteenth century is interesting as there is no immediately obvious explanation for it. Part of the explanation might lie with the increase in population in the metropolis, and a proportional increase in the total number of assaults, though it is impossible to know this for certain. Some historians have argued that sudden surges in the number

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136 This is a broken series, with many fewer documents from the early nineteenth century.
of indictments in a period of post-war demobilization are the result of real increases in property crime. Whether the same is true for offences against the person is less clear. Perhaps the same anxieties about finding employment, food, and shelter that led some to commit theft also manifested themselves in short tempers and violent outbursts. But even if this was so, the most substantial demobilization did not occur until 1814-15, when indictment numbers reached their peak and started to decline.

One historian has detected a slight increase in assault convictions at the Sussex quarter sessions after 1815, especially in the years 1818-20, but clearly this was not happening in Middlesex.

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Figure 2.2
Assault Indictments: London & Middlesex Sessions of the Peace, 1760-1835

Source: See Appendix.

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139 Emsley, Crime and Society in England, 32.

The impact of the stipendiary offices in the patterns of prosecution in the metropolis for misdemeanours may also be reflected in this surge of prosecutions. If stipendiary magistrates were dealing mainly with property offences and felonies, leaving the prosecution of assault to other JPs and to the quarter sessions, the increase might reflect a concentration of numbers on a particular court in a way that was not possible before 1792. The fact that the number of assault indictments prosecuted at the London sessions remained relatively steady tends to support this notion (see figure 2.2). But the reasons why it would take a decade for this effect to be noticed in the court records remain obscure.

One might also expect such a significant change in prosecution patterns to be the result of new legislation. However, the significant pieces of legislation passed in the period we are dealing with would better explain a decline in prosecution numbers rather than a sharp increase. Ellenborough’s Act of 1803 made certain serious assaults capital felonies, thus removing them from the pool of cases that would have been tried at the quarter sessions. They would now be sent to the Old Bailey. Two acts of 1818 may be more suggestive of what was happening in the quarter sessions. One, “An Act for preventing frivolous and vexatious Actions of Assault and Battery, and for slanderous Words, in Courts” (58 Geo. III, c. 30) was intended to discourage the prosecution of trifling actions at the inferior courts by limiting the amount of costs that could be claimed by the plaintiff to an amount equal to the damages assessed by the jury. It made a similar stipulation against actions for slanderous words, limiting costs and damages in such cases to thirty shillings only. Clearly the explicit intent of this legislation was to limit the number of prosecutors coming before the courts; it may have been passed in response to complaints from judges and magistrates about the mounting number of petty assault prosecutions. It was certainly passed in the context of another

141 58 Geo. III, c. 30. (1818). The act was proclaimed on May 23.
142 There is no discussion of the debate in Parliamentary History. From the Times we learn that the bill was introduced by General Gascoyne (14 April, 1818).
debate to abolish awards, which were seen to encourage false prosecutions. On this point, Sir James Mackintosh was under the impression that "false accusation had of late become a most flourishing though an accursed trade, and it was necessary to do the utmost to put an end to it."143 This indicates a general feeling that the courts were subject to frequent abuse and unnecessary prosecutions.

It is also possible that practice was anticipating legislation, with prosecutors willing to bring even the most trifling cases to court under the assumption that at least some of their costs would be covered by the court.144 The extension of expense payments as a result of the liberal interpretation of the 1778 and 1818 acts has been noted by others.145 Thomas Sweeney, pointing to the testimony of Buckinghamshire’s clerk of the peace to the Select Committee on County Rates, suggests there is reason to believe that a second 1818 act which allowed costs to poor prosecutors in cases of felony "was liberally interpreted and provided for a significant expansion in the practice of reimbursement."146 As a consequence, as one Warwickshire justice complained, "offences of the most trifling nature...are now brought before the public with all the parade of greatest turpidity."147

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143 Times, 5 May, 1818.
144 Thomas Sweeney argues that by 1828, "the mitigation of the penal code and, above all, the expansion of the ‘legal aid system’ (reimbursement of court costs and witnesses expenses) had combined to produce a wave of prosecutions, notably of property offenders, in the courts of Quarter Session and Assize" (“The extension and practice of summary jurisdiction in England c. 1790-1860” [Ph.D. diss, Cambridge University, 1985]), 123.
146 Though he does not say so explicitly, he must be referring to 58 Geo. III, c. 70, particularly section 4 (Sweeney, “Extension and Practice,” 124). The Buckinghamshire clerk, Thomas Tindal, agreed with the committee’s suggestion that the 1826 Criminal Law Act (7 Geo. IV, c. 64) "only legalized the practice [he] had always pursued." Tindal told the Committee that, before the Act, even though the magistrate did not have “the power to allow the expenses of the prosecutor,” they did permit the reimbursement of the prosecutor’s fees. Tindal testified that he “used to allow it before the passing of the Act in question, and so did the clerk of assize.” (P.P. 1834 xiv, 97). 58 Geo. III, c. 52 (1818) continued 52 Geo. III, c. 17 (1812), which allowed costs to witnesses at special general sessions, while 58 Geo. III, c. 70, s. 4 explicitly empowered the court to pay the expenses of prosecutors and witnesses in all cases of grand or petty larceny or any other felony. The Marquis of Lansdowne told the Lords the object of this legislation was to do away with the rewards system, and to allow “prosecutors their fair expenses to remove any discouragement that might stand in the way of detecting criminality.” According to the Buckinghamshire clerk, “criminality” was subject to broad interpretation. 147 Sir J. Eardley-Wilmot, A letter to the magistrates of England on the increase of crime: and an efficient remedy suggested for their consideration (2nd ed. 1827) cited in Sweeney, “Extension and practice of summary jurisdiction,” 125.
But again, the increase in the Middlesex numbers occurred in the decade before this act was passed. Still, the practice may have anticipated the legislation by a number of years.

Finally, we must consider that the numbers might point to a real change in the attitudes of prosecutors, magistrates and grand juries: a desire to see assault cases prosecuted with greater severity, and this as a reflection of larger changes in attitudes towards such behaviour. V.A.C. Gatrell argues that the increase in the statistical record of prosecutions in the early nineteenth century “was greatly inflated by a hardening of public and judicial attitudes to offences which might in earlier times have been tolerated.”148 Perhaps magistrates were less inclined to mediate settlements in the period than they had been in the past. Or perhaps we are witnessing the result of a change in prosecution brought on by the new possibilities for sentencing violent offenders. The surge in the number of indictments for assault may suggest a growing expression of faith in the ability of prisons to deter future offenders and reform others guilty of violent offences. The magistrates may have been sending more cases on to quarter sessions because they knew that, upon conviction, a term of imprisonment was both possible and more likely and was (as we shall see in chapter 6) the preferred means of punishing such offenders.

But just as curious as the sudden increase in assault indictments in the period up to 1815 is the equally rapid decline in their number in the two decades afterwards. How do we account for this decline between roughly 1815 and 1828? Again, the explanation might be multi-faceted. The most likely explanation, though it is difficult to find much supporting evidence for this, is that JPs were taking it upon themselves to restrict the flow of indictable assault cases into the quarter sessions and were encouraging parties to settle or drop their cases altogether when the complaint was first made.

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A second part of the explanation might rest in the operation of the 1818 act to prevent vexatious prosecutions. A proportion of those who had pursued a prosecution of a relatively minor assault—or even a fictitious one—would have been discouraged from either initiating or prolonging the process by the 1818 legislation. Third, we must at least consider the possibility that the actual number of violent offences was declining, perhaps as a result of the stiffer penalties being handed down in the previous decade or two. And, as we will see in other chapters, there were other pressures on public behaviour in the early decades of the nineteenth century which suggest a quickening of interest in the suppression of violence in many of its public forms. Certainly, the continued decline in numbers after 1828 must be largely due to the passage of the Offences Against the Person Act. This act gave two JPs the power to try those accused of common assault and battery and sentence them to a fine and or to pay damages of up to £5. Given that the settlement of minor disputes at the magistrate’s level had been encouraged since the late eighteenth century, the 1828 act might then be seen simply as a move by parliament to lend statutory authority to a practice among JPs of settling disputes involving minor violence which had developed—perhaps chiefly in the metropolis—during the preceding decades.

6. Westminster: The Palace Court

One other minor metropolitan court worth a brief mention here was the Palace Court. The records of the Palace Court reveal interesting details about the nature of interpersonal violence and how it was mediated in one unique legal venue. Established in place of James I’s Court of the Verge in 1630, the Palace Court was a minor civil court which sat every Friday at Westminster until it was moved to King Street, Southwark and then back to Great Scotland Yard in the eighteenth century. The court was presided over by three judges: the Lord Steward of the Household, the Knight

149 See chapter 6 below.
Marshal, and the Steward of the Palace Court or his deputy, and sat before a jury. Its jurisdiction was over all personal pleas and actions arising in the verge of the royal court. That is to say, those areas within a twelve mile radius of the Palace of Westminster which did not fall within the jurisdiction of the City or other liberties. The bulk of the court's business dealt with the recovery of small debts and disputes over rents, unpaid wages, and the like, while cases of any significance were usually removed to King's Bench or Common Pleas. Physical threats and assaults were sometimes aspects of such cases and the court did hear simple assault cases on occasion. Since the court met throughout the year, with no vacation, it was likely a desirable place to launch an action since judgment could be had in weeks rather than months. By the later 1820s, however, the business of the court had declined markedly and assault cases disappear entirely from the surviving records. By 1837, the court was not meeting regularly and a dozen years later it was abolished altogether.

7. Old Bailey

In the counties, the assize courts would hear the kinds of cases of assault that we have seen coming to the quarters sessions and, indeed, there was no procedural impediment to such cases coming before any assize court or its equivalent. The equivalent of the county assizes for London and Middlesex was the sessions of oyer and terminer and of gaol delivery at the Old Bailey.

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152 According to a nineteenth century report, about 6000 cases were brought into this court annually, but the average number actually tried was only about 180. See The Legal Examiner and Law Chronicle, 1:3 (June 1833), 245.

153 "The average length of time intervening between the commencement of the suit and final judgment is about five weeks." Legal Examiner, 246.

However, the sharp distinction of business between the quarter sessions and the Old Bailey, only really possible because of the proximity and frequency of court sessions in the metropolis, meant that, unlike the county assize courts, misdemeanour assault cases were rarely heard there. Those assaults involving non-lethal violence that were tried at the Old Bailey were usually committed during the course of a robbery or other felony. From 1674, at least, and continuing into the twentieth century, the details of many of the cases tried at the Old Bailey were recorded and published in the pamphlet series commonly called the Old Bailey Sessions Papers. As John Langbein has noted, since the OBSP was intended for a popular audience, the more serious crimes—homicides, highway robbery or cases with sexual overtones—received the most detailed reportage. Although the OBSP do not afford a complete picture of all cases tried, other evidence confirms that the Old Bailey rarely dealt with the kinds of assault I am concerned with here. Still, we might ask what characterized the assault cases that did make it to the Old Bailey, and what they reveal about attitudes to violence, class, and social standing.

When John Daws was struck in the nose by David Davis in July 1793, his case came before the Recorder at the Old Bailey. Daws had noticed Davis arguing with a man in the street, insulting him and calling him names. Daws intervened and sent the object of Davis’ attack—a much smaller man, according to the testimony—on his way. Davis then turned on Daws for interfering and redirected his anger towards him. Daws told him “I thought he was a cowardly fellow, for insulting a man of the size of the gentleman” whereupon Davis put himself in the attitude of boxing; he put his hands up, I told him it should not provoke me to strike him; I told him, that I believed, in such cases, people generally come off second best; then a crowd [sic] gathered around, and they called out, a fight! a ring!

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156 Langbein, “Criminal Trial Before the Lawyers,” 15-16.
Daws claimed that, at this point, the crowd that had formed around them would not permit his escape. Daws' witness, Jane Sowden, testified that Daws never indicated he was willing to fight, though her objectivity is suspect as it turned out that Daws had paid her five shillings "for [her] kindness in attending." Moreover, Davis's witness claimed that Daws was not at all the gentleman he was making himself out to be in court, claiming Daws called Davis "a number of ungentleman-like names." As well, Daws "told him, that he understood boxing, and if he would go with him to a tavern, he would fight him, and if he licked him, he would give him a crown's worth of punch."

Davis's counsel pressed the witnesses to testify that Daws was willing to fight his client either at the time, indicating this by raising his fists, or at another place, as was suggested by the remark about retiring to some private place such as a tavern. But neither of Daws' witnesses could say with certainty that Davis's hands were "clinched," and both stated that Daws had told Davis he did not wish to fight him as he "was not a fighting man." At this point, the case was not looking good for Davis, despite his attorney's efforts. Realizing, perhaps, that a man like him was probably unlikely to come off the better for challenging a gentleman, Davis decided to change tack. He appealed instead to the jury's sympathy, stating that "I have been in the Poultry compter for eight weeks, and I think it is a very hard case that I should be insulted in such a gross manner by him." The jury nevertheless found him guilty but recommend mercy in sentencing him. Despite his time served (presumably he was unable to make bail), the Recorder sentenced him to two weeks imprisonment.157

Though, on the surface, this appears to be a straightforward case of assault, such affrays rarely made it to the Old Bailey. This case was likely tried there because of Daws' wealth or standing. He was clearly a gentleman in the social sense of the term (despite Davis's claims about his conduct) and may well have had sufficient clout to get the indictment brought there rather than at the quarter sessions. But the Old Bailey was not the only metropolitan court worthy of a

157 OBSP, (December, 1793), 163-65.
gentleman’s custom in prosecuting such cases. The Court of King’s Bench also heard a fair number of assault cases, and it is to the operation of that court that we now turn.

8. Court of King’s Bench

Thus far we have seen that detail about individual cases in the records of the London and Middlesex quarter sessions is sparse. Indictments and recognizances concerning assaults are formal documents which provide no information about the circumstances of the charge, while depositions and examinations only rarely survive. In addition, it is a curious and rather unfortunate fact for the historian of crime that the Old Bailey, one of England’s busiest courts—and the one that has left the most detailed and most widely-publicized record of its business—provides little evidence with respect to interpersonal violence short of homicide. The court records and the Old Bailey Sessions Paper are, of course, useful for the study of serious violence, such as homicide and rape, but since so few assault cases were tried there, we can gain only glimpses at the court’s attitude towards such behaviour. However, another London court which did regularly hear assault cases was the Court of King’s Bench, and considerable information about petty, non-lethal violence may be gleaned from cases prosecuted there. Fortunately, the records of this court for the eighteenth and early nineteenth centuries are virtually complete.158

The Court of Kings Bench was the principal high court of criminal jurisdiction in England and Wales until 1875. Originally the court accompanied the king himself on his travels but, as this grew increasingly inconvenient, at some point in the thirteenth century it began to sit on a regular basis at Westminster Hall.159 From then on, the court sat regularly in four terms each year: Hilary

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158 The London and Middlesex Indictment files are located in PRO, KB 10. The affidavits are in KB 1, and are virtually complete from the late seventeenth through the mid nineteenth century.

(January/February), Easter (April/May), Trinity (June/July) and Michaelmas (November/December).\textsuperscript{160} The court's broad criminal and civil jurisdiction was a result of historical changes in its jurisdiction over hundreds of years, although the transformations in procedure which brought many of the sorts of crimes that concern us here into the King's Bench occurred in the mid-fifteenth century.\textsuperscript{161} At first, the jurisdiction of King's Bench had been restricted to pleas of the crown—that is, to cases in which the king himself held a real interest, including violations of the King's Peace. Later, that jurisdiction was extended to actions of "trespass \textit{vi et armis}"—in other words, cases in which violence or force was used in breach of the peace either to obtain goods or to injure the person. It was through the action of trespass that the King's Bench came to exercise wide jurisdiction in cases of contract and tort, especially relating to minor cases of assault. Over the long term, the vagueness of an action of trespass allowed King's Bench to siphon a great deal of civil and criminal business from the other high court, Common Pleas. However, a statute of Charles II's reign nearly wiped out most of the King's Bench business by requiring "the true cause of action to be expressed particularly in the writ or process."\textsuperscript{162} In King's Bench processes, all acts were alleged trespasses only, but the court quickly rectified this potential threat to its business by adding the "\textit{av etiam}" clause to its writs and indictments. These spelled out the true nature of the trespass and, in effect, maintained the court's wider jurisdiction. Thus, for eighteenth-century cases, the nature of

\footnotesize{Westminster and Middlesex cases were heard at Westminster Hall. For a discussion of the court in the eighteenth century, see Oldham, \textit{Mansfield Manuscripts}, vol. I.

\textsuperscript{160} For the history of these terms and their names, see C.R. Cheney, ed. \textit{Handbook of Dates for Students of English History} (London: Royal Historical Society, 1945), 65-74; also see Blackstone, \textit{Commentaries} III: 275-77.


\textsuperscript{162} 13 Car. II, c. 2 (1661). See also Boote, \textit{Historical Treatise}, 35. In my researches into the King's Bench records, I looked at cases of trespass \textit{and} assault. In a spot check of cases recorded as trespass only, none of those that did not specifically include assault in an "\textit{av etiam}" clause concerned a physical assault, but instead dealt with other misdemeanours.}
the trespass is spelled out in the indictment. This change in procedure is of no small importance to the historian of violence who relies upon the records of the King's Bench. Before the *ac etiam* clause was made a necessity, it was difficult to know for certain whether actions of trespass *vi et armis* did in fact involve some act of force against another person. Supplementary evidence, provided in the eighteenth century by the affidavits, permits us to know for certain whether allegations of assault made in the King's Bench (at least after February 1661) did indeed involve violence.\(^{163}\)

Although the Court of Kings Bench was the superior court in the land, it was not precluded from hearing relatively minor cases such as riot, assault (or trespass *vi et armis*) and other misdemeanours on original indictment. In addition, as a superior court, both felonies and misdemeanours might be removed into it from inferior courts by writ of *certiorari*. And finally, the court held an original jurisdiction in London and Middlesex by virtue of sitting at Guildhall and at Westminster Hall. Original indictments were preferred in court when it was in session and, when it was sitting at Westminster Hall, the King's Bench superseded all other courts in London and Middlesex, thus making it, for the time while it was in session, the sole court of original jurisdiction for London and Middlesex.\(^{164}\) As a court of first instance for cases arising within the metropolis, the Court of King's Bench—despite its august stature—was the venue for a sizable number of trivial cases of conspiracy, swindling and assault at every session. Indeed, James Oldham has pointed to the frustration felt by Chief Justice Mansfield at the use of the King's Bench by "the lowlife of London."\(^{165}\) But, despite its clientele, the court itself enjoyed considerable prestige, and it appears that the litigants themselves saw it as an embodiment of a higher moral order since it was headed by

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\(^{164}\) But, as this became more of an inconvenience for courts already in session at the start of the King's Bench term, an act was passed in 1785 (25 Geo. III, c. 18) to allow existing sessions at the Old Bailey to continue to conclusion during the term of the King's Bench session if, in Gude's words, "the press of business makes it necessary so to do" (Gude, *Practice* 1: 5). New sessions were not allowed to start until the conclusion of the King's Bench session.

\(^{165}\) Oldham, *Mansfield Manuscripts*, II: 926.
the Chief Justice of England and was, technically, closer to the Crown than any other court. As we shall see, it was believed that a decision from that court would carry considerable weight.

Cases initiated at King’s Bench proceeded towards trial at the bar of the court. Two grand juries drawn from the population of Middlesex would be sworn to sit on two separate days at the beginning and end of term to hear criminal indictments and presentments. In the case of civil suits and assaults, many were sent for trial at nisi prius—that is, trial at the county assizes by a jury of the county in which the original indictment was brought. Offences arising in the counties and removed into King’s Bench were almost always returned to the assizes for trial at nisi prius.

The King’s Bench material is a rich source for the study of violence in the first place because it was a London court. As a court of first instance for the largest urban area in the country, it attracted a wider range of cases and far more cases of interpersonal violence than other county courts. As well, despite the higher costs of mounting a prosecution there than in the lower courts, the King’s Bench was open to and was used by a wide range of social and occupational types, a fact that is revealed clearly in the records. The diversity of litigants in these courtroom dramas makes for a very interesting mix of personalities, disputes and circumstances. But a third possibility in explaining this unusually rich source must be that the cases themselves were far better organized because the litigants sought professional help. The more elaborate preparation of King’s Bench cases required the involvement of barristers and solicitors, a fact which also accounts for the uniform quality of detail in many of the documents. Attorneys would know what questions to ask of the deponents and what sorts of information the court would like to hear in prosecuting or defending a case. Finally, the involvement of lawyers suggests why the King’s Bench was such an expensive venue for the conduct of trials.

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166 Kiralfy, English Legal System, 155.
167 Courts of nisi prius were held after every term for London and Middlesex. The cases sent to nisi prius were returned to the King’s Bench for a judgment once a verdict was reached.
i. Prosecution Procedure in the Court of King's Bench

The complexity of procedure in the King's Bench is reflected in the court's records.\(^{168}\) The court of King's Bench differed from other criminal courts in that a greater proportion of the crucial evidence upon which a case was based was entered into the official records of the court before the trial ever began. This is very much in contrast to the quarter sessions or Old Bailey courts, where prisoners were brought forward, often with little or no knowledge of the charges they faced, and were expected to give an honest reckoning of themselves in defence of the charge.\(^{169}\) In the King's Bench, however, in cases arising in London and Middlesex, defendants knew from an early stage of the proceedings what charges were laid against them, and they were compelled by the procedural rules of the court to join issue and answer the charge (or at least agree to do so at some point) within four to eight days. Thus, attorneys and court officials were involved from the outset in the preparation of cases in the court of King's Bench.

After this first batch of information was collected, and the initial documents were drawn up, the next step for both the country or town attorney would be to decide which process to issue. The two most common ways of bringing an action into the court of King's Bench were either by Bill or else by an Original Writ. The Bill, often called the original bill (also called a bill in trespass), was a bill founded on the original jurisdiction of the court as the first court of criminal judicature.\(^{170}\) If the defendant lived in Middlesex, the first process was by a bill of Middlesex, which would allow the


\(^{169}\) Beattie, *Crime and the Courts*, 356.

\(^{170}\) Crompton's guide explains: "Whereas other proceedings by bill are either founded upon the jurisdiction of courts in general, over their own immediate officers and prisoners, or are given by statute." Crompton, *Practice*, II: 75. The development of the Bill of Middlesex in the early Tudor period allowed the King's Bench to "poach" some of the
defendant to be arrested by the Middlesex sheriff for an alleged trespass. If he was likely to be found elsewhere, the first process was a Bill of Latitat, which assumed (fictitiously) that the defendant had fled from Middlesex to avoid his arrest. Officially the defendant would be deemed a prisoner in the Marshalsea Gaol and the official record would state that this was so but, again, this was usually only a legal fiction developed in order to place defendants under the jurisdiction of the King’s Bench. The other possible form of process was by Original Writ, which was a writ issuing from the court of Chancery delegating the authority to hear the case to the King’s Bench court. With the development of the Bill of Middlesex and latitat, there was less need for the use of Original Writs from Chancery. In addition, cases arising within the court’s original jurisdiction of Middlesex were prosecuted on an indictment.

Cases arising in London or Middlesex would begin with an indictment. However, the exact procedure by which litigants obtained their indictments in the King’s Bench is difficult to uncover. By the late nineteenth century, indictments were to be drawn by the prosecutor or his attorney and then engrossed—that is entered into the parchment record of the court. Witnesses would have to appear before the grand jury and, as in other courts, that jury would render a verdict on the indictment. True bills could proceed to trial at bar and bills ‘not found’ were dismissed (see figure 2.3).

Until the early sixteenth century, litigants appeared in person in the high courts. During the reign of Edward I, defendants were permitted to attend the King’s Bench via an attorney, and during the reign of Henry VIII, oral pleadings were almost entirely replaced by written ones. With this

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business from Common Pleas in cases of debt and other personal actions. See Kiralfy, English Legal System, 154; Brooks, Pettyfoggers, 88-89.

171 A more detailed discussion of the emergence of process by Bill of Middlesex and latitat may be found in Crompton, Practice, II: 72-75.

172 Now located at PRO, KB 29.

173 Brooks, Pettyfoggers, 18-19; Boote, Historical Treatise, 39; Baker, Reports of Sir John Spelman, 92, 95-100.
Figure 2.3: Simplified Procedure on Indictment at King's Bench

1. **COMPLAINT** leading to **INDICTMENT**
   - **GRAND JURY FINDS TRUE BILL?**
     - Yes → **CASE DISMISSED**
     - No →
       - **VENIRE FACIAS** or **WARRANT**
         - Yes →
           - **DEFENDANT ENTERS A PLEA** or **DEMURRER ENTERED**
             - **RULE NISI** or **CONFESION**
               - **CASE GOES TO TRIAL AT NISI PRIUS**
                 - **JUDGMENT**
                   - **GUilty VERDICT AT NISI PRIUS**
                     - **JUDGMENT FROM COURT**
               - **IMPARLANCE GRANTED?**
                 - Yes → **SETTLEMENT REACHED PRIVATELY?**
                   - No → **TRIAL**
                     - **GUilty VERDICT ‘IN BANC’**
                       - **DEFENDANT ACQUITTED & PARTIES DISCHARGED**
                 - **DEMURRER ENTERED?**
                   - Yes → **DEMURRER GRANTED?**
                     - Yes → **DEFENDANT DISCHARGED**
                     - No →
                       - **GUilty VERDICT**
                         - **NOT GUilty VERDICT**
                           - **DEFENDANT ACQUITTED & PARTIES DISCHARGED**
             - **NO PLEA ENTERED**
               - **JUDGMENT BY DEFAULT**
                 - **DEFENDANT DISCHARGED**

change in procedure, all written documents gained an important place within the court’s machinery.

Affidavits became crucial to the case and formed the principal grounds upon which a motion to grant or refuse a trial were based. This may explain why they had to be sworn before a judge or commissioner of the court and, from the reign of Charles II, were filed in the Crown Office.174 Christopher Brooks argues that in the sixteenth and seventeenth centuries, the underclerks who actually carried out these duties were really attorneys working in a professional, bureaucratic capacity.175 Clerking at these offices in the early stages of their career provided a good introduction to the law and procedure at the high courts and useful knowledge for later in their careers. I have not been able to determine whether the affidavits were drawn up by the attorneys before hand and then the deponents were taken to the judges to swear to their authenticity, or whether the judges themselves (or more likely their clerks) sat and heard the statements as they were transcribed. From descriptions by other scholars of the formal pre-trial procedures of the sixteenth- and seventeenth-century high courts, we might surmise that prepared statements were being brought to the judge’s chambers in the Inns of Court, to the court itself at Westminster or to other places to be sworn to.176

174 Gude, Practice, II: 1.
175 Brooks, Petyjiggers, 23.
176 Baker, Reports of Sir John Speelman, 99-100; Brooks, Petyjiggers, 19-23. Francis Buller signed at least one affidavit at the Treasury Chamber, Westminster Hall (KB 1/21, Pt. 2, Michaelmas, 19 Geo. III, R. v. Samuel Hadley). Other evidence suggests that aspects of the pre-trial procedure may have been much more informal. Attorneys and clients may have met in less formal settings to negotiate their business. In an early nineteenth century description of the Inns of Court, Robert Pearce mentions that the “Round”—that is, the circular part of the church of the Middle Temple— “stood open, and was a place of public resort.” He gives the impression that, in the seventeenth century, the public would come to the Inns of Court in the afternoons in search of attorneys willing to take up their case. Pearce also cites a passage from Samuel Butler’s Hudibras (1617) in which an allusion is made to the Round and to Lincoln’s Inn as areas for low lawyers and the public to meet and transact business:

Retain all sorts of witnesses,
That ply i’ th’ Temples under trees
Or walk the Round, with knights o’ th’ posts,
About the cross-legg’d knights their hosts;
Or wait for customers between
The pillar-rows in Lincoln’s Inn;
Where vouchers, forgers, common bail,
And affidavit-men ne’er fail
T’ expose for sale all sorts of oaths, &c.
Still, it appears from the court records that the early process in an action may have been initiated in the chambers of the Chief Justice, or one of the puisne judges or, indeed, wherever else the judges might be found. The affidavits may have been drawn up by the attorneys, as they were in the counties. But it seems likely that individuals in the metropolis wishing to make a complaint would present themselves, perhaps with their attorney in tow, at the office of the Clerk of the Papers for the court of King’s Bench, located in the Crown Office, or later to the Clerk of the Affidavits, to hear and draw out a complaint in which a trespass would be alleged. The prosecutor (usually the victim, but not necessarily) and his or her witnesses would also swear out affidavits in which their stories were transcribed, almost verbatim, to be read later in court. Witness affidavits need not have been sworn at the time of the original complaint, though they likely were to be given before the grand jury sat.

These affidavits, wherever they originated, followed a standard format. They contained personal information about the individual making the statement and usually a detailed description of the events leading up to the alleged offence. It is that detail found in the affidavits which is most helpful to our purposes here. These records shed some light on the character of assaults that were coming before this and other courts (since a number of cases were removed into King’s Bench from

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177 The affidavits in PRO, KB 1 usually bear the signatures of the judges, affirming that the statements were “sworn before me.” Also, see Frederick Hugh Short and Francis Hamilton Mellor, The Practice of the Crown Side of the Queen’s Bench Division of Her Majesty’s High Court of Justice (Founded on Corner’s Crown Office Practice) (London: Stevens & Haynes, 1890), 7.

178 In the counties, with the help of an attorney, a prosecutor would first have an affidavit drawn up alleging the offence and then swear to its contents before a commissioner of the peace. This material would then be sent to London to an attorney there who would initiate the proceedings in the court. On the procedure for cases arising in the counties and tried at King’s Bench, see Anonymous, County Attorney’s Guide.

179 I am speculating here on the operation of pre-trial procedure based on the description of Chancery procedure in Brooks, Pettyfogger, 19-23. Until 1844, crown side business at the King’s Bench was conducted by junior officers called Clerks in Court (subordinates to the Chief Clerk). They were abolished by 6 & 7 Vict., c. 20 (1843) and replaced by attorneys and solicitors. The position of Clerk of the Papers was split in two at some point in the eighteenth or early nineteenth century: Clerk of the Rules and Clerk of the Affidavits Crown Side (Guide, Practice, I: 31-2). According to one early nineteenth-century account, the buildings constructed along King’s Bench Walk in the Inns of Court were erected during the eighteenth century “as a depository for papers belonging to the offices of the King’s Bench, and were placed in this insular situation to avoid any future accident from fire, as many of the records of that court had once been destroyed by that calamity.” They might well have been located there also for the convenience of the Chief Clerk’s office. See
quarter sessions on writs of *certiorari*, and we can also use them to detect any noticeable changes in the degree of violence that complainants reported. Clearly, the advantage of the King’s Bench records over those of the courts of quarter sessions or assize for the study of violence lies in this exceptionally rich cache of qualitative material that the court generated—material that permits a deeper analysis of the issues and attitudes that underpinned violent behaviour.

Once the prosecutor had made his or her complaint, and the indictment was found by the grand jury, the court would then issue either a writ of *venire facias* or a writ for a warrant to arrest or summon the defendant to answer the complaint.180 The plaintiff's action was now under way, and the defendant would be notified either by being arrested but more usually by being served the process and summoned to come to court (or send his attorney) to put in bail and join issue. The defendant could file a demurrer at any stage, contending that the plaintiff's case was faulty at law. This may have been a legitimate and necessary procedure in cases that lacked a legal foundation but, as one attorney commented, the demurrer was often filed “merely to gain time.”181 Since defendants would have little information regarding the cause of action when they were arrested or summoned on a bill of Middlesex or latitut, the court granted many defendants one *imparlance* “*vel licentia interloquendi*”—that is with “licence to speak” to the plaintiff. The reason for this, once again, was to facilitate a private or arbitrated settlement:

The reason of allowing *imparlance* is to give the plaintiff an opportunity of settling the matter amicably with the defendant, without farther suit, a practice which *Gilbert, C.B.* supposes to have arisen from a religious principle founded on the text of Scripture, “Agree with thine adversary quickly, whilst thou art in the way with him.” Mat. ch. v, ver 25.182

As we saw above, Blackstone was wary of this practice in the inferior courts, though he remained

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180 The writ of *venire facias* was usually only issued if deemed necessary by the court or to proceed to an “outlawry.”
182 Boote, *Historical Treatise*, 156, n. 1; also see Blackstone, *Commentaries*, III: 298.
confident that it "may be intrusted to the prudence and discretion of the judges in the superior courts of record." If a settlement was reached at this point, the case would end and would not appear in any subsequent records of the court.

From a broad sample count of indictments, we can detect a general decline in the number of true bill indictments for assault found at King's Bench in the first third of the nineteenth century as compared to three year periods in the middle and at the end of the eighteenth century (table 2.2). This reduction in the number of new cases beginning in the court mirrors the notable decline in the volume of affidavits and other miscellaneous papers dealing with assault cases and is interesting given the increase in business on the plea side. Brooks calculates that "cases in advanced stages in King's Bench grew by more than five times between 1750 and 1830," most of it coming in the post-1790 period, especially 1810-30. The picture that emerges, then, is one of a court whose civil business was growing rapidly while its criminal business diminished. As we have already seen, and as shall be clear from cases studied in the following chapters, prosecutors in crown side prosecutions for assault were less determined to initiate a case with the intention or desire to see the case brought

Table 2.2
True Bill Indictments and Indictments for Assault found at King's Bench: London & Middlesex, 1759-1834

<table>
<thead>
<tr>
<th>Years</th>
<th>Total Indictments</th>
<th>Assaults</th>
<th>Assaults as proportion of all indictments</th>
<th>Average number assault indictments per year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1759-61</td>
<td>739</td>
<td>205</td>
<td>27.7%</td>
<td>68</td>
</tr>
<tr>
<td>1797-99</td>
<td>742</td>
<td>86</td>
<td>11.6%</td>
<td>29</td>
</tr>
<tr>
<td>1832-34</td>
<td>532</td>
<td>85</td>
<td>16.0%</td>
<td>28</td>
</tr>
</tbody>
</table>

Source: PRO, KB 10.

183 Blackstone, Commentaries, IV: 357.
184 Located in PRO, KB/1.
to a final resolution by the high court judges. Rather, the lengthy and costly procedures of prosecution at King’s Bench provided the time and the opportunities for parties to reach a settlement themselves. The increase in civil business at the King’s Bench in the early nineteenth century, however, was so large that it was starting to seriously tax the resources of the court. By 1829 a parliamentary committee reported that “the Court of King’s Bench is immoderately overburthened. The Judges of that Court make extraordinary efforts to dispose of the accumulation of business. Yet the arrear both of term business and of causes at Nisi Prius, is excessive.” Such heavy demands on the court time may have resulted in a declining interest in trifling assault prosecutions at this court and increased pressure on litigants to settle on their own.

If the case did go on, there would be time for a jury to be called. According to Blackstone, if the case actually went to trial, the court would allow time after the arraignment for a jury to be impanelled. The writ of *venire facias* caused the jurors to come to Westminster on a certain day during the Easter or Michaelmas term “*nisi prius*”—that is, *unless before* the assigned day, the justice of assize heard the case in the county in which the action originated. The expense of mounting a trial at King’s Bench for trifling cases not arising within a day’s journey from the capital was recognized by parliament early on. A statute of Edward I permitted the practice of continuing (that is, putting off) a cause originated at King’s Bench provided the justices did not come into the county in which the offence originated before the next term. If they did, they could assume jurisdiction of the case there. By the early modern period, this always happened, in fact, when the justices traveled regularly to the counties on the assize circuit. If a cause originated at King’s Bench from the counties, it was virtually guaranteed that the court would grant a Rule Nisi, which meant that the case would be tried

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187 Blackstone, Commentaries, IV: 344.
at the nisi prius sittings at the next assizes for the county.\textsuperscript{188} Generally speaking, the trial in case of a misdemeanor was heard at nisi prius unless, as Blackstone stated, “it be of such consequence as to merit a trial at bar; which is always invariably had when the prisoner is tried for any capital offence.”\textsuperscript{189}

Brooks found that, despite an increase in litigation at King’s Bench in the late sixteenth and seventeenth centuries, “relatively few of the cases which reached advanced stages ever came to trial at nisi prius.”\textsuperscript{190} This suggests that, long before the late eighteenth century, the King’s Bench had been regarded by litigants as a court in which there was a low expectation of ever receiving judgment. The records of the eighteenth century court tend to confirm this, as they reveal that very few cases proceeded all the way to trial either at bar or at nisi prius.\textsuperscript{191} London and county attorneys in the eighteenth century were likely to receive as much money from an arbitrated settlement as a full prosecution, and the courts provided many opportunities for what seems to have been the more culturally or socially acceptable path of dispute resolution.\textsuperscript{192} Prosecuting assaults at King’s Bench to their conclusion was clearly not common practice. The threat of a prolonged and costly prosecution was probably sufficient incentive to encourage the parties to come to some kind of agreement, and merely initiating a prosecution was, in the majority of suits, all that was necessary to achieve this.

When cases did come to trial, the procedure there was similar to trials at other courts. The parties, or more usually only their attorneys, would appear in court to present the case before the jury. The prosecutor was not permitted to appear on his own but had to prosecute through an attorney. He would deliver his declaration (which was simply a copy of the original bill) into court,

\textsuperscript{188} Since there was no civil side at the Old Bailey, the sessions of nisi prius were held at Guildhall. (Langbein, “Shaping the Eighteenth Century Criminal Trial,” 33). According to Tidd’s Practice, “In London, trials at nisi prius take place by immemorial custom; and the judges sit at Guildhall, when and as long as the exigency of business requires.” (8th edn. 1824), II: 811, (fn. to 3 Camp. 42n.).

\textsuperscript{189} Blackstone, Commentaries, IV: 344

\textsuperscript{190} Brooks, Pettyfogger, 51, Table 4.1, and 298-99, note 10.

\textsuperscript{191} J.S. Cockburn says that even at Nisi Prius, most cases were sent to arbitrators: Cockburn, History of English Assizes, 136.

\textsuperscript{192} Brooks, “Interpersonal conflict,” 381.
and the defendant would make a reply. In misdemeanour cases, the defendant did not have to appear in person either (as he did in other courts) and could plead through a solicitor either in court or at the Crown Office. Much of the procedure relied upon the documents already generated in the early stages of the prosecution. The informations and depositions would be read out in court as necessary by the secondary on the crown side or deputy clerk of the crown (the subordinate to the master), or the clerk of the affidavits. In some cases, the parties actually appeared at bar, though this was rare and became extremely so over the course of the nineteenth century; the court, in the words of one 1890 guide to proceedings, was “reluctant to grant it unless there is real necessity.”

If the parties were able to reconcile as a direct result of an imparlance, or simply on their own, the case dropped out of the court records. Some issues were referred to a court official called the king’s coroner and attorney, (known also as the master), for arbitration. These cases often generated particularly rich affidavits. In these cases, the master decided upon a possible fine, the award of costs and damages, or other punishments, based on written submissions from the prosecuting attorneys, their clients and their witnesses. Other cases which often generated a flurry of documents were those in which the defendant had suffered judgment by default—that is, in which the defendant had failed to join issue or enter a plea within the designated time allowed by the court. As a result, the court simply passed judgment against them in absentia.

Few cases of assault reached a final judgment. When they did, defendants and their witnesses would petition the court with affidavits “in mitigation” of the judgment both before and after the fact. Plaintiffs and their witnesses would likewise submit affidavits “in aggravation” in order to re-emphasize or add credibility to their claim of injury.

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193 Gude, Practice, 29-32.
194 Short and Mellor, Practice of the Crown Side of the Queen’s Bench, 308.
195 The precise order in which these affidavits were to be heard by the court was decided in a rule of Mich. 29 Geo. III, 1788. See Gude, Practice, I: 376.
ii. The writ of *certiorari*

The other avenue for cases of assault arriving in the King's Bench was by a writ of *certiorari*. The writ of *certiorari* had two purposes. One the one hand, it was simply a means of supplying one court with information about the procedure in another. The writ in this case being issued to permit the inspection of documents issuing in another court. If granted, the writ empowered the King's Bench to have all the documents from the lower court removed into it in order that the case be reviewed and retried. The other function of the *certiorari*, and the one that concerns us here, was its use in obtaining a change of venue for cases originating in lower courts.196 The King's Bench had exclusive power to review the proceedings of all inferior criminal courts through either a writ of error or of *certiorari*.197 J.H. Baker argues that, in the early modern period, it was rare to find cases removed by *certiorari* from inferior courts before trial and was generally denied by the superior judges when they heard cases at the Old Bailey or assizes.198 The King's Bench may also have been reluctant to serve as a court of appeal for quarter sessions decisions, though, in practice, this is often what it was used for in the eighteenth century.199 When cases were successfully removed into the King's Bench by *certiorari*, they could either be tried at bar by a jury of the county where the indictment was found—something which was only practicable for London and Middlesex cases—or they could be sent back to the county in which the offence originated to by tried at nisi prius. When the *certiorari* was granted, plaintiffs would often swear a new affidavit, and affidavits in support of the

197 No writ of error could arise from summary proceedings, thus judicial review of such cases was only possible through writ of *certiorari* (William Paley, *The Law and Practice of Summary Convictions on Penal Statutes by Justices of the Peace: Including Proceedings preliminary and subsequent to Convictions, and on Appeal and Removal; also the Responsibility and Immunity of Convicting Magistrates and Their Officers*, 2nd ed. 2 vols. [London: S. Sweet, 1827], I: 298). Ecclesiastical courts were exempt from the power of an order of *certiorari* (Kiralfy, *English Legal System*, 188).
199 Todd, "Use of the Writ of *Certiorari*," VIII, 23.
defence were also sworn and introduced into the court in order to inform the high court judges of the facts of the case and (sometimes) the reasons for removing the case to the higher court.

Before 1694, it had become common practice for defendants under indictment at quarter sessions in the counties to apply to the King’s Bench to have their cases removed there by writ of certiorari. In that year, an act was passed, (5 & 6 William & Mary, c. 11), by which such “divers turbulent, contentious, lewd, and evil disposed persons, fearing to be deservedly punished where they and their offences are well known” were restricted from obtaining such writs from the King’s Bench outside term time. Although cases arising in London, Westminster and Middlesex were exempted from it, litigants continued to make use of this procedural strategy throughout the eighteenth century. The legislation likely reduced the number of cases coming into the King’s Bench from the counties. Indeed, it would appear that previous scholars have underestimated the frequency with which litigants applied for writs of certiorari, at least in the eighteenth century. The Webbs, for example, argued that certiorari was rarely used because of its cost and inconvenience. However, I would argue that expense and inconvenience were precisely the reasons for its popularity. A further effort to restrict the use of the certiorari writ was made in 1740 in a statute that fixed a time limit of six months for the application for a writ from the commencement of an action or following a conviction in a lower court.

The writ of certiorari had been granted as a matter of course upon application from the prosecutor, whether they were an officer of the crown or a private individual. However in 1835, by 5 & 6 Wm. IV, c. 33, parliament stepped in to severely restrict this practice. The act was designed to reduce further the number of cases coming into King’s Bench by certiorari. Its preamble stated that


201 13 Geo. II, c. 18, s. 5 (1740); Nelson, *Office and Authority of the Justice of the Peace*, 178; Paley, *Law and Practice of Summary Convictions*, 307.
its intention was “to prevent Prosecutors of Indictments and Presentments from vexatiously removing the same out of inferior Courts in His Majesty’s Court of King’s Bench.” Thus, prosecutors of indictments at quarter sessions who wished to have their cases removed into the higher court now had to obtain leave from the King’s Bench first. Defendants still had the right to remove indictments against them, as parliament did not want to restrict their legal opportunities to appeal, but they were now required to enter into a recognizance to prosecute with the King’s Bench before obtaining a writ of 

iii. The Rationale of Prosecuting at King’s Bench

The willingness to turn to the King’s Bench to prosecute an assault depended on a number of factors, not least of which was convenience necessitated by legal procedure. When the King’s Bench was in session, it became a court of eyre and so quashed the authority of all other courts, including the general commissions of oyer and terminer, as King’s Bench had unlimited jurisdiction. In other words, in strict legal terms, the King’s Bench was the only court open when it was in session. For London and Middlesex, this meant that, until 1785, at least, in the rare instances where the sessions at the Old Bailey and the quarter sessions at Middlesex overlapped with the King’s Bench term, they were temporarily halted until the end of the session. The court of King’s Bench had always had an original jurisdiction over criminal offences but, over time, the court had allowed that business to be taken on by the Assizes. And since the court usually sat at Westminster Hall, the King’s Bench could be used as a court of first instance for cases arising in London and Middlesex at the time of its sitting.

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202 See note 164 above.
The Court of Kings Bench was also used as a venue for the prosecution of assault precisely because it was a superior court. The King’s Bench was an expensive court, and many prosecutors clearly thought that they could effect a swift conclusion to the matter and force the defendant into a settlement by threatening them with heavy costs. Thus, the decision to prosecute at King’s Bench often reflected a different strategy than the decision to prosecute at the lower courts. Undoubtedly, some prosecutors used the King’s Bench in some cases in the hopes of winning a judgment from that court. But many more used its costly and prolonged procedures as a tool to pressure defendants into a settlement made on the prosecutor’s terms.\(^\text{244}\) Besides convenience, we can identify four other general factors which encouraged this strategic use of the court.

The first was the possibility of a more severe punishment. If the accused was convicted on the assault charge, the court frequently sentenced them to a fine (as in the lower courts), but they could also be made to pay damages and court costs. The fines themselves were often only one shilling, also in keeping with the lower courts, though a fine of 6/8 was slightly more common.\(^\text{245}\) However, there are a number of cases of assault prosecuted at the King’s Bench in which the defendant was fined a large amount of money, such as twenty, fifty or one hundred pounds.\(^\text{246}\) imprisonment does not seem to have been a sentence of choice at the King’s Bench, even though the court was possessed of its own prison.\(^\text{247}\) But more importantly, those who were convicted here were often required to pay costs and damages on top of any fine imposed by the court. These costs

\(^{244}\) Douglas Hay advises historians to remind themselves “that the law is used for the furtherance of disputes as much as for their resolution.” Only after this is taken into account can we “free ourselves from the moral fallacy that describes courts as simply places where criminals are brought to be dealt with by judges, juries, or the state” (Douglas Hay, “Prosecution and Power: Malicious Prosecution in the English Courts, 1750-1850,” in Policing and Prosecution in Britain, 1750-1850. ed. Douglas Hay and Francis Snyder, [Oxford: Clarendon Press, 1989], 347-48). For the manipulation of courts and court procedure to exact revenge, see pp. 365-7.

\(^{245}\) P.P. (1821) xxx, 381-91, Account of Fines imposed on offenders convicted of Assault by King’s Bench. Hilary 1818-Hilary 1821.

\(^{246}\) See for examples: CLRO, London Sessions Papers, Solicitor’s Briefs, (February, 1804); Oldham, Mansfield Manuscripts, II: 1022, 1054, 1055.

could grow to exorbitant amounts, especially in prolonged cases, and therefore confident prosecutors (and those with deep pockets or wealthy friends) might not hesitate to bring even a minor dispute there with vindictive motives. Thus, even though the actual fines assessed by the court were generally in line with the lower courts, prosecution at King's Bench might have remained popular because of the hope or expectation that successful plaintiffs might win a larger settlement of damages. The business of the court was well known through the law reports published in the newspapers and in such periodicals as the Gentleman's Magazine. The Times and other newspapers carried extensive reports of trials at King's Bench, sometimes going into considerable technical detail on points of law and often reporting the judge's opinion in full. It would therefore have been common knowledge that the King's Bench could impose sizable fines, as well as award large settlements and hefty costs to its litigants.

The growing popularity of newspapers in the latter half of the eighteenth century might also have presented potential litigants with a second reason for prosecuting at King's Bench. Readers of both the London newspapers and the provincial press could gain a considerable amount of information about the operations of the high and low courts, of the progress of trials there, and of the verdicts and judgments handed down by the judges. Although the papers covered trials at many of the metropolitan courts, the King's Bench attracted a significant proportion of that interest. And in cases of interpersonal violence in which a man's honour had been slighted, or in which a particularly vicious attack was perpetrated, a case could draw a kind of second hearing in the court of public opinion which could of course work to both the advantage or disadvantage of either party. In certain cases, however, the newspapers provided a relatively new and powerful way of shaming an

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288 See the Times, 29 November 1790 for an example that took up a quarter of the issue.
opponent and also focused broad community interest on particular acts which the courts, but more importantly the editors and publishers of those periodicals, felt worthy of wider social censure.

The cost of mounting a prosecution or defence at the King's Bench could range widely but, given the involvement of lawyers and the complex procedural requirements, they were always much higher than at quarter sessions. Since there was a fee for the execution of each stage of the complicated King's Bench procedure, and since many clerks and court officials were involved in processing the considerable amount of paper, even a limited prosecution could amass sizable costs in a short time.

Of course wealthy prosecutors could exert greater leverage in such situations and certainly many did, in fact. A number of the cases initiated in or brought up to the King's Bench were allowed to proceed uncontested by one or other of the litigants because of their inability to pay the costs. Litigants at the King's Bench who wished to plead their case but who were unable to raise the funds necessary to do so could petition the court to plead in forma pauperis—that is, as paupers. Such individuals would have to submit a formal petition to the court and swear that "they are not worth five pounds in the whole world, after their debts be paid and their wearing apparel excepted." James Gee made such a request to Chief Justice Mansfield in November 1778, as did John and Sarah Brown in 1780. The Browns asserted that, in July 1779, their indictment against William Hancock "for Violently Assaulting, beating bruising and Wounding your Petitioner Sarah Brown on the 25th day of June last past" was found at the Middlesex quarter sessions. But Hancock had removed the case by certiorari and the Browns argued that they were "very poor and totally unable to prosecute the said Indictment without an Order from this Honourable Court to enable them to prosecute the same."210 In both of these cases, the court granted a Rule Nisi to permit the trial of the case at the

210 PRO, KB 1/21, Part 2, Michaelmas 19 Geo. III, No. 1, Petition of James Gee, Petition of John and Sarah Brown.
presumably less costly sittings of nisi prius. In another case, John Eames's petition to plead as a pauper in his assault prosecution against two men (which he had removed into King's Bench himself) was granted, allowing him to try the case in court. Mansfield and his fellow judges may have been reluctant to grant too many of these petitions, as they and the other officers of the court derived their income from the fees incurred by prosecution. Nevertheless, it was an option open to and used by litigants.

Prosecutors and defendants alike manipulated the procedure of removal by certiorari in order to turn the machinery of justice to their own ends. In October 1778, for example, Robert Everden brought a charge of assault against Edward Mander and his wife to the sessions of the peace for Middlesex. The defendants, however, caused the indictment to be removed into King's Bench by certiorari and entered into a recognizance to appear on the first day of Michaelmas term (that October). They did not appear to plead or try the indictment, however, and instead preferred their own indictment against Everden for an assault on Mander's wife, "thinking thereby... to deter this Deponent [i.e., Everden] from proceeding on the said Indictment by the Expenses attending the making up of a Record in this Honourable Court."212

Another possible reason for removing a case into King's Bench was that prosecutors may have wanted a second chance to prosecute the civil charge of "battery"—that is, that they had actually been "touched in anger" and not simply that a criminal assault had occurred. By arguing the civil issue of battery successfully, that would change the nature of the damages the prosecutor could recover. According to Thomas Lee's guide to civil actions in King's Bench, if an action for assault was found for the plaintiff and assessed damages were less than 40s, he was only entitled to claim costs in equal portion to the damages. But if an assault and battery was proved, and the judge

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211 PRO, KB 1/29, Part 2, Michaelmas 37 Geo. III, No. 1, Petition of John Eames.
certified as much on the indictment, the plaintiff could recover his full costs regardless of the damages awarded.213 This was a significant point, as costs could be very stiff indeed.214

Given the fact that one’s case would be tried before Chief Justice and other very senior judges, the quality of adjudication and the court’s supreme jurisdiction might also have attracted litigants. Since the King’s Bench was effectively the high court of the land, a decision there would almost certainly be final. As well, the court’s business was given a high profile in the press, and many people knew from reading the newspapers that, if they ever came to court, their case might be widely reported. Even if the punishment given by the court was not terribly stiff, the shame and embarrassment that their opponent might suffer as a result of an action against them, and especially following a conviction, would be compounded by its reportage in the papers. Such public humiliation might satisfy the feelings of resentment and revenge which many victims of violence no doubt felt. Shame played an important role in the penal ethos of eighteenth century England, as we shall see in chapter 7 below. One defendant declared “that he shall always consider the Censure and displeasure of this court as a very heavy misfortune to him.”215

Conclusion

The regulation of interpersonal violence was an issue of considerable and growing interest in our period. The lower courts of the English legal system spent a significant amount of their time dealing with the prosecution of assault and occasionally went to some lengths to effect a settlement between the parties. In the early part of our period (and likely well before), the courts regarded

214 In one case of assault prosecuted at the King’s Bench, for example, the City Solicitor (who was acting as prosecutor) charged his client £47/8/6. CLRO, London Sessions Papers, Solicitor’s Briefs, February, 1804.
215 KB 1/21, Part 1, Easter 18 Geo. III, Affidavit of Theopliius Swift.
assault as a private matter that was of little public interest. However, this attitude was to change quickly around the turn of the nineteenth century.

The reasons for those in search of justice, or at least for compensation for their injury or loss, for choosing to prosecute violence in any of these courts were varied. It made sense, for example, for cases which might have arisen while a particular court was in session, to take the complaint directly to that court. But it appears from the records that victim prosecutors were often familiar with the machinations of the criminal justice system in early modern England and that they knew full well what kinds of justice they were likely to receive depending on where they decided to initiate their case. Some victims, who wanted only to bring the threat of a potential prosecution to bear against those who had injured them in some way, were seeking simple reassurances from a recognized figure of authority within the community that their complaint was legitimate. In such cases, a simple reprimand of the defendant was satisfactory. Thus a simple presentment before a Justice of the Peace, which was liable to end with a stern rebuke and a nominal fine, was probably all the legal force that many victims required to gain satisfaction and closure. Other cases were clearly sent on to the quarter sessions by JPs because the parties could not come to an amicable agreement, or because the prosecutor desired that the alleged offender be more severely censured. As we have seen, JPs were encouraged to settle “trifling” assaults in order to avoid clogging the courts. And since the JPs themselves sat at the quarter sessions, they were likely willing to prevent as many potentially tedious disputes as possible, in which no serious harm had occurred, from coming before a grand jury.

Victims of violence could push the courts to action when it seemed in their best interests to do so. Some prosecutors brought their cases of minor violence to the quarter sessions as they knew that the victim, if convicted, would at least be fined and may even be forced into a better settlement (from the prosecutor’s point of view). We saw examples of these somewhat coerced settlements
above in considering the conditions of general release at the London sessions of the peace. At the other extreme, some prosecutors would shop their case around town, looking for the best possible judgment from the various courts of the metropolis. As we shall see in a later chapter, a number of the cases that eventually came before the King’s Bench had started as minor affairs first brought to the quarter sessions.216

Throughout much of the eighteenth century, and no doubt continuing the customary practice of long before, judges and magistrates were reluctant to intervene in cases of assault that could easily be settled out of court. There was a certain amount of complacency or tolerance for a level of non-lethal violence which was generally sanctioned on a communal, almost neighbourly level—a view that probably reflected broader social attitudes towards violence. Judges encouraged and facilitated arbitration, and litigants were often prompted to reach a settlement between themselves. In fact, the willingness of the courts to facilitate some form of quasi-judicial arbitration in other jurisdictions of the high courts (Common Pleas, for example) had been established since the late seventeenth century.217 This could be rather disconcerting for the attorneys who, of course, saw no further income from settled cases. At the Salisbury Nisi Prius trials in 1764, Sir Joseph Yates “recommended to the Parties in two or three litigious Actions, to compromise their Differences without Law, and sent them away even seemingly Friends; which made one of the Council say, ‘he hoped his Lordship did not intend to go on so’.”218 The experience of the London and Middlesex courts indicates that the culture of arbitration which pervaded the English legal system was also at work in assault cases from the mid-eighteenth century on. As we shall see again in chapter 6, and as Beattie has noted, “magistrates were themselves encouraged to arrange agreements that would settle

216 See KB 1/21, Ayscough v. Swift, and KB 1/33, Tosh v. Wooley for examples. Both cases are considered more fully below.
218 Public Advertiser, 22 March 1764.
the issue privately and keep it out of the courts” in cases of trespass or assault. The courts took a serious interest only when extreme violence or sexual misconduct were the defining features of the assault.

However, as has been suggested here, and as we shall see in the following chapters, that notion was to change in the last decades of the eighteenth century. By the 1780s in particular, the court records begin to reveal a noticeable change in the sentencing practices of magistrates, especially at quarter sessions but also at police courts. They suggest a new willingness to sentence offenders to various terms of imprisonment where, in the past, a negligible fine had sufficed. By the early nineteenth century, the prosecution of assault and the regulation of interpersonal violence were increasingly seen as matters of serious concern and more of a matter of public interest. This trend in judicial practice was indicative of changing attitudes towards assault and violence generally in this period. The increasing severity of sentences for assault cases reveals a real change in what Norbert Elias has called the thresholds of tolerance for interpersonal violence. In the following chapters I shall argue that judges and magistrates were acting in response to a broader understanding and internalization of existing standards and feelings, that is a change in attitudes towards violence that really took hold in the last decades of the eighteenth century. As imprisonment increasingly became a possibility for the punishment of all offenders, judges turned to its use for the punishment of assault. As well, the fines that had for a long time served as only a nominal indication that the legal case was finished, began, by the 1780s and 1790s, to reflect a more punitive interest and the court’s intention to curtail interpersonal violence in both the public and private spheres.

219 Beattie, Crime and the Courts, 39.
Chapter 3

VIOLENCE IN EVERYDAY LIFE

The question of whether early modern England was a "violent society" is a very difficult one to answer in a general way. The eighteenth century world presented a host of blatant contradictions. It was an age, as Dorothy Marshall has suggested, "in which refinement of manner was only too often accompanied by brutality of behaviour."¹ Thus any answer to the question of to what extent English men and women had moved to successfully repress violent behaviour, will depend on who is asked to comment, and in what context. In chapter 2, we examined how official institutions of the state (in particular, the courts) could be brought to bear in the desire to seek more than personal retribution in sanctioning violent behaviour. From that discussion, the legal institutions available to eighteenth-century Londoners, and the limited scope of the law when it came to prosecuting interpersonal violence, should now be clear. What may be less clear at this point is the cultural context within which the law operated. Since one of the central claims of this study is that the prosecution and punishment of violence is part of a cultural process, it is important to understand the extent to which violence was tolerated as a feature of everyday life, outside of interpersonal conflicts. This chapter presents some of that story by examining some of the characteristic forms of violence in everyday life.

This chapter, and the next, are important to the overall argument in that they present important background to the more specific changes in penalty that I shall discuss in chapters six and seven. This chapter reveals the basic characteristics of interpersonal violence in England in the

eighteenth century. First, it will show that violence was gendered in the past—that it was a largely male phenomenon—and also that there was a class element to such behaviour. The second goal is to introduce some of the archetypal forms of violence in everyday life in England. To do this, I have divided violent experiences in the past into those encountered in the public sphere and those in the private sphere. For my discussion of public violence, I have relied on some particularly detailed cases in order to highlight aspects of violent experience that would have been familiar to men and women in the eighteenth century. They merit study as they help us to comprehend more clearly the cultural backdrop to some of the issues raised in the next and following chapters. I then turn to a brief examination of violence in the private sphere through an introduction to the issue of domestic violence. Domestic violence in the past is an important element of the larger topic of quotidian violence, and one that has attracted surprisingly little scholarship. The subject is a large one which deserves a more expanded and nuanced treatment than I am able to offer here. I raise the topic in this study simply to fill out the general picture of violent experience in everyday life, and also to demonstrate the value of court records in illuminating this aspect of violent experience in the past. First, though, let us turn our attention to the court records themselves, and ask what they reveal about the gender differential in the experience of, and prosecution of, violence in late-eighteenth and early nineteenth century England.

The Gendered Face of Violence

The recent explosion of scholarship in gender history has thrown much light on the fundamental differences in past historical experiences for men and women. This work is starting to show how men and women's social and cultural experiences have been shaped by hegemonic paradigms of "masculinity" and "femininity". These historians have demonstrated how every aspect of the standard subjects of historical interest can be recast and re-evaluated through a gendered
reading of the past.\textsuperscript{2} Historians of crime and criminal justice are also beginning to incorporate discussions of gender into their histories of crime and the administration of the law.\textsuperscript{3} Of particular importance to this study is the suggestion that the gendered construction of particular offences themselves dictate both the ways in which they were sanctioned by society generally, and the manner in which offenders were punished.

The importance of gender in the way men and women experienced the English legal system in the early modern period has, until recently, been neglected by social historians of crime. Every historian worth his or her salt would now contend J.F. Stephen's dismissive comment that there was little point in studying the history of crime as it affected women, since that "history possesses no special interest and does not illustrate either our political or our social history."\textsuperscript{4} Recent scholarship has, not surprisingly, demonstrated how patently false this notion was. Still, the statistical under-representation of women in the court records of early modern England remains a primary obstacle to determining how the rights of women were variously defended or trampled on by the courts.

Beattie has shown that women figured far more frequently in property crime than frequently has been assumed, while Shoemaker and others have demonstrated that the role of women in informal


and petty prosecutions was likely to be stronger than at the Old Bailey or the county assizes.\(^5\) Yet even this recent work tends to focus on female property crime. Women were also involved in crimes of violence, though how often and for what reasons await full explanation. Official records of female violence are sparse. Women number among the court records disproportionately only in the case of infanticide, and it is arguable whether this offence might not be seen as much the result of desperation and fear as of violence.\(^6\) Among all other crimes of violence, women figure less frequently, as we shall see.

Based on the raw numbers of sampled cases from the courts of quarter session and the court of King’s Bench, the data suggest that interpersonal violence in the metropolis was overwhelmingly concerned with men. As table 3.1 shows, at the Middlesex quarter sessions between 1760 and 1835 men composed about 60% of all prosecutors at the Middlesex quarter sessions and over 75% of all defendants. At the King’s Bench, the general picture is the same, though men were represented in those cases even more strongly (tables 3.1 and 3.2). Male defendants, therefore, figured in better than three out of every four assault prosecutions in the metropolis in the eighteenth and early nineteenth centuries. Men were also the predominant victims of interpersonal violence.\(^7\) This gender imbalance mirrors Shoemaker’s findings for the gendered distribution of indictments at the start of the eighteenth century (that is for all indictable offences), and Beattie’s calculations for mid-eighteenth century Surrey, indicating that this was not a situation unique to assault cases.\(^8\) It makes sense then to see interpersonal violence as largely a male phenomenon.


\(^6\) See above, page 57, n. 40.

\(^7\) Unfortunately, the King’s Bench Controlment Rolls do not list the names of prosecutors in cases of trespass (i.e. all assault cases) as all such prosecutions were conducted by the crown on behalf of the prosecutor. Information regarding prosecutors, though less easily quantifiable, is available from the affidavits. Of fifty-three sampled cases of assault, drawn somewhat randomly from the affidavits held in KB 1, between 1760-1830, forty-two (or 79.2%) had male prosecutors.

\(^8\) Beattie in Cockburn, ed., Crime in England, 157, table 1; Shoemaker Prosecution and Punishment, 208, table 8.2.
Table 3.1
Gender of Litigants in Assault Cases at Middlesex Sessions, 1760-1835

<table>
<thead>
<tr>
<th>Prosecutor</th>
<th>Defendant</th>
<th>N</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Male</td>
<td>Male</td>
<td>2358</td>
<td>51.9</td>
</tr>
<tr>
<td>Female</td>
<td>Male</td>
<td>1055</td>
<td>23.2</td>
</tr>
<tr>
<td>Male</td>
<td>Female</td>
<td>365</td>
<td>8.0</td>
</tr>
<tr>
<td>Female</td>
<td>Female</td>
<td>767</td>
<td>16.9</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>4545</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: See Appendix.

Table 3.2
Proportional Representation Defendants at King’s Bench and Middlesex Quarter Sessions by Gender, 1760-1835

<table>
<thead>
<tr>
<th>Gender of Defendant</th>
<th>King’s Bench</th>
<th>Quarter Sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1760-1790</td>
<td>1800-1830</td>
</tr>
<tr>
<td>Male</td>
<td>1353</td>
<td>1424</td>
</tr>
<tr>
<td>%</td>
<td>87.4</td>
<td>75.8</td>
</tr>
<tr>
<td>Female</td>
<td>195</td>
<td>87</td>
</tr>
<tr>
<td>%</td>
<td>12.6</td>
<td>24.2</td>
</tr>
<tr>
<td>Total</td>
<td>1548</td>
<td>455</td>
</tr>
<tr>
<td></td>
<td>559</td>
<td>23.4</td>
</tr>
</tbody>
</table>

Source: King’s Bench: KB 29; Quarter Sessions: see Appendix.

Men were more likely than women to become involved in the criminal justice system as a consequence of some violent encounter. The institutions of social control were therefore designed to control male behaviour more than female behaviour. And, as table 3.1 suggests, women were more commonly involved in assault prosecutions as victims of violence (i.e. as prosecutors), but their willingness to prosecute varied according to the circumstances of the assault and their ability to mount a successful prosecution. Costs of prosecution, and the threat of retribution from their attackers, may have served as the key disincentives to prosecute.

Why women figure less prominently among the official records of interpersonal violence is an interesting question. The answer may have to do with the sources used to reach such conclusions. My figures, like those calculated by other historians, are based on a count of assault indictments. However, by studying indictments alone we might be overlooking the contemporary social
characteristics regarding the control of criminality. Rachel Short has argued that historians of crime have underestimated the level of female involvement in violent crimes because of their tendency to begin their researches at a point in the criminal process by which many women had already dropped out. She detects a general disinclination among prosecutors to press charges too far and, among the courts, to convict women for crimes of violence, because of an overarching social conviction that denied female criminal capacity. This argument posits the dominance of a patriarchal criminal justice system, that denied female agency in all social relationships. Aggressive women were simply not taken as seriously as aggressive men. There was more inclination among officials to try to settle their cases rather than to proceed to trial. When assault cases in which women were the aggressors were brought before local magistrates, the justices were often inclined to dismiss the case. Thus, Short concludes, women were less frequently prosecuted than males.

This explanation seems to fit with evidence from metropolitan courts. Female defendants brought before the Mayor in the Mansion House Justice Room or the other magistrates at the Guildhall Justice Room were almost invariably discharged with a small fine, as were women who appeared before other rural and urban magistrates. Also, my analysis of recognizances for assault among the Middlesex quarter sessions lends the impression that there are noticeably more cases involving women both as prosecutors and as defendants among these records than in the indictments. Since it was easier to discharge a recognizance than to prosecute a case in a trial, and given that women defendants were rarely punished severely, it may have been customary for the JPs to try to deal with assaults involving women through a recognizance. As Norma Landau has suggested, and as Robert Shoemaker has attempted to prove, recognizances were likely employed in more innovative ways than we have yet been able to determine. Further research is necessary into all

stages of prosecution at quarter sessions before historians come to a more satisfactory conclusion on this point.\(^1\)

The general conclusion—that violence is an overwhelmingly male phenomenon—has itself begun to draw scholarly attention as it suggests broader theories about violence in society. In a recent article, Martin Wiener has argued that Elias’s model of the “civilizing process,” which I have cited earlier as a generally useful hermeneutic for explaining changing attitudes towards violence in society, may be due for a reassessment in light of its “fundamentally and deeply gendered” implications. For all of its insight, the “civilizing process” is surprisingly silent when it comes to explaining the gendered nature of violence. Wiener suggests that a gendered reading of Elias’s process reveals two trajectories: “while the ‘civilizing’ of women proceeded particularly around their sexuality... that of men, by contrast, focused primarily around their aggression.”\(^12\) Women, he argues, were streamed out of the official channels for the prosecution and punishment of violent behaviour.\(^13\)

Professor Wiener cites my own earlier findings, among recent work of other scholars, in order to confirm this argument.\(^14\) However, based on the more substantial database used here, drawn from a longer time series than that of my original study, I would suggest that the dichotomy that Wiener wants to argue was less visible, at least in the period under consideration here. From my sample of quarter sessions assault prosecutions it appears that, in fact, the proportion of female defendants increased, if only slightly, in the period between 1760 and 1815, when the number of assault prosecutions at the Middlesex quarter sessions reached their peak.\(^15\) Indeed, as table 3.3

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\(^3\) Professor Wiener’s forthcoming study of domestic homicide will presumably explain the reasons for this perceived decline in female violence or, at least, the de-criminalization of female violence, in this period.

\(^4\) Ibid., 204, n. 29.

\(^5\) See above, chapter 2, p. 91, figure 2.2.
Table 3.3
Proportional Representation of Women in Assault Cases, Middlesex Quarter Sessions, 1760-1835

<table>
<thead>
<tr>
<th>Year</th>
<th>Female Defendants</th>
<th>Total Defendants</th>
<th>% Female</th>
</tr>
</thead>
<tbody>
<tr>
<td>1760-1775</td>
<td>208</td>
<td>902</td>
<td>23.1</td>
</tr>
<tr>
<td>1780-1795</td>
<td>247</td>
<td>979</td>
<td>25.2</td>
</tr>
<tr>
<td>1800-1815</td>
<td>387</td>
<td>1388</td>
<td>27.9</td>
</tr>
<tr>
<td>1820-1835</td>
<td>298</td>
<td>1313</td>
<td>22.7</td>
</tr>
</tbody>
</table>

Source: See Appendix.

shows, the proportion of female defendants in all assault cases increased gradually until 1820. Only after that point did the decline begin. Thus I would argue that the criminalization of violence generally, in all of its gendered forms, was more on the minds of judges and juries who heard such cases and who participated in the censure of that violence than was the particular issue of violent men. It would seem that the predominance of men among violent offenders was a “given” element of violence in society, and not something that attracted particular attention until at least the second third of the nineteenth century.

Social Status

Having now established the gender make-up of those prosecuted for interpersonal violence, we may turn briefly to explore one other structural factor that can be drawn from the available court records—that is, the social status of litigants. Although the information contained in indictments at quarter sessions courts is notoriously imprecise,16 the records of the King’s Bench again provide a more certain source for determining the occupation of alleged offenders.17 The precise detail with

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17 Again, it is the fine detail of these records which leads me to this conclusion. I have relied on the Controlmant Rolls, located in PRO, KB 29 for the following conclusions. The fact that the occupation of defendants in these records were recorded with considerable attention to accuracy suggests to me that this source offers a reliable account of the occupations of those involved in prosecutions for assault. Though many defendants were simply noted as “labourer” I counted more than 90 different occupations or appellations (e.g. “Gentleman” or “Singlewoman”), including such precise designations as “Bellows Maker” (KB 29/420) and “Straw Chip and Leghorn Hat Manufacturer” (KB 29/482). I found a number of instances where the clerk altered the defendant’s occupation, presumably in the name of accuracy.
which occupations were noted in the King’s Bench records seems to suggest a strong desire for accuracy in describing the persons involved.

Table 3.4 classifies defendants in assault prosecutions at the King’s Bench into six general categories. The figures here bear out what Lord Mansfield lamented as the unending flow of the lower orders into his courtroom. Of the 2107 defendants in my sample, 1825 (87.9%) were male and 282 (13%) were female. Of the male defendants, it is clear that the majority of them—that is, 63.9% in the period 1760-95 and 61.9% in the period 1800-1835—were either unskilled labourers or yeomen. There was a sprinkling of men from the top end of society (including one Bishop, three M.P.s, two Lords and three Earls) and a fair number from London’s middling ranks of “polite and commercial” society (e.g. coach masters, cooperers, tailors, cheesemongers). Over time, though, we can detect a decrease in the number of defendants of the highest orders. There was a slight increase in those from the middling ranks which accompanies a modest decrease in the proportion of unskilled labourers, but the significance of those changes is negligible.

Whether the class composition of the regular pool of defendants affected the ways in which justice was administered at Westminster is difficult to determine. Apparently it had no bearing on cases with defendants of exceptional status. Mr. Justice Ashurst claimed that at the King’s Bench equality reigned in cases of assault. When Viscount Falkland was charged by Henry Seymour, an ironmonger, for an assault on him at Maidenhead, the Annual Register reported Ashurst’s observation “that the law, much to its honour, regarded the meanest subjects as much as those of the highest rank and that no elevation could place a man beyond the reach of justice. He then sentenced the right hon. lord to pay a fine of £20.” Whether Falkland suffered more for his status than for his temper, however, will remain known only to the Chief Justice.

18 Mansfield’s remarks are cited in Oldham, Mansfield Manuscripts, II: 926.
19 Annual Register 32 (1790), 226.
Table 3.4
Occupation/Social Status of the Accused at King's Bench, 1760-1820

<table>
<thead>
<tr>
<th>Occupation/Status</th>
<th>1760-1785</th>
<th>1800-1825</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male %</td>
<td>Female %</td>
</tr>
<tr>
<td>Aristocracy, Gentry, High Social Station</td>
<td>5.8</td>
<td>1.5</td>
</tr>
<tr>
<td>Gentlemen, Professionals</td>
<td>10.2</td>
<td>0.5</td>
</tr>
<tr>
<td>Tradesmen, Craftsmen</td>
<td>17.1</td>
<td>6.7</td>
</tr>
<tr>
<td>Shopkeepers, Merchants</td>
<td>2.2</td>
<td>5.1</td>
</tr>
<tr>
<td>Yeoman</td>
<td>30.9</td>
<td>13.3</td>
</tr>
<tr>
<td>Labourer, minimally skilled</td>
<td>33.0</td>
<td>18.5</td>
</tr>
<tr>
<td>Spinster</td>
<td>-</td>
<td>38.5</td>
</tr>
<tr>
<td>Widow</td>
<td>-</td>
<td>11.8</td>
</tr>
<tr>
<td>Unknown</td>
<td>0.7</td>
<td>4.1</td>
</tr>
<tr>
<td>Total</td>
<td>99.9</td>
<td>100.0</td>
</tr>
<tr>
<td>N</td>
<td>1353</td>
<td>195</td>
</tr>
</tbody>
</table>

*Source: PRO, KB 29.

*Married women are counted by their husband's occupation.

The occupational definitions of women depended on their marital status. Women were almost always defined in relation to their husbands, though in a few cases women are categorized as “Mariner,” “Seller of Wine” or “Labourer.” In the earlier period, unmarried women constituted the largest proportion of female defendants, with wives of labourers and widows following second and third. By the 1800-1825 period, however, widows have nearly disappeared from this court, as have women at the very top end of the social ladder. Unmarried women constituted a little over 32% of the female defendants, but it there is no information from these court records to indicate anything else about their social status. Women from the lower orders accounted for the majority of all female defendants, with nearly 52% of defendants listed as wives of labourers or other minimally skilled workers.

To sum up thus far, we may now suggest a violent “type” for the period under study. From the data compiled here, we can say that among those offenders who were brought to court as a consequence of their violent behaviour, the vast majority of those people were men, and of those men, nearly two thirds were from the lower orders of society. Among female defendants, we have
seen that women brought to account for their violent acts were often single or widows, in which case a clearer idea of their social status remains obscure. Women whose social status was known were generally of the lower orders. By the early nineteenth century, well over half of the number of women coming before the King’s Bench justices were of the unskilled, labouring classes. Thus the general picture of violent lower class men (and to a lesser degree women) is confirmed by the experience of the metropolitan courts in the late eighteenth and early nineteenth centuries.

The Nature of Violence

The court records are helpful in establishing general features about the class and gendered nature of prosecutors and defendants in assault cases, but they also reveal the court’s attitudes towards violence. The evidence of attitudes is less easily recovered from the court records, especially the indictments at the quarter sessions, as these were formal documents that followed a uniform style. The affidavits preserved in the records of the King’s Bench are more helpful in this respect, as they are at least suggestive of some of these attitudes. Judging from the markings and the marginalia in the King’s Bench affidavits, it may be suggested that the chief officers of this court were sensitive to the nature and degree of violence involved in individual cases, and to the consequences of that violence. For example, in the affidavits, the judges highlighted what they must have seen as salient details regarding the cases. The kinds of things that received special notation were those details that either intimated or explicitly described the nature of violence underlying the assault charge; details such as whether the victim was struck once or repeatedly, whether the assault was perpetrated using a weapon or just bare hands, whether there were physical injuries and the nature and extent of the injuries themselves (whether minor or life threatening).20

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20 Other examples, besides those noted below, may be found at: PRO, KB 1/22, Part 2, Michaelmas 20 Geo. III, Affidavit of William Inglish; KB 1/22, Part 2, Michaelmas 20 Geo. III, Affidavit of William Axford; KB 1/33, Part 1,
In one affidavit, the fact that the prosecutor was beaten senseless and “fell to the ground” drew the court’s attention. The court was also drawn to the prosecutor’s assertion that the defendant had encouraged others to join him, and his claim that he was a healthy man before the attack but “ever since the . . . day the said Assault was made upon him he had Periodically been Afflicted with Violent Head Aches Giddiness and Dimness of Sight.” In another case, the fact that the prosecutor was of a “weak and infirm state” and that this put him at a disadvantage to the “Strength and Determined Violence of the Defendant” was noted and might well have factored into the sentencing decision. A third example comes from the prosecutor’s affidavit in a case between two attorneys. The court noted the fact that the defendant “stuck this Deponent a violent Blow on the Temple, which made this Deponent reel against the Iron-Rails of the Garden of Lincolns Inn . . . and immediately repeated his said Blow.” Following the defendant’s alleged outburst, the prosecutor claimed that “he attempted to reason” with him, who “then being at some small Distance from this Deponent advanced with his Head foremost towards this Deponent forcing the same into this Deponent’s Stomach.” All of this was underlined in the affidavit.

A second interesting feature of these violent episodes revealed in the King’s Bench affidavits was the use of abusive language. Since many violent incidents began with verbal assaults, the court was clearly keen to know the precise language being used and the aggression and sincerity of that language in order to establish the immediate context. In one case (that we shall consider in greater detail in chapter 4) some importance was clearly attached to the fact that William Collins was called a “notorious Rogue Villain and Thief.” Also, the defendant’s threat (made after the assault) that “he


21 PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of Walshingham Collins.

22 PRO, KB 1/39, Part 1, Hilary 56 Geo. III, Affidavit in Aggravation per Daniel McKenzie. McKenzie was fined 6/8 and ordered to enter into a recognizance in £40 to keep the peace for one year.

23 PRO, KB 1/22, Easter 21 Geo. III, Affidavit of William Strong.
would do for [Collins] before the night" was taken seriously by the court. Since the affidavits played such a central role in King's Bench proceedings, it is likely that the clerks who drew them up made certain that the deponents were aware of the importance of emphasizing details such as these, and recounting the severity of the language used against them. This might also account for the vivid, nearly verbatim, accounts that these affidavits contain. One can almost imagine the clerk composing these documents as the deponent sat before them and related their stories. The honesty and realism that these affidavits project is especially compelling because of the sometimes rambling, narrative style that characterizes them.

The records of all of the metropolitan courts, including coroner's courts, are especially revealing of attitudes towards violence when weapons were used. Weapons of some sort figured frequently in fights, often with serious consequences, though not always for the person wielding them. Such episodes, in which serious bodily harm or death occurred, revealed the darkest consequences of violence. Because violence involving weapons could become much more serious much more quickly, anxieties about violence and uncontrolled emotional outburst were reified. Coroner's records are especially useful in documenting the fatal damage wrought by such violence. They indicate that various weapons were used in the commission of offences. Often this meant items that came easily to hand during an altercation, such as "a certain large piece of Wood called a hand spike" or a wooden staff. An iron poker proved fatal in a case involving a bailiff, John Wilson, who, while acting upon a warrant and attempting to arrest one Louis Bartolomichi, was attacked by the man with a sword. According to the coroner's report, Wilson, acting in self-defence, and in order to take and arrest the said Louis Bartolomichi according to the command of the said Warrant did then and there justifiably and of inevitable necessity...take...a certain Iron poker and did throw the said Iron poker to and against the said Louis Bartolomichi and did thereby strike [him] in and upon the upper lip mouth and neck...and did give him one mortal

24 CLRO, Coroner's Inquests, London and Southwark, 1788, no. 17.
25 Ibid., no. 89.
And the Jurors...do say that the said John Wilson...in pursuit of Justice of inevitable necessity and justifiably did kill and Slay [Bartolomich]...26

In another case from the summer of 1788, William Jones was killed in a violent affray with one John Winterbottom. The coroner's jury inquiring into Jones's death determined that the use of a weapon had been significant in escalating the violence of the attack, but justified the retaliatory violence from Winterbottom who, in putting off Jones's blows, accidentally knocked him down causing a mortal head injury. Jones had been using the "butt end of a certain Whip called a Cart Whip" the coroner wrote, and "violently and forcibly did divers times strike and beat [Winterbottom]...very many grievous and violent blows and strokes" causing "divers mortal [sic] wounds and bruises in and upon [Winterbottom's] head face back sides arms legs and thighs," from which he later recovered. In the end, the jurors agreed that Winterbottom had acted "in the defence of himself" and thus Jones's death was judged "justifiable" and therefore manslaughter.27

These cases demonstrate the elasticity of definitions of violence, and that, in certain circumstances, violence was even "justifiable" and could be excused in circumstances of "inevitable necessity." In addition, the fact that in both cases the victim had a hand in escalating the level of violence by introducing a weapon seems to have mitigated the responsibility placed upon both Wilson and Winterbottom for causing another person's death.

Judgements in non-lethal attacks involving weapons were also open to interpretation, based on the context of the case. In 1785, Alex Fraser was charged at the King's Bench with assaulting and stabbing a man with a pen knife. Fraser was also charged with attempted murder, but the jury acquitted him of that charge. The judgement on the misdemeanour assault then was left to the discretion of the master.28

26 Ibid., 1800, no. 25
27 Ibid., 1788, no. 15.
28 Middle Temple Library, Dampier Mss., Notes on Judgements, f. 38. Unfortunately the amount of damages allowed by the master is not recorded.
One other question raised by these cases, as well as the Renwick Williams case that we shall consider in depth in chapter 5, is how commonly men went about armed in the late eighteenth and early nineteenth centuries. In the fifteenth and sixteenth centuries it was common for men to carry a knife or dagger. Radzinowicz explains that the 1604 Stabbing Act was passed in response to a rash of stabbings at the royal court, in which short daggers carried as side arms were used.\textsuperscript{29} Even by the late eighteenth century, according to James Cockburn, the custom of going about armed had not died.\textsuperscript{30} In the 1790 case of Renwick Williams, “The Monster”—convicted of stabbing a woman in the leg with a small knife—one of the public broadsides put out in aid of his apprehension advised that cutlers keep watch for a man who “is desirous of having his Weapon of attack very sharp,”\textsuperscript{31} while servants were to be told to be suspicious of requests to clean any knives that appeared to be covered with blood. This would seem to suggest that men did carry weapons—or, at least, potential weapons—of some sort as a matter of course.

The Bartolomichi case occurred in 1800. And though the relationship between violence, weapons, and assault had become somewhat more clearly defined in law over the course of the eighteenth century, things would still be in flux for at least another forty years. As mentioned in chapter 2, particular forms of physical injury, that is, maiming, were made felonies in the early-modern period. In 1704, it was decided in the case of Genner v. Sparks that simply pointing or brandishing a weapon in a menacing fashion (in this case a pitchfork), with the intention of using it, constituted an assault.\textsuperscript{32} But it was not until 1840 that similarly threatening with an unloaded pistol was deemed an assault.\textsuperscript{33}

\begin{thebibliography}{9}
\item Radzinowicz, History, I: 630; see also Stephen, History of English Laws, III: 47-8.
\item BL, L.R. 301.h.3.
\item Genner v. Sparks, Eng. Rep. 87 (1908), 928-29.
\end{thebibliography}
Public Drinking and Public Violence

The alehouse is a quintessential fixture of English culture and has been so since medieval times.\textsuperscript{34} Alehouses were small at first, but as they grew in size they could offer other services. By the eighteenth century its use as a meeting place for all sorts of social and official business was deeply entrenched in the routines of daily life. Political and social clubs that became very popular in the eighteenth century also took to meeting in alehouses. However, with the commercialization of leisure activities in the latter part of the eighteenth century, the alehouse was to undergo substantial changes. The old alehouse gradually lost many of its former administrative associations, as town halls and permanent court houses provided official venues for the conduct of local government business, and as specialty shops sprang up to capitalize on the provision of goods and services formerly provided by alehouses. The alehouse was transformed into the public house, a primarily social location, whose main purpose was to provide a venue for the leisurely consumption of beer and liquor. Entrepreneurs in the eighteenth century began to build new public houses specifically for the sale of alcohol alone. But in order to maintain a steady and repeat clientele, pub and tavern owners also worked to provide more hospitable surroundings and to cultivate more up-market and respectable clients.\textsuperscript{35}

Alehouses attracted men and women from various classes. An Italian visitor to England in the late seventeenth century detected in the English alehouse a general division of space along class lines: "these places are not very extravagant and they are almost to be found full downstairs,


\textsuperscript{35} Haydon, \textit{English Pub}, 104-110. Some pubs did assume new functions later in the nineteenth century, such as the hiring fair.
crowded with the rabble, and upstairs with every condition of man from artisan to gentleman.”

Whether such class divisions were sustained by the end of the eighteenth century seems less clear. What does seem consistent is the connection between alcohol and violence. However, not only men were known to drink to excess and become involved in violent altercations. Nor does there emerge, from the court records documenting cases of violence in pubs, any clear sense that the eighteenth-century alehouse or pub was an explicitly male domain. In the eighteenth and early nineteenth centuries, females played a regular part in tavern life. Women proprietors had been known since the thirteenth century at least, and widows frequently turned to running alehouses in their own names after their husbands’ death. While visiting a Billingsgate alehouse in 1704, Ned Ward was witness to a prolonged harangue by a fishwife who was obviously a regular. Patrick Colquhoun lamented the fact that “the public tap-rooms of many ale-houses are filled with men, women, and children, on all occasions, where the wages of labour is too often exchanged for indulgences ruinous to health, and for lessons of profligacy and vice, totally destructive of the morals of the adults as well as of the rising generation.” Still, even if the pub was patronized by men and women, it may well have developed a masculine ethos. Respectable women were less likely to be seen in taverns and tap rooms later in the eighteenth century.

The social consequences of alcohol and alcoholism in eighteenth century English culture have not received the detailed attention they deserve. The artist William Hogarth’s famous images of Gin Lane and Beer Street offer only allegorical glimpses into the reality of drink and alcoholism, and

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36 Ibid., 81.
other serious consequences—such as illness or violence—are only now receiving detailed study.\(^4\)

According to Thomas Forbes "excessive drinking was a significant cause of death" in eighteenth century England. Indeed, he argues, the "intake of alcohol in some cases was startling, even in an age notable for consumption of drink."\(^4\) Public-houses had a reputation as centres of "riot and intemperance" and as "seminaries of drunkenness, debauchery, and extravagance," and violent behaviour was frequently the result.\(^4\) That there were strong correlations between drinking and violence in the eighteenth century should come as no surprise.

Drinking played a part in precipitating quarrels and altercations of varying seriousness. Men and women who were drinking were more apt to turn violent more quickly when contentious situations arose. Countless scuffles and blows came as a result of insults, name calling, or simply rude behaviour. Many of these violent outbursts were no doubt settled on the spot, often through violent retaliation. In one case (recorded in a famous eighteenth-century medical text on head injuries) we learn that two females got drunk together and quarreled; one of them threw a stool at the other, knocking her down and cracking her skull. In another case recorded in the same text, a watchman got involved in a scuffle with a group of drunken sailors, who set upon him and delivered several blows to his head.\(^4\) Some victims of violence stewed over their petty injuries long enough to get the other party before a magistrate, or as Oldham found, even before the King's Bench. Lord Mansfield apparently had very little time for such disputes, and preferred to fob these cases off to inferior courts, or to strongly recommend an immediate settlement between the parties. In one such

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example, Mansfield encouraged the parties in a petty assault "to shake hands in Court" to settle their squabble, "his Lordship perceiving it was the goodness of the wine that occasioned the imaginary insult."

Other patrons in pubs could be inadvertently injured when violent situations arose. Edward Bride was drinking in the Queens Head in Bishopsgate Street "in the parlour at the back of the tap Room" in the company of "a number of persons [who] were assembled... playing (as he believes) a game called cribbage." When one of the players "endeavour[ed] to take up the cards an affray took place in which [Bride] was much bruised."

In another case of assault, prosecuted at the King's Bench, we learn that Joshua Fox was to meet John Burn at a public house in order to settle a debt between the two. When Burn arrived, he found Fox sitting at a table. Burn claimed that he approached Fox and "without any manner of provocation whatsoever given to him...(except demanding his s'd debt may be thought one) [Fox] pushed this Deponent several times on the said floor and with great force trod on this Deponents Toes and with one of his knees pushed this Deponent so violently in the Groin that it caused the said Deponent to have a Rupture with which he has ever since been afflicted."

Pubs could also be the scene of serious assaults, or, as the following case demonstrates, at least of their beginnings. In December 1767, five men who were drinking at a public house, owned by Robert Newton, became abusive and were soon asked to leave. One of the five, Daniel Asgood, became particularly abusive, swearing and punching another patron, Charles Duncombe, in the face. Robert Newton went out and called for assistance from the watchmen, one of whom was William Ridley. Upon the arrival of two watchmen, the five rowdies fled the pub but the watchmen pursued and caught up with them on the steps to Fleet ditch. An affray ensued and Ridley was disarmed by

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46 CLRO, London Sessions Papers, Solicitor's Briefs, 1799, f. 4.
47 PRO, KB 1/14, Trinity 33 & 34 Geo. II, Affidavit of John Burn.
Daniel Asgood who, having grabbed the staff out of Ridley's hand, struck Ridley over the head broke his lantern and also struck and knocked down another man. Later that evening, Ridley was led home by Simon Lloyd, a fellow watchman, and upon his wife letting him in she noticed “him bleed both at the ears and nose” and asked Lloyd what had happened. He replied “that he had been used very ill by five villainous fellows who he knew not.” Ridley then said to his wife, “O Hannah I fear I have had my fatal stroke to which [she] replied, she hoped not.” His wife testified to the coroner's jury that “he cried out several times, O my poor head, my poor head, and very soon afterwards was speechless and continued so to the time of his death which happened on Saturday morning.”

All of these episodes illustrate the kinds of violent experiences that were familiar to English men and women. Thus far, this chapter has sketched some of the broad themes that arise from a close study of the evidence of such violence. The first of these is the public nature of violence. It seems clear that violence in public was a relatively commonplace experience. The links between public space and public violence were obvious to eighteenth century men and women, and the expectation that violence might occur in the outside world was likely high. This was particularly true for certain spheres, such as alehouses, where the links between drinking and violence were understood and tolerated to a certain point. This fact no doubt contributed to other concerns among eighteenth century authorities regarding alehouses, public disorder, and general immorality. Of course, much of the qualitative detail we have discussed so far comes from the court records and is thus illustrative of examples of violence which had transgressed certain thresholds of tolerability. The examples given here might be seen as the forms of interpersonal violence that lay in the grey areas between acceptable, tolerable and expected, and that which was excessive, injurious and menacing. The courts provided the forum for making such decisions, and their records therefore

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leave us with some sense of how eighteenth century men and women negotiated the boundaries of acceptable violence in the public sphere. But, of course, violent behaviour was not restricted to the public sphere alone. Violence directed at intimates in the home or in the workplace was also an all too familiar aspect of everyday life. The chief concern of the remainder of this chapter is to examine the court records, along with other sources, for what they reveal about the everyday experience of violence in the private sphere.

**Violence in the Private Sphere**

1. **Domestic Violence**

   It is not at all surprising that domestic violence is a form of behaviour with deep historical roots. For centuries, the physical punishment of wives and children was considered a normal, even necessary element of domestic order and control. The patriarchal nature of Western society, reinforced as it was by the most important moral and social bulwark, the Church, perpetuated the domination of women, children and other inferior persons by the male head of the household. It is not surprising, then, in a culture that tolerated the use of physical abuse in other contexts as a means of correction and control (as we shall see in chapter 7 on punishment), that such behaviour would be found in the domestic sphere.49

   One of the general transformations in the experience of violence from the early modern period to today, is its privatization. In the seventeenth century, as Keith Wrightson argues, violence was “more readily used—less circumscribed—in society at large.” Violence, even that leading to death, was “relatively widely directed and less contained within the intense emotional setting of the family than it is today.”50 This seems to have been true for most of the eighteenth century too.

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Thomas Legge, the author of *Low Life* presented a caricature of domestic violence, in which “Drunken cuckolds and old fools” are found “quarrelling in Night-Cellers, and proceed to break each others heads, to prove the emptiness of their arguments.” Accounts such as these, though fictitious, must have had at least some grounding in reality, but the extent to which that was so is only partially clear. As Peter King has recently noted, there has been remarkably little historical research done on the issue of domestic violence in the past. By and large, historians of crime or of the family have not risen to the challenge of explaining the manifestations of this often hidden form of interpersonal violence, although some recent notable work stands out. This neglect is less obvious for more recent periods and, for many earlier historical contexts, the leading obstacle to such a study is the paucity of sources. Not only are the cases themselves relatively rare among the official court records, but even among the few cases that do make it to court there usually remains only sparse evidence to help us understand the issues underlying the charge. The violent behaviour remained invisible, occurring as it did in the private sphere of the home where masters lorded over their household. Only in exceptional cases was violence in the home brought forward as a public issue. Among his Essex samples from the last third of the eighteenth century, King found that only

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51 [Thomas Legge], *Low-Life, or, One Half of the World Know Not How the Other Half Lives*, Being a Critical Account of What is Transacted by People of Almost all Religions, Nations, and Circumstances, in the Twenty-Four Hours Between Saturday-Night and Monday-Morning. In a True Description of a Sunday, As It Is Usually Spent Within the Bills of Mortality. Calculated for the Tenth of June. With an Address to the Ingenious Mr. Hogarth. (London, 1764), 28-29.

52 King, “Punishing Assault,” 46-7; this despite the attention given to the subject by Dobash and Dobash, two noted sociologists in the field of family violence, who were among the early proponents of studying violence against wives in a wider historical context. Maternal violence, or ‘wifebeating’ is, according to Dobash and Dobash, “a form of behaviour which has existed for centuries as an acceptable, and indeed a desirable part of a patriarchal family system within a patriarchal society” (R. Emerson Dobash and Russell P. Dobash, *Wives: The ’Appropriate’ Victims of Maternal Violence*; *Virtuology: An International Journal* 2:3-4 [1977-78]; 426-442; also see R. Emerson Dobash and Russell Dobash, *Violence Against Wives: A Case Against the Patriarchy* [New York: The Free Press, 1979]).

a “handful” of husbands were indicted at the quarter sessions for assaulting their wives. He surmises that such cases were likely dealt with less formally, and in greater numbers, at the petty sessions. As we shall see, the London courts heard their share of domestic assault cases and took often innovative steps in dealing with the problem. Still, it is likely that only the most severe cases were brought before the courts; and even when they were, the court records themselves are rather thin on the specific details of the abuse.

There were few social restrictions upon the rights of the master of the home to maintain order and to discipline those under his patriarchal control. Moreover, there was also legal permission to correct servants, children and wives within reason. The 1825 edition of Burn's Justice states that a charge of assault and battery would not be sustained in the case of a parent chastising a child, “in a reasonable and proper manner” or “a master his servant being actually in his service at the time, or a schoolmaster his scholar, or a gaoler his prisoner or even a husband his wife.” The legal threshold for such violence was therefore high, and the circumstances of the attack would play an important part in determining legal culpability.

Although physical violence against wives or other family members was largely tolerated and even legally condoned in our period, unless it was severe, its frequency or severity probably varied within different social groups. The social strictures against physically disciplining wives or children were certainly much stronger in middle-class and aristocratic houses in which public displays of anger were more tightly censured than in working-class homes. There, physical force was perhaps the only true threat to coerce compliant behaviour in the absence of financial penalties, restricted

34 King, “Punishing Assault,” 54.
35 One possible future avenue for the study of this topic is the Consistory Court records held at the Greater London Record Office. Unfortunately, time did not permit a thorough examination of those records for this project.
36 Burn, Justice of the Peace 22nd ed. (1814), 181.
leisure opportunities, or restricted access to non-essential material goods.

Interpersonal violence among intimates in the eighteenth century was considered a family affair and, for the most part, remained an issue outside of the concern of the law and the public. Of course, what constituted a “family” in that context is also important to consider. We know from historians of the early-modern family that the typical household unit was a less private, more complex entity than the simple “nuclear family” and often included people who were not blood relations. In many cases, the nuclear family alone did not constitute a household. Servants were commonly employed year round, even by poor tradesmen and small landholders, and ate and slept with the master’s family. Apprentices were also incorporated into the domestic network, as were paying lodgers, adopted orphans, or, in some cases, extended family such as children from previous marriages, cousins, or grandparents. Given the composition of the eighteenth-century household then, it is not surprising to find among the court records a number of cases of assault or abuse which might well be considered as “domestic violence.”

Cases of domestic violence appear with some regularity among the business of the eighteenth-century courts—both religious and secular. Fathers and mothers disciplined their children, young apprentices, or servants in the house, often with a severity that we would find shocking today. Spouses attacked each other too, though from those incidents that were prosecuted it appears that most cases involved men beating their wives. Before the early nineteenth century, and only in a limited sense even then, there is little indication of a broader public interest in curbing

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37 D. Marshall, “The Domestic Servants of the Eighteenth Century” Economica 9:23 (April, 1929): 15-40; Ann Kussmaul, Servants in Husbandry in Early Modern England (Cambridge: Cambridge University Press), 7-8; Naomi Tadmor, “‘Family’ and ‘friend’ in Pamela: a case-study in the history of the family in eighteenth-century England” Social History 14 (October, 1989), 297. Also see the Times, 2 November 1779, which reports the case of a man tried for theft from a dwelling house and convicted because “the prosecutor dwelt there by [i.e. via] his servant, who is part of his family” even though the prosecutor himself resided elsewhere.

domestic violence. In many such cases the complaints were simply discharged as “trifling” and the parties were urged to work things out amongst themselves. However, this was far from universally true. Depending on their circumstances, their class, their own determination to pursue the case, and their choice of court, victims of domestic violence could achieve a range of judicial settlements to their ordeal.

The Court of Arches and parochial church courts offered a venue for the management of disputes within marriages. Men and women were also brought before the diocesan court or Dissenters’ tribunals seeking a formal judgement in such disputes. Often these cases involved defamation or scolding, but cases of physical violence were not uncommon.\textsuperscript{59} In severe and chronic cases of abuse, a married person could petition the ecclesiastical courts for a separation on the grounds of cruelty. But this could not only prove costly because of the long and involved court procedure, but also because of the complex problem of defining cruelty itself.\textsuperscript{60} Since the husband usually had both the physical power and legal authority to discipline his wife, the threshold beyond which an actionable cause was possible was blurred at best. Cruelty then, had to be proven as physical cruelty, over a prolonged period of time, and to such an extreme degree that the victim’s life was in danger. Such a stiff standard of proof meant that few women ever made such complaints.

As well, many women endured remarkably harsh treatment for years on end, fueled in part by a patriarchal culture that emphasized the subservience of women, in part by the familiar and vain hope that the husband would “change.”\textsuperscript{61} Both of these factors were compounded by the fact that a woman who left her husband was legally in the wrong and risked driving herself and quite possibly her children into destitution.


\textsuperscript{61} Nancy Tomes argues that, in the nineteenth century, a certain degree of violence against wives was tolerated to demonstrate male superiority (“Torrent of Abuse,” passim ).
Victims of domestic cruelty, usually the woman, also had a number of secular avenues of legal redress open to them. First, they could bring their husband before a magistrate. In June of 1732, the Hackney justice Henry Norris heard a string of complaints from Thomasin Wheeler against her husband John "for beating & abusing her being Sick & for denying to assist in the maintenance of her & her Children & threatening her Saying were no more pity to kill her then to kill a dog." When Dennis Beaumont was brought by a warrant before Samuel Whitbread in Bedfordshire in 1811 on a previous complaint by his wife Jane "for using her so ill," Whitbread "recommended them to part." At the February 1777 sessions of the peace, Ann Ferryton complained to the Middlesex magistrates that she was in danger from her husband. In another case, John Jordan was bound over to appear at the next sessions of the peace to answer the complaint of Sarah, his wife.

Women who brought charges against their husbands or partners were not always seeking a harsh punishment and, given that many such cases were prosecuted only at the petty sessions or quarter sessions, such a resolution was barely possible in any case. Rather, the documents offer the impression that aside from seeking to halt the abuse itself, these women were seeking some recognized, authoritative power (in this case, that of the state) to add some weight to their own personal opposition to harsh physical treatment. For example, thirteen days after Thomasin Wheeler had her husband committed to New Prison to await trial at the quarter sessions, she appealed to Norris to have him discharged "in her hope of his amendment." In certain cases the court saw fit to intervene to a greater degree, and could tailor a decision to fit the particular circumstances. There

62 Paley, Justice in Eighteenth-Century Hackney, 2, no. 9. See also nos. 48, 89, 119, 129 for other complaints from his wife against him.
63 Cirket, Samuel Whitbread's Notebooks, 65, nos. 353, 356.
64 LMA, MJ/SR 3321 (12 February, 1777) recognizance of Stephen Ferryton; (30 November, 1776) recognizance of John Jordan.
65 Paley, Justice in Eighteenth-Century Hackney, 12-13, no. 48.
is no direct evidence that shows how such decisions were made, but it seems reasonable to assume that the severity of the case, or the possibility that the parties would cause further harm to one another, were likely factors that influenced the magistrate’s decision on how to proceed.

When Elizabeth Hayes complained that Alexander English had assaulted her on different occasions the court ordered the pair to separate and English was ordered to pay a kind of alimony of 5s per week. In other cases, the magistrates tried to address what they perceived was the root of the problem; thus when Sarah Forrester brought her husband James before Mr. Alderman Clark for an assault, Clark made James “promise not to go into an Alehouse for one Month” before he was discharged. Clearly, the magistrates were attuned to the social consequences of alcohol and they did make attempts to employ the law in ways that fit the unique circumstances of the lives of the litigants. This seems to suggest that domestic assault was not seen as a simple sub-category of assault. The fact that it was a wife rather than a stranger being assaulted appears to have been an important factor in determining how some magistrates decided to settle the issue and work towards a solution to the problem of violence that would not upset the broad conventions and duties of marriage.

Lawrence Stone suggests that eighteenth century spouses may have been less prone to marital violence than their twentieth century counterparts if only because there were more people in a household—particularly servants. It may have been the case, as Stone suggests, that neighbours and servants often intervened in cases of family violence. But there is no way of knowing how often this was true. Many assault cases that appear as “random” among the records could well have arisen from such attempted interventions and, as we shall see, servants and apprentices could face serious retribution if they tried to intervene against an abusive master of the household.

66 CLRO, GJR/M 18 (10 September, 1782).
67 CLRO, GJR/M 18 (19 September, 1782).
Abused wives were sometimes supported by their friends or neighbours, who might intervene to try to prevent further violence from occurring. After Elanor Flinter was assaulted by her estranged husband, Thomas, and his friends, she exhibited articles of the peace against him at the next quarter sessions. The couple had been separated for about two and a half years, when Elanor moved out of the house into a room in Tash Court, Grays Inn Lane. Eventually her husband discovered where she was living and arrived at her new lodgings one day “with about Nine or ten Shabby looking Persons with him.” She testified how her husband “immediately laid violent Hands on [her] and tore and pulled her about the Room as was for forcibly dragging her down Stairs in Order to carry or convey her …(as She verily believes with the Assistance of the Party with him) to some Strange or secret place for to Ill treat or Murder her.” Fortunately for her, this was prevented by “her Neighbours and Friends then in the House who came to her Assistance.”

In Flinter’s case, then, others were willing to intervene in order to protect her. This was likely because of the fact that the husband was estranged from her, and was not living with her. From the scanty details of the case that have survived, his arrival seems sudden and the woman’s friends might not have even known who he was. In this case others were clearly willing to become involved on behalf of someone threatened with serious physical violence. However, that willingness to intervene in violent assaults probably depended upon the nature of the relationship between the abuser and the victim. In those cases where the abuser and victim were on more intimate terms, there may have been greater hesitancy for outsiders—even relatively intimate ones—to get involved.

Even in particularly severe cases of domestic violence we can find instances where outsiders were both entirely cognizant of the abuse, but were unwilling to get involved. In one such case from December 1766, a woman named Williamson was beaten and starved to death by her husband even in the presence of other lodgers and the children of the deceased. Elizabeth Farrington, the

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58 LMA, MJ/SR 3090 (9 July, 1759), no. 3.
landlady, testified she had heard the woman being beaten too. She told the coroner’s jury that from
the time the deceased and her husband first came to live in the garret she rented to them, “she
frequently heard the deceased’s husband beating her she hearing her often fall upon the floor crying
out for Christ’s sake to not serve me so and in the presence of one Mr. Cole who used to be in the
daytime almost constantly in the same room.” Farrington even heard Williamson plead to Cole
“how can you let him do so?” as he beat her. Cole apparently laughed her off, “saying ha ha, how
can I help it, what would you have me to do?”

Williamson suffered terribly on other occasions too. Once she appeared before Farrington
“with iron hand cuffs with her hands behind her” and told Farrington “that with a Fork or Nail she
might open them.” Farrington’s husband tried to file the cuffs open but was unsuccessful and told
her “that she must continue in misery till her husband came home which might be 11 or 12 o’clock.”

Mrs. Farrington did try to intervene on several occasions on the abused woman’s behalf. She
testified that she “frequently admonished [Williamson’s] husband for his ill usage to [his wife] for
which he always abused [her] and called her names and saying that if he did anything amiss he was to
answer for it.” But despite her admonitions, Williamson continued the abuse. On another occasion,
about six or eight weeks before she was killed, Farrington heard the woman’s stepdaughter try to
intervene during a beating, “crying out pray Father dear Father for Christ’s sake do not do it.”
Farrington believed the woman’s life was in danger, and even came to the foot of the stairs and
called “Mr. Williamson what are you about, are your murdering the woman,” to which he appeared,
obviously “trembling” and replied it was his daughter who was screaming.

A few weeks later, Farrington heard more noise, “as if the furniture in the room was pulling
ab’t” and soon after saw Williamson, along with his children, Mr. Cole and his wife, lock the
apartment and leave. Once they were all gone, she immediately went upstairs and knocked and called
to Mrs. Williamson several times, but received no answer. She returned to her room and revealed to
her apprentice her suspicion that Mrs. Williamson was dead. The next day, her fears were confirmed when the stepdaughter called, saying her father “would be extremely obliged to her if [she] would come and look at his wife for that she was dead.” Farrington said she would come later in the day, and sent her apprentice to fetch a friend, who spread the news to the neighbourhood. This brought “several of the neighbours to the number of 8 or 10” to the house, who all “went up into the room…and saw the deceased laid out upon the bedstead covered only with a sheet.” Aside from the beatings, the woman had clearly been malnourished, as “she was extremely thin her bones seeming to be ready to come through her skin” and it appeared to Farrington “as if she had died for want of common necessaries.”

At the coroner’s inquest, the jury heard from the deceased woman’s stepdaughter, who recounted even more shocking details of abuse. She said that about two months earlier, her father bought a pair of iron hand cuffs in which he put her hands fastening them behind her putting a rope round the iron of the handcuffs and therewith drew her up the rope through the staple in the closet and then fixed it to a spike nail above her head, the deceased resting upon her toes…from time to time [he] used to put a slice of bread and butter upon a shelf in the closet which she could just reach with her mouth and gave her water when she called for it.

She also testified how he beat her frequently, either with a leather sturrup or with his bare fists. In her opinion, her stepmother’s death “was occasioned for want of sustenance & by the ill usage her father gave her.” An autopsy was performed and though the surgeon found a bruise on her cheek and a deep cut in her upper lip, the most significant finding was that “there was not the least appearance of her lately having received any kind of nourishment.”69 Williamson was tried and convicted for murder in January 1767, and hanged.70

This case, though certainly atypical of the kinds of domestic violence encountered in our period, is still instructive in that it sets clear boundaries in the use of violence within the home. It

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69 CLRO 226A, Sessions Papers, 1767-68, Information sworn before the coroner, 18 December, 1766. Testimony of Charles Barton, Surgeon.
70 LW, 36 (1767), 41.
also provides a glimpse of the networks of surveillance and sociability that existed in the eighteenth century. Clearly, some neighbours took an interest in the lives and, indeed, the sufferings, of others. But the case also demonstrates the limits of those alternate networks of community governance.

Although Williamson appealed to the Farringtons to assist her when she was handcuffed, when they were unable to free her, she returned to her abusive husband rather than stay with her neighbours or flee the home altogether. It appears there were culturally determined limits to what extent neighbours or strangers were willing to intervene in the happenings of another domestic sphere. And there were similarly invisible bonds which held Williamson, and no doubt many other women, in relationships where their imprisonment and domination was all too real.

The scale of domestic violence is extremely difficult to assess, given the paucity of quantifiable records. As table 3.5 reveals, the numbers of cases of domestic violence coming before the quarter sessions in our period was small. They account for only 1.3% of the total number of assault cases in my sample.⁷¹ The low prosecution numbers might suggest that judges and magistrates tended to encourage a peaceful reconciliation rather than an exemplary punishment for the abusive husband, a point suggested also by the proportion of unknown outcomes in such cases. It is possible that prosecutors in cases of domestic violence were more amenable to settlements of some kind as they had the most to lose by successfully prosecuting their attackers.

Table 3.5
Verdicts in Domestic Violence Assault Cases at Middlesex Quarter Sessions, 1760-1835

<table>
<thead>
<tr>
<th></th>
<th>Prosecutor</th>
<th>Not Guilty</th>
<th>Guilty</th>
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<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td></td>
<td>Wife</td>
<td>-</td>
<td>10</td>
<td>7</td>
<td>17</td>
</tr>
<tr>
<td>1800-35</td>
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<td>3</td>
<td>3</td>
<td>7</td>
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<tr>
<td></td>
<td>Wife</td>
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</tr>
<tr>
<td>Total</td>
<td></td>
<td>18</td>
<td>25</td>
<td>18</td>
<td>61</td>
</tr>
</tbody>
</table>

Source: see Appendix.

⁷¹ That is, 61 of 4578 indicted cases.
Male victims of spousal abuse might have been embarrassed about bringing their mistreatment to light, given that such an admission also implied a lack of control over supposedly subservient women. It could even invoke the censure of the local community. The informal sanctions against husband-beaters (and wife-beaters), as E.P. Thompson has pointed out, included the use of "rough music" in a ritualized shaming of the offender. The submissive husband could be the victim of this ritual too—and be punished for not standing up to his wife. Thompson argues that over the course of the nineteenth century, however, wife-beaters became the prime targets of such informal communal sanctions. These communal sanctions may have removed some men from more official forms of sanctioning through the courts. He also suggests that this shift might have been indicative of deeper changes in gender relations, where traditional, patriarchal notions of order were breaking down and some greater support was being shown for improving the lot of wives. On the other hand, Thompson also suggests that the increase in frequency of rough music against wife-beaters may have indicated a concurrent increase in the brutal treatment of some wives.\(^{72}\)

Historians of earlier and later periods have been similarly unable to assess the full scale of domestic violence, for reasons that are familiar to us in our own day.\(^{73}\) The likely reasons for wives and female partners not prosecuting their abusive male partners seem to have remained constant over time. Women's fears of reprisal were certainly real. Also, there may have been some apprehension that the prosecution might actually be successful. And in the mean time, if the offender could not make bail, the act of making a formal complaint could lead to the imprisonment of the family's principal or only source of income. Women were also less likely to be able to afford the costs of prosecution. Among the King's Bench cases, though not necessarily domestic assault cases, I have found examples in which the financial burden of prosecution was alleviated by a

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\(^{73}\) Sharpe, "Domestic Homicide," 31-32; Emsley, Crime and Society in England, 139.
wealthy supporter who was willing to finance a prosecution. However, the extent to which friends or neighbours, or even strangers, were able to provide such support in cases of domestic violence is impossible to know.

Finally, we must not discount the possibility that many women truly loved the men who beat them and, despite the abuse they suffered, were willing to excuse that behaviour in exchange for apologies and promises of better behaviour in the future, for even a short spell of relief from the abuse, or so that their children would have a father. The irrationality of this thinking might offend more modern, feminist notions of what should constitute a female/male relationship. But it would be wrong to discount the importance of the emotional element of intimate relationships since those intangible bonds also sustain the preconditions for repeated episodes of domestic violence.

2. Child Abuse

The ill-treatment of children struck many in the eighteenth and early nineteenth centuries as a cruel and unacceptable abuse of power, as it does today. Although, as we have seen, the law gave parents and masters wide latitude over the control and correction of children through the use of physical force, cases of serious abuse did not go entirely unheeded and parents and other guardians who were excessively harsh on children were taken before the courts in order to check and sometimes punish their behaviour. What is difficult to ascertain is how serious the mistreatment of children had to be before the law became involved. Of course we can not generalize all experience from information revealed in individual cases, but they are illustrative of the types of experiences some children were, unfortunately, forced to suffer.
Francis Place, the early nineteenth-century autobiographer, saw his beating as characteristic of the style of discipline-making in his younger days. He related how his father regularly beat him and his brother for the most trifling transgressions, often with a stick. Place adds, “I scarcely ever recollect his ceasing to strike until the stick was broken.” How often parents were made to account for this behaviour is less clear. Two cases from 1810, both reported in the Times, indicate that some cases did breach the limits of toleration for such behaviour. In the first case, “a woman named Boyce was examined at Union Hall [i.e. the Southwark Police Office], charged with having beaten her daughter, of eight years of age, so cruelly as to endanger her life. The child is now in St. Bartholomew’s Hospital, and the woman was committed until the state of the infant is determined.” Later the same year, it was reported how Mary Fleshman was brought before the quarter sessions at Devon and tried “for having cruelly beaten her infant child, of four years old; she was found guilty and sentenced to three months imprisonment.”

Another hint that the abuse of children was able to draw wider public opprobrium comes from a broadsheet printed in June, 1834. It relates how “the neighbourhood of Phoenix Court, Spitalfields, was suddenly thrown into considerable excitement and confusion” following the discovery of girl named Margaret Crane who had been “forcibly confined in a cole-hole, in a state of nudity and destitution!” When the parish officials were notified, the mother and the girl were seized and immediately brought before the magistrates at the Worship Street Police Office, “followed by some hundreds of people, who were with difficulty prevented from tearing the old woman to pieces.” In his defence, the girl’s father claimed that his daughter was insane and had “several times,
when her hands were free, taken up a knife and attempted to stab” him and his wife. Nevertheless, the parents were deemed by the magistrates to have been entirely capable of properly caring for the child. Thus, on account of their abrogation of their parental duties, and for “exercising great brutality towards” the girl, they were both committed to prison to await trial, and the girl was taken to the workhouse.

Others who held power over children in loco parents, such as schoolmasters, also employed violence as a regular means of discipline and correction. Children were disciplined harshly in school and could be whipped or caned by the master. Place reported how when he was a boy at school, punctuality, discipline and learning were all enforced with the cane. The punishment, Place said, “was very severe.” Yet, once again, the excessive use of force in the correction of school children was also coming under scrutiny from judges and juries. These particular cases of unusual cruelty, which arose in the early nineteenth century, shortly before the time Place was writing, helped to recast the outside limits of toleration for such violence. But they also occurred in a nebulous middle-ground, in the private sphere of the master's chamber, but within the public context of the school. Students were certainly well aware of who was punished and when. But when the punishment was excessive, and when the parent’s trust in their substitutes to draw the line at intolerable violence was breached, an opportunity arose to once again test the boundaries of what was an acceptable use of violence.

In one extreme case, the Rev. James Townsend Lawes, the Master of Marlborough Grammar School in Wiltshire, was charged in 1815 with an assault on one of his fourteen year old pupils, Courtney Boyle Brice. The case was tried before Dampier J. at the Summer Assizes. According to Brice’s testimony, it appeared that Lawes had called the young Brice to his study to

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address his poor performance on a “Theme” (a written school assignment). On cross examination the boy related the events:

You state Mr. Lawes took your Theme, put it down, and then struck you?
A. Yes.
Did he not say any thing to you?
A. Not then.
Had not your Theme been wrong?
A. Yes.
Did not you refuse to alter it when Mr. Lawes told you?
A. No.
Don’t you know that Mr. Lawes was dissatisfied with you?
A. I suppose he was, or he would not have knocked me down.80

It turned out that Lawes had in fact beaten the boy so severely about the face and head with a rod, that he caused a severe brain injury. The presiding judge, Henry Dampier, was determined that this should be an exemplary case. He saw here an opportunity for the jury to send a message to others who exercised control over school children or apprentices. He invited the jury to balance the circumstances of the offence with its severity, to try to establish in their own minds a clear threshold of acceptability for such forms of violence in their society. He told them:

it certainly is not to be justified, that Masters should resort to such a method of correction; but you must consider, the various tempers and dispositions they have to deal with: the Defendant has called no witnesses to his character. Indeed, Gentlemen, the whole question you have to consider, in my opinion is, whether the mode of punishment is proper, or improper? If you are satisfied with the evidence of the prosecutor; if you think it proper, you will acquit; if improper, you will find the Defendant guilty.81

After a few minutes consideration, the jury brought in a verdict of guilty.

3. Mistreatment of Apprentices and Servants

As with the case of men abusing their wives, domestic violence against other members of a

80 Rev. A. Brice, Narrative of Facts. Leading to the Trial, Conviction and Judgment of The Rev. James Townsend Lawes, Master of Marlborough Grammar School; For an Assault Upon Corney Boyle Brice. One of his Scholars, not Fourteen Years of Age. Tried Before Mr. Justice Dampier and a Special Jury, at the Summer Assizes 1815, for the County of Wilt. (London, 1816), 36-7.
81 Ibid., 51-2.
household were similarly difficult to uncover as there was wide latitude for the master of the house to discipline and maintain order. Domestic servants were often the subjects of such discipline, and not just in middle and upper class houses.\textsuperscript{82} Even relatively poor families had domestic help, though often these were no more than parish orphans who were bound out for very little money as apprentices to "housewifery."\textsuperscript{83} Nevertheless, despite their class, the mistreatment of persons under the control of the master of the house was a matter that came to the attention of the authorities from time to time. The mistreatment and even systematic abuse of domestics and apprentices was certainly known in this period.

One eighteenth century legal treatise advised that a master was permitted by law to correct and punish his servant "in a reasonable Manner for abusive Language, Neglect of Duty or other Misbehaviour, so it be done with Moderation."\textsuperscript{84} Cockburn's assumption that no doubt "much violence was passed off as 'moderate' correction" and that some deaths were attributed to natural causes is almost certainly true.\textsuperscript{85} If the servant died as a result of "immoderate or unreasonable" correction, the master was guilty of murder, though consideration could be made "of the Manner of the Provocation, the Danger of the Instrument, which the Master useth, and the Age or Condition of the Servant, that is stricken."\textsuperscript{86}

Cases of master/apprentice violence reveal a number of attitudes towards violence at the time. First, they indicate the boundaries of acceptable violence within non-blood relationships. Servants could be corrected but, again, when correction shaded into cruelty, or when the contractual elements of the apprenticeship bond were contravened, negligent masters could be held to account.


\textsuperscript{83} Marshall, "Domestic Servants," 39.

\textsuperscript{84} A Gentleman of the Inner Temple, Laws Concerning Master and Servant, (London, 1767), 126.

\textsuperscript{85} Cockburn, "Patterns of Violence," 97; also see Forbes, "Cronwer's Quest," 35.

\textsuperscript{86} Laws Concerning Master and Servant, 126.
Second, these cases moved judges and juries to look into areas of abuse of power and to reassess attitudes about parenthood—at least surrogate parenthood—control, and violence. Third, they touch on notions of "civility" and the "culture of sentiment" since, at the time, many still considered apprenticeship the principal method of teaching not only a trade but proper conduct and manners, and of, as Elias might argue, reproducing "bourgeois" society. Finally, such cases also touch on matters of breach of contract, because the actions and responsibility of each party are laid out in the indentures. One of the marks of capitalism that provided the preconditions for a rise in humanitarianism, according to Thomas Haskell, was the inculcation of the contractual relationship or promise keeping as a basis of trust in society. Thus abuse of apprentices might be seen as an example of breach of contract, thus a breach of trust, which a "civilized" or humanitarian court might well take action against. By looking at interpersonal violence through the lens of master/servant violence, then, we are better able to read changing attitudes towards violence across a broad canvas.

Of course detailed cases of this sort also reveal, more straightforwardly, how brutal some masters could be. The well known case of Elizabeth Brownrigg is one extreme example of the severe treatment meted out to servants. Brownrigg, the wife of a tradesman and a mother of sixteen children, was a midwife who took in pregnant women and accepted young orphan girls from the Foundling Hospital to act as servants to her. In 1765 she received Mary Jones and Mary Mitchell as apprentices. At first she treated them well, but soon Brownrigg, along with her husband and son, began abusing them horribly. They were starved, beaten, and had water thrown upon them. In one instance, Mary Jones was whipped with such force that Mrs. Brownrigg had to relent, having tired

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herself out. Jones eventually fled the house but soon another girl, Mary Clifford, was taken in and suffered similar abuse. On a number of occasions, Clifford was stripped naked, suspended from a beam and whipped until she bled. This continued for some time until her mother-in-law came to London to call on her. A neighbour informed the mother-in-law that “she and her family had often heard moanings and groans issue from Brownrigg’s house, and that she suspected the apprentices were treated with unwarrantable severity.” When the parish officials were informed, a search of the house was ordered whereupon Mary Mitchell was discovered and later Mary Clifford who was confined in a cupboard. The girls were taken to St. Bartholomew’s hospital where Mary Clifford died. Mr. Brownrigg was arrested at the time of the girls’ discovery, but Mrs. Brownrigg and her son managed to escape. Eventually they were apprehended in Wandsworth and returned to London to stand trial for murder. Elizabeth Brownrigg was convicted and sentenced to death, while her husband and son were acquitted of murder, but convicted on a misdemeanor for which they were sentenced to six month’s imprisonment.

Brownrigg’s name became synonymous with cruelty and severity in the eighteenth century, and female cruelty in particular. She was alternately portrayed as a bawd or a witch, while other portraits played off of her career as midwife, accusing her outright of infanticide. What prompted the attacks or explained her actions, however, is never explored. Eighteenth century commentators were unconcerned with, or unable to conceptualize, the psychology or pathology of the crimes. Most were content to see her as simply an incarnation of evil and the opprobrium directed to her by the spectators “on her way to the fatal tree” spoke well of the crowd, and “testified [to] their

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88 George Theodore Wilkinson, The Newgate Calendar Improved (orig. London: R. Evans, 1816; reprinted London: Cardinal, 1991), 308. See also Genuine and Authentic Account of the Life, Trial, and Execution of Elizabeth Brownrigg, who was Executed on Monday the 14th of September 1767, for the barbarous Murder of Mary Clifford, her Apprentice Girl. (London: R. Richards, 1767).
89 Wilkinson, Newgate Calendar, 311.
detestation of her cruelty."

The Middlesex sessions papers contain a few cases (only slightly less extreme than the previous one) with appeals from apprentices and servants seeking release from their remaining obligations of apprenticeship. In 1759, for example, Elizabeth Sudds, who was apprenticed to a grazier named Anthony Cross in order that he “instruct the Petitioner in the Art of Housewifery,” petitioned the court for her release from service. She had been subjected to the most terrible abuse from both Anthony Cross and his wife. She stated that they began to beat her almost as soon as she came into their service, subjecting her to a particularly brutal beating where she was stripped naked, and “barbarously and most inhumanly whipt and cut...with a Horsewhip...over most parts of her Body for a considerable time.” Sudds was granted an absolute discharge from her apprenticeship bond by the court.

James Bumsted, apprenticed to a cabinet maker named John Smallwood petitioned the Middlesex justices for a release from his apprenticeship. He claimed that Smallwood “hath frequently very ill Treated yr Pet’r and many time Assaulted & beat your Pet without Just Cause.” In fact it was doubtful whether Smallwood had any intention of apprenticing Bumsted since he further complained “that the said John Smallwood has not only Neglected to Instruct yr Petr as by the Indenture he Covenants to do but hath also refused to Teach & Instruct him.” Similarly Peter Kearman, a twelve-year-old boy apprenticed to George Freeland, a stationer, complained at the general quarter sessions in February 1788 that Freeland and his wife had “frequently beat and ill used the petitioner without any reason or cause.” On one occasion, Mrs. Freeland beat Kearman with a brass ruler and tried to spear him with a hot poker when he intervened in a dispute between Mrs.

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93 LMA, MJ/SBB/1132/43-45, July 9, 1759.
94 LMA, MJ/SP/1772/OCT/90. Bumstead was released from his indenture.
Freeland and her drunk and abusive husband. George Freeland also abused Kearnan, whipping him with a thick rope for “refusing to eat stinking meat and Musty bread” and on another occasion “refusing to eat of a stinking Shoulder of Mutton in which there were Maggots.” Again, the court granted Kearnan an absolute discharge from his apprenticeship and further ordered Freeland to repay the twenty pound apprentice fee received from Kearnan’s father.95

Such clear examples of child abuse appear infrequently among the surviving court records. But it would almost certainly be wrong to conclude from the court records alone that the mistreatment of children was rare. Other examples of the harsh treatment of children in this period, especially among the poor, are well documented. The abuse of chimney sweeps, for example, attracted the attention of the authorities in the early nineteenth century. Taken together, these examples remind us that issues such as domestic violence and child abuse have a history and that forms of interpersonal violence could be as severe in private as they were known to be in the public sphere. More significantly, though, we gain some sense of public intolerance for such violence, and can begin to establish some thresholds of acceptability for certain forms of violent behaviour. That abusive husbands, or mothers, or masters were brought to account for their violent behaviour towards those in subordinate positions indicates there were some standards by which violence in the home was judged. However, the persistent use of violence as a disciplinary tool in various social settings ensured that progress would be slow. By the late eighteenth century, however, intimate violence was a phenomenon that, even if it was not coming under closer censure and control, was certainly being monitored and prosecuted within a larger cultural world in which other forms of violence were, as we shall see in the following chapters, losing their former claims to legitimacy.

A Violent Society?

We began this chapter by considering the question of violence in English society. And though it would still seem premature—if not entirely facile—to offer any conclusions about the level of violence in England, it should be at least be clear from the foregoing discussion that violence and the experience of violent behaviour was very much a common feature of everyday life in eighteenth and nineteenth century England. More precisely, it appears from the evidence considered here, that interpersonal violence was primarily a dominant feature of working-class, male behaviour. This conclusion confirms what scholars have discovered in earlier and later periods. However, as the evidence we have considered here reveals, violence was also a feature of daily life in a wide range of contexts. Violence in the public sphere, committed by men upon other men certainly dominates our general picture of what violence was like in the past. But it is also clear that women and children were also the perpetrators and victims of violence too. The examples noted here are drawn from the court records and, as we saw in the previous chapter, there is good reason to believe that such cases reflect only a fraction of the total number of violent episodes that punctuated the rhythms of daily life. Thus the actual experience of violence in the lives of men, women and children in the daily lives of people may well have been even more common than these exemplary cases suggest. What these case also reveal, however, is that such violence was clearly not tolerated in every situation. Though they collectively portray an image of eighteenth-century England as an inherently violent society, it is important to bear in mind that all violent episodes are test cases in the constant process of negotiating the limits of acceptability in the patterns of daily life. The more interesting and more complex task is now to explain what the facts we do have about daily violence can tell us about other facets of past social experience: about how and why violence figured in the lives of men and women, how it effected their everyday relationships with others, and how it shaped their perceptions in other areas of life.
Chapter 4

THE METROPOLITAN EXPERIENCE OF VIOLENCE

This chapter looks at some of the prototypically urban experiences of violence in the metropolis. Its aim is to give an historical account of the sorts of violent experience that men and women living in the metropolis might actually have encountered in the period we are considering. Though many of the kinds of violent behaviour considered in the previous chapter were familiar to those living in London, this chapter examines how the urban experience gave some of those commonplace manifestations of violence a particular spin. The chapter presents a view of late eighteenth and early nineteenth century London as a city that was, despite the reforming tendencies of the age, essentially a violent city. The anxieties about violence felt by eighteenth and nineteenth century men and women, though almost certainly exaggerated by commentators and polemists, were nevertheless grounded in an urban culture in which violent behaviour, in various manifestations, figured regularly. It is important to bear in mind also that violence is only one facet of the urban social experience; I do not mean to suggest that everyone lived in perpetual fear for their lives or safety in eighteenth century London. But the opportunities for the experience of violence, on a day-to-day basis, were greater in the thriving metropolis than in the provincial town. And though at one level the types of violence one might experience in the two areas might be the same, (a brawl is a brawl), the unique character of the metropolis and its urban culture leant an essential urban character to the manifestations of violence experienced there.

The anxiety about violence often associated with the city was the product of both myth and experience. Fears of serious violence were sharpened in the eighteenth century with the spread of
newspapers and cheap, criminal literature. Both of these relatively new media enjoyed phenomenally explosive growth in our period, and even if crime itself did not always pay, writing about it usually did. Such stories of serious criminal violence sold well in an urban centre in which violence seemed to surround its readers. The streets were still largely volatile places, and Londoners still lived much of their lives out of doors. The public sphere was, not surprisingly, a complex social and cultural space and the urban milieu, with all of its attendant sights, smells, sounds, people, movement and physical structure added greatly to the uniqueness of the London experience. Violent spectacles, including public punishments, blood sports, as well as simple street brawls, all drew crowds which could themselves grow unruly. And when the authorities stepped in to restore order, violence often reared its head once again. This chapter will try to capture some of that urban violent experience, while also setting up the preconditions for the more specific study of city streets, public opinion and violence in chapter 5.

That unique modes of social interaction are formed within large conurbations has long been recognized by urban sociologists and urban historians.1 A large population is the key factor, accounting for the range and variety of individual experience that contributes to the cultural life of a city. Eighteenth-century London was not exceptional on this score. It was a metropolitan entity unto itself, where the dynamics of urbanization and social change outpaced the rest of the country by far.2 Demographics certainly had their role in the transformation of London. In the eighteenth century, London was the largest city in Europe. Its population grew from around 675,000 in 1750 to over 900,000 in 1801, while during the same period, the population of Middlesex increased from 590,000

to over 840,000. By 1831, the population of Middlesex had grown to 1,373,000 an increase of over 62%, in the period since 1801. One consequence of this development was the tremendous growth of London's retail trade. Its consumer market was unparalleled, and supported the growing social and economic networks for the free exchange of goods and services. In fact, London was the transportation hub for the rest of the country and for the colonies. The distribution of such a large volume of goods required a transportation system that could operate year-round; and that meant, at first, improved roads and a network of canals. In the city, small public streets had long been the scene of both commercial and social activity. The street was also the place for workers, journeymen, smiths, coopers, peddlers and hawkers to ply their trades as many did not have the luxury of shops or stalls. Coupled with a general increase in the volume of coaches, post-chaises, horses, carts and drays, it is not surprising that the demands for the orderly, safe and free movement of goods and people would force, as we shall see, a reconfiguration of the functional role of the street, most notably in the second half of the eighteenth century.

London's character was being transformed by new building and by the pace of business and commercial activity. Many new houses, streets and squares were built, though this was true more of the areas surrounding the City proper. The rapid expansion of urban and commercial worlds transformed the character of eighteenth-century London, and made for more superficial, impersonal contacts. This anonymity increased the need for new standards of public behaviour and for recognized guarantees of social and professional standing. And yet, despite its changing character and its transformation into an increasingly anonymous commercial sphere, the eighteenth-century metropolis could still be described, in Dorothy George's words, as a place "made up of a number of

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self-contained communities to a far greater extent than it is now.” However, by the end of the century, George detected the erosion of the old boundaries—both physical and conceptual—that had demarcated London life for much of the preceding century or two. The rapid pace of change in London from a residential to commercial centre—especially in the ‘ancient square mile’ of the City proper—had an effect on the nature of social relationships and bonds of community. The more deeply rooted notions of reputation and character were still essential in establishing one’s place and role within the larger social world. Indeed men, especially men of business, may have depended even more on their character and reputation than before, and it was vital to defend one’s name on pain of losing respect, standing, business and livelihood, as we shall see. Violence was sometimes used in defence of personal honour, but in the metropolis, those larger forces of commercialization and urbanization—some might say “civilization”—conspired to force a new conception of the role of violence in the culture of honour.

Urbanization may have challenged the acceptability of violence in some situations, but it almost certainly exacerbated it in others. As a result of commercial and urban growth there were quite simply more structural and even spatial opportunities for the kinds of social interaction that led to irritation, hostility, aggressiveness and violence. Coupled with the increased anonymity of the urban milieu, in which the traditional networks of family and community were weaker than elsewhere, it is not surprising that the metropolis, and urban spaces in general, came to be more strongly identified with violence and violent behaviour in the early modern age. This does not necessarily mean that ‘violence’ was increasing in any quantifiable sense, but it does suggest a reason for the greater public awareness of violence in everyday life which may in turn reveal clues to why this period marks a shift to its greater circumscription.

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As we saw in the last chapter, there was considerable reason to believe that English society was inherently a violent society. At the end of the eighteenth century, there were many contemporaries who also thought that they were living in a violent age, and the metropolis was often portrayed as the crucible for such violence. In 1785, amidst a particularly bad crime wave, the Times reported that “Murder, a species of cruelty scarce heard in this kingdom is now become as common as in the most uncivilised countries, and calls aloud for justice, for adequate punishment.” Patrick Colquhoun, the noted reformer, certainly thought that he was living in a violent city:

It is impossible to reflect upon the outrages and acts of violence which are daily committed, more particularly in and near the metropolis, by lawless and highly-depraved characters, in disturbing the peaceful mansion, the Castle of every Englishman, and also in abridging the liberty of travelling upon the public highways, in consequence of the interruption of these ravagers of property, and destroyers of lives, without asking—Why are these enormities suffered in a Country where the Criminal Laws are supposed to have arrived at a greater degree of perfection than in any other? Colquhoun was expressing what was likely a widespread anxiety that despite ostensibly harsh criminal laws, many people still went about their lives in fear of the experience of violence through crime. Though writing at the end of the 1790s, Colquhoun was articulating concerns that had been evident for nearly two decades.

The 1780s, in particular, were a decade of unusual turbulence. The Gordon Riots of June 1780 seem to have set the tone for the next few years in the sense that there would be almost constant anxiety about crowds, disorder, revolution and public violence. Leading this chorus of panic were no less men than the principal authorities of the Corporation of London. At a meeting of the Court of Common Council in October 1780, it was resolved to discontinue “the Entertainments commonly held at Guildhall on Lord Mayors day” on the grounds that they had, in the past, “been frequently attended with much Riot and Tumult.” In their stead, it was suggested

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6 *Times*, 30 November 1785.
to the lord mayor elect "to provide a Genteel Entertainment in lieu thereof for the Members of the Corporation and their Ladies at the Mansion House." 8 A few years later, in March of 1786, a petition was drafted to be presented to the King decrying the "alarming encrease of Crimes and Depradations in this City and its Neighbourhood, especially within the last three years." 9 The cause of this crime wave, in their view, was the large backlog of convicts who had not been shipped to the American Colonies as a result of the disruption in transportation caused by the Revolutionary War. Since many of those transportees would have been pardoned from capital offences, the dour City officials recommended the king to direct such measures to be taken as to your Royal Wisdom shall seem best, for providing a speedy...and due execution of the Law both as to capital punishments and Transportation without which all other regulations must prove Nugatory and Abortive and the mischiefs complained of must daily and rapidly encrease. 10

Serious violence caused by criminal behaviour, and resulting in the death of one or more people, was a rare occurrence in the eighteenth century. It was increasingly rare in the eighteenth and nineteenth centuries for an individual to be a victim of murder. 11 Indeed the murder rate, such as it can be determined for the past, had been on the decline since the thirteenth century; even in the heavily populated metropolis, murder was relatively rare. 12 If a Londoner did experience serious violence in the public sphere, in which their life was put in danger, it was more likely to be as a result of a robbery.

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8 CLRO, Mansion House: Committee Papers 113B, Box 4 (1780).
9 CLRO, Misc Mss. Box 4, no. 47.
10 Ibid.
Violence in the City

1. Fear of Serious Criminal Violence

The fear of serious criminal violence had been a constant concern in London since the early eighteenth-century. Fledgling newspapers and an increasing body of criminal literature in the form of cheap printed pamphlets, handbills, and broadsides contained reports of vicious encounters, often during robberies. These accounts usually emphasized the violence employed by the attacker, recounting the horror felt by the victim in vivid detail. Accounts of murder also sold well. There was an explosion of interest in crime at the end of the seventeenth century and throughout the eighteenth century and with it came an intense public interest in the most dramatic and serious offences. The growth of the popular press and the rapid expansion in the number and availability of pamphlets and newspapers secured crime as a subject of immense public interest and concern. Printers and publishers were quick to realize the profitability of lurid criminal accounts, and the unnatural horror of the murder case held the greatest power to shock, repulse, and fascinate.13 Whether such reports were always true is an open question. One critic of the press complained of hacks who invented “stories of rapes, robberies, riots, &c. to fill up the newspapers of the ensuing week” when they should instead have been in bed or saying their prayers.14 Nevertheless, crime was standard fare, regularly reported in the newspapers.

By all accounts, however, pre-mediated murder was rare. Aside from accidental deaths, most homicides arose from fights or attacks of some sort. Some arose from formal duels, which

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experienced a brief renaissance in the late eighteenth and early nineteenth centuries before being outlawed altogether. Others were more straightforward altercations, perhaps instigated by a slight to another's honour, but more often the consequence of mundane lapses of civility. In cases of interpersonal violence, the extent to which perpetrators could be held criminally responsible for the consequences of violent behaviour were not always immediately obvious. Before the eighteenth century, this was due to a limited understanding of human physiology. The links between physical violence and serious injury or death were beginning to be better understood in the later eighteenth century with the advance of medical knowledge. The degree of violence suffered by some people in the early modern period, at least among cases coming to the attention of the authorities, is more often revealed in coroners' reports than in the court records in cases of assault.

Other forms of violence were commonly associated with the metropolis too. The fear of gangs, for example, had been a constant concern since the early seventeenth century. The apparently random destruction of property and gratuitous violence associated with such groups of young men were most upsetting to the sense of peace and order shared by most respectable Londoners, especially when the upper-class backgrounds of some of these hooligans was revealed. Reports of criminal gangs in the city are not as numerous in the late eighteenth century as they had been in the early to mid part of the century. Still, it would be wrong to deny their existence altogether. Though they may not have had formal names, like the "Mohawks" of the 1710s, or the "Circling Boys" or "Bravadoes" of other times, traditional habits of male association and socialization would seem to have guaranteed the existence of scores of informal gangs.

That groups of men could turn to rowdiness or violence in the public sphere of the city

streets is evident from many accounts of city life. In one incident from March 1802, a woman named Elizabeth Sells was attacked by a group of men as she was returning home from the market through Cheapside. Suddenly she was approached by three young men, one of whom “in the sight presence of divers very many of his majesty’s subjects,” and, “to the great scandal of all decent persons in the said public & open street,” grabbed her, “pressed against her behind and thrust his hands up her petticoats.” She pushed him away as best she could, “and then two other men who were in [his] Company...shov’d her with violence against the wall and then all went on.” Sells followed the men and “saw them serve two Ladies who were with two Gentlemen in the same indecent cruel manner.” The assailants were soon pursued by two men and one was taken into custody at the Poultry Compter. Sells charged the man with assault and the case was taken up and prosecuted by the City Solicitor. The assailant was convicted and sentenced to three months’ imprisonment.

Attacks such as these, though disturbing for those involved, did not form the core of gang or street violence that most concerned Londoners, and those travelling to and from the metropolis. The concern was more often associated with violent robberies. Highway robbery had been a source of growing concern since the late seventeenth century as the roads going in and out of London seemed to be the scene of frequent attacks. These roads were well known haunts of highwaymen, and the reports of robberies of carriages and of other travellers peppered the newspapers and provided staple fare for the criminal pamphlet literature. However, the violence of such attacks is not always appreciated because of the sometimes romantic depiction of the gentleman highwayman in contemporary pamphlets.

Street robberies, or what we would now call ‘muggings,’ were similarly of concern. Privately stealing—that is pick pocketing—was a capital offence in the eighteenth century, but since the victim was not placed in fear of his or her life those charged with the offence could often curry a little favour with the jury, who in turn showed leniency by convicting the offender of stealing, “but not privately.” In the first half of the eighteenth century, the concerns over violent offences in the metropolis led city authorities to take steps to improve both street lighting and the night watch, and parliament was moved to introduce legislation that encouraged prosecutions in such cases.

Robbery with violence, or assault with intent to rob were much more serious, and were no doubt as traumatic and unsettling for eighteenth-century victims as they would be today. The potential robber did not have to present a firearm to be considered a dangerous threat. In one case that came before the twelve judges on reserve, a man named Richard Simons had been convicted of robbing a woman of the corn she was carrying. The question of law, however, was whether the threat he made to her was felonious. Simons did not strike the woman, but did threaten her with a stick, and “said ‘he would scat her Brains out’ if she would not do as he demanded.” The original Assize jury found him guilty, and the twelve judges concurred.

Fears of robbery with violence were fueled not only by newspaper stories, but also by broadsides and pamphlet literature. One such account from 1792 describes the bungled robbery of Duncan Robinson. He and a friend named Hunt were walking together when Hunt realized someone was trying to pick his pocket. Hunt grabbed one of the men—it turned out there were

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18 The role of the media in shaping fears of street violence in the nineteenth century is examined in Rob Sindall, Street Violence in the Nineteenth Century: Media Panic or real Danger? (Leicester: Leicester University Press, 1990).
20 Middle Temple Library, Lawrence Miss., Crown Cases, 1794-1797, 153. Though the case is from the Cornwall Assizes (1773) it is illustrative of the law’s harsher attitude towards the use of violence in the course of a robbery.
three of them—and he and Robinson soon became engaged in an altercation. As the broadside recounts,

a general scuffle ensued, in which Mr. Robinson was most desperately wounded, the villains cutting him across the eye and nose with a long knife, and giving him several stabs in the body, one of them calling out “Damn the rascal, cut his heart out!” and so determined and resolute were they in the execution of their purpose, that the button of Mr. Hunt’s coat was cut quite through, and several slits made in his coat, one of which was more than eighteen inches in length.

The fact that one of those involved was a sixteen-year-old boy who “wept bitterly in the press-yard, [and] confessed being concerned in the robbery,” may have evoked the sympathy of some readers, but the author of the broadsheet nips it in the bud by relating a surgeon’s testimony that Robinson had “languished in the most excruciating torments for nearly a week” before he died. The author’s only satisfaction was that at their execution, “they behaved in a manner becoming their wretched situation.”

In another case, a man was lured into an apartment and robbed. The robbery came to the attention of the Watch Committee for the Liberty of Saffron Hill, Hatton Garden and Ely Rents, an area in Middlesex just to the west of the City. The committee had called the owner of a group of “disorderly houses” in the neighbourhood, located in Blue Court, to appear before them, probably in a bid to have the tenants evicted by the magistrate. Among other depredations, the constable reported to the committee how a man “a Jew (an Old Cloaths man)” was enticed into the house by a Girl who was looking out of the Window who presented she had a Gown and Coat to Sell. That as soon as he got into the Room he was attacked by three Men one of whom held a Knife to his Throat. Upon which the Jew immediately ran to the Window and called out Murder. That he was notwithstanding robbed by them of what Money he had and was cut with the Knife in several Places besides being very much beat and Bruised. That they then knocked him down Stairs and followed him into the open Court and there beat him again and then the Men walked away with great Composure.

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21 The Last Dying Speech, and Confession, Life, Character, and Behaviour, of the Unfortunate Mafefactors, Executed this Day for the Murder of Mr. Duncan Robinson, near Smart’s Buildings, Holborn, (London, ?1792).
22 CLHA, P/LS/WT/1, Watch Committee Minutes, 14 May, 1787.
What happened after that, and whether the men were charged, is not recorded. The violence involved, however, was clearly intolerable to the parish authorities, who used the case to illustrate the level of danger and depravity that had come to characterize those houses.

By the late eighteenth and early nineteenth centuries, numerous local initiatives in policing, lighting and watching had conspired to alter the “dangerous” character of the metropolis. To what extent the street lighting contributed to a decline of public violence or of crimes accompanied by violence is a change suggested only by qualitative evidence. Some manner of protection from violent, criminal attacks was provided by night watchmen and constables who patrolled the streets from dusk till dawn. Lighter boys could be hired to conduct parties through the sometimes labyrinthine streets of the capital, many of which were still not illuminated. Innovations in street lighting, which began as far back as the 1690s, continued to be implemented over the course of the eighteenth century. By the early nineteenth century, a number of commentators could share in Edward Brayley’s opinion that “the manner in which the Streets are Lighted very much conduces to the public safety, and on dark nights has a most striking effect, particularly at a distance and to strangers.”

2. Contexts of Metropolitan Violence
   i. Streets

   Even if the most terrifying forms of violence, including murder and rape, were relatively rare events in the eighteenth century, even in the metropolis, other less serious forms of interpersonal violence, such as brawls and assaults, were not. Where might a person experience such violence in the eighteenth century? Not surprisingly, the answer to that question was as it might be today: just about anywhere. There were few safe havens in early-modern England. The records of the courts,

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along with other evidence, reveal that violence could arise in nearly every social setting. Other
documents, such as newspapers or magazines, relate how undisciplined crowds or mobs could
spring up spontaneously, as the result of some particular event or public outrage. For example, when
an English sailor was stabbed to death as he was walking in Mill-Yard, Westminster by a Portuguese
man in April of 1760, it was reported how a mob quickly set upon the Portuguese, pursued him to
Rag Fair and “nailed him by his ear to the wall.” The Gentleman’s Magazine explained that “incidents
of stabbing in the streets of Lisbon for the slightest quarrels, are very common,” implying that such
behaviour, though prevalent among foreigners, would meet a harsh rebuke in England. In any case,
the man escaped, sans ear, was again mobbed, and “at last either fell or threw himself in a puddle of
water, where he died.” Race and xenophobia were certainly underlying elements of this incident,
and the fact that the victim was a foreigner no doubt justified the swift outburst of vengeance, at
least in the minds of those committing the violent acts.

My sense from the documents describing minor riots, fights and other uprisings in the street,
is that people were quickly drawn to a crowd, especially when there was a violent altercation of some
sort to be seen. Riotous crowds are integral to the larger explanation of violence in metropolitan life,
and in chapter 7 we shall consider the importance of crowds around the pillory or along the route of
a public whipping. But crowd behaviour per se is too large a topic to be covered adequately in this
study.

Such incidents as that with the Portuguese are exceptional, no less for their extreme violence
than for their occurrence at all. The experience of violence in the streets on a daily basis was more
likely the result of an accident or mishap, or as a result of sudden emotional eruptions over trivial

24 GM, 30 (1760), 199.
Thompson, Customs in Common: Studies in Traditional Popular Culture (New York: The New Press, 1991); John Stevenson,
matters. In part this wide compass for public acts of violence was due to the way the street was regarded, as a largely unregulated public space, in which behavioural codes were in constant flux. The streets themselves were largely unregulated in the flow of traffic, though this was beginning to change. People were supposed to remain on the pavement, while coaches, post-chaises, and other traffic were coming under greater control and regulation. But the public street was still a largely unregulated zone of social interaction. The street served multiple purposes: as traffic conduit and transportation route, community link, commercial space, and cultural space.  

The streets were also scenes of voluntary and involuntary violence. London’s cosmopolitan nature led to many circumstances where diverse groups of people were forced to interact with one another. Thousands of people crowded the city’s busy streets daily, and many were involved in the massive task of servicing the population with its basic necessities. The increase in street traffic was a necessary consequence of London’s phenomenal growth. The city was experiencing massive pressure to accommodate those who lived and worked in the thriving commercial culture. Trade, shipping, the transportation of commodities, all of these were centred in London which was the central port for the importation and exportation of goods both to the country and to the expanding Empire. The increase in street traffic was obvious to contemporaries, and it led to the kinds of traffic problems that all growing cities must experience. The movement of goods and people was a tremendous undertaking, magnified in its scale by the movement of commercial goods through England’s largest port town.  

City streets were thronged with all manner of carters, porters, and...
drivers, generating a cacophony of noise, movement, bodies and beasts. According to one petition from the London grand jury, presented to the magistrates at the session of the peace for October 1767, the general disorder of the streets was itself criminogenic. The great number of “Beggars, Fruiterers, Balladsingers, Pedlars, and Prostitutes, that constantly infest the streets and liberties of this Metropolis,” they said, were not only a “very great nuisance” to the general public, but posed a particular threat to youth. Moreover, “Robberys, disturbances, and Riots are perpetrated, [and] Vice and Immorality promoted, to the disgrace of the civil government of this City.”

The problems with traffic in the metropolis, generated by the increase in population, had been clear from at least the early seventeenth century. As Brayley informs,

During the first ten or twelve years of the reign of Charles the First, the Suburbs of London kept continually on the increase, particularly in the neighbourhoods of Spitalfields and Westminster. The domestic traffic of the City in provisions, was also so much augmented, that various local regulations were devised to regulate it, and prevents its becoming a general nuisance.

Some road improvements had begun in the early part of the eighteenth century, but after mid century, the increase in population, traffic and trade forced the local officials to consider more comprehensive plans for the regulation, repair and maintenance of streets and roads.

Metropolitan parish records reveal a general concern over the “dangerous” condition of roads and pavements, as well as with the proper illumination of the streets at night. Faulty or unfinished pavements, broken lamps, and other potential hazards were noted by local inspectors and nuisances were brought to the attention of the magistrates if they thought a formal charge was warranted. In July 1786, the Inspector for the St. Giles in the Fields and St. George Bloomsbury...

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29 CLRO, Sessions Papers 1767-68, 29 October, 1767.
30 Brayley, *The Beauties of England and Wales*, 64.
paving committee was asked to confront one Elizabeth Case of Hyde Street, Bloomsbury, who had
"for a long time past been accustomed to throw out [her] foul Water before the fronts of the Houses
there, to the great annoyance of the Inhabitants," by consequence of which, "the Pavement is
injured and sunk." 32 Though the complainant, Hannah Bass, mentioned the deterioration of the
road, there is also an interesting hint here that levels of decorum had shifted, at least for some
metropolitan residents, in the sense that Elias points to explicitly in marking the "civilizing process."
That some considered the street the inappropriate place for "foul water" indicates that the street was
being thought of as a different kind of social space—at least one that should be kept relatively clean.

A more serious incident was brought to the same committee's attention in June 1795, when
a report was presented to the chairmen complaining of a serious hazard concerning "a very large
portion of the Pavements both of the Foot and Carriage ways of Little St. Andrew Street and the
Circle of the 7 Dials." The paving stones had been taken up by someone without consent, and, the
Inspector continues,

a great quantity of Earth thrown upon the Carriage way to the heighth [sic] of Six or Seven
feet without being Hoarded in, Lighted or Watched, by which means Carriages were
overturned, and the lives of persons therein greatly endangered in the Night time.

The obstruction proved a particular hazard to those carriages "returning from the theatres towards
the West part of the Town" noted the Inspector, thus suggesting that it was London's polite society
who were most offended. 33

Both of these incidents suggest a clear sense of public concern for the well being of others,
and for the need to prevent unnecessary inconvenience or even injury. Still, accidents were a part of
life in the metropolis, and certainly accidental deaths were known to occur in London's streets as a
result of various physical hazards. For example, shopkeepers typically advertised their line of

32 CLHA, P/GG/PA/1, St. Giles in the Fields & St. George Bloomsbury, Paving Minutes, 1785-1792 (13 July, 1786).
33 CLHA, P/GG/PA/2, St. Giles in the Fields & St. George Bloomsbury, Paving Minutes, 1792-1801 (9 June, 1793).
business with outdoor signs, suspended from the face of their shop, high above the street. These signs, made of wood, copper, or even pewter, and hung from iron bars, were heavy and occasionally collapsed on to the heads of pedestrians. With the Paving Act of 1762, many of these signs were removed, thereby lessening the danger of injury.34 The physical condition of the streets themselves, and the potential for accidents and injury was also a subject of concern, particularly for local officials. The constables of the metropolitan parishes that reported to the grand jury of the King’s Bench frequently mentioned the various dangers presented by the poor condition of the streets. The benefits of cleaner, safer streets were widely applauded: one broadside proclaimed “the late improvement of our streets by the new pavement, is evident from the general approbation it has meet [sic] with, and therefore it is hoped, that any proposal which tends to add to that improvement, will be thought to deserve some attention.”35 Since the 1740s, and perhaps before, those seeking support for improving the streets had envisioned their designs as something of a moral crusade. Lord Tyrconnell rose in the Commons to ask whether other members travelling to and from Westminster had not often been “alarmed with obstructions, or shocked with nuisances” in the streets. What was worse, he believed, was that the poor character of the streets reflected poorly on the civilized image of the nation as a whole. “The filth,” he continued, “of some parts of the town, and the inequality and ruggedness of others, cannot but in the eyes of foreigners disgrace our nation, and incline them to imagine us a people, not only without delicacy, but without government, a herd of Barbarians, or a colony of Hottentots.” But most telling was his explicit connection between clean streets and civility. How could the nation expect to maintain its place in the sun when “the British

capital, a city famous for wealth, commerce, and plenty, and for every other kind of civility and
politeness...abounds with such heaps of filth as a savage would look on with amazement”?

The changing physical nature of the streets also seems to have had an effect on the nature of
violence in the metropolis. The simple and clear division of road and pavement (or sidewalk) that
governs the flow of street and pedestrian traffic today was much more fluid in eighteenth century
London, although there were informal rules of custom that a polite and courteous pedestrian was
expected to have internalized. Breach of such matters of custom and manners could even lead to
altercations in the public setting. Not “giving the wall” to oncoming pedestrians could cause minor
altercations and rude exchanges on occasions where passers-by were jostled unexpectedly. Questions of right-of-way could also lead to petty battles, though some of these likely had as much
to do with machismo and social place as to careless or dangerous behaviour. The gendered nature of
these street customs is interesting to note too. I have not found any examples of women challenging
others or getting involved in altercations for standing their ground. With men, however, it was a
different story.

One assault case, prosecuted at the King’s Bench, illustrates how two competing notions of
acceptable behaviour in the public space of the street could lead to violence. In May of 1788, Joseph
Mitton, a soldier, was marching as part of his company to the City to guard the Bank of England.
As the soldiers made their way along the Strand towards the Bank, they passed a Mr. Crespigny, who
stood his ground on the pavement. For this Crespigny was “treated with particular rudeness, and
pushed off the kirk-stone by the defendant,” Mitton. Crespigny, who was carrying a cane, lifted it
and struck the soldier, whereupon Mitton halted, removed his firelock from his shoulder—which
had a bayonet fixed to the end of it—and “made a violent thrust at Mr. C’s head” nearly severing his

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16 Parliamentary History xi, (1741) col. 1011.
17 Langford, Polite and Commercial People, 425.
ear. Mitton was duly charged and indicted first for attempted murder, and second with assault.

The case was brought to the King’s Bench by *petition*, where it was tried before Lord Kenyon. Mitton’s attorney offered the defence that Crespigny had instigated the altercation, and that the soldiers had “always had orders to march on the outside of the pavement, as near the kerbstone as possible, to accommodate the passengers with the wall.” This argument was contradicted by two other witnesses, one a soldier, who both swore there was no room left for the public to pass. Since both sides did not deny the blows struck, the case seemed to turn on the propriety of reacting to violence with violence. Naturally, Erskine (Crespigny’s lawyer) defended Crespigny’s behaviour: “The soldier,” he argued, “having provoked a quarrel by an assault, Mr. Crespigny being constructed with flesh and blood returns a blow.” Erskine portrayed Mitton’s violent behaviour in ominous terms that were at least suggestive of deeper fears of an uncontrolled army, marauding the streets and terrorizing the “King’s subjects.” In his argument to the jury, he mused “What cruelty or cowardice can be so great as for an armed soldier, in the midst of protection, to leave his rank in the streets of the metropolis of this empire, and with a bayonet fixed to the end of a musket stab an English citizen?” Lord Kenyon admitted that the blow by Crespigny “was sufficient provocation to rouse [Mitton’s] feelings of resentment.” But since “instantaneous resentment, upon such a provocation, was the infirmity of human nature” and given that if Crespigny had died as a result of the wound, Mitton would only have been convicted of manslaughter, the charge of attempted murder was in Kenyon’s opinion “not supported” and the jury acquitted him. However, Mitton was convicted on the lesser charge of assault, which gave the prosecuting attorney, Mr. Erskine, the opportunity to expound: “It has pleased God to spare Mr. Crespigny’s life; but your Lordships cannot turn the mercy of God into a mitigation of this man’s punishment. I think your Lordships may pronounce as severe a judgment as if Mr. Crespigny had died.” Mercy in this case was not
warranted, Erskine argued, “it would be throwing the jewel of mercy before swine, to extend it to
this ruffian.”38 Mitton was sentenced to twelve month’s imprisonment in Newgate.39

One species of violence that people might experience anywhere, but was exacerbated by the
population of the metropolis and by the greater number of bodies in the public sphere, was the
occasion of street accidents. Busy streets inevitably led to physical contact. One German visitor to
London, describing Cheapside and Fleet Street on a December evening in 1775 advised
“circumspection” when gazing at the wares on display in shop windows, “for scarcely do you stop
than, crash! a porter runs you down, crying ‘By your leave’, when you are lying on the ground.”40

With the increase in street traffic, it was more likely there would be serious accidents, and
indeed some were lethal. Some accidents were clearly unintended mishaps. And although these
accidents are unremarkable in themselves, we might note that they were reported in the newspapers
in ways that demonstrate a degree of sympathy for the suffering and loss experienced by others
through the detailed construction of “humanitarian narratives,” in the sense discussed by Laqueur.41

The magazines and daily newspapers, which were much more common after mid century,
would frequently recount the details of such incidents in ways that made the experiences more real
and, as Laqueur says, more likely to arouse sympathy. One example from April 1790 relates
following story:

Yesterday at noon a fine boy, about twelve years old, in crossing Fleet-street, near Temple-
Bar, was unfortunately rote over, by a Gentleman’s carriage. He was immediately taken to
Mr. Bulkeley’s shop, where every attention was paid him, notwithstanding which, there is
little reason to expect his recovery.42

38 “Trial of Mitton the Soldier, for wounding Mr. Crespigny,” in The Templar, 2 (December, 1788), 742-51.
39 Middle Temple Library, Dampier Mss., Notes of Judgements, f. 41.
40 G. C. Lichtenberg, Lichtenberg’s Visits to England: as described in his Letters and Diaries, trans. and annotated by Margaret L.
42 Times 30 April, 1790.
The poignancy of this report is telling, in its brief summary of the mundane business of crossing the street. In reporting on the accidental shooting of a man by his friend, the Gentleman’s Magazine was certain that for its readers “the distress of the young widow is easier felt than described.” These reports show clearly that empathetic feeling was not absent from this society and readers were invited to share in the tragedy and sadness of such violent experiences not for prurient or voyeuristic reasons, but to excite in readers the sense of duty and public responsibility to prevent such incidents from occurring in the future.

Vehicle accidents were another form of violence associated with the streets, but one which the state had not usually taken an interest in regulating unless serious injury or death had resulted. The level of criminal responsibility in such cases was never immediately clear. Those who were killed in accidents were usually the subject of a coroner’s investigation which could lead to a criminal charge. When the coroner’s jury sat on the body of John Pussell in August of 1788, they ruled that one John Smith was responsible, and charged that he “feloniously did kill and slay” Pussell by running him over with his cart. One JPs’ manual defines “casual death” or accidents as when “a Man is slain otherwise than by the Hands of another; as by a Fall from a Horse or Cart, &c.” More specific legislation having to do with the hazards caused by street traffic came in the 1780s. An act of parliament passed in 1787, ordered car, dray and wagon drivers to pay a fine of 10s if they injured another person, or, on failure to pay, to spend one month in the House of Correction. Before this legislation, however, and for some time after, street accidents involving injury could lead to a prosecution for assault. In September 1805, William Cruchley’s daughter was thrown from the

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43 GM, 66 (1789), 759.
44 CLRO, Coroner’s Inquests, London and Southwark, 1788, no. 17.
45 W. Nelson, The Office and Authority of a Justice of the Peace, 2 vols. (London, 1745), I: 492. In earlier times when such cases arose, the Coroner was to hold an inquiry to determine the cause of death, in part to establish a deedland. But by the eighteenth century, the law on this point had declined, though Blackstone mentions it, and if there was any criminal action to be taken as a result of a death, it would be done through a prosecution for homicide (Forbes, “Crown’s Quest,” 1: 25, 40).
46 27 Geo. III, c. 16.
chaise in which she and her father were riding when it was struck by John Hayley. Cruchley prosecuted Hayley at the King's bench for an assault. Whether he was successful or not is unclear. We do know that the substance of his case was the violence and carelessness of Hayley's behaviour, confirmed by witnesses who claimed that Hayley was driving his chaise at a furious pace and on the wrong side of the road.47

By the early nineteenth century, notions of individual responsibility were coming into play in such cases in ways that outlined the developing relationships between personal risk and public liability. In the case of Butterfield v. Forrester from 1809, the King's Bench ruled that those injured as a result of their own negligence, even though the injury was caused by another's negligent act, could not claim compensation. In the court's decision, Lord Ellenborough CJ wrote: "In cases of persons riding upon what is considered to be the wrong side of the road, that would not authorise another purposely to ride up against them. One person being in fault will not dispense with another's using ordinary care for himself."48 In this case, Butterfield was injured when his horse tripped over an obstruction placed in the road by Forrester. But since it appeared from the evidence that Butterfield "was riding with great violence and want of ordinary care"49 he was in fact responsible—to the extent that he was denied legal action—for the injury that resulted. This case marks the emergence of an important element of tort law, the doctrine of contributory negligence.

One other form of road-related violence is what has recently come to be called "road rage." These are essentially assaults arising from the release of tensions caused by traffic congestion or bad driving habits. One such case arose in 1806 when the wheels of Sir John Earner's and James Purnell's respective carriages became locked together in a close meeting of the two vehicles. Earner,

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49 11East 60 (1809).
a City Alderman, and former Lord Mayor of London, exploded following the accident and began striking and whipping Purnell with his riding crop, then dragged him to the watchhouse. The case came before the Kent Assizes, where it emerged that Eamer was driving on the wrong side of the road. The jury awarded Purnell £10 in damages. Other incidents of this sort were settled less formally through public apologies in newspapers, or private settlements.

ii. Violent Sports and Pastimes

Historians have demonstrated, in their studies of eighteenth-century society, that further evidence of the movement away from the former "pervasive insensitivity" to cruelty in English society may be found in the declining popularity of rough sports and recreations that involved the harsh treatment—in effect the torture—of animals. Violent sports and pastimes, especially those involving animals, had a long tradition, yet one which was tempered by calls for the restriction or abolition of such events. But as evidence from the metropolitan experience suggests, such concerns about cruelty and violence were also tied to attendant fears of disorder generally.

From the early eighteenth century, City officials had consistently raised objections to the Shrove Tuesday tradition of throwing at cocks. After Christmas, Shrove Tuesday was the other major winter holiday, and one which had traditionally been associated with apprentices. Among the popular recreations on this holiday was throwing at cocks, which involved hurling a broomstick from a set distance at a bird whose leg was attached to a stake by a cord. The winner was the one who knocked the bird senseless long enough for him to seize it. On numerous occasions, London's

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33 Malcolmson, Popular Recreations, 28-29.
Court of Aldermen spoke out against the annual practice, though as we shall see with public punishments, they took issue not so much with the cruelty of the activity, but rather “the great obstructions, hindrances, dangers and injuries that frequently do happen to many of His Majesty’s subjects passing and repassing in and through the streets lanes and other common passages and places of this City and liberties thereof about their lawful occasions.” The issue was, in the first instance, one of inconvenient conduct in the streets: “the pesterling, or obstruction, or annoyance of His Majesty’s subjects,” and only secondly the conduct itself.54 This does not mean that the violence itself was not being censred by these officials; indeed it was. What is also interesting is the concern for crowds, for maintaining public order, and for what the declaration says about the nature of public space. We shall return to that point shortly.

Some contemporary authors were explicit in proclaiming the links between what William Hogarth styled the “Four Stages of Cruelty” in his series of prints and the levels of violence in society. Indeed, Hogarth was himself especially proud of the series, which was done, he said, “in hopes of preventing in some degree that cruel treatment of poor animals which makes the streets of London more disagreeable to the human mind than anything whatever.”55 According to the Rev. Leigh Richmond, “cruelty to animals and cruelty to man are more nearly allied than many may be willing to allow: where the one exists in the heart, the other is never wholly absent.” His views, proclaimed in an 1801 sermon, were no doubt radical for the time, even lamenting the use of horses as “tools of avarice and greedy sport” in horse racing. All such amusements, Leigh argued, did nothing except to “glut the gambling appetites of individuals whose hearts are eagerly alive to the spirit of mammon, but dead to the calls of humanity.”56

54 CLRO, Rep. 164, f. 59-61 (15 January, 1759); Rep. 197, f. 91-93 (15 January, 1793). The wording of both declarations by the Court, though 34 years apart, is nearly identical.
56 Rev. Leigh Richmond, A Sermon on the Sin of Cruelty towards The Brute Creation; Preached in the Abbey Church at Bath, on February 15th, 1801 (Bath, 1802), 11.
Other blood sports, he continued, involving “birds and beasts of the more savage and ferocious natures” were similarly offensive and had no valid purpose other than to satiate the “merciless appetites” of the spectators “with the gratifying spectacle of mangled limbs, convulsed nerves, bleeding carcasses, and dying groans of struggling animals.”  

Cock-fighting had been a popular entertainment throughout the eighteenth century, but by the beginning of the nineteenth, Richmond believed, there was “reason to hope that that infamous and disgraceful diversion is not now so frequently practised as formerly.”  

Another observer from Totness, Devon was proud to announce in 1800 that

in this town a cock-fighting monthly club, composed of the principal gentlemen of rank and property in the neighbourhood, existed during a period of nearly a century, and for our credit became extinct about six years ago for want of a sufficient number of candidates to supply vacancies.

And though “in this age of boasted refinement” cock-fighting in Totness could now “be reckoned upon by its civilized amateurs as an annual one only, being continued as an attendant on horse-racing,” the battle against cruelty to animals was a long way from being won.

Bull-baiting and cock fighting were two popular sports whose cruelty could be uncommonly severe, and whose effects upon the populace were thought by many to be nothing more than demeaning. When Lord Erskine presented his bill to prevent cruelty to animals, Romilly rose to speak in favour of the measure, arguing that “habits of cruelty towards animals led to the exercise of cruelty towards human beings.” Bull baiting had reached “the utmost extent of ferocity and barbarism” according to one magistrate from Stafford, who described cases where participants were seen putting salt and pepper in the animal’s wounds, breaking off the horns or pulling off the tails.

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57 Ibid., 14.
58 Ibid., 14n.
59 “Letter from S.L. after the Bill was Thrown Out, Totness, Devon, April 23, 1800,” in A Member of Parliament, A Letter to the Right Hon. William Wyndham, on his Late Opposition to the Bill to prevent Bull-Baiting (London, 1800), 34.
60 Ibid, emphasis in original.
ears and tongues. Those who objected to the "savage custom" of bull baiting were similarly concerned with the behaviour of the crowds who watched them—behaviour not dissimilar from that of crowds that swarmed around the pillory or the gallows, as we shall see in chapter 7. Others supported the move to abolish this "relic of barbarism" too. In an anonymous letter to William Windham, MP, from a parliamentary colleague during Lord Erskine’s parliamentary campaign, the author notes that even if his fellow MP could not support a law which might affect his constituents’ rights to hunt game (a sticking point for many opposed to the proposed legislation), the particular practices of torturing animals for sport could be banished on more civilized grounds. Could not, he asked Windham, "the scenes of drunkenness, rioting, revelling, idleness, and quarrelling, which were the certain concomitants of a bull-bait...be urged as a cogent reason for the abolition of the practice"?

The bill was defeated, however, as were many of the subsequent initiatives in this vein, not because of a callous attitude towards animals, but because many rural sportsmen believed their rights to hunt would be infringed upon. Even the more odious blood sports such as bull-baiting and dog fighting were difficult to eliminate without offending an apparently national fondness for matches. Richmond lamented that blood sports were still in fashion, "not only amongst the lower but some of the higher classes." Indeed, a bear-garden had recently been opened in the metropolis, "with a view to revive the almost exploded inhumanity of baiting bears...Are we to hail those as men and brothers, nay as fellow-Christians, who can take delight in such spectacles as these?" Richmond singled out "boys in particular, that fundamental source of future cruelty of temper" in his warning

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63 "Letter from S.L. after the Bill was Thrown Out, Totness, Devon, April 23, 1800," in Ibid., 1.
64 Ibid., 30.
65 Ibid., 16.
of the potential depredations from such a place and of the imperatives of instructing youth in the proper treatment of animals.66

Reports of various atrocities to animals committed within the civilized city continued to be noticed well into the nineteenth century. An 1835 broadsheet, directed to “Graziers and Agriculturalists” lamented the occurrence of an incident in which an ox was goaded to death in a terrible manner by two men. As the notice read, “It is one of those cases of cruelty to animals which occur so often, and reflect so much disgrace on the metropolis.” Again, what is notable is the fact that the cruelty itself, though condemned, reflects back not only on those who perpetrated it, but upon the society generally. “It is impossible...to look into the circumstances of the case without feeling the greatest disgust and indignation,” it stated. To condone such behaviour was certainly out of step with larger opinions of what was considered right. Clearly, violence and cruelty to animals in the streets of Smithfield market (where this particular incident occurred, and where, otherwise, “the internal arrangements of the market are not only judicious but humane”) were no longer to be tolerated. The broadsheet concludes with a summary of the police report, which relates how “the poor Ox was beaten and pricked with the goad in the end of the sticks, in a way that shocked the feelings of all who beheld the barbarity of the Defendants. Both the animal’s eyes were forced out.” In the end, the Alderman found the perpetrators guilty and both men were fined 40s and costs.67

But the argument to refrain from mistreating animals was not simply raised for concern over the health of the animals. Rather, critics feared an erosion of Christian values that would follow from watching such blood sports as bear baiting, cock fighting, and so on. Certainly, as we have seen, some of the more vigorous commentators on the subject were religious men, who believed in the idea that watching evil makes you evil. According to the Reverend “L.B.,” the practice of bull

67 To Graziers and Agriculturalists (London, 1835).
baiting was one “ardently cherished by a vast body of people, and its effects upon their minds is of a nature highly pernicious to domestic comfort, and degrading in the scale of beings, even below the brute which they torment so unmercifully.”

Where did the sentiments behind such reforms actually lie? Beattie has argued that these trends in sentiment regarding the mistreatment of animals coincide with attempts to repress physical cruelty in other settings—flogging in the army, wife beating in the home—and also indicated aspects of larger trends in moral reform. Steven Wilf has argued that movements to repress “crowd-dominated public spectacles” including fairs and cock-baitings came under increasing scrutiny in the latter decades of the eighteenth century because of their objectionable aesthetics. And Joanna Innes points to the 1780s in particular as a period in which the “reformation of manners” movement enjoyed a resurgence. During this wave of moralism, all forms of vice and immorality came under attack, including “idleness,” which Hogarth had suggested was the root of crime in his *Industry and Idleness* series, and of the “early stages of cruelty,” which led inevitably to the most heinous criminal depredations in his *Four Stages of Cruelty*. This was reason enough to curb activities and popular recreations that detracted from good, honest labour, but there does seem to be a heightened sense of sympathy with the suffering of other living beings, and an emerging distaste for the cruel treatment of animals.

Bullock hunting was another disorderly and cruel sport of particular concern to metropolitan officials. The scene of this potentially dangerous sport was the streets in and around Smithfield Cattle Market. Patrick Colquhoun, in his advice manual to constables, warned of the “evil propensity” of London’s idle and disorderly inhabitants to engage in the pastime of bullock

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The sport, as Malcolmson describes it, “was essentially a free-for-all bull fight without weapons, or at best with only sticks and heavy staffs.” Francis Place relates that he often took part in such amusements. As he remembered it, as the cattle were driven into the market place, a group of people (“the hunters”—usually young men and boys) would gather and a few would “fix their attention on a light long horned one, these being the most skittish and the best runners” and then moved to separate the bullock from the drove. When the opportunity arose, the selected animal was chased from the herd and sent running wildly through the streets, “to the great annoyance and imminent danger of the inhabitants.”

The bullock was alternately pursued and avoided by the hunters, as Place recalled, “from one to several hours,” until finally the exhausted beast was captured and taken to a slaughterhouse. Though Place boasts he was never injured, the pandemonium that this activity incited is easily imagined. In 1774, parliament attempted to curb this “dangerous nuisance” by making the offence punishable by a fine of not less than 5s and up to 20s. Suspects could be apprehended without warrant and, if they refused to pay the fine upon conviction, could be publicly whipped or committed to the house of correction for one month.

In 1818, when a bullock was run into a silkweaver’s premises, a fight ensued between the owner of the workshop and his weavers, and the bullock hunters. The Times reported that “the poor bullock was driven in so desperate a manner, and goaded so cruelly, that it ran mad” tossing “several peaceable persons” before it collapsed dead. Six of the leading hunters were charged for riotous assembly and assault at the quarter sessions, four of whom were convicted. The magistrate chairing the sessions remonstrated the hunters for encouraging such practices that were “attended with so

70 Patrick Colquhoun, *A Treatise on the Functions and Duties of a Constable; containing Details and Observations Interesting to the Public as they Relate to the Corruption of Morals, and the Protection of the Peaceful Subject Against Penal and Criminal Offences.* (London: W. Bulmer and Co, 1803), 23.
71 Ibid.
73 Ibid.; 14 Geo. III, c. 87 (1774).
much danger.” He added that “those who had engaged in such vile disorders were much more brutal than the poor animal they had hunted to death.” The *Times* thought the convicted men still escaped with “very mild punishments” of one, three and six months imprisonment.74

**Assaults on Constables and Authority Figures**

One species of violence which arises with considerable frequency among the metropolitan courts’ records concerns the ill treatment of community officials. Various community officials were the victims of violence partially on account of their positions of authority. Tax collectors, toll gate collectors, even the inspector of the pavements all number among the victim prosecutors in assault cases in our period. Attacks on other officials, such as JPs or customs officers, were not uncommon either. Ruth Paley suggests that one reason that men who had offered themselves for the commission of the peace were reluctant to actually take up the qualification was that the position could be dangerous. Justices were particularly vulnerable when they were sent out to quell riots or other disturbances, but clearly others were simply unwilling to submit themselves to the popular distrust and even hatred that went with the position.75 However, as we might expect, the majority of assaults committed upon local officials involved constables, night watchmen and beadles.

Before the first official, paid, police force was established in the metropolis in 1829, the policing of the capital was a responsibility left to the local parish officials. In the City in the early nineteenth century, each Ward hired constables who were charged with maintaining order and with bringing violent or disorderly incidents to the attention of the magistrates. In Middlesex, the petty constables were under the supervision of High Constables who were appointed by the parish vestry

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74 *Times* 12 May, 1818.
and sworn in by the justices.\textsuperscript{76} A petty constable, also known as simply a constable or headborough, was elected for a one year term; in Middlesex, by the late eighteenth century, such constables were effectively under the control of parish officials.\textsuperscript{77} Since their overall duty was to maintain the peace of the parish, attacks on such men were seen as a more serious challenge to order and authority and therefore worthy of harsher punishment. This is borne out in the data presented in table 4.1. Over 40\% of all defendants in such cases in the period 1760-75 were sentenced to fines or imprisonment or a combination of these, increasing to 56\% in the period between 1780-95. The proportion of those imprisoned was on the rise too.

Some community authority figures were likely targets of such violence simply by virtue of their office and the limited authority and standing that it granted. One unnamed Watchman of Tower Ward was leading a drunk Joseph Spranger home when Spranger called him a thief and struck him, for which Spranger was brought before the Lord Mayor on a charge of assault.\textsuperscript{78} Similar assaults on constables were considered in a humorous light, as in the following account:

At the sessions of the peace at Guildhall, a woman was tried for assaulting Mr. Emmerton, constable of St. Bride’s parish. He had taken her into custody for bawling “Wilkes and Liberty” when, for his folly, she said she would take the liberty to break his head; which she accordingly did. The jury found her guilty and the court fined her one shilling.\textsuperscript{79}

Constables and beadles were sometimes threatened with violence or were the victims of actual violence as a consequence of their duties. According to vestry minutes from Clapham, in December, 1809, it was reported to the vestrymen that threats had been made towards Thomas Carter, one of the parish Beadles, for testimony he had given before the grand jury in a case against two other men. Carter had been warned by a publican that “he (Carter) was not personally safe in

\textsuperscript{76} Except inHackney, where the Court Leet still met and held the official power to appoint and swear these officials. See Ruth Paley, ed., \textit{Justice in Eighteenth-Century Hackney: The Justising Notebook of Henry Norris and the Hackney Petty Sessions Book} (London: London Record Society, 1991), xxi.

\textsuperscript{77} Radzinowicz, \textit{History}, II: 183-4.

\textsuperscript{78} CLRO, MJR/M 70 (7 January 1803). The matter was settled and the parties discharged.

\textsuperscript{79} \textit{Annual Register}, XI, (1769), 135.
passing up, or down the Village." In other cases, constables were attacked while trying to carry out their official duties. In one case, noted in Oldham’s collection of trials before Lord Mansfield, a constable was attacked when he tried to break up a fight. As one witness testified, the constable had “pulled out [his] staff and demanded peace.” Others testified the constable then manhandled one of the men who “shoved [him] against a table and after gave a blow.”

Whether these cases exhibit elements of the apparent long-standing distrust of central authorities is debatable, and may be reading too much into what were simply angry outbursts. However, the violence that these men encountered seems often to have been exacerbated by the fact of their office. Also, due to the nature and duties of the office, these men were naturally drawn to scenes of disorder and violence in order to lay down the law. In some sense, then, these officials must be seen as on the front line of the “civilizing process” or, at least, as significant historical figures as they were the physical embodiment of larger desires for order, control, and a society that was relatively free from violence in everyday life. Being on the front line, these men frequently took the brunt of the opposition from people to being pacified, controlled, and civilized.

In another example, around midnight on 19 June 1807, after headboroughs William Barret and John Lee had cleared a small riot in Noble Street, they approached a woman and told her to go home or else they “sho’d find her one.” No sooner had they issued their order than John Adams (the woman’s husband) “rushed by the Woman & with some weapon struck Lee two blows, the last of which knocked him down, and directly after struck the prosecutor with the same Weapon several Blows on the head and body pursuing him near 200 yards when he fell & was there left by the prisoner senseless.” Adams later testified he did not know the two men were constables, believing they were among “some men who...had been in his house that night, & treated his Wife with great

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80 LMA, P95/TRI 1/140, Clapham Committee Book, f. 25.
82 Middle Temple Library, Lawrence & Dampier Mss., Crown Cases 1806-1815, ff. 135x-136x.
Indecency.” That may have been the case, but the fury of his attack is still shocking. It transpired too that the weapon of attack was a square iron rod, about three feet long. Both defendants had been hit with enough force to damage both their hats, and Barret received a wound to his skull. Adams was charged under Ellenborough’s Act, and was found guilty, but Lawrence J. reserved the case for the twelve judges. They agreed there was no direct proof of an intent to cut the prosecutor, and all concurred with Chambre J. who ruled “it was neither the wound nor the Instrument intended by the Act.” Thus Adams was “to be recommended to a free pardon” since he had already been convicted of the charge. Whether he was then charged with a misdemeanour assault is unrecorded.

Still other examples demonstrate that attacks on constables could be very serious indeed. In December 1793, three headboroughs were injured when, acting on a tip, they went to Smithfield Market “in order to obstruct and if possible suppress the frequent and dangerous Practice of Bullock Hunting.” In attempting to secure the most active hunters, the constables were threatened and abused by the mob. Levi Osborne, one of the three, was warned by one of the hunters once he had collared another, “Damn you you B—r if you do not let him go I will let your bloody tripes out about your Heels” and was then struck a violent blow in the arm with a bludgeon. Osborne’s fellow constable, Joseph Hawford, was set upon by a group of “about six fellows…all of who were indiscriminately striking him with all the violence they could with their bludgeons.” In September of 1761 William Warren, a constable of the ward of Farringdon Within, was attacked and fatally wounded. He was allegedly “set upon and knocked down with a Bludgeon in the Execution of his office by a man unknown in company with some common prostitutes at the corner of Creed Lane in

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83 CLRO, P76/JS1/148/16-19, Brief for the Prosecution, 2-3.
Ludgate Street and by the ill treatment he received died..." The City Chamberlain offered a £50 reward for the discovery of the murderer and his conviction.84

Although assaults on some authority figures formed a distinct category of assaults in law, it is impossible to know whether this encouraged such victims to prosecute more frequently, or even whether the perpetrators were pursued more rigorously than in other cases.85 It does not appear from recognizances that it took a serious attack to move some constables to prosecute. William Masters, a constable in the parish of Kensington, charged one Thomas Livard with "assaulting and pushing him about in the execution of his office against the peace."86 When an official of the City, such as a watchman or constable, was involved, the City Solicitor's office could prosecute the case, thus assuring that the public interest in maintaining order was preserved.87 In some cases, parish officials in Middlesex were similarly willing to offer financial support in prosecuting assaults committed on their watchmen.88 The watch committee for the Liberty of Saffron Hill, Hatton Gardens and Ely Rents resolved to allow Edward Druitt to prosecute a charge of assault "at the Expence of this Board" in September 1802.89 This was not universal practice, however. George Erskyne, a constable of the same parish, petitioned the vestry to recover the expenses he had incurred in defending himself against a charge of false imprisonment. However, the request was

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84 CLRO, Repertories of the Court of Aldermen, 24 November, 1794. See Burn, 9th ed. (1764), 1: 99. By 33 Geo. 2. c. 10, s. 37 (1760), assaulting revenue officers was punished on the first offence with £100 fine or 12 months imprisonment, and with transportation for seven years for a second offence. By 52 Geo. III. c. 17, s. 26 (1812), it was enacted that any person convicted or assaulting or resisting "any person watching or warding whilst in the execution of his office" or promoting the same would be liable to a fine of up to £20.

85 CLRO, MJ/SR 3321 (27 November, 1776) recognizance of Thomas Livard.


87 For examples, see CLHA, P/PN/P/A/15/11, St. Pancras, Southampton Estate, Watch Minutes (1808-1818).

88 CLHA, P/LS/WT/1, Liberty of Saffron Hill, Hatton Garden and Ely Rents, Watch Committee Minutes, (13 September, 1802).
Table 4.1
Outcomes of Assault Cases involving Community Officials*, 1760-1835

<table>
<thead>
<tr>
<th>Outcome</th>
<th>1760-75</th>
<th>1780-95</th>
<th>1800-15</th>
<th>1820-35</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
<tr>
<td>Acquitted</td>
<td>1</td>
<td>3.8</td>
<td>10</td>
<td>16.9</td>
</tr>
<tr>
<td>Fined</td>
<td>10</td>
<td>38.5</td>
<td>25</td>
<td>42.4</td>
</tr>
<tr>
<td>Imprisoned</td>
<td>1</td>
<td>3.8</td>
<td>8</td>
<td>13.6</td>
</tr>
<tr>
<td>Other**</td>
<td>-</td>
<td>-</td>
<td>2</td>
<td>3.4</td>
</tr>
<tr>
<td>Stay of proceedings</td>
<td>4</td>
<td>15.4</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Unknown</td>
<td>10</td>
<td>38.5</td>
<td>14</td>
<td>23.7</td>
</tr>
<tr>
<td>Total</td>
<td>26</td>
<td>100.0</td>
<td>59</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Includes: bailiff, beadle, bearer and assistant bearer of the vergers, (special)/constable, collector of land tax/watch & lamp rate, customs/excise officer, headborough, JP, night patrol/watchman, officer of the court, officer of the sheriff, overseer of the poor, reverend, Thames policeman.

**Includes respite on entering navy (1), punished on another indictment (2), respited (1), remanded to Newgate at his own request (1), juror withdrawn (1), recognizance to be of good behaviour for 1 year (1).

Table 4.2
Known Punishments for Assaulting a Community Official, 1760-1835

<table>
<thead>
<tr>
<th>Sentence</th>
<th>1760-95</th>
<th>1800-35</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N</td>
<td>%</td>
<td>N</td>
</tr>
<tr>
<td>Fined</td>
<td>35</td>
<td>76.1</td>
<td>22</td>
</tr>
<tr>
<td>Imprisoned</td>
<td>9</td>
<td>19.6</td>
<td>60</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>4.3</td>
<td>5</td>
</tr>
<tr>
<td>Total</td>
<td>46</td>
<td>100.0</td>
<td>87</td>
</tr>
</tbody>
</table>

*Includes: bailiff, beadle, bearer and assistant bearer of the vergers, (special)/constable, collector of land tax/watch & lamp rate, customs/excise officer, headborough, JP, night patrol/watchman, officer of the court, officer of the sheriff, overseer of the poor, reverend, Thames policeman.

Assaulting a member of the community serving in some official capacity seems to have been viewed in somewhat more serious terms by the courts than assaults on non-officials. Acquittals were rare before 1775, occurring in less than 4% of all trials (table 4.1). By the latter period (1820-35) roughly one third of those accused of assaulting community officials were being acquitted; though, denied on the grounds that “granting such allowance... wo'd be a bad precedent and wo'd probably be attended with future ill effects and tend to induce the constables and Headborough of the s'd Liberty to overact their duty.”

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90 CLHA, P/LS/M/1, Liberty of Saffron Hill, Hatton Garden and Ely Rents, Vestry Minutes, (21 April, 1767).
coincidentally, the punishments faced by those who were convicted were growing more severe. The
clear shift over time in the severity of punishments—from fining to imprisonment (that we discuss
in chapter 6)—is evident in these cases involving principally constables, beadles and headboroughs
(table 4.2). In the 1760-95 period, roughly 20% of those convicted of such assaults were imprisoned.
After 1800, however, in the period up to 1835, that proportion had increased to 69%. The general
impression, then, is that violence against community officials was taken seriously and those
convicted of such assaults were likely to be punished relatively harshly. After 1800, that meant a jail
term.

An assault on a customs official or collector of royal taxes was considered a very serious
offence. It would seem from the severity of attacks on some of them (sometimes lethal) that the
strong support from the highest levels of government was entirely necessary. In cases of assault
involving customs officers, the attorney general himself headed the prosecution.91 Stiff penalties in
these cases were not uncommon. Fines ranged from £5-100, and terms of imprisonment from 3-6
months.92 In 1795, a man named Muscle was convicted at the King’s Bench of assaulting a custom
house officer and attempting to “rescue goods.” One of the presiding judges recorded in his
notebook that the assault “was accompanied with circumstances of violence” which no doubt
contributed to his sentence: he was to be imprisoned two years in Newgate, and was to find sureties
for his good behaviour for seven years in £100 for himself, and two guarantors in £25 each.93 In
another incident—which might have ended very badly—a customs house officer was thrown out of
a boat by a man who then began beating him with a boat hook, while the officer scrambled in the

91 See the Times, 23 & 24 November, 1797 for two examples.
92 For the sentences passed in trials of assaults on revenue officers at King’s Bench between 1817-1820, see P.P. (1820)
xii. 247-48. By 3 Geo. 4, c. 114, after 5 August 1822, assaults on peace or excise or customs officers were to be punished
by imprisonment with the option of hard labour.
93 Middle Temple Library, Dampier Mss., Notes of Judgements, f. 123.
water. The assailant received two years imprisonment and was ordered to enter into a £100 recognizance to keep the peace.94

Assaults by Authority Figures

The fact that someone was in a position of authority did not necessarily mean they were even tempered or unaccustomed to the use of violence. Indeed in some cases, the community officials were the ones responsible for the excessive use of force. In April of 1778, a fisherman named Joseph Savory, was fishing in the Thames for smelts when he was boarded by Joseph Goodfellow, a waterman acting as deputy water bailiff, and some other men. They seized Savory's net, claiming it was illegal. Savory tried to stop them by pushing them off, when Goodfellow apparently turned violent and, brandishing a knife, threatened Savory that he “would cut his arm off.”95 Savory testified how Goodfellow then

without any Provocation with an Hanger or some such Weapon made a Stroak with great Violence at this Deponent which cut through the Flaps of this Deponents Hatt and cut off the Fore Finger of his Left Hand so that it only hung by the Skin and which Finger has since been taken away by the Surgeon and greatly wounded the next Finger by reason of which said Maiming and Wounding this Deponent has lost a great Quantity of Blood was and continues in great Pain and is at present incapable of getting his Living.

When others inquired into the circumstances of the attack, Goodfellow was questioned directly and bragged about it. He told Thomas Savory, a relative of the victim, that he was the one who had given Joseph Savory “such ill Treatment” and “with an Oath” said to Thomas “I am the person that cut off the said Joseph Savory's Finger and am Sorry I had not cut his Head off.”96 Nor does it seem that Goodfellow was concerned about a possible prosecution. Some time after the incident, John Wyle, a lighterman, was speaking to Goodfellow “about being the Person that had cut...Savory's

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94 Ibid.
95 PRO, KB 1/22, Part 1, Hilary 20 Geo. III, Affidavit of Joseph Savory and Thomas Savory.
96 Ibid.
Finger off.” He recalled how Goodfellow “in a Bravado way Sported at his having cut Savory’s Finger off and declared he did not care for what he had done nor should he have cared if he had cut the said Savory’s Head off For that the City of London would pay for what he had done And the Costs attending the Law Suit.” Whether or not Goodfellow actually received the official backing he expected remains unclear, and unlikely.

**Masculinity, Honour, and Violence**

Goodfellow’s “bravado” leads us to consider another aspect of violent behaviour; that is, its connections with honour and masculinity. Goodfellow’s boasts about his obvious willingness to use violence—even very serious forms of it if necessary—speaks to a much deeper connection between masculine culture and violent behaviour. The concept of masculinity has not (until recently) been discussed as an historical concept. Even though men have dominated the historical landscape, masculinity is rarely confronted as an inherent aspect of social experience. As John Tosh observes, “it is as though masculinity is everywhere but nowhere.” From recent work, we are now

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97 PRO, KB 1/22, Part 1, Hilary 20 Geo. III. Affidavit of John Wyley.


becoming aware of how the social construction of male identity was an important, even fundamental, characteristic of human experience. It both defines the roles for boys to grow into and establishes the boundaries or normative codes of male behaviour, while simultaneously demarcating the boundaries of exclusion for all women.

As we saw in the previous chapter, the majority of those indicted for violent offences against the person were male. What might this suggest about male behaviour? What do contests of violence in the metropolis reveal about masculine identity there? Anthropologist David Gilmore argues that manhood is not innate; it is a constructed identity, individually created, or, won by struggle. Historians must be sensitive to the various constructions of masculinity or manliness over time as the codes and boundaries of manliness change and adapt to particular circumstances. For example, masculine identity at Oxford and Cambridge Universities in the second half of the nineteenth century was defined in part by physical and intellectual prowess, and also in part by racial superiority. In other times, historians have argued that moral excellence or military readiness represented the dominant traits of manliness. Historians have also shown a renewed interest in explaining the importance of honour codes in this process of masculine identity construction.

Historians and social anthropologists have helped us to understand how a man's standing within a community forms a vital aspect of how he relates to others. In less populous, rural settings, where individuals were known for a very long time by nearly all members of the community, the networks of order were replicated and passed on through familial ties. One's place within the social hierarchy was a function of birth. Keith Wrightson has described how such networks of kith and

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102 For these and other examples, see J.A. Mangan and James Walvin, ed., Manliness and Morality: Middle-Class Masculinity in Britain and America, 1800-1940 (Manchester: Manchester University Press, 1987).
kin served to reinforce the social order in English society until the late seventeenth century. But by the eighteenth century, the degree of growth and expansion, both in population and with respect to urbanization, were forcing the breakdown of old networks of this sort. People in cities, especially London, were forced to reconfigure their networks of social interaction in new ways. As Elias has suggested, the old bonds of honour and place were among the first casualties of the new social milieu. Honour was a vital aspect of human culture, and formed a necessary ingredient for establishing one's position in a community. At every social level there were advantages to having a good character, and to being known as a person whose promise was good. These characteristics went to the heart of emerging conceptions of personal honour too. In the growing commercial milieu of late eighteenth and early nineteenth century London, manliness among the middling classes—but lower down the scale too—was characterized by one's trustworthiness, credit and standing. In an urban setting, where the automatic relationships of family were less useful, and where people were less likely to be known personally to one another, individuals had to take on new ways of establishing their personal reputation, standing, or credit. This meant different things for a merchant as compared to a labourer.

Honour is a concept with deep roots in English society. But it is also a mutable concept whose meaning depends to some degree on the context within which it is used. Though historians have often pointed to the importance of honour in explaining particular facets of social experience, as Donna Andrew has shown with regard to duels, what honour might have meant in less formal situations is less clear. Lawrence Stone has argued that in the case of the cuckolded husband,

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male honour in seventeenth and eighteenth century England was defined in terms of sexual potency and bravery. Anthropologists have given the subject of honour greater attention than have historians, and that literature suggests that honour is a gendered concept with very different attributes for men as compared to women. For example, in many cultures physical bravery or the willingness to resort to violence forms a dominant characteristic of male honour. But the resort to violence in the defence of honour is also historically contingent and was very much a function of class and social circumstance. In early nineteenth century London, as we shall see, men of a higher socio-economic class were able to forego violent responses to insults to their character because they were satisfied that their masculine honour could be reaffirmed through another form of competition—in the courts.

Honour has also been seen as something akin to, though something more than, “integrity” or “character,” or might also be understood as a right to respect as an equal. This right can be lost, and to regain it one must follow certain rules known as the code of honour. The tendency to turn to the law rather than to personal vengeance to solve disputes had been a characteristic of gentlemanly behaviour since the late sixteenth century. When it came to direct challenges to masculine honour, however, the use of violence continued throughout the eighteenth and nineteenth centuries. At the same time, attitudes towards violence were shifting, and we can also see that these attitudinal changes were influencing the defence of male honour in new, more civilized, ways that shunned the resort to violence.

Changing attitudes towards violence had forced (or at least encouraged) some men to modify their use of it in the defence of honour. And even in cases where a threat to honour was

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108 Stewart, Honor, passim, but esp. 145-6.
accentuated by an initial, retaliatory resort to non-lethal violence, some men felt that their options for the restoration of honour could preclude further violence, and that honour could be restored in a retreat from the “field of honour” to the courtroom. Depositions from assault cases prosecuted at King’s Bench are useful in illustrating this link between assault and honour. They suggest that some litigants in assault cases sought to reach a two-fold settlement; on the one hand the parties sought to settle their dispute, and the prosecutor sought restitution for the physical harm done to him; but at the same time, the trial process afforded the litigants an opportunity to defend their own ideas of credit and reputation—two concepts at the heart of masculine honour—in ways that precluded further violence.10 The courts provided the arenas for battles of honour and thus removed the need for further violence in battles of character.11 The trial provided an opportunity to test the boundaries of legitimate violence in the defence of honour as litigants explained their reasons for its use in the course of their disputes. That the courts punished such violence, often rather harshly, indicates a shrinking tolerance for the role for violence in the defence of masculine honour, at least among certain classes, in the metropolis.

1. Formal Honour Contests: Duelling

Upper class duels have received detailed attention from historians and I do not mean to dwell on them here, other than to point to two salient aspects of this form of behaviour.12 First, the

10 The cases in this study are different from those studied by Martin Ingram and Tim Meldrum. They have relied on Church Court records for their studies of sexual slander. In contrast, the cases I have examined here were cases of assault prosecuted in the Court of King’s Bench. See Martin Ingram, Church Courts, Sex, and Marriage (Cambridge, 1987); Tim Meldrum “A Women’s Court in London: Defamation at the Bishop of London’s Consistory Court, 1700-1745,” London Journal 19:1 (1994): 1-20; also, Laura Gowing, Domestic Dangers: Women, Words, and Sex in Early Modern London. (Oxford: Clarendon Press, 1996).
idea that violence could be employed, with relative impunity, in the defence of honour; and second, that a code of honour was still strongly embedded in masculine culture in eighteenth century England. Both points seem clear from other studies, and also from the language employed in the court documents that we shall examine below. Duelling was a particular manifestation of that code, and one, according to the recent work of James Kelly, which “could not survive without public approval of the principles of the code of honour.” And though he agrees with Donna Andrew, detecting a more pointed wave of criticism against defending one’s honour in such a manner from the 1770s in England, “most representative and influential voices” had yet to be persuaded. Thus when quarrels arose in which men sought to resort to violence to even the score, when they were later brought before the law to account for their actions, their attention to the shared elements of the code would usually allow judges and juries to accept their claims of diminished responsibility.

In formal duels between gentlemen, as long as the rules of engagement were followed, the man who might later face a charge of murder was almost always found guilty of “manslaughter only.” Though the unfortunate consequence of death was something to be lamented, men were loath to deny the honour that underpinned the act of rising to the challenge. Refusing a challenge was a breach of honour codes too, thus many gentlemen clearly felt that once it was issued, there was only one honourable course of action. One contemporary, seemingly unable to break the contradiction in his own mind, called for the punishment of both those engaging in duels and those who refused a challenge to fight. And even though they were criticized in various forums, from the periodicals to the newspapers and to the courtrooms, as being violent holdovers of a past age, duels continued to be fought well into the nineteenth century.

Frevert, Steven Hughes, Robert Nye, in Men and Violence: Gender, Honor, and Rituals in Modern Europe and America, ed. Peter Spiersenburg (Columbus: Ohio State University Press, 1998).

Kelly, Duelling in Ireland, 159.


The Courier, 1:4 (2 September, 1795), 54-5.
Andrew argues that opposition to duelling in Britain became more effective after the 1770s with the triumph of rational arguments over the underlying principles of the code of honour. By 1803, then, Grose J. could decide that if one person killed another in a deliberate duel, no matter how serious the charges to the character of the defendant, he was guilty of murder. Thus the mere challenge to fight was a serious misdemeanour, even if an actual duel was never fought. The defendant, Rice, was a lieutenant in the navy. He sent a letter to his superior officer challenging him to a duel in the wake of certain charges made against him by the superior officer which greatly disparaged Rice’s character in the eyes of his fellow crewmen. But settling disputes in this manner, even among a select group of men for whom honour and place were much more prominent aspects of their daily lives than non-military men, was growing intolerable, according to Grose. In his decision, he expressed his concern that the offence of challenging to a duel “in modern times is so frequent, that it is become alarming to the public, and induces me to suspect, that men either are not aware of the consequences the offence may lead to, or are become insensible to the mischiefs of them.”

Actually fighting a duel was considered by Grose “a grievous breach of the peace” as it could lead to murder. He reiterated that in the eyes of the law “to kill a man in a duel amounts to the crime of deliberate murder, whether he that gave or he that accepted the challenge fall.” Grose made the further point that even if the felony murder could not be proved and only a misdemeanour was found, then the punishment, which was discretionary, “must be guided by such circumstances of aggravation or mitigation as are to found in the offence.” In Rice’s case, Grose felt that despite Rice’s generally good character, there still remained “much for which atonement should be made to the public for the intended violation of its peace.” He therefore sentenced Rice to time served

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116 East’s Reports, III (1803), 581.
117 East’s Reports, III (1803), 581, 584.
(awaiting trial) plus one month, and ordered him to pay a fine of £100 and enter into a recognizance to keep the peace in £1000.

Contemporary antiquarians concluded that duelling in fact depended upon a “phantom honour” which itself arose in “a primitive society bereft of strong legal institutions and dominated by feudal magnates.” By the late eighteenth century, both of those circumstances had changed radically, and indeed the honourable place to settle a matter of honour was now the courtroom. Men could refuse a challenge and retain their social standing, but only if the battle was still fought in an honourable court of law, such as the King’s Bench. In one case from 1777, we see how one party was able to force a resolution in a case of assault arising from a challenge to a duel through recourse to the courts, rather than to the field of honour. In May of 1777, Theophilus Swift received a visit from one George Edward Ayscough at Swift’s apartment in King Street. Ayscough “personally and repeatedly challeng[ed]” Swift to fight him in a duel, on account of some alleged slight to his character. Swift refused the challenge and ordered Ayscough to leave. A few days later, Swift claims he was met in the street by Ayscough and some other men who accosted him in the street and levelled a pistol at him. Ayscough’s friends reportedly egged him on, crying out “Damn him fire,” though likely this was done in jest. Swift swore in his affidavit that he warned Ayscough “that should the Pistol which [he] … Ayscough levelled and directed at [him] miss fire that He …would defend his Life with a Sword which he this Deponent happened to have with him.”

At the next London sessions, Ayscough preferred an indictment against Swift for assault. Swift put in bail for his appearance at the sessions and appeared for the trial, whereupon Ayscough “removed the Indictment by Certiorari into the court of King’s Bench, thereby putting deponent to great inconvenience and expence.” Swift had travelled from Worcester for the London Sessions, and

was angered to learn that the case had been removed into King's Bench. Thus, "in order to prevent Expence to himself and the said George Edward Ayscough, he... has suffered Judgement [at the King's Bench] to go by default against him; and trusting in the clemency and mercy of the court, that he come voluntarily to receive judgment." Swift added that "the Expence he has already incurred exceedingly distresses him in his fortune, that he has a large family to maintain, and that he is a man of very small fortune." He therefore decided to cut his losses, and allow the court to pass judgement in his absence.

Clearly, not everyone who was offered a challenge accepted it automatically. In 1801, Stephen Stoddart was brought up on charges of assault and provoking a challenge against one John Prentice. Though Stoddart did not defend his actions, allowing judgement to go by default, Prentice's attorney—the redoubtable Erskine—pressed for a sentence that was in tune with the times. In his address to the judges, he “observed that the manners of the present day had undergone a silent but complete revolution.” And since “their Lordships had frequently declared that whoever was convicted of having murdered his fellow subject in this way, [i.e. through duelling] should suffer the course of the law,” he thought that a sentence that both rewarded Prentice’s recourse to the law rather than to the field of honour, while similarly punishing Stoddart for his wrong, was entirely justified.120

2. Honour Among Thugs: Boxing, Fighting and Brawling

Settling contests of strength, power, fortitude and masculine honour, was given popular legitimacy through the support for prize fighting. Prize fighting was a popular amusement in the eighteenth century, particularly in the metropolis. It was also an activity that frequently drew the

119 KB 1/21, Part 1, Easter 18 Geo. III, Affidavit of Theophilus Swift.
120 Times 23 November, 1801.
attention of the authorities, since technically boxing was a breach of the peace, and also because
crowds of spectators could themselves grow unruly. As violence came under greater
circumscription in other aspects of daily life, and punished within other contexts, so too boxing
came under sharper scrutiny. Continuing into the nineteenth century, boxing or “pugilism”
continued to be a target of derision for those concerned with the decline of manners and morals.
That it was a sport enjoyed and supported by many in the upper classes, however, did not bode well
for its speedy demise. The 1825 edition of the Newgate Calendar begins the story of William Ward,
(whose offence we shall consider in a moment) with the following observation:

‘Boxing,’ says a British writer, ‘which is the setting of the most worthless of the human
species to batter each other to mummy, to break jaws, to knock eye-balls out of their sockets,
to flatten the nose, beat out teeth, or to dash each other on the ground, with such dexterity as
that they shall never rise again, if not a royal sport, is, at least, a princely entertainment, and
manifests the exalted taste of its patrons!’

The entry goes on to express shock that the “barbarous and unlawful practice of fisticuffs, which the
fools of fashion dignify by the name of pugilism” had been revived.

Prize fighting was also condoned, in part, because it was a contest over money. The
violence was controlled and governed by rules. Duelling was more narrowly focused on one
outcome—the death or serious injury of the other party, and for something far less tangible. For
this reason, the violence of the duel was much closer to random violence or to the unchecked
violence of altercations and street fights.

Fighting played a familiar role in the settlement of disputes among men and women, though
perhaps more commonly in the case of men. Many brawls or punch-ups were short-lived, and

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121 In November 1790, the Court of King’s Bench had ruled in a claim for a debt that “no winnings can be recovered on
the event of a boxing-match, because the object of the bet in the case is a breach of the peace” (Annual Register 32 [1790],
225); Gilmour, Riot, Rising and Revolution, 282.
122 Andrew Knapp and William Baldwin, The Newgate Calendar; comprising Interesting Memoirs of the Most Notorious Characters
who have been Convicted of Outrages on the Laws of England since the Commencement of the Eighteenth Century, vol. 3, (London: J.
123 Gilmour, Riots, Rising and Revolution, 282.
emerged as an outlet for anger and aggression which escalated in the course of some other incident. Thus a fight could be simply a momentary, violent eruption, quickly dissipated by the landing of a few good shots, or through the intervention of friends or bystanders. However fighting could also be very serious, leading to intentional and unintentional deaths. Most cases of manslaughter leading to death were a result of blows to the head, many received during fights. In his study of coroner’s reports in the City of London, Thomas Forbes found that punches and kicks received in fights “were the most common single cause of death” among the three hundred cases he studied. Not all fight-related deaths led to manslaughter convictions either. Forbes also found a number of cases in which natural causes were judged to have caused the death of a combatant, even contrary to other evidence. This seems to indicate a certain level of tolerance among coroner’s juries for violence, and a reluctance to see someone brought formally to justice for their use of violence in an ostensibly “fair fight.”

Various kinds of fighting have also been seen as forms of working class duels, both by historians and contemporaries. Even when serious injury or death ensued, such fighting was condoned, at least to some degree, and especially among the lower classes. Cudgelling was one form of lower class duel identified by Robert Malcolmson, though I found few references to this among prosecutions in the metropolis in the late eighteenth century. More common forms of such honour battles were loosely choreographed boxing-matches. There exists plenty of evidence that many fights among men of lower social station were in fact arranged bouts, and were seen and understood by those involved as a trial of manhood. The participants convened at a prearranged time and place, stripped to the waist and settled their score before a crowd of onlookers. There were popularly

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127 Malcolmson, Popular Recreations, 43.
known rules to these contests, the most important of which was that the defeated man was to indicate when he had had enough. Such working-class duels were an accepted part of male culture and as with their aristocratic counterparts, any injury or death that might ensue, though unfortunate, was not considered excessive as long as the rules of engagement had been followed. Within the rules of engagement, then, and based on a man's word to fight a clean and fair fight, violent physical contact was tolerated, even supported, in the defence of a man's honour.

Details of one of these contests comes to us through surviving records of London's coroner. One morning in September 1768, Thomas Knight and Robert Ball were drinking together in the "Three Jolly Butchers" public house. A witness, William Smith, deposed that the two men had been "for some time drinking amicably together" when they set upon a wager to see which one could slap the other's face first, "on which they began to slap one another's faces." This continued for a time, but "as the wager could not be decided they called for a pot of beer between them." Roughly ten minutes passed, when Smith heard "some words" arising between the two men, and "they closed upon each other and endeavoured to throw each other down and Knight threw the deceased down upon the floor: that they separated and the deceased went into the back room." Ball later returned to the taproom out front, where Knight was waiting, and offered Knight "a challenge to fight and laid the said Knight two half guineas to one that he should beat Knight." Knight accepted the challenge, and Ball "put down half a guinea and Knight 5:3d to bind the wager" with the rest to be paid within twenty-four hours following the bout.128

The next morning at 11 a.m., the two men met "in a Packthread Ground in Whitecross Street" for the bout. As the crowd gathered, the two men shook hands "and then began to fight with their fists." The fight lasted roughly half an hour, and other witnesses who testified at the inquest

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128 CLRO, 226A, Box 39 (1767-68), Sessions Papers, Informations sworn before Thomas Beach, Coroner, (10 September, 1768). Testimony of William Smith.
were careful to mention that it was “a fair battle.” As Beattie has noted, despite the physical violence involved, combatants and witnesses were less sensitive to that matter as long as the “rules of honour” had been obeyed. In this case, nearly every witnesses hinted that the rules of engagement had been followed, and that Ball’s death, though unfortunate, was not to be blamed on Knight. After “24 or 25 minutes,” Smith said, “Roberts who was the deceased’s second said the deceased had had enough.” John Roberts, who afterwards assisted in carrying Ball back to a pub, tried to paint a picture of an even match also: “the deceased appeared to [me] at the beginning of the battle to have advantage of Knight but afterwards the deceased by having lost a good deal of blood lost strength and Knight got the better of him.” Ball was carried back to the Three Jolly Butchers in a chair, and was then taken first to his sister’s house and then to St. Bartholomew’s hospital.

Roberts noted that when someone came later that day with the news that Ball was dead, Knight “jumped up in a sort of brave manner, and said, D—n his eyes, I should not have fought, unless I had thought of killing of him [sic].” Thomas Hudson, keeper of the Three Jolly Butchers confirmed that Knight was in a violent disposition following the fight, “and blasted and talked of fighting me; then I went and got a poker, and ordered him out of the house.” Knight was indicted at the Old Bailey for murder though the coroner’s jury that had sat on Ball’s body had returned a verdict of manslaughter. Knight was convicted of manslaughter at the Old Bailey too, and was sentenced to be branded and imprisoned.

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129 Ibid., Testimony of John Roberts.
131 John Truse, Knight’s “second” also testified “it was a fair battle and seemed to be precarious for some time who would succeed.” John Burck thought that “the whole of the battle... was a fair one and the deceased appeared to have the advantage over Knight very much for a considerable time but at length... gave out.” He added that Knight was in little better condition, being “so weak as not to be able to walk without help and was led to a Public House near the place where they fought,” and that “Knight never struck the deceased after he declined fighting” (see note 128 above).
132 Ibid., Testimony of William Smith.
133 OESP (December, 1768), 33.
134 Ibid., 35.
Another case of an informal boxing-match that led to manslaughter involved William Ward, a well-known professional prize fighter. Ward was en route to London via stage-coach when his driver stopped at Enfield to change horses. During the stop, Ward’s “bravado” got him involved in an argument with a drunken blacksmith named Edwin Swain. Swain was induced to challenge Ward to a fight, which immediately followed, but “science soon overcame brute force, for, in fact, the blacksmith could not hit the trained bruiser.”135 Swain quickly conceded, being too drunk to fight, and retired to the public house. Ward then followed him in and continued his attack, beating Swain to death. When the coroner’s jury met over the body, they were split on the possible verdicts of “wilful murder” or “manslaughter.” Ward was finally charged with murder when the case was tried at the Old Bailey in June, 1789, but as in Knight’s case, the jury found him guilty of “manslaughter only.” He was fined one shilling and sentenced to be imprisoned for three months.

These cases, it seems, turned on two points. First, there was a legal question of intent. It was not clear that Ward intended Swain’s death, “there being no evidence from whence to infer actual malice” since Swain had offered the challenge.136 Second, they presented high evidentiary demands upon the current state of medical knowledge. In Ball’s case, the surgeon who testified at the inquest and the trial stated that “he died of the bruises and hurt he had then received.”137 In Swain’s case, however, the jury chose to split hairs, and could not decide whether the blows themselves were the cause of death, “or whether, from any extraordinary exertion, he might not have died from an apoplexy, or in a fit, or by breaking a blood-vessel.”138

According to reports of the trial in the Gentleman’s Magazine, the Ward case was a “proper” cause for public concern. The editors agreed with Judge Ashurst’s lamentation “that the science of

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135 Knapp and Baldwin, Newgate Calendar, 147.
136 GM, 66 (1789), 666.
137 OBS (December, 1768), 34.
boxing prevails so much in this kingdom as it does at present, it not being any honour at all to the
civilization of this country; and he wished it were laid aside.” Again, the links between violence
and honour are clear. In fact, the idea that there was honour at stake was a point raised in Ward’s
defence at the trial (though it was one given little credence by the high minded, middle-class authors
of the Newgate Calendar—itself indicative of a change in perception over time). In the 1825 edition,
Ward was ridiculed for “inhumanly accept[ing] the foolish dolt’s invitation,” and chided, “there is no
honour in the owner of a blood-horse, or a game cock, to match with a dung-hill” implying, one
must assume, that Ward had the unfair advantage. Still, unless the courts were willing to enforce a
two-class system of justice, and permit gentlemen to escape serious punishment in their duels, while
punishing the working man, men like William Ward and Thomas Knight would suffer the same fate
as their gentlemen counterparts.

By the early nineteenth century, there are reports that combatants in such “boxing-matches”
were not just being punished after the fact, but that local authorities were taking steps to intervene as
quickly as possible to break them up. In a case brought before the petty sessions at St. Giles,
Camberwell, Samuel Birkin, a constable, testified how on 18 August, 1823, he found “Charles Duke
and Thomas Over in the Fen Field at Peckham, stripped and fighting.” The men were obviously
trying to settle a score. Even when the constable and his assistant (George Sedgley) took the two
men into custody and led them to a public house, “Duke put himself in a fighting attitude and held
up his hands and attempted to strike myself and Sedgley but he was prevented.” As it turns out, the
original fight between Duke and Over was precipitated by a casual remark. A witness, John Moyens,

139 Ibid., 666.
140 Knapp & Baldwin, Newgate Calendar, 147.
141 Patrick Colquhoun’s Tmtise informed constables that whenever they received “information of any intended fight or
boxing match within his constablewick or parish, or in the neighbourhood, it is his bounden duty to inform the nearest
Magistrate thereof, and...to repair to the spot for the purpose of preventing affrays, and apprehending all persons
committing breaches of the peace; and of conveying the offenders and their abettors as soon as may be, before a
Magistrate, to be dealt with according to law” (Colquhoun, Treatise on the Functions and Duties of a Constable, 10-11).
testified that Duke had lost a bet, and Over made some remark about Duke’s loss, upon which
“Duke struck him two or 3 blows—there was no previous provocation…. On this many persons
that were by persuaded Over that he must fight him—On which they went out and fought and were
taken into custody.” Duke’s defence was only that “he was in liquor.” Over, for his part, stated “that
what he did was in his own defence for if he had not gone out to fight Duke would have probably
knocked him about and insulted him afterward.” Over’s master was called and gave him a good
character, characterizing him a “peaceable” person “that would not stand up unless grossly insulted.”
The magistrates decided that the case was serious enough to send on to the quarter sessions, and
bound both men over in recognizances of £20. Duke was unable to find bail, and was thus taken
into custody to await his trial.142

The foregoing cases stand out because of their more or less orchestrated forms of violent
behaviour, and reveal the persistence of ritualized forums for the defence of masculine honour. But
even less ritualized fights as those considered above might also be interpreted as honour contests.
The following two cases relate some of the distinctly urban and commercial preconditions for
violent behaviour. They also demonstrate how middling men handled challenges to their masculine
honour.

Our first case involves two principal players: Walshingham Collins, a Notary Public, and
John Reilly, a publican and owner of the Ship Ale House in the neighbourhood of Charing Cross.
Collins had for some time patronized Reilly’s pub as a favourite dinner spot and arranged for his
nine year old son to dine there too, for which Reilly charged Collins 8d. per meal. Collins thought

142 LMA, P73/GIS/123, St. Giles, Camberwell, Petty Sessions: Magistrate’s Minute Book, May 1818-August 1826, entry
for 19 August, 1823.
this was excessive and offered him 6d. for each meal, but Reilly refused to lower the price so Collins initiated an action in the Court of Requests.\textsuperscript{143}

The Court agreed with Collins that 8d. was excessive and ordered him to pay Reilly 4d. for each dinner, which he promptly did. And, understandably, Collins also stopped patronizing Reilly’s pub. From then on Reilly took an active dislike to Collins and decided to make his life difficult at every opportunity. Collins testified how for the next nine months whenever he met Reilly in the street he “very much Abused [him] without any Provocation whatsoever And often times by his Abuses Collected Mobs in the Streets about [them] And Called [him] Notorious Rogue Cheat and Villain.” Reilly even pursued Collins through the streets to the door of his place of business, “Abusing [him] and Villifying his Character in [the] manner aforesaid.” On other occasions, Collins claimed, Reilly threatened “that he would do for and ruin [him] and Drive him out of the neighbourhood.”\textsuperscript{144}

Collins’ housekeeper swore that several times she had heard Reilly “very much Abuse and threaten the Prosecutor And Called him Rogue Villain Cheat Thief and several other Opprobrious names and threatened that he would do for [him].” Lucy Necks, who rented a room to Collins for office space, was also called to testify on his behalf and spoke to his unquestionable character, calling him a “Gentleman and Man of Business.” Necks agreed that Reilly’s behaviour was growing disruptive and testified that Reilly had done him “great injury in his profession or Business of a Notary Public.” Collins was clearly growing weary of this constant abuse and feared that Reilly’s

\textsuperscript{143} London had a small debt court established in 1606. New Courts of Record were established in the reign of Charles II to hear cases where the amount in dispute was less than £5. However, the House of Lords denied statutory attempts to establish more of these courts until the eighteenth century when the need for such courts was overwhelming. They were established in other towns and were called Courts of Conscience or Courts of Request and were modelled on the London Court (Holdsworth, \textit{History}, I: 188, 190).

\textsuperscript{144} PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of Walshingham Collins.
continued attacks were going to prove successful in ruining his business and getting him fired as, he claimed, Reilly “often declared he would endeavour to Effect.”145

The dispute came to a climax on August 14th when Collins and another man were passing behind Reilly’s pub. In Collins’ version of the story, two of Reilly’s mates146 were standing at the back door of the house “with large Cudgells or Sticks in their Hands And one of them then pointed to [Collins] and said to the other ‘That is he’.” Collins’ companion confirmed that two men were indeed outside Reilly’s back door, “Leaning on their Sticks... as if for some particular purpose.”147 One of the servants then alerted Reilly that Collins was about and Reilly soon emerged from the pub screaming “Damn you you Thief Collins will you never pay me my Money, I will make you by God or I will do for you God Damn you I will.”148 Reilly then set upon him, fists flying while Collins defended himself with his cane. Reilly’s two mates joined in the attack and struck him several violent blows on the back of his head and on his body with such force and violence that he was knocked senseless and fell to the ground. Collins’ companion testified that Collins received such violent blows on his head that he feared “he was Certainly killed, as he Reeled afterwards and fell down flat upon the pavement.”149 Collins added that the whole time he was being beaten by the other two men, “Reilly continued to follow Close behind them Encouraging and Inciting them to Beat [me] in [a] Cruel manner.” Collins swore that the two men were no doubt instructed by Reilly to lie in wait for him and to alert him of any sightings, while Leonard Hammond, Collins’ companion, confirmed that after the attack the three men retreated together into Reilly’s house.

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145 Ibid.
146 Edward Rail and John Hannegan.
147 PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of Leonard Hammond.
148 PRO, KB 1/22, Affidavit of Walshingham Collins. The court took special note of these provocative words as they are underlined in the affidavit. ‘To do’ some one is to ‘rob and cheat him’, but could also meant ‘to overcome in a boxing match’ according to A Dictionary of Buckish Slang, University Wit, and Pickpocket Eloquence (London, 1811), reprinted as The 1811 Dictionary of the Vulgar Tongue, forward by Max Harris (London: Senate, 1994).
149 Affidavit of Leonard Hammond.
Reilly, of course, offered a different version of the story. He claimed that he was standing at his back door on the day that Collins happened to pass by. He called out to Collins, asking when he planned to pay the remainder of his bill. Collins turned around and replied “By God I will pay you now” and struck Reilly on the head and arms with his walking stick.\(^{129}\) Two bricklayers who were passing by on their way home from work confirmed the story.\(^{151}\)

Following the attack, Collins collected himself and staggered down to the magistrate’s court in Bow Street. There he received a warrant for Reilly’s arrest.\(^{152}\) Reilly was brought before the magistrates the next day where he put in bail and was released. But upon the parties exiting into the street, Reilly lashed out at Collins yet again. Jasper Kelly, a witness to this exchange claims he “heard...Reilly in the publick street cry out with a loud voice ‘there goes Collins the notorious Rogue and Villain’” and that Reilly “then and there Swore that he would do for the Prosecutor before the Night... and if he could not do it himself he would get others to do it for him.”\(^{153}\)

The case came before the quarter sessions at Guildhall in October but the grand jury dismissed it. In Collins’ view, the lower courts were only adding insult to insult and injury. The physical assault was bad enough, but perhaps more significantly, Collins clearly believed that Reilly’s behaviour had damaged his professional reputation. He claimed that “by means of the Declaration and the Injurs which ... John Reilly had done to [his] Character he ...verily believes he has thereby sustained a loss in his Business to the Amount of Several hundred pounds...” What he meant was that Reilly’s actions both in the street and in the courtroom were ruining his good character and standing in the neighbourhood and the community, particularly his reputation as an honest man of business. We can therefore appreciate Collins’ mounting frustration after Reilly and one of his mates

\(^{129}\) PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of John Reilly.

\(^{151}\) PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of Mr. Singleton & another.

\(^{132}\) At the time he did not know the names of the two other men.

\(^{153}\) PRO, KB 1/22, Part 2, Easter 21 Geo. III, Affidavit of Elizabeth Powell & others.
launched a counter-suit in the September quarter sessions. Since Reilly and Rail were intent on protracting their trial at quarter sessions, Collins felt he was “obliged” to “make up and pass the Record in this Cause” that is, try the case in the Court of King’s Bench in order to obtain some final settlement. Thus in Michaelmas Term following (i.e. in November of 1780) Collins preferred a bill of indictment against Reilly and the two other men, Rail and Hennagan, this time in the King’s Bench whose Grand Jury found a true bill.154

Unfortunately there is no record of the outcome in the King’s Bench.155 Still, the motivation behind the case is instructive: Collins clearly believed that he was owed some recompense for both the injury to his person and to the slight against his character; having failed at quarter sessions, the King’s Bench was the only court that would be able to satisfy him.

We might now ask what other issues spoke to male honour in this period, or how they make have differed from the seventeenth century, for example. Based on her study of slander cases at the London consistory courts, Laura Gowing argues that “men’s honour never involved their sexual behaviour” and that men could speak with confidence about their own sexual conduct with a pride that was “entirely absent from women’s speech.”156 This may have been true for men who were trumpeting their heterosexuality through such admissions of sexual indiscretion, but accusations of homosexual behaviour cut directly to the issue of masculine honour.

154 PRO, KB 1/22, Affidavit of John Reilly: “and this Deponent [Reilly] having put in Bail to traverse and try this Indictment the next Easter Term he this Deponent employed a Mr. Jonas to defend the same and paid the said Mr. Jonas the sum of Nineteen Guineas for that purpose And this Deponent has been Guilty of this Assault without any Witnesses being examined on the Trial in Deponent’s Defence”. In the mean time, Reilly and one of the other men, Edward Rail, launched their own suit against Collins at the September Quarter sessions for an alleged assault two days after the one just described. Collins put in Bail and gave notice he would try the case and at the next February Sessions Collins was acquitted at a cost to him of £30-40 for council, court fees, fourteen witnesses and his solicitor’s charges.
155 The case was referred to the Master or Clerk of the Crown. For this office, see Gude, Practice 1: 21-29.
In another case from the King's Bench, the issue underlying the assault, and the threat to masculine honour, was very clearly that of sexuality. The case was defined by both the dishonour associated with a charge of sodomy, and the presumption that violence against homosexuals would go unpunished by the courts. The case concerns one Richard Tosh, gentleman, and Thomas Wooley, an attorney. On the 9th of December 1805, Tosh arranged to meet his tailor John Ledger at the King’s Arms public house in Moor Street. The two met to discuss some wool waistcoats that Ledger had been hired to make for Tosh and, upon meeting, the two proceeded into the public drinking room to conduct their business. By coincidence, Thomas Wooley was in the same room drinking with other friends. As Tosh and Ledger entered, Wooley spotted Tosh and began calling him, as Ledger testified, “foul and gross names too Indelicate [to] be named or repeated” across the room.157 Tosh countered that “he was not a person of such habits and character”158 whereupon Wooley came across the room, seized Tosh by the hair and beat his Head against the wainscoting, and afterwards struck him on his right eye whereby his ring cut Tosh “in a dreadful Manner.” Tosh escaped, bleeding profusely, into the Tap Room for safety, but Wooley followed him, calling him “Infamous names and assured the Company that [Tosh] was guilty of an Unnatural Crime and he could prove it.”159 Tosh claimed that Wooley persisted in insulting him and accusing him of sodomy “for about an hour repeating and making use of nearly the same words over and over.”160 Ledger claimed that Wooley was trying to incite a riot and gather a Mob “to get [Tosh] Assaulted and us’d Ill.” He claims this would have happened too “if he had not Assured the persons present that such Accusations were false and that [Tosh] was a Respectable Man who he had known for Years.”161 Ledger recognized the importance of quickly establishing Tosh’s good reputation and character in

158 PRO, KB 1/33, Part 1, Trinity 46 Geo. III, Affidavit of Richard Tosh.
159 Affidavit [of John Ledger] in aggravation.
160 Affidavit of Richard Tosh.
161 Affidavit [of John Ledger] in aggravation.
the highly masculine and potentially volatile context of the pub’s tap room and criticized Wooley’s conduct, significantly, as “shameful and unmanly.”

It turns out that this was not a random example of what we would now call gay-bashing. In fact, some months prior to this assault, Wooley had attacked Tosh while he was walking down Greek Street in Soho. On that occasion, Wooley crossed the street, struck Tosh with a stick and began calling him opprobrious names which, Tosh stated, “caused a great number of persons to come near...which exceedingly alarmed [him] in as much that [he] with difficulty got into a public House to avoid further injury from the said Defendant and any insult from the Mob.” Wooley certainly knew that by raising a tumult and attracting a mob, his charges would pack a more serious sting, and judging from Tosh’s anxiety to make a speedy exit, it was likely that there were others who were willing to accept such defamatory claims uncritically.

Following this attack in the street, Tosh obtained a warrant from the magistrates at Marlborough Street and Wooley was held to bail for the offence. But at the insistence of some of Tosh’s friends and on Wooley’s promise not to offend Tosh in the same manner again, Tosh forgave him and dropped the case. For this second attack, however, Tosh was unwilling to settle privately. Wooley claimed that Tosh had been playing the courts, preferring indictments at the general quarter sessions at both Clerkenwell Green and Westminster. Wooley felt that Tosh “could have obtained by proceeding at either of those Sessions redress and substantial Justice as speedily or more speedily than by proceeding by Indictment in [the King’s Bench].” However, Tosh had let both quarter sessions cases lapse and chose instead to pursue the case in the King’s Bench, in Wooley’s opinion “for no other purpose but to harass and oppress this deponent [i.e. Wooley] by a more expensive mode of prosecution.” Tosh denied this, of course, claiming he had “not commenced this

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162 Affidavit of Richard Tosh.
163 PRO, KB 1/33, Part 1, Trinity 46 Geo. III, Affidavit of Thomas Woolley.
prosecution either for lucre or gain nor from any malice but for his personal safety from such violent
and dangerous assaults as he... hath met with from the Defendant.”

In order to resolve the matter quickly, now that it had moved into the much more expensive
King’s Bench, Wooley resorted to what had become common practice in cases of assault—he
offered to settle the matter privately. He swore in his King’s Bench affidavit that he “repeatedly
offered to the said Prosecutor personally to make him a reasonable compensation for the said
Assault and also to acknowledge his Sorrow therefore and to adjourn and take a Glass of Wine at
[his] expence and be Friends.” But Tosh would have none of it. He repeatedly refused or foiled
Wooley’s attempts to reach an agreement. Wooley even tried to persuade Tosh’s friends to convince
him to settle the matter, but to no avail. Tosh declared to one or two of Wooley’s interlocutors that
“he could not consent to an accommodation.” From the early stages of the matter, Tosh declared
that “he would be content with nothing less than the Judgment of this Honorable Court” and
despite his requests, refused to provide Wooley with an account of his expenses in prosecuting the
case.

In this case we do know the court’s decision and it was severe in relation to other known
judgments in assault cases where the penalty was usually a simple fine of 6/8. Wooley was fined £5,
imprisoned 1 month, and ordered to give £100 security for himself and find two sureties in £50 each
for his good behaviour for three years.\(^{165}\)

In this case the threat to masculine honour is more obvious. Aside from the physical attack,
important in itself, the defendant, Wooley, used sexual slander—and in particular the cultural mores
which fuelled homophobic sentiment—to undermine the prosecutor’s public character and to
attempt to incite further violence from a potential mob. The *Times* reported how Wooley “not only

\(^{164}\) Affidavit of Richard Tosh.
\(^{165}\) *The Times*, 25 June, 1806.
committed acts of violence on [Tosh’s] person, but charged him with unnatural practices, so as to expose him to the honest indignation of an English mob, from which he with difficulty made his escape.” By suggesting to a crowd of strangers that Tosh was a “molly,” Wooley hoped that the men in the pub would pick up his cue and finish off the dirty work he had begun himself. In this particular case, no mob scene developed in the pub though from Ledger’s testimony Wooley clearly expected it to happen and the Times simply assumed that it did.

What I am suggesting is that even non-lethal confrontations such as these can be seen as contests of honour. In the commercial and increasingly atomized sphere of public life in eighteenth and early nineteenth century London, a man’s basic right to respect, that is his honour, became a legally contestable point. And though the explicit charges of homosexuality cut more quickly to the issue of masculinity, the threat to a respectable business man’s livelihood was equally damaging and constituted a public challenge to masculine notions of honesty, and commercial integrity. This desire to settle these contests of honour in a courtroom, even when precipitated by relatively minor assaults, suggests the degree to which revenge had been separated from violence by the late eighteenth century. The restitution of honour through revenge, even in cases of interpersonal violence, had been stripped of its formerly violent nature and became for some upper middle-class men firmly entrenched as a commercial transaction. The individuals involved in these cases are clearly of a higher socio-economic class. There may have been lower expectations of further physical violence in order to defend one’s honour among these men, although in both cases physical violence was employed to heighten or amplify the threats to character and social standing. But in both cases studied here, the men did not retaliate with violence (as far as the court records reveal) so

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166 Ibid.
167 Lawrence Stone saw the early stages of this in the late seventeenth and early eighteenth century in cases of criminal conversation; see Stone, *Road to Divorce*, 238.
the violence itself was not only a threat to their manhood but the primitive expression of deeper attitudes and motivations.

In their attempts to defend their personal credit, social standing, or honour, and reconfirm and uphold their standards of masculine behaviour, many men in the latter eighteenth century brought disputes into the Court of King’s Bench. The fact that it was a metropolitan court with wide jurisdiction, and was willing to hear even trivial assault cases, made it an ideal forum for those with both the resources and the desire to reach a settlement. On the face of it, these disputes were the consequence of some minor assault or trespass. But in some cases, clearly there was more on trial. The courtroom was the site of contests of masculine honour and standing within the community. Indeed, when we look closely, what we find is that the Court of King’s Bench afforded many men with the stage, and more importantly the moral and intellectual audience, to judge their worth as both a litigants and as men.

Conclusion

What is clear from this and the previous chapter is that violence, in varying degrees, pervaded many aspects of eighteenth-century life. The metropolis provides us with a unique setting within which to study the experience of violence in the past. Violence was clearly a central feature of urban life. As this chapter has suggested, the opportunities for the experience of violence, in various forms, were multiplied by the social and structural changes wrought by the increase in population and by urbanization. The absence of a police force also meant that individuals had to intervene themselves in stopping violence, thus their experiences with it were likely more familiar.

Yet these same changes were also the source of wider concern about the place or role of violence in society. The transformations in London’s character, from a network of neighbourhoods to a more anonymous, commercial centre, had clear implications for the nature of social
relationships. The urban milieu was the crucible for the most rapid expansion of the emergent ideas of civil society that were being developed at this time, and these ideas lay at the heart of a new, urban cultural ethos, in which order, politeness of manner, and the free movement of goods and people were expected. The interference with the orderly rhythms of life, especially in violent outbursts, or in the resort to public violence, came to be seen more often than not as behaviour worthy of censure, at least among the middling sorts. As the metropolis became more of an egalitarian political and social sphere, and as communities within it became more loosely knit, traditional methods of maintaining order and control, and of sanctioning interpersonal violence, began to break down. Indeed violence itself, which may have been condoned within closer, more private networks of kith and kin, could, in the more variegated social networks of the city, prove more disruptive to a wider circle of people. Neighbours, local officials, or even strangers who took an interest in maintaining a particular kind of neighbourhood character, or who may have imbibed some of the underlying strictures of market behaviour, perhaps unconsciously, were willing to bring their concerns about dangerous behaviour, including that involving intimate violence, to the attention of state authorities with the expectation of a resolution. If nothing else, such actions seem to indicate where certain thresholds of toleration for the role of violence in metropolitan society may have lain.

People living and working in the city still placed considerable importance upon personal connections, and reputation, but those elements of social interaction were also to be modified and refined to fit new public, commercial roles. For men in the city, reputations could be tarnished by challenges to their credit and trustworthiness or to their sexuality, and often the immediate response to such challenges was to invoke violence. Many cases of non-lethal interpersonal violence began as contests over honour or reputation. Indeed for many men in the metropolis, honour was at the heart of violent exchanges. The growing anonymity of life in the increasingly urbanized and commercial world that characterized eighteenth-century London, increased the need for new standards of public
behaviour and for recognized guarantees of social and professional standing. In this way, a man's reputation was an essential feature of both his personal and financial credit, and was essential to his honour or his right to respect.

However, by the early nineteenth century, violence was not the only means of restoring one's reputation, and for some men it was an unacceptable solution. What the cases examined in this chapter have demonstrated is that, depending on one's class and means, violence was replaced by self control and by the appeal to law to settle questions of honour. Men of sufficient means who retreated from retributive violence, could still find substantial legal satisfaction, and could re-affirm their honour and credit, though an action at the Court of King's Bench. They also demonstrate how the study of assault prosecutions in particular might be helpful in understanding the techniques for the social construction of masculine identity in the past. They reveal that challenges to sexual identity still lay at the heart of manliness, but also that for metropolitan men, challenges to one's personal honour, to their reputation and standing in the community—especially as men of business—could be equally damaging. Examples of both types of challenge emerge in the cases considered here. And whereas in the past, such challenges would be answered with resort to violence, in the context of early nineteenth-century London, such behaviour was no longer deemed acceptable, at least among men of the middling sort. Instead, as the courts in the metropolis came to be seen increasingly as venues for the restoration of honour and character, there was less justification for the ready resort to violence in the settlement of disputes. But, as we saw, the willingness to turn to law in the defence of honour depended upon one's class. Working-class boxing matches continued to be fought into the nineteenth century, and it would take time for the weight of social and legal sanction to repress these informal honour battles entirely.

Finally, this chapter has suggested that one of the preconditions for the shift in attitudes towards violence was the apparent trend, in the urban society of the metropolis, towards a more
orderly division of public space. The streets were increasingly designated as the preserve of traffic, and vehicles were to remain as unobstructed in their movement as possible. The pavement was the place for pedestrians both for their safety, and to facilitate the easiest movement of traffic possible. Shopkeepers were quick to capitalize on this division of public, commercial space too, adorning their shop windows and showing their merchandise. Shops were illuminated at night, both to display goods in windows and also to improve the safety and therefore the desirability of being in the neighbourhood. One commentator noted that in the early nineteenth century, “on winter evenings, till eight or nine o’clock, all the principal retail streets appear as if partially illuminated; such is the brilliancy that arises from the numerous lamps, &c. with which the shops are lighted up.”

To what extent the changing character of the streets had worked to ameliorate anxieties about crime and violence in the metropolis is impossible to quantify. However, visitors and residents, such as Joshua White and Francis Place, seem to have articulated generally shared opinions that the improvements in the physical city had had an effect in the improvement of manners and morals. By the early 1820s, Francis Place could proclaim “I have no doubt at all, that in manner, morals, dress, information there have been as many improvements in the country as there have been in London.” White, an American visitor to England in the early nineteenth century, could state with admiration how he “passed through various streets in the metropolis, alone, and at all hours of the night, and in no instance was I ever molested or insulted.” Indeed, he continued,

perhaps, no city in the world of similar magnitude can boast of so great an exemption from enormous violations of the laws. The high-way robberies and murders that formerly were so frequent on the great roads leading to the city, have diminished; and the footpads that were wont to infest Hounslow and Bagshot heaths, now seldom molest the peaceable traveller.

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168 Brayley, Beauties of England and Wales, 13-14.
Nineteenth-century London was by no means free of violence. But the transformations in attitude, and the general sense that the degree of violence and disorder was markedly different from that of a generation or so earlier, lend support to our larger picture of decline in the acceptance and experience of violence in the metropolis over the eighteenth and nineteenth centuries.
Chapter 5

VIOLENCE, PUBLIC OPINION AND "THE MONSTER"

In most cases of assault committed in our period, there is scarcely any detail to be drawn from either the official records of the courts or from the press. Fortunately, this is not invariably the case. From time to time, exceptional cases do emerge, which attract the attention of contemporaries precisely because of their different nature. This is precisely what happened in the case of "The Monster," a case that crystallizes many of the larger issues developed in the preceding chapters. As will be clear from this extended case study, the problems outlined in chapter 2 regarding the lack of generality in the eighteenth-century assault laws created a troubling situation when the authorities were faced with the task of prosecuting and punishing the primary suspect. They found that the laws were simply inadequate to the task of punishing such violence in a satisfactory manner. When it became clear that there was no law, and therefore no punishment, to fit the crime, public anxiety about the ability of the state to protect its citizens against such violence was raised to a new level. The curious manifestations of that anxiety in the popular press are also given particular attention in this chapter, as they illuminate some of the deeper motivations for the resort to law and concerns over levels of violence in society that eighteenth century Londoners were beginning to grapple with in new ways. The terror of the Monster became associated with urban danger writ large, and the randomness and violence of his attacks seemed to underscore the dangers of life in the city. Most importantly, the case marks a new level of anxiety about the role of women in public spaces, and also about public violence in what were generally understood to be “genteel” or “respectable” neighbourhoods. The greater articulation of that sense of violation that comes with such acts as
those attributed to the Monster, seems to indicate another of the thresholds of incivility that characterizes a society in the process of negotiating the boundaries of civilized and uncivilized behaviour.

The case of the Monster is also interesting for what it reveals about ideas of “otherness” as well as sexuality and violence in the period. The Monster’s brand of violence was seemingly unknown to eighteenth-century commentators, and to his victims too. They were at a loss to explain how such crimes could have been committed. However, although they lacked the sophisticated psycho-analytical understanding of sexual pathology, many eighteenth-century authors sensed the connections between sex and urban, stranger-violence inherent in this case, and offered some glimpses at a growing awareness of the sometimes deeper, inexplicable motivations for interpersonal violence. Attempts were also made to project the Monster as an outsider or “other” in terms more familiar to the time. His masculinity was thrown into question by some, while others drew attention to his foreign connections, particularly his relationship with a number of French men and women, in further attempts to reconstruct his image as a dangerous, violent foreigner.

The Attacks

There was a buzz on the streets of London in the spring of 1790. Over the preceding twelve months, numerous reports of knife attacks on fashionable London women by a “tall thin man, with a rather curved nose” had appeared in the newspapers. The victims had been approached by a man who variously engaged them in conversation or followed them to their place of residence and then suddenly stabbed them with a small knife. At first these attacks were portrayed as a macabre curiosity, another species of crime in a violent city. The papers did not begin reporting the incidents in detail until a number of women had lodged similar complaints. Whether or not these cases were linked was, as yet, unclear. Reports of such incidents appeared as early as May of 1788, when Mrs.
Elizabeth Smyth was attacked in Johnson's Court, Fleet Street. The assailant cut her in the thigh with a very sharp instrument after following her a while and muttering obscenities to her. As one contemporary pamphlet later explained, "this kind of cruelty was then so uncommon and unaccountable (as he made no attempt to rob her), that she was advised by her friends not to take any public measures in regard to it, unless she heard of similar attempts made upon others." As a result, Smyth did not pursue the matter despite seeing a man whom she believed was her attacker on several later occasions. She did not proceed with an indictment, she said, until a reward was offered in 1790 for "the apprehension of a man for similar offences."

On 13 October 1789, the World reported an "uncommon and melancholy circumstance" which occurred a few days previous. A young woman, "who had the appearance of a servant," was attacked by a "genteel young man in black" who was waiting on the steps near her home. The man addressed her in a familiar manner, but then suddenly "intimating she was not the person he wanted, he immediately laid hold of her, and stabbed dangerously with a knife in the body." In this case the attacker "was immediately secured." The report in the paper highlighted the shocking anonymity of the crime, as the woman "declared she knew nothing of the man, and had never seen or spoke to him in her life." The terror of such violent offences possibly becoming a frequent occurrence was heightened with the news that the "unfortunate young woman" had been "carried to [a] hospital without hope of recovery."

By April 1790, the newspapers, led by the Morning Herald, had taken up these cases as a cause célèbre. In a letter to the editor on 12 April, the paper was lauded for its part in "stimulat[ing] the

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2. *Times,* 20 April, 1790
3. *World,* 13 October, 1789. The British Library holds a collection of contemporary newspaper clippings, broadsides, and other printed ephemera concerning the Renwick Williams case, located at BL, L.R.301.h.3.
Public Office in Bow-street to detect and bring to conviction those MONSTERS under human forms, who are so frequently maiming the lovely women that are casually walking without protectors.” In fact, the author continued, the media attention to these cases was entirely warranted given that yet another woman had fallen victim to this species of offence. “I desire you will add to the list of names you published this day, that of the beautiful Mrs. Godfrey, of Charlotte-Street Portland-Place, who, returning home one evening with her servant, was followed by a genteel looking man, who, on her approaching [sic] her own door, stabbed her with a tuck-stick in the thigh, and then walked off composedly, without uttering a syllable.”

By the spring of 1790, the list of victims had grown to at least six, and the perpetrator or perpetrators had been dubbed “Monsters,” a name which would come to identify the case.

The Monster’s most notorious attack—the one for which he was eventually tried—had already occurred on 18 January 1790, yet it received no public attention at the time. The date was special, as it was the Queen’s birthday, and a celebratory ball had been held at St. James’s palace for court society. Attending the ball were Miss Anne Porter and her sister Sarah, in the company of one Mrs. Mead. The ball was scheduled to end at midnight, and the women had arranged to meet Miss Porter’s father then to escort them home. But when it ended early, the Porters left around eleven o’clock and, since they lived in the neighbourhood on St. James’s Street, decided to walk home.

After proceeding a short distance, Sarah Porter became greatly agitated for some reason and encouraged the others to step up their pace, exclaiming “Make haste, run!” They soon reached the steps of their house, and Sarah was the first to the door. As Anne turned the corner of the railing to

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4 *Morning Herald*, 12 April, 1790.
5 One pamphlet lists six victims by May of 1790. In order of attack, they are: Mary Forster (26 September, 1789); Ann Frost (9 November, 1789); Elisabeth Baughan (6 December, 1789); Ann Porter (18 January, 1790); Sarah Davis (5 May, 1790); and Sarah Godfrey (13 May, 1790). *The Trial of Runwick Williams (Commonly Called the Monster) at the Old Bailey, on Thursday the 8th of July, 1790 before Judge Bailey and a Middlesex Jury, for Assailing and Wounding Miss Ann Porter.* (London, 1790)
reach the front door, she felt a violent blow to her right hip. She turned around and saw a man who
"could not be mistaken as to his person, as the street was illuminated." The man made no
immediate attempt to flee and "stood close to the wall hard by her, and stared her in the face."7
Porter was startled, but later recalled that "she had seen him before several times, on each of which
he had followed close behind her," using language "so gross, that the Court did not press on her to
relate the particulars."8

On 16 April, and for the next four days, an advertisement appeared on the front page of the
Times stating that a subscription had been taken up at Lloyd's coffee house offering a £20 reward for
the capture of the culprit responsible for the attacks on women in the metropolis. The noted
London merchant and philanthropist John Angerstein was behind this, which lent the cause both
credit and authority, and the security of knowing that the reward would indeed be paid.9 Angerstein
took the Monster's apprehension as something of a personal crusade and used his prominence
within London commercial and social life to spread his enthusiasm to find the offender or offenders.
We know that this reward led to at least two cases of false accusations and of innocent men being
brought into the Public Offices. Within a few days of the Lloyd's reward being published, the public
interest in the cases and the concurrent media frenzy grew intense. Posters and handbills were being
plastered around London proclaiming that a "Monster" was on the loose, and women were warned
to be cautious. The public was anxious for something to be done, but no suspects had yet been
apprehended.

No doubt as a consequence of the mounting interest in the case, and upon hearing that a
sizable reward was being offered, Elizabeth Smyth charged a man named James Tussin with the

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7 New Lady's Magazine, 372.
8 B. Laurie (ed.), The Newgate Calendar or Makers' Bloody Register. (London: T. Werner Laurie, 1932), 993.
9 D.N.B. s.v. "Angerstein, John Julius".
attack on her back in May of 1788.  

Tussin was brought to the Bow Street office and, as the *Times* noted, “it was immediately presumed that this was the MONSTER.”  

Ann Porter and five other women were called to Bow-Street to identify Mrs. Smyth’s alleged attacker, but declared that Tussin “was not the man.” The brief descriptions of his examination reveal a few clues about the process of identifying suspects at that time. In an age before reliable forensic evidence, personal identifications of the alleged offender formed the principal means of establishing probable suspects. The female victims were given the opportunity of “very minutely surveying Mr. Tussing.”  

The accused was put in with a crowd in a sort of line-up, and the victims were asked to point out their assailant. In this case, Smyth “at once pointed him out in the crowd [sic] that was there, and was positive to his person.”  

Smyth likely recognized Tussin as she had seen him three or four months before at a public auction “but did not then mention her suspicions to her husband or any person.” The interval had fogged her memory, however, and “at first sight of him yesterday, when every other lady present declared him not to be their assailant, she then thought only, that he was like the person; but became more confirmed in her belief afterwards, in proportion as his innocence became evident to every other person.”  

Tussin did not fit the physical description of the offender, but perhaps more importantly, he did not fit the popular image of a predatory “Monster” either. The *Oracle* noted that Tussin was “a person of business, of exceeding good character, with an amiable wife and family.” His good character was guaranteed “by a great number of Gentlemen” and thus the paper concluded that

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10 Some papers reported the man’s name as William Tussing. See the *Oracle*, 20 April, 1790.  

11 *Times*, 21 April, 1790.  

12 *Oracle*, 20 April, 1790.  

13 *Diary*, or Woodfall’s Register, 1 May, 1790.  

14 *Oracle*, 20 April, 1790. According to the report in the *Diary*, or Woodfall’s Register, even Smyth’s husband was skeptical of his wife’s ability to correctly identify her attacker. He “entreated her, as he had often done before, to be extremely cautious, and if there was a shadow of doubt or uncertainty in her mind, to say nothing against the man; but she declared that she was clear and certain” (1 May, 1790).
Tussin seemed “very unlikely to be the person.” The magistrates seem to have agreed, if only reluctantly. Rather than committing him for trial, Tussin was released on £400 bail, an enormous amount of money in the eighteenth century, even for a “person of business,” and a sum which the Times the next day argued was “no doubt excessive.” Magistrates could refuse bail if they feared the accused might flee, or if they wished to underline the serious nature of the charge. But in this instance, given Tussin’s “exceeding good character” it was more likely that the large bail amount was intended as a general comment on the heinousness of the attacks.

Following Tussin’s release, others were suspected of being the Monster. One unnamed man apparently known to the authorities, and who “on a former occasion appeared in a suspicious light before the public” was taken up near Devonshire House by the “runners” of Justice Reid’s Office, in Poland Street.” He was kept overnight in a watchhouse but was released when none of the female victims appeared against him. The Times and others criticized “The Runners, who no doubt had the large reward in their eye.” The paper called for the prosecution of the runners for wrongful arrest, “for though the person has appeared before the public in a suspicious point of view, he certainly by no means answers the description of the Villain advertised.”

Despite such condemnatory words, the Times was seemingly oblivious to the effects of promoting the hefty rewards and the potential for future false arrests. The very next day the paper warned that since “the person who has assaulted and wounded so many young women, may lodge at a home where only one maid servant is kept, who not being able to read, may probably be ignorant of the reward offered for his apprehension,” it was recommended “to all tradesmen, servants, and bakers men in particular” to spread the word of a reward for the Monster’s apprehension.

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15 Oracle, 20 April, 1790.
16 Times, 21 April, 1790.
17 On bail, see Beattie, Crime and the Courts, 281-3.
18 Times, 21 April, 1790.
19 Times, 22 April, 1790.
**Official Actions**

On 29 April, the Bow Street police office issued a notice of its own reward of £100 for the commitment and conviction of the person matching the following description:

HE appears to be about 30 Years of Age, of a middle Size, rather thin made, a little Pock-marked, of a pale Complexion, large Nose, light brown Hair, tied in a Queue, cut short and frizzed low at the Sides; is sometimes dressed in black, and sometimes in a shabby blue Coat, sometimes wears Straw coloured Breeches, with half Boots, laced up before; sometimes wears a cocked Hat, and at other Times a round Hat, with a very high Top, and generally carries a Wampee Cane in his Hand.²⁰

Domestic servants and others in service trades were called upon especially to aid in the detection of this offender. Servants were advised to take special note “if any Man has staid home without apparent Cause, within these few Days, during Day light.” And “all Washerwomen and Servants should take Notice of any Blood on a Man’s Handkerchief or Linen, as the Wretch generally fetches Blood when he strikes.” Servants, even those unfamiliar with particular weapons, were not to be excused from the investigation, being especially instructed to examine whether the men they knew carried sharp weapons of any kind. As well, they were to check “if there is any Blood thereon, particularly Tucks; and Maid Servants are to be told that a Tuck is generally at the Head of a Stick, which comes out by a sudden Jerk.” Finally, cutlers were requested to report any man “answering the above Description [who] is desirous of having his Weapon of attack very sharp.”²¹

Despite the widespread attention that the Monster’s outrages had attracted, it seemed to one commentator, in retrospect, that rather than putting the “horrid wretch” off, the publicity that was generated only served to provoke him: “The public offer of rewards, in large posting-bills on every corner of the streets, by some benevolent, humane, and active members of the community, for their discovery and apprehension of these ruffians seemed only to stimulate and increase the audacity and

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²⁰ *Public-Office, Bow-Street, Thursday, 29th April, 1790* (Broadside, BL, L.R. 301.h.3).

²¹ BL, L.R. 301.h.3. A “tuck” is defined as “a slender, pointed, straight, thrusting sword; a rapier.” A “tuck cane” is a cane in which a tuck or rapier is carried, serving as its sheath (O.E.D.).
number of their sanguine outrages.” On 3 May, the Times reported that two ladies were attacked in Leadenhall Street “on Friday Last [i.e. April 30].” If perpetrated by the same person, then the assaults were now occurring in diverse parts of the metropolis. Those concerned with the case began to turn their attentions to the locations of the attacks. On 7 May, a poster warning of assaults on women committed in Vigo Lane, Conduit Street, Marybone Street, and in Holborn was distributed. Angerstein published an advertisement with a new description of the clothes worn by the Monster, but which also expressed the growing fear that these attacks were not the work of a lone individual: “there is great reason to fear that more than ONE of these WRETCHES infest the streets.”

Also on the same day, in another development that was not atypical of the eighteenth century, a number of local residents decided to take the responsibility for apprehending the offender into their own hands and formed a private prosecution association. They had their own posters printed, advertising the creation of their association and soliciting contributions from those residents of the parish of St. Pancras dedicated to the apprehension of the ‘Monster’. (Figure 5.1 is reproduced and the end of this chapter.) Historians have noted the creation of such prosecution associations in other regions, but they have found that they were usually formed with the intention of providing resources to subscribing members in order to cover the cost of prosecutions in case of any offence or in case of particularly serious offences like horse-theft. The St. Pancras association was therefore unique in that the subscription was collected for the apprehension of one offender only. Such organized private policing may have been spurred in part by vigilantism but points, more

22 Authentic Account, 33-34.
23 Broadside, 7 May, 1790 (BL, L.R. 301.h.3).
24 Cited in Authentic Account, 96.
significantly, to the shortcomings of the authorities in their ability to detect and prevent such crimes and to control violence in public spaces.

The implication behind the sudden appearance of this association is that behaviour such as that perpetrated by the Monster was clearly beyond the range of what might reasonably be expected in the streets. Certainly the fact that it was a man attacking women with a weapon excited particular opprobrium, and that the women were fashionable, genteel, and attractive (or so they were described in the press) reveals another layer of class anxieties about the control of undesirables. Moreover, the Monster's crime was "highly aggravated by the manner in which it [was] committed, by the most sudden surprise, upon Females, when unsuspecting and off their guard, and with an unknown weapon of an uncommon sharpness that seems to have been prepared for the inhuman purpose."26

And since the local authorities were clearly inadequate to the task of policing their localities, the members of the prosecution association took it upon themselves to monitor the genteel space on the outskirts of London's fashionable West End that was now being threatened by a violent offender.27 "Female Safety and the Public Peace" were thus to be "faithfully" protected by the subscribers who, as well as contributing 2s 6d to the cause, pledged to

nightly patrol the streets of the South Division of St. Pancras from half an hour before sunset till Eleven at Night for the Public Safety and especially to guard that Sex which a Monster or Monsters in opposition to the Dictates of Nature and Humanity have dared to Assault and wound with wanton and savage Cruelty.

26 Authentic Account, 4-5.
27 St. Pancras parish was expanding rapidly at this time. Between 1776 and 1831, the population swelled from around 600 to over 10,000 (Christopher Trent, Greater London: Its Growth and Development through Two Thousand Years [London: Phoenix House, 1965], 125). The area of London where Ann Porter was attacked had been a respectable neighbourhood, and increasingly so, since the early Stuart period (R. Malcolm Smuts, "The Court and Its Neighbourhood: Royal Policy and Urban Growth in the Early Stuart West End," Journal of British Studies 30:2 [April, 1991]: 117-49. According to Judith Walkowitz, "by the early nineteenth century, the West End came to stand for Society," so must have been well on its way to "respectable space" by the time the Monster was on the loose (Judith R. Walkowitz, "Going Public: Shopping, Street Harassment and Streetwalking in Late Victorian London," Representations 62 [Spring, 1998]: 1-30, quote at p. 22, n. 4).
Through their efforts, they hoped that “the Monster or Monsters will either be quickly driven from these horrid and unnatural acts or detected and brought to condign Punishment.”

As a final point, it is interesting to note that although women have been singled out as in need of extra protection, there is no suggestion that that the women who had been attacked were victims because they had strayed from the safe, respectable, and female confines of hearth and home. There is no implication that anyone but the Monster or Monsters should be removed from public space, which is certainly in contrast to later constructions of violence and public space in the nineteenth century.

**The Rise and Fall of Monster Mania**

The most telling sign that the Monster had been absorbed into the contemporary popular culture was his satirization in song and verse. For many weeks before a suspect was captured, a successful entertainment was performed at Astley’s theatre in London, entitled “The Monster: or the Wounded Ladies.” Like the story of the mysterious offender himself, Astley’s rendition of the case employed the newspapers to stir public interest. Astley took the case on with true entrepreneurial gusto, announcing his new performance in various papers: “This, and every Evening this Week, a New Musical Piece, called The MONSTER; or The WOUNDED LADIES.” The entertainment was celebrated for performing a great public service, and received universal acclaim from the public and the press. The *Morning Herald* commended Astley both for his business acumen in capitalizing upon a topical issue, but also for having “taken up the matter very seriously.” The *Times* commended Astley for his *au courant* entertainment savvy and commented that “by exposing the villain in so public a manner, proves Astley’s great attention in endeavouring to discover this horrid wretch, who is completely painted in his proper colours in the last scene of the piece.” Ironically, the legal

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28 Broadside, BL: L.R.301.h.3, f. 47AA. The names and addresses of fifteen paid subscribers, including one woman, are
paradox on which the case against the prime suspect would eventually falter was intimated in one concluding chorus which alludes to the two key statutes concerning assault:

When the Monster is taken in the fact,
We'll have him tri'd by the Coventry Act,
The Black Act,
The Coventry Act.²⁹

The irony of this stanza would not be revealed until a suspect was caught and charged, and the shortcomings of the two statutes were laid bare. In the mean time, however, the crowds at Astley's theatre were greatly amused. The house was reportedly “crowded every night, and Astley never hit on a more popular subject.”³⁰ The piece seems to have excited considerable emotion in the audience, too. At the conclusion of the performance, the Times reported, with more than touch of self-conscious hyperbole, “every breast pants for his destruction, knowing well that such a cowardly monster merits every mark of public detestation.” Perhaps as a publicity stunt, or perhaps being moved by the intense public anger, it was reported that during the final scene at one of the first performances that

a sailor actually jumped out of the gallery, with an oak stick in his hand, to give the monster a good drubbing, which would have been the case had not the curtain dropped so suddenly. The applause from every part of the House was unbounded, and we have only to regret that the monster escapes justice so long; however, Astley, by thus exposing him, may drive him from his hiding place.³¹

The Times cheered the production on, lamenting (and punning) that “it would be monstrous, indeed, if the MONSTER is not apprehended after so much monstrous doing.”³² But such levity quickly drew criticism that the case was being exploited. Some attempt to appease those who questioned the propriety of Astley's production was made by reporting the following interview:

³⁰ Morning Herald, 27 April, 1790.
³¹ Times, 28 April, 1790.
³² Times, 30 April, 1790.
A Gentleman last night, speaking about the propriety of exhibiting the MONSTER; ASTLEY replied, Sir, by exposing him so publicly on [my Theatre it may lead to a discovery, and you see, said he, pointing to the Boxes what an assemblage of fine women are come to see him, which I conceive to be of the utmost consequence to any Theatre, for wherever the Ladies are, the Gentlemen will surely follow—you are perfectly right replied the Gentleman, for I can see no corner but what is crowded.33

Not to be outdone, Astley’s competitors soon jumped on the band wagon and, on 11 May, at the Drury Lane Theatre, a monologue “entertainment” entitled The Monster Discovered was performed by an unknown speaker.34

With such attention to the case and the growing media excitement, the public officials who were seen to be responsible for preventing such outrages—especially the magistrates and their “runners”—were coming under mounting pressure to make an arrest. The magistrates and constables of the Bow Street Public Office were put on special alert, and other magistrates were swept up in the public anxiety about the case. Some private citizens were attracted to the rewards, which contributed to the arrest of Tussin and others. But after Tussin proved to be the wrong man, and with no other suspects in custody, the critical gaze of polite society returned to the streets in search of new suspects. Since half of one reward was being offered only for the commitment of the offender, it was inevitable, according to one contemporary chronicler, that “a number of innocent men of different descriptions and characters were carried before the magistrates, and immediately discharged upon their persons not being identified.” The same author also noted (ironically) that “it became dangerous for a man even to walk along the streets alone, as merely calling or pointing out any person as THE MONSTER, to the people passing, was sufficient to endanger his life.” Women became suspicious of all men they met in the streets, and “gloomy jealousy and dark distrust appeared on every female brow.”35

33 Times. 7 May, 1790.
Even suspected offenders brought in on completely unrelated charges were accused of being the Monster. When Walter Hill was brought before Mr. Justice Hyde in Litchfield Street on 4 May, for having allegedly obtained money under threats and false pretenses, he was also accused of having attacked several women "in the manner as has been frequently described." One woman was brought before the magistrate to identify him as her attacker, and "was so much alarmed, that when the man appeared she fainted, though she declared she could not swear to his person, but suspected him to be the man that had wounded her." The Hill's house was searched and a number of articles of clothing that fit the various descriptions given by the other victims were found, which, along with other "suspicious circumstances" persuaded the authorities to commit him to the New Gaol at Clerkenwell to be re-examined the next day.

But the newspapers and the stage were not the only literary genres for exposition on the Monster. There was at least one example of poetry published at the height of the Monster craze. Entitled "Advice to the Ladies," it is ostensibly a warning to beware of the monster. But the poem also carries a distinct moral message, implying that the women victims might have been in part responsible for provoking the attacks:

So dreadful is the Monster grown,
To all the Ladies in the town,
Each strives to hide each lovely trace,
That decks a youthful beauty's face:
Conceals beneath the swelling vest,
The dazzling whiteness of her breast:
Bids the deep veil in many a fold,
Protect them from the gazer bold,
And lest their graces still should charm
The Monster to uplift his arm
They teach their faces to disclose
The crimson of the damask rose.
Not such as modest maidens wore,

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36 Times, 10 May, 1790.
37 The General Evening Post (London), May 8 to May 11, 1790.
38 Times, 10 May 1790; Ibid.
39 Anonymous author, printed in the Diary; or, Woodfall's Register, 11 May, 1790.
In foolish blushing days of yore:
Not such as timid virtue speaks,
Adorns the modern beauty's cheeks.
Expressive of her fears and ire,
She daubs her face as red as fire;
While o'er the brows, her tweezers gave,
The martial helmets proudly wave:
As signals of a bold defiance,
To prove defence no vulgar science.
But ah! beware ye fair to meet,
The dreadful Monster in the street,
Lest conscious of your just pretensions,
He jealous prove of your intentions:
And well convinc'd how true your claim,
For his of late distinguished name,
Fir'd by revenge and cruel rage
Against you, war he still may wage.
So your expedients may be in vain,
And the deception prove your bane.
Perchance, 'neath the fictitious hue,
He'll hail a Monster's form in you!

The misogynistic view of the female temptress enticing her attacker, only to charge him later with a form of rape, out of "revenge and cruel rage," remains a familiar aspect of rape and sexual assault cases and seems to lie very close to the surface of this poem.

The conflation of sex and violence led some to draw further upon the pornographic undercurrents of the case; in particular, in two sketches by James Gillray from May 1790. In one, a slathering, almost vampire-like Monster is depicted with a knife and fork in hand, about to tuck in to a curvaceous young woman, who bends before him exposing her buttocks. In the second print, entitled "Spearing to the Cutting Monster, or a Scene in Bow Street," the magistrate and others ostensibly examining a suspect at the bar are instead gazing lecherously up the female deponent's dress while she is perched atop a stool. The case clearly excited more than just alarm about the
violence of the attacks. The victimization of all women by lecherous male “monsters” of every stripe is at least suggested by these prints, even if such notions were not entertained elsewhere.

Besides musical entertainments, bad poetry, and pornographic prints, there was no shortage of witty remarks, bad puns, and double entendres which played on the case’s notoriety. The *Times* applauded the success of the Monster musical, cheering “Go on, ASTMEL—we wish you success, and that you may continue to have monstrous houses.”

Indirect references to the case were made too. In a reference to a piece of legislation then before the house to alter the nature of the death penalty in cases of petty treason and coining, the *Times* quipped “That Bill for preventing the burning of women is a monstrous good one,—will not be disputed by the friends of the sex—yet, at the same time it cannot be supposed the Monster had any hand in it!”

As with other panics, public attention and interest in the Monster case dissipated almost as quickly as it had arisen. By late May, the furore over the Monster had largely subsided. England was preparing for the possibility of war with Spain and public anxiety was soon focused elsewhere.

One report in the *Public Ledger* of 21 May went so far as to claim that the Monster was a hoax, and that “there can be no doubt in the mind of any man, who has considered and examined the subject, that the whole is a mistake from beginning to end.” The editors were of the opinion that the culprit

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40 Gillray alluded to the Monster in a later print officially entitled “A Peep into the Shakespeare Gallery.” The title on the print, however, contains the words “The Monster broke loose.” Those words were scratched out by Gillray with a pen, but not so much as to make them illegible. The print is an attack on Alderman Boydell whose private picture gallery was vandalized in 1791 by someone who slit a number of pictures. Boydell’s enemies suggested he had cut them himself in order to excite public sympathy. Gillray’s print depicts Boydell with a large knife in his hand, cutting the pictures. The voice bubble above his head reads: “There! there! there’s a nice gash! There! This will be a glorious subject for to make a fuss about in the newspapers; a hundred guineas reward will make a fine sound. O, there will be fine talking about the Gallery, and it will bring a rare sight of shillings for seeing of the Cut Pictures—There, and there again.”


41 *Times*, 30 April, 1790.

42 For a discussion of this bill, and the sentence of burning for women, see chapter 7 below.

43 The author of *An Authentic Account* suggests that the activity of the press gangs in searching for sailors in anticipation of the war with Spain may have frightened the Monster from his usual pursuits; see *Authentic Account*, 105-6. The *Times* reported, on 13 May 1790, that “the press goes on with such alacrity that we shall have our ships completely manned.”
was merely an inexperienced pick-pocket who was trying to cut the pockets from the ladies’ clothing in bungled robbery attempts. On that belief, he Public Ledger went so far as to declare the Monster “a direct and unqualified falsehood” asserting further “THAT THERE NEVER DID, AND DOES NOT NOW EXIST A MONSTER, OR MONSTERS, OF THE DESCRIPTION GIVEN TO THE PUBLIC.” A few days later, however, the paper was backpedaling, attributing the earlier denials of the existence of the Monster to “a correspondent” and declaring that they now felt it “necessary to retract the assertions then made.” This retraction was occasioned by protests that the reliability of the stories from the female victims were unreliable. In response, Dr. Smyth, whose wife was the first reported victim, contacted the Public Ledger who later stated that it was this correspondence with them which “induces us to doubt the authenticity of that article.”

By early June, the immediacy and shock of the crimes themselves had waned to such a point that pundits and jokesters now considered it safe to reconstruct the Monster in new, less threatening ways. Having gone undetected for some time—at least enough time for the perpetrator’s crimes and the resulting furor to be appropriated by other voices within the public sphere—the Monster began slipping into parody. An example of how quickly things had changed in this respect comes in a broadside that appeared sometime in early June, insinuating that the attacks that the women had experienced were mere fabrications. The suggestion is that the stories were the work of the publicity-seeking writer Philip Thicknesse, a well known contemporary author and eccentric:

The Monster.

MR. ARGENSTEEN, takes the earliest opportunity of informing the Nobility and the Public, of the MONSTER’S re-appearance in Town on Friday last June 4th. He is dressed a Scarlet Coat, wears a prodigious Cockade, and bears in every respect a Striking Likeness to that much respected Character, PHILIP THYCKNESS, Esq.

He has already frightened a Number of Women and Children; made several desperate attempts upon different Noblemen; and, has attempted to cut up his own Children.

Since his last arrival in London, he has assumed the name of Lieutenant Governor GALLSTONE; and, as it is strongly suspected that his present Journey to Town, is in Order to

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44 Public Ledger, cited in Authentic Account, 101-105.
devour all Editors of Newspapers, Book-sellers, Engravers and Publishers of Satiric Prints, and every other Person who has dared to arraign his Conduct, the Public are cautioned to be upon their Guard.

N. B. The Reward for his Apprehension still remains in its full force.45

Although by early June the furor had died down, Angerstein, who had put up the initial reward, was still being criticized for not producing a suspect despite the posters, the rewards and the public attention excited by the case. Even Angerstein’s friends “would sometimes joke and banter him very freely upon the subject; which indeed they were too well enabled to do on rather tenable grounds, from the inefficiency of such arduous and laudable exertions.”46 Within a fortnight, however, the case would break wide open.

On 13 June, Ann Porter was strolling in St. James’s Park with her mother, two sisters and a friend named John Coleman when, to her great surprise, the man who had attacked her in January passed right by her. The man hesitated a moment to look at her, whereupon she recognized him immediately, “became very agitated” and told her companion “the wretch had just passed her.” Coleman immediately followed the suspect, who “walked exceedingly fast,” presumably trying to lose him. The suspected man took a very circuitous route, but Coleman stuck close to him and attempted to draw his attention by doing “every thing that laid in my power to insult him, by walking behind him, and walking before him, looking at him very full in the face, and making a noise behind him; I used every act I could to insult him; he would not take any insult.”47

Along the way, the man knocked at a few doors (one of which was to a clearly abandoned

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45 Broadside, BL: L.R.301.h.3, f. 47Aa. Philip Thicknesse was a rather infamous figure. Besides a career in the army, Thicknesse was a prolific writer. In 1762 he lost a libel action to Francis Vernon (later Lord Orwell) for which he was imprisoned and fined £300. He published a number of travel accounts and essays, including one in 1789 entitled “Junius Discovered” in which he claims ‘Junius’ to be Horne Tooke. The broadside’s reference to “Lieutenant Governor Gallstone” recalls a pseudonym Thicknesse had used in a letter to John Crookshanks, and also references a caricature of him by James Gillray (D.N.B., s.v. “Thicknesse, Philip”). Also on Thicknesse, see Edith Sitwell, English Eccentrics (London: Dennis Dobson, 1958), 165-184.

46 Authentic Account, 106. On Gillray’s print, see Wright and Evans, Historical and Descriptive Account, 33.

house) and was finally let in at the house of Mr. Smyth (no relation to the earlier victim) in South Moulton Street. Coleman testified that by this point, he had resolved “that the next house he came to [he] would follow him in.” At first Smyth denied Coleman entry, but he eventually relented and introduced Coleman to Renwick Williams who was seated “in the dark, in the front parlour.”

Coleman asked to have Williams’s address, but Williams demanded a reason for it first. Coleman, by this point a little flustered by the events, confessed “I did not know what reason to assign; I was a little agitated; I did not like to say, Sir, you are supposed to be this Monster.” He therefore charged Williams with insulting some of his female friends. He said to Williams, “I was walking in the Park with one of the ladies, and she had pointed [you] out to me, and that as far as lay in my power I would have satisfaction for the insult.” Williams told Coleman that he lived at No. 52 Jermyn Street and, at first, Coleman was satisfied with this information and left. However, he soon thought better of leaving Williams and returned to him as he made his way up St. James’s Street. Coleman testified, “I overtook him in Piccadilly, near the top of St. James’s-street; he said to me we meet again; I said, yes, we do meet again; . . . I said, good God! Williams, I do not think you are the person I took you for; if you will give the ladies an opportunity of seeing you this evening it will be better.” Williams protested briefly that it was late, but upon being convinced that it was close by, accompanied Coleman back to the Porter residence. Coleman noted that when they reached the house, Williams recognized it as the Porters’s. Coleman then invited him to enter. Coleman’s testimony continues the story:

[Coleman] I introduced the gentleman to the ladies in the parlour, and two of the Miss Porter’s[6] immediately fainted away; that was Miss Sarah Porter, and Miss Ann Porter, exclaiming “oh my God! Coleman, that is the wretch.”

[Mr. Shepherd] Did you say any thing when you introduced him?—No, Sir.

Before they exclaimed in this way, and fainted away, had you particularly pointed him out as the man, or had you only introduced him into the parlour?—No; I desired him to walk in.

48 Counsel for the prosecution.
... Did he say or do any thing when the Miss Porter's cried out, that is the wretch?—He said, the ladies' behaviour is extremely odd; he said, good God! they do not take me for this person, about whom there has been so many publications? I answered, it really is so, Sir; I do not recollect he made me any answer to it.

... Court. What answer did he give, or did he give any when you said it really was so?—I do not think he said any thing; I cannot say; I did not make any particular observation.49

A constable named Patrick McManus was summoned, and Williams was brought to the Bow Street public office. The female victims were once again summoned to identify their attacker. Once again, we learn that, during the identification procedures, the magistrates took some efforts not to frame the suspects. In fact, "great care was taken to give the prisoner the benefit of not being charged upon slander, or assisted evidence; for he was in the yard behind the office, in the midst of a vast crowd of persons: but both Miss Wheeler and Mrs. Forster pointed him out without the least difficulty or hesitation." Sarah Porter later testified too that when she was taken to Bow Street, "Sir Sampson Wright desired me to look round, and I pointed [Williams] out directly."51

The examination of the infamous suspect apparently attracted an unusually celebrated audience. Attending the preliminary examination were the Duke of York, the Duke of Cumberland, the Duke of Hamilton, Lord Beauchamp, Colonel Fitzpatrick, the Earl of Essex, "and many other men of fashion."51 There was also a large crowd assembled outside of the office, thirsty for revenge:

never did we apprehend more fatal effects from the misguided zeal of honest indignation in the populace than on the present occasion; they certainly were tragically inclined...it was with the utmost exertion, and greatest difficulty that the officers preserved from destruction, not only the prisoner, but the coach also in which he was carried!52

50 Ibid., 588.
51 Authentic Account, 120; OBSP, "The Monster," 584.
52 Authentic Account, 120.
According to one commentator, the crowd was so furious that "the Magistrates were under the necessity of keeping him in their office till a late hour at night; when the mob dispersing, he was conducted under a strong guard to Newgate."  

Reconstructing the Monster

Once a suspect was in custody, the case moved to a new level of public discourse. In an attempt to satisfy popular anxiety about the violence of the offences and to restore trust in the official organs of law enforcement, especially following their long delay in apprehending a likely suspect, the public press set about re-constructing Williams into a suitable "other" as part of his criminalization. This reconstruction followed three distinct themes, and began with the subtle sexual emasculation of his character in descriptions of his past history and present occupation which appeared immediately following his arrest. During the course of the trial, as more of the facts about his present life and employment were revealed, the feminization of Williams was also coupled with a tinge of xenophobia as it became clear that he was intimately involved with foreigners, specifically Frenchmen. Finally, the press began to cast him, perhaps unwittingly, as a kind of "sexual psychopath" (though the terminology had not yet been developed), a century before the crimes of Jack the Ripper would come to light.

When Williams was first apprehended, early reports claimed the accused was originally a Dancing Master, but was now in the business of artificial flower making. Indeed, at some point during the 1780s, Renwick Williams was sent to London and apprenticed to Sir John Gallini to

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55 The Diary; or, Woodfall's Register, [717 June, 1790] clipping located in BL, L.R.301.h.3. The date assigned to this clipping in the British Library scrapbook (i.e., 28 April, 1790) is almost certainly incorrect.
become a professional dancer, but was dismissed from this apprenticeship after being suspected of stealing a watch. He subsequently "led a very loose life" until he was taken on temporarily as a lawyer's clerk, and then more permanently by Amarel (a.k.a. Aimable) Mitchell of Dover Street, Piccadilly, an artificial flower maker.  

These details, when coupled with the fact of his blatant, unmanly behaviour in assaulting women, must only have combined to cast a pall over Williams' own masculinity. In his discussion of homosexuality in the eighteenth century, Randolph Trumbach argues that descriptions of the sub-culture always emphasized effeminacy. And though a tailor might not be cast in such a light, the more specific trades of dress making, flower making, and dancer might well be combined in a popular image of a particular sexual typology. Certainly, from the reconstruction of the case in the contemporary trial accounts, pamphlets and newspaper stories, the image of Williams that was being projected to the public was one of an effeminate, yet violent offender—one who was a threat to all women—and one who consorted with foreigners.

On 17 June, Williams was brought back to the Public Office at Bow Street where he was informed that the charges against him had become more serious. Despite the well-known refrains of Astley's popular entertainment, it seemed that the magistrates had not at first considered the possibility that Williams had committed a felony. Nevertheless, as the General Evening Post explained, "though there are grounds sufficient to bring him to a trial, [the suspect] can neither be prosecuted on the Coventry or the Black Act; for though both these Acts go to maiming, they, being penal statutes, require that offences should be literally such as they set forth." As discussed in chapter 2, common assault was a misdemeanour only; thus the authorities were hard-pressed to find an offence with

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58 Gerald Newman also argues that in the later eighteenth century, the manner in which the French, as a nation, were portrayed by the English was "feminized" in order to emasculate perceptions of French power (Rise of English Nationalism, passim).
59 General Evening Post, June 15 to June 17, 1790.
which to charge Williams that matched not only the severity of the crime but, more importantly, carried a punishment that would satisfy the popular outrage occasioned by the "daring and atrocious nature" of the assaults. The use of a weapon, in this case a particularly sharp knife, was seen by many as the element of the attack which was most offensive, especially since it was used on young women. But since Williams was not lying in wait for his victims, he could not be charged under the Coventry Act. Indeed, as we have noted, and as other witnesses confirmed, their attacker usually made himself known to them and followed them in the street for some time before executing the attack. The other well-known eighteenth-century statute, the Black Act, pertained to going armed while under disguise and to malicious shooting, so that statute was not obviously applicable either.

Upon reviewing the case, it appeared to the magistrates that Williams could be brought up on the more serious charge of feloniously cutting another's clothes. A statute of 6 Geo. I made it a felony to "willfully and maliciously assault any person or persons in the publick streets and highways, with an intent to tear, spoil, cut, burn, or deface, and shall tear, spoil, cut, burn or deface the garments or cloaths of such person or persons." Since the penalty for that offence was transportation for seven years, a conviction under that statute held out the possibility of a punishment more adequate to the crimes committed than anything the magistrates could hand down at quarter sessions for a misdemeanour charge. In the end it was decided to charge Williams with the assault on Ann Porter and the other victims under that statute. Williams was brought before the Bow Street magistrates on 17 June, and informed "that his situation was materially altered; that, on the examination the preceding day, the Bench were not aware he (if guilty) had committed FELONY, and, consequently, the parties had only been bound over to prosecute for the assault; but they had since found a clause, which renders the person so offending guilty of Felony." Five of

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60 6 Geo. I, c.23, s. 11. As a public service, the General Evening Post printed "a correct copy of the clause in the Act of Parliament on which Renwick Williams, commonly called 'The Monster' is to be prosecuted." (June 19 to June 22, 1790). 61 Times, 18 June, 1790.
the victims (Ann Porter, the Baugham sisters, Ann Frost, and Elizabeth Davis) were then bound over to prosecute the felony, and Williams was committed to prison to await his trial at the Old Bailey. If found guilty on all counts, he could be sentenced to transportation for thirty-five years.

The First Trial

Renwick Williams’s first trial began on 8 July 1790 before Justice Buller at the Old Bailey, for the willful and malicious assault on Ann Porter and specifically with the felonious intention of tearing and cutting her garments. The prosecution was led by Arthur Piggott, with Samuel Shepherd and Mr. Cullen assisting, while Williams was defended by Newman Knowlys. In Piggott’s opening address, according to later reports, he outlined the “novelty” and “enormity” of the crime, “which he painted in very elegant language.” He began by summarizing the facts of the case, but did not miss the opportunity to preface his summary with a rather pointed commentary on the character of what he styled this “unnatural, unaccountable, and until now, unknown offence.” Although, as Piggott stated, the prisoner deserved a fair trial, the offence with which he was charged was itself deserving of the utmost scrutiny, as it afforded “a melancholy lesson to our nature, and teaches us not to be too confident of the impossibility of any event, on the principle of its appearing to us to be out of nature.” That unaccountability was particularly disturbing, he stressed, unless the attacker was “impelled by some impulse which cannot be explained.” But since no such defence would be made, and since the accused had acted “apparently and visibly, without a motive for the commission of the deed,” it was nearly impossible to fathom how anyone could make such a

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62 *The Lawyer’s and Magistrate’s Magazine* 1 (July, 1790), 393.
63 OBSP, “The Monster,” 582.
64 *New Lady’s Magazine*, 372; *Annual Register* 32 (1790), 264.
"wanton, wilful, cruel, and inhuman attack upon the most beautiful! the most innocent! the most lovely! and perhaps I shall not trespass upon the truth, when I say the best work of nature!"65

Following this hyperbolic preamble, Piggott summarized the facts concerning the assault on Ann Porter, and then concluded his opening remarks with an attack of the alibi defence, which Williams’ lawyer was expected to make. “Whenever that alibi makes its appearance,” he told the jury, “your experience of the world, your knowledge of business, and of human affairs, will, I dare say, have taught all of you long since, that it is either the best or the worst defence in the world.”66 Piggott, of course, intended to prove that in this case Williams’s alibi was far from airtight.

According to the testimony offered at the trial, the assault on Ann Porter followed on an earlier exchange with her sister Sarah. Sarah testified that Williams had “followed me, and talked to me” in the street at least four times before the attack on January 18. On those occasions, she said, he walked “close behind me, with his head quite leaned over my shoulder, and talking the most dreadful language that can be imagined.” Then, on the night of the ball, she saw him again at the foot of St. James’s Street. Upon spying her as the Porter party passed him on their way home, Williams “started round, stared in my face, and looked again, and said, oh! oh! and instantly gave me a violent blow on my head, the back of my head.” That first attack was what prompted her to call to her sister to hurry along; she said “Nancy, for God’s sake make haste, do not you see the wretch is behind us; a name we always distinguish him by.”67

Ann Porter, the key witness for the prosecution, related a similar story, adding that after running to catch her sister and Mrs. Mead she reached the stairs of her house, when “just as I was passing the corner of the rails I felt a violent blow on my hip; I turned round to see from whence it

66 Ibid., 584.
67 Ibid., 587.
proceeded, and I saw that man stoop down.” “That man?” asked her lawyer, Mr. Shepherd, and indicating Williams. “Yes, Sir; that man.”68

In his cross-examination of the witnesses, Newman Knowyls tried to cast doubt on the Porter sisters’ testimony that Williams was not unknown to them. But Piggott and the other prosecuting attorneys pressed on with the issue of identity as it was one of the two pillars of Williams’ defence. Shepherd, for the prosecution, asked if Ann Porter had seen the man before the attack on her, and she stated that she had encountered him “in the middle of the day” in the company of her sisters: “he insulted me and my sisters with very gross and indecent language; he walked behind me and muttered.” Shepherd pressed her—but only slightly, to protect her modesty—to expand on the “sort of language” he used. “Very gross, and very abusive,” she replied and said it had happened on three or four occasions. Against the objections from Knowyls as to the admissibility of the evidence, the other sisters, Rebecca and Martha Porter, confirmed what their other two sisters had stated and both testified that on previous occasions they had been with Ann and that the accused had accosted her, as Rebecca put it, with “The most horrible [language] I ever heard in my life.”69

Knowyls’ cross-examination of the witnesses also concentrated on the precise time of the attack, and upon the identity of the alleged attacker. Since the defence was going to argue that Williams was working late at his employer’s house on the night of the attack, the timing of their departure from the ball was crucial. Ann Porter testified that it was “exactly a quarter past eleven” when she was attacked, as she had checked her watch upon leaving the ballroom.70 Williams’ employer claimed he did not leave until half past midnight but under cross-examination from Piggott, it became clear that he was relying on the word of one of his servants as to the exact time.

68 Ibid., 585.
69 Ibid., 585, 588.
70 Ibid., 586.
After the Porter sisters confirmed Williams's identity on both the night in question and on prior occasions, John Coleman was called to explain how he had apprehended Williams following the encounter in St. James's Park. His testimony was followed by that of the constable, McManus, who had been asked to search Williams's lodgings at the George public house. He did not find a weapon but did produce some clothing owned by the accused. The only other material physical evidence in the case was Ann Porter's gown and shift, which were both produced in court. Both items bore large rents in the right side. The value of this evidence was confirmed by a surgeon named Tomkins who had attended Ann Porter. He confirmed that he had examined the clothes, and offered the opinion that they had "certainly" all been cut at the same time with "a very sharp instrument." More serious still, Tomkins added that the stabs must have been made "with great violence" and added that Porter was fortunate that "part of the blow was below the bow of the stays; if not it would probably have pierced even the abdomen."72

The defence case began with Williams reading a prepared statement. He claimed he was innocent of the charges brought against him, but perceived (correctly) that he had already been prematurely convicted in the court of public opinion. "[M]y case has been multiplied in horror," he said, "though with submission I think, in comparison, far beyond even the sufferings of my accusers." And though he claimed he was content to experience the hardships I have suffered in the process of the law against me, till my innocence could be proved...yet I must reprobe the cruelty with which the public prints have abounded, in the most scandalous paragraphs, containing malicious exaggerations of the charges preferred, so much to my prejudice, that I already lie under premature conviction, by almost an universal voice.

71 According to the report of the case in The Romance of Crime (London, n.d.), 103, Coleman was a fishmonger in Piccadilly.
Aside from condemning the press, however, he offered no particular evidence to prove his innocence, and instead pledged to “cheerfully resign my case into the hands of this tribunal” leaving his fate “to the decision of an English jury.”

Knowlys was left to establish the credibility of his client’s alibi that he was at work during the time of the attack on Ann Porter. The alibi was confirmed by Amarvel Mitchell, Williams’s employer at the time. Mitchell claimed that Williams was asked to work late on the night of the attack, owing to a particularly urgent order for a dress to be made for a woman as well as a large commission from Ireland. He testified that Williams stayed at work until 12:30 a.m., a full hour after the alleged time of the attack. A number of other servants and employees also testified to Williams’s working past midnight.

In addition, at least a dozen other people came forward to speak to Williams’s character, among them a number of “very handsome women...[who] all gave him a most excellent character for good-nature, humanity, and kindness to the fair-sex in particular.” As in many eighteenth-century criminal trials, the issue of character was of paramount importance in establishing a moral and social universe within which to place the accused. Ostensibly “good” people, that is those with connections and relationships with persons of character and standing, were considered more likely to be successfully re-integrated into the fold of community life if their sentence was light. But those of poor character, without references, or who kept bad company, were more likely to be regarded as unstable, and less tightly controlled by bonds of community and neighbourliness. Such men and women, when convicted, were more likely to be punished harshly as examples of the incorrigible

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73 OBSP, “The Monster,” 593.
74 Presumably the artificial flowers were used to decorate the gowns.
75 Annual Register, 32 (1790), 267.
nature of mankind and of the wages of sin. Not surprisingly, the prosecution in this case did its utmost to paint Williams in the blackest possible colour. From his opening remarks, Piggott took care to describe Williams's living conditions and the company he kept. He described how the constable was sent to his lodgings to search for evidence, and "found out that he lodged at a very despicable public house in Bury-street, St. James...he lodged in a room in which there were three beds; and in which I think six men slept."

Further attempts to malign his character and undermine his credibility were made during the trial in order to construct a strong sense of "otherness" about Williams. During the trial, and in almost every published account of the case subsequently, there is at least some attention paid to William's foreign connections. Reports of the trial published in the OBSP, along with other pamphlets, made a point of mentioning that the key witness for the defence, Mr. Mitchel (Williams's employer), delivered his testimony in French with the assistance of an interpreter. Mitchel's sister, "who spoke in French also" noted one magazine was also called to testify on the defendant's behalf, to speak to his character. That the "foreign" element to Williams' case was perhaps crucial to the way popular images about him were constructed is supported by the persistent mentioning of it as somehow salient, even in late nineteenth century accounts. One nineteenth-century writer reminded readers who might have believed Williams' alibi that the "principal witnesses" for the defence were "foreigners" and "that, without any evil intention, they are more liable than others to mistakes."

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78 The Annual Register referred to him erroneously as "Mr. Michelle, [rather than Mitchel]a flower-maker," perhaps intending a double-edged slight on his masculinity too. Annual Register, 32 (1790), 266.

79 New Lady's Magazine, 376.

80 The Romance of Crime, 106.
The testimony being given, it was then Judge Buller's duty to sum up the evidence for the jury. Buller feared that Williams's fate had been fixed the moment he was arrested. As he stated to the jury, "to imagine or suppose that any body in this coruded[xit] audience, should not have heard of the great many very serious and atrocious injuries, which have been done to ladies in the neighbourhood of this place, would be absurd." He supported Williams's decision to trust his fate to the jury and to appeal to their sense of justice. "He has told you," said Buller, "that popular prejudice has prevailed much against him; and therefore he requested from your justice, that you will hear and consider his case with patience and attention, before you pronounce your opinions upon him." Buller further informed the jury that, should they find a guilty verdict, he had decided to reserve judgment for the opinion of the twelve judges on two grounds: first, "because this undoubtedly is the first prosecution that has ever taken place on the statute on which he is indicted" and, though Buller doubted not the intended interpretation of the law, "yet being a new case, I think that it is right that the opinion of all the judges in England should be known." The second point of contention concerned the statute upon which the indictment was drawn. Buller said he "entertain[ed] some doubts about the form, and the sufficiency of the indictment."81 In short, he was uncertain whether the defendant had been properly charged with committing an offence which was within the intent of the statute.

These questions, however, were substantively legal and, as Buller noted, should not concern the jury. Their duty was to decide on the facts of the case—whether or not they thought Williams was the person responsible for the crime under the statute. And if they believed he was the culprit, they were also to consider whether they thought he intended to "cut, tear and spoil" Ann Porter's garments, as the statute stated, as well as to wound her. Given the testimony in the case, and following Buller's instructions to the jury and his obvious doubts regarding the applicability of the

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statute, these were ambiguous issues—significantly ambiguous, at least, to cause reasonable doubt in the mind of the most senior legal authority present. Nevertheless, the jury found Williams guilty.

Buller, an experienced and respected judge, was unwilling to sentence Williams given both the unique qualities of the case, and his reservations about the form of the indictment. He therefore ordered judgment to be suspended. The recognizances binding the parties were respited until the following December sessions of the Old Bailey, and the case was ordered to be sent to the twelve judges. In the interval between the trial at the Old Bailey, and the decision of the twelve judges, all of the questions surrounding the Williams case were revisited in the public forum. On at least two occasions, for example, the City Debates society considered the issue both in the particular and in the abstract. On 12 July, the society considered the question ‘Did the late extraordinary Conduct ascribed to Rynwick Williams (commonly called the Monster) originate in an unfortunate Insanity—a diabolical Inclination to injure the Fair Part of the Creation—or in the groundless Apprehensions of some mistaken Females?’ This was a curious point of debate, given that during the actual trial there had been no attempt to argue as a defence strategy that Williams was insane. Nevertheless, the Daily Advertiser reported that, on this question, the debating society determined that Williams’ actions were inspired by “a diabolical inclination.”82

Of course, it is entirely possible that Williams was indeed mentally disturbed. The attacks themselves seemed almost random and were not provoked by any personal or immediate circumstances, such as an altercation or attempted robbery. None of the victims claimed to know Williams, other than as their attacker. A number of his victims did notice his rather odd behaviour, and some reported that he had followed them on previous occasions, all the while mumbling obscene and indecent language. Defence witnesses, however, reported that Williams was of a

"genteel nature," and even Coleman, who apprehended Williams after the encounter in the park, testified that he thought he knew him from some place and that perhaps they had met at a ball. Even those who suspected him did not think it unusual or out of character for this man to be seen among polite company. Despite his meagre lodgings he was not obviously out of place among his victims. Accounts of his trial noted his eloquence, and his defence was styled "a splendid and numerous auditory" in one pamphlet. This bi-polar description of his nature may indicate a personality disorder. Perhaps he suffered from a sexual pathology against women and was, in fact, an early-modern stalker. One defence witness, Thomas Williams, claimed he was "perfectly astonished" when Williams was accused, testifying that "he always thought he liked the ladies too well!" In any case, such medical conditions were not introduced either as a defence or as mitigating circumstances in either of his trials.

Once it became known that the Monster’s fate had not been sealed due to a shortcoming of the law, the public discourse turned to the nature of the offence and to the inadequacies of the law. The City Debates debating society put the question "Ought not the Legislature (in protection of the Ladies of Great Britain) immediately to pass an Act rendering the Crime of Rhynwick Williams, commonly called the Monster, a capital Offense?" to its members. The issue was also raised in a cartoon print, published shortly after the trial. Below an image of Williams stabbing Ann Porter, there is a caption alluding to the lack of severity in the law which reads as follows:

An ex post facto Law was made to hang Jonathan Wild, whose attacks were on the Property only, but the above Criminal for attacking the Persons of the fairest of the Creation is subject to no more than Transportation for Seven Years, a punishment by no means proportioned to

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83 OBSP, "The Monster," 590. Also see General Evening Post (London), 12 June to 15 June, 1790, which refers to "the supposed Monster" as a man "well dressed" and of "a genteel appearance."
84 [Williams] The Trial of Renwick Williams, 27.
85 His obscene utterings, noted by a number of the victims, may indicate a severe form of what is now called Tourette's syndrome; a nervous disorder characterized by involuntary tics, and in which the sufferer is often unable to control the impulse to shout obscenities (Mosby's Medical & Nursing Dictionary, 2nd ed. [1986], s.v. "Gilles de la Tourette’s syndrome").
86 [Williams] The Trial of Renwick Williams, 41, emphasis in original.
the Crime, nor fit, as it may afford the Wretch an opportunity of exercising his crudties[st] on the Females of another Country.88

The irony of Astley's refrain came to be keenly felt, and the fact that a special verdict was necessary in this case reveals more about the inadequacy of the law to deal with these kinds of violent behaviour in the eighteenth century than it does about the particular shortcomings of the evidence. Before the late eighteenth century, parliament simply had not taken a serious interest in the control and punishment of physical violence to the person, broadly conceived. Had there been a statutory provision against stabbing another person, for any reason, the Monster case may well have been dealt with like any other, at least in the eyes of the law. But no such statute existed in the eighteenth century, and it took exceptional occurrences, such as the exploits of Renwick Williams, to highlight the substantial gap in English law when it came to serious violence against the person, and the inability of the state to satisfactorily punish such violence when it did occur.

The Final Ruling

The twelve judges were charged with rendering their decision on three points. First, they were asked whether Williams intended to cut the person of Ann Porter, and whether in carrying that intent into execution the secondary slashing of the clothing was an offence as set out in the statute. The second question concerned the specific form of the indictment, which may have described an event which fell outside of the statute. The Annual Register summarized the particular legal issue thus:

Whether the statute being in the conjunctive, "That if any person shall assault another with an intent to cut the garment of such person, and shall cut the garment of such person, then the offender shall be guilty of felony;" and the indictment, in stating the intention, not having connected it with the act, by inserting the words that he "then and there" did cut her garment, could be supported in point of form.89

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89 Annual Register, 223.
The third issue was whether the case involved an offence that parliament intended when the act was passed. As Leach notes, the statute was passed in 1719 to deter silk weavers from destroying cloth imported from India, a new commodity which they perceived as a threat to their industry. Thus the intent of the act was to punish the destruction of the clothing itself, whereas, in this case, it seemed the primary intention was to wound another person.

The majority opinion agreed, first, that the wording of the statute implied that the assault and the cutting had to be made at the same time. Second, they found that the indictment itself was flawed in point of law, as it did not specify that, during the assault, the suspect “then and there tore, spoiled, cut and deface the clothes” of his victim, but stated rather that both events occurred on the same day. Third, it was agreed that “the primary intention of the prisoner appears to have been the wounding of the person of the prosecutrix.” The high court agreed the crime committed was “diabolical” in nature, but it was not the offence with which the accused had been charged. And even though parliament had neither anticipated such a crime, nor assigned a fitting punishment for it, the judges ruled that “it does not fall within the province of those who are to expound the law to usurp the office of the Legislature, and to bring an offence within the meaning of an Act, merely because it is enormous, and deserving of the highest punishment.”

Williams’s conviction on the statute was therefore overturned, and on 8 December he was acquitted before Judge Ashhurst in a hearing at the Old Bailey.

However, as Ashhurst made clear, and as the high court had ruled, the offence allegedly committed by Williams, though not a statutory felony, was still a high misdemeanour. Ashhurst decreed that “although the lenity of the law has so far judged favourably of your case, yet God

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90 Thomas Leach, *Cases in Crown Law, Determined by The Twelve Judges; by the Court of King’s Bench; and by Commissioners of Oyer and Terminer, and General Gaol Delivery; from the Fourth Year of George the Second, 1730, to the Fifty-Fifth Year of George the Third*, 2 vols. 4th ed. (London: J. Butterworth and Son, 1815) I: 534-35.
91 Ibid., 535.
forbid that the common law of the land should not reach such an enormity as you have committed, and that you should not be punished for your temerity.”92 Williams was remanded to Newgate and eight indictments for the common assault were then immediately found against him for which he was brought forward for trial at Hicks’ Hall five days later.

The new indictments carried three counts: first, for assaulting with intent to kill; second, for assaulting and wounding; and third, for a common assault. Though he was indicted on eight separate charges, Williams faced a trial on only three of them: the assaults on Ann Porter, Elizabeth Davis, and Elizabeth Baughan. Piggott led the prosecution for the Porters again, but this time Williams was defended by Theophilus Swift, “a gentleman of the bar, remarkable for his eccentricity.”93 Following a thirteen-hour trial—a trial of exceptional length for the eighteenth century, especially for an assault—he was again found guilty of the assault on Ann Porter. The next day he was tried and convicted of the assault on Davis. A few days later, he was convicted of the attack on Elizabeth Baughan. Although, at this point, there were still other indictments pending against Williams, Mr. Fielding, one of the counsel for the Porter family, requested that the charge against him for the assault on Sarah Porter be dropped, “as the ends of justice had been answered by the convictions that had already taken place.”94 The chairman of the quarter sessions, William Mainwaring, consented to this request, and likely encouraged the other plaintiffs to do likewise as there were no further trials. Williams was then sentenced to two years’ imprisonment in Newgate for each of the three attacks. At the expiry of those six years, he was to enter into a seven-year bond for his good behaviour in £200 for himself, with two sureties of £100 each.95

92 Annual Register, 227.
93 [Williams] The Trial of Remnick Williams, 53. Swift was an Irish writer who penned a pamphlet in defence of his infamous client before the second trial, entitled The Monster at Large: or The Innocence of Rhynwick Williams Vindicated, in a Letter to Sir Francis Buller, Bart., One of His Majesty’s Judges of the Court of King’s Bench. . . . (London: J. Ridgway, 16 November, 1790); see also D.N.B., s.v. “Swift, Theophilus.”
95 OBSP, (December, 1790), 107-08.
Class, Gender and Violent Crime

Let us step back for a moment to reflect on some possible larger conclusions to be drawn from this case. The most obvious historical parallel with the Monster case is that of Jack the Ripper. Much of the power of the Ripper case, as Judith Walkowitz has observed, comes from the fact that it “continued to provide a common vocabulary of male violence against women.” The myth-making that the Ripper case has fostered, and the persistence of that myth through the exploitation of the killer’s image by the mass media and the “celebrations of the Ripper as a ‘hero’ of crime” have served to empower men by intensifying the fears of male violence while at the same time reinforcing the stereotype that women are helpless victims. No doubt such fears are intensified and constantly reiterated because the culprit was never caught. The fact that such a gruesome string of crimes went unsolved, despite the intense popular attention and the unprecedented investment of police time and resources into the case lends an unsettling air of victory and invulnerability to this extreme form of male-female violence. This might be why the case of the Monster has not achieved the same timelessness and abstract ability to generate fear among the public (and particularly women), as the Ripper case, since there is a known outcome to the case. Once the “Monster” was apprehended, both the real and the perceived danger were lifted and the terror of male-female violence achieved some closure. Williams’s capture and conviction proved that all men did not attack women, only some disturbed psychopaths; and once they were caught, then everything could return to normal. That is not to say that the Monster was subsumed by the march of history. His story lived on in publications such as the Newgate Calendar, which continued to reprint the case in many subsequent nineteenth-century editions. But the closure that was provided by the arrest, conviction and punishment of Williams does place boundaries around the fear, anxiety, and violence that were

salient to the case. Once grounded in a living, breathing individual, even if he was mentally disturbed, the "unaccountable" motivations for his violent behaviour lost much of their supernatural power and became in some ways manageable and more readily confined within the existing institutions of social control.

But like the case of Jack the Ripper, the Renwick Williams case deserves to be revisited as it touches on several different discourses—legal, medical, sociological, and historical—which combined to create a popular, idealized image of an outsider, (indeed, a "Monster"), who was elevated to a mythical level due, in large part, to the growth and expansion of the press. The Williams case received the kind of public attention that we associate with serial killers today. With each new stage, from detection, trial, conviction to the punishment of the offender, the case was thrust into the public sphere and subjected to various forms of interpretation and cultural construction in order to make sense of the crimes and to serve larger social ends.  

As we have seen, the case touched on a number of legal issues and highlighted various shortcomings of the English criminal justice system in the late eighteenth century. First, the right not to be arrested on frivolous grounds was infringed by the fact that the prosecution society offered a £50 reward merely for the commitment of the offender—an issue that did not escape the notice of the contemporary press. As the Times remarked, "this is certainly opening a wide field for imposition and perjury, for that part of the reward may be paid without any conviction following...It likewise opens a wide field for innocent persons being apprehended on a very trivial suspicion, as has already been the case."  

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98 Times, 21 April, 1790.
The inability of the local authorities to coordinate a thorough search for the attacker highlighted the limitations of detection and arrest too. This was most clearly reflected in the establishment of at least two private prosecution associations dedicated to the apprehension of this one offender. The absence of an organized and regular police or detective force made the discovery, even of particular offenders such as the Monster, a more fractured and piece-meal process. With a private prosecution system, information was not easily shared, and the onus was still on the victims themselves to identify and charge any potential suspects. To facilitate this, the authorities in the Bow Street magistrate’s court, as well as other local, public spirited men such as Angerstein, relied on more cumbersome techniques of eighteenth century detective work such as the formation of prosecution societies, the use of newspapers, and the plastering of “wanted” posters around the neighbourhood.  

In the Monster case, we also see early indications of how the media could serve multiple roles in the public response to criminality, form assisting in the detection of suspects to the sensationalizing and demonizing of particular offenders. The ability of a popular and rapidly expanding press to stimulate and perpetuate a “moral panic” was revealed by the events of the Williams case. The attention and importance given to the case by the press, even though the attacks were non-lethal, reveals the popular fascination with violent crime, but also exposes deeper attitudes to violence in its reflection of widespread anxiety about the uncontrolled violence in the

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streets. The Monster’s attacks demonstrated the disturbing reality that even members of polite society were liable to violent victimization in the city streets. But the threat that the Monster posed to the civilized urban spaces dominated by middle-class society generally, not just to certain women, revealed that even upscale neighbourhoods were not immune to such behaviour. It is that fact which constitutes the most significant element of the anxiety raised by this particular eighteenth-century episode. It is interesting that the anxiety about women in public space that Walkowitz point to as the “moral message” of the Ripper murders of the late nineteenth century is absent from the discourse surrounding the eighteenth century’s Monster. There was no suggestion that the Porter women were somehow partially to blame for being out late at night, or unaccompanied by men. This may indicate a greater openness for women in eighteenth century society and a different sense of public space; one in which women were much more regularly included. A century later, Dickens’ journal All the Year Round reprinted a summary of the case, which it referred to as a contemporary “social scare.” The Monster, it said, presented “very real and present danger to the female sex of that day.” Though this was certainly true, the issues and anxieties underlying the eighteenth-century commentators’ perceptions of their monster, as compared those who had experienced nineteenth-century monsters, were likely to be very different.

As this chapter has also tried to show, part of what the press was able to do was to re-cast the image of the violent offender as a particular kind of violent offender—as a Monster—in a way that formed the template for future representations of criminal violence and evil. The Monster case was the first “serial attacker” of this sort to receive massive public attention through the newspapers and other print media. Clearly, the Monster’s deeds were not as serious as the exploits of Thomas Neill Cream in the 1880s and 1890s, who poisoned his victims with strychnine, or Jack the Ripper in

1888, who murdered and then mutilated the bodies of his victims. Still, the publicity and widespread terror generated by the Monster's attacks allowed the media new editorial licence to mold particular forms of criminality to a popular audience, with the multiple purposes of warning the public and facilitating detection, while at the same time exploiting the notoriety of the offender and boosting newspaper sales.

Finally, the enormity of the case and the “unnatural” nature of the violence was a theme that attracted much commentary. Public interest and “curiosity having been much excited” by the Monster, a number of authors jumped at the chance to publish their “authentic” accounts of the case. Many were clear in their condemnation of the Monster's deeds. According to one, they exhibited “an instance of depravity, perhaps, hitherto unheard of.” Certainly his crimes were shocking enough to excite the “indignation of the friends to humanity.” The perpetrator’s “demon-like malice” was noted as were the vain attempts to apprehend him. Others were unwilling to believe that the offences could have been the work of one man acting alone. Before Williams was apprehended, there was widespread speculation that the attacks were a fashionable new form of crime, being committed by various copy-cat offenders. Following the wrongful arrest of Tussin, the Diary; or Woodfall’s Register asserted confidently that “it appears beyond a doubt, that there is a gang of these Monsters; and, that they communicate with each other, from the exact similarity of their attacks.” The various descriptions of the assailant offered by the victims was pointed to by this paper as evidence “that there must be several in the gang.” This opinion was not shaken following Williams's arrest either. The Morning Chronicle, on 18 June asserted “we are far from

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104 The comment in Gillray's satirical prints suggests that the newspapers did well from their coverage of the case. See note 40 above.
105 [Williams] The Trial of Benwick Williams, iii.-iv.
106 Diary; or, Woodfall’s Register, 1 May, 1790.
believing...that the perpetrator of this mad, unnatural mischief stands singly, and without associated guilt." Thus despite this one arrest, the Morning Chronicle lamented to its readers "that we are under the necessity of saying, that there is, beyond doubt, a herd of these Misanthrope; and that those who look for an end to the mischief in a single conviction, lose sight of the original object of their pursuit!" The author of the pamphlet An Authentic Account of the Barbarities lately Practised by the Monsters! makes it clear in the title where his suspicions lie, and in fact uses many of the aforementioned quotes from the newspapers to support his conclusion that "these unprecedented and barbarous actions have been committed by men, or rather creatures in the shape of men, a disgrace to society, the outcasts of creation." And moreover, that "there are several of these unnatural wretches, these inhuman MONSTERS, is evident, from the most clear and decisive proofs, both circumstantial and positive." The other-worldliness of the case also reveals a deeper medical/psychological side to the events. Even though contemporaries did not possess the psychological theory necessary to identify Renwick Williams as a particular kind of pathological personality, it seems clear, as Anthony Simpson has suggested, that many commentators at least recognized the features or symptoms of what the post-Freudian world would identify as sexual pathology. The Monthly Review, in its notice of an anonymous pamphlet, printed for "S. Blandon" and probably written by Angerstein, referred to the Monster case as an unaccountable and astonishing subject; so unaccountable, that many have imagined that insanity alone could occasion so vile and barbarous a practice: but this pamphlet while it enumerates the instances of those ladies who have suffered from such unheard-of inhumanity, would persuade the reader, that several Monsters are engaged in these atrocious deeds. We hope, for the honour of our species, that this is not the case: but we must wait till time makes farther discoveries.

107 Morning Chronicle, 18 June, 1790.
The sensationalization of certain aspects of violent attacks by a man on women had been a common feature of early-modern pamphlet and broadside documents from at least the seventeenth century. But before the mid-eighteenth century, women were less often portrayed as defenceless victims of male predators. Though vulnerable to male aggression, women victims were more apt to have played a part in exciting male passions, or in enticing them through their own predatory, sexual behaviour. It is only after the mid-eighteenth century, according to some writers, that the female becomes reconstructed as vulnerable and sexually passive in these portrayals.\(^{111}\) But in all of this, there was at base a rational understanding of what led men to criminal violence. The role for women in their own victimization was a function of historical circumstance and shared assumptions about the role of women in society. What was unique about the Williams case was that the Monster's deeds were beyond all shared assumptions of gender roles and of male and female social interaction. Williams's crimes were not a result of the traditional, and rationally comprehensible causes of crime in the eighteenth century—moral failing, licentiousness, idleness—but instead the product of unseen, and barely understood forces. As Anthony Simpson points out, the Williams case represents "the first occasion on which there was some understanding that the attacks originated in some dark corner of male sexuality." Simpson points to Piggott's opening remarks at the trial in particular because, he argues, they reflected "a world which appreciated the connection between sexual appetite and lack of self-discipline, but as yet had a dim understanding of sexual pathology and the strength of its effects on the human psyche."\(^{112}\) Piggott argued that Williams' actions were "unaccountable" to contemporaries, "unless impelled by some impulse which cannot be explained" and the dark manner in which the case was analyzed—at least by The Times—indicates the horror.

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\(^{112}\) Simpson, "Masculinity and Control," 622, and 622n.
and confusion generated by Williams’ selection of “the most beautiful! the most innocent! [and] the most lovely!” as his victims.113

Perhaps the most interesting and significant point about the Williams case, within the larger aims of this study, is that it focused rather pointed, public attention upon the fact that legislators had never given serious legal attention to the problems of non-lethal violence to the person. The inadequacy of the laws against interpersonal violence were thrown wide open by the Williams case, especially after Judge Buller’s decision not to sentence him immediately upon his first conviction. What the Williams case did do was raise popular interest in the question of the punishments for crimes against the person as opposed to crimes against property. Popular prints and public debates called for stronger laws, while the twelve judges mused on the responsibilities of parliament to protect against such crimes of violence, “merely for the sake of wounding the person.”114 Still, the legislature was slow to act. English men and women would have to wait another thirteen years—until Lord Ellenborough’s Act—before the law was altered to punish the actions of any future “Monsters” with fitting severity.115

114 Leach, Cases in Crown Law, I: 535.
115 For a discussion of this act, see chapter 2 above.
WHEREAS,

An ATTACK,

Has Been MADE by a

MONSTER,

UPON A

YOUNG WOMAN,

WITHIN THE

SOUTH-WEST DIVISION OF THIS PARISH:

AND THE

INHABITANTS of the said Division, assembled at a general Meeting this Day, at Pery Coffee-house, have entered into an ASSOCIATION, for the Prevention of similar Assaults in future. Such of the Inhabitants, Householders, as were unable to attend the said Meeting, are hereby earnestly invited to become Members of such Association, the Articles of which may be seen and subscribed, at the Bar of Pery Coffee-house.

BARTLETT AND Co. PRINTERS, No. 4, JOHN'S-STREET, GOODGE-STREET, TOOTENHAM-COURT-ROAD

Source: BL: L.R.301.h3, f. 46.
Chapter 6

PUNISHING VIOLENCE

The previous chapter touched on the *inability* of the law and the courts to come to terms with a particular manifestation of interpersonal violence. The case of "The Monster" highlighted many of the shortcomings of the laws against violence and their failure to satisfy larger notions of justice and punishment, even when it came to dealing with exceptionally aberrant and physically harmful behaviour. For the most part, however, the courts did manage to deal with the vast majority of incidents of interpersonal violence that came to their notice swiftly and successfully, and in ways that did conform to more widely shared notions of individual responsibility and public justice. In this chapter we will look at the official responses to interpersonal violence and trace the increasing role for the state in the maintenance of order by examining the ways in which the courts punished violent behaviour. The fact that a wide range of such behaviour was punished at all, though an ostensibly simple and obvious point, indicates one very important aspect of social attitudes. It reveals that there were *some* established levels of tolerance that could be transgressed. And that when they were, society had assigned consequences to those acts, consequences which both reflected and informed broader social attitudes towards violence and the levels of tolerance or intolerance for violence in society. Moreover, since punishments tend to change over time, both in their form and intention, we are able to gauge the concurrent changes in attitudes towards the offensive behaviour itself through a study of penal practice.

As a test of changes in these attitudes, this chapter examines the way the courts punished serious violence as well as less serious, non-lethal violence to the person. Historians have made
some attempts to assess changing attitudes towards violence through its punishment, but much of that historical work has focused only on the most serious—and least frequently prosecuted—forms of interpersonal violence, like homicide and rape. The punishment of those offences is important to note in this discussion, but this chapter will add to our understanding of changes in the official responses to violence by examining the changing patterns in the punishment of assault between 1760 and 1840. My intention is to expand the scope of behaviours that must be considered in constructing an inclusive picture of attitudes to all forms of interpersonal violence in eighteenth-century England. But what is most revealing about the data found in the court records is the clear shift in penal practice which saw a growing place for public denunciation—as opposed to private reconciliation—in the punishments meted out by the courts in cases of interpersonal violence.

The Problem

The ambiguities created by the public and private aspect of assaults, batteries and woundings were as problematic for eighteenth-century judges and juries as they were for England’s pre-eminent legal theorist, William Blackstone. No one could reach a firm conclusion on how such acts should be treated. Blackstone’s bipolar division of offences into public and private wrongs in his Commentaries sets up an interesting problem for his discussion of assault: one which is never reconciled. In Book IV, Blackstone reiterates his position on most manifestations of interpersonal violence, classifying them as “private wrongs, or civil injuries, for which a satisfaction or remedy is given to the party aggrieved.” But he is also impelled to state that when the same offences are taken “in a public light, as a breach of the king’s peace, an affront to his government, and damage done to his subjects, they are also indictable and punishable with fine and imprisonment; or with other ignominious corporal
penalties, where they are committed with any very atrocious design.”¹ The fact that assault had both a public and private element meant that it did not fit as easily into the general categories that he had set up for himself and for his readers.

But this problem, as we have already discussed in chapter 2, was not unique to Blackstone’s classification system. It was clear to Blackstone and others by the late 1760s that historical practice by judges and magistrates at all levels of the criminal justice system had conspired to transform the official norms of sanctioning interpersonal violence in such a way as to undermine at least some of the fundamental aspects of English criminal justice. Indeed, the process—perhaps even the sanctity—of trial itself had, in Blackstone’s view, become corrupted by the extension of what he called the “dangerous practice” of allowing the defendant in misdemeanour cases to “speak with the prosecutor” in order to facilitate a settlement between the parties. Blackstone explained that this was done “to reimburse the prosecutor his expenses, and make him some private amends, without the trouble and circuity of a civil action.”² But Blackstone advocated a swift change from this practice. He argued that it was wrong to see misdemeanour violent offences as largely private matters, since the state did in fact have an interest in the prosecution of interpersonal violence as well. In such cases, he argued, “the right of punishing belongs not to any one individual in particular, but to the society in general, or the sovereign who represents that society.”³ Assault was a crime with both a private and public nature, but it was the public interest that was most threatened by the casual punishment of violent behaviour characteristic of the mid-eighteenth century. It was not only the wronged individual who deserved satisfaction; society, too, had a stake in the regulation of such behaviour. To condone the exercise of forgiveness—for that is what such practice implied—and to

¹ By which he meant assault with intent to murder, or to commit rape or sodomy (Blackstone, Commentaries, IV: 217).
² Blackstone, Commentaries, IV: 356-7, emphasis in original.
³ Ibid., 357. Blackstone was quoting from Beccaria’s On Crimes and Punishments, (1764), first published in English translation in 1767.
interrupt the trial process was, in Blackstone's words, "to interrupt the strike of justice" and was to be avoided.4

This problem of a muted voice for the state in the punishment of violence arose at a time when greater concerns about its control and restriction were being raised in other contexts. The issue was perpetuated by the fact that the courts and the law itself had yet to break down the range of non-lethal violent behaviour into manageable compartments to which it could then assign suitable punishments. This problem was not unique to assault. The entire English penal ethos had been based on maximum severity and deterrence by terror. As we saw in chapter 2, when it came to violent offences against the person, the state did take an interest in the most serious of such offences—maiming and so on—and these were to be punished severely. But when it came to the prevention and punishment of lesser forms of violence, the state was noticeably silent and, instead, frequently opted to facilitate the private settlement of such matters. It was this aspect of the punishment of interpersonal violence that most concerned Blackstone. He feared that if the culture of arbitration were allowed to infuse the courts any more deeply, in the case of violent offences at least, all hope of injecting a larger, public voice into the message behind the punishments would be lost. And, though Blackstone was writing as a high minded jurist, he was articulating a change in sentiment regarding interpersonal violence that was beginning to be reflected in the sentencing patterns of various courts. As we shall see below, when it came to violent offences against the person, metropolitan judges and magistrates were moving in the direction of greater penal severity.

Our best evidence that such a transformation in the punishment of assault had occurred over our period, outside the records of the courts themselves, comes from two nineteenth century editions of Burn's Justice. In the 1814 edition, the old system was still firmly in place:

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4 Ibid.
in case of trespass and assault, the court frequently recommends the defendant to talk with the prosecutor, that is, to make him amends for the injury done him; and if the prosecutor come and acknowledge a satisfaction received, the court will set a small fine on the defendant, as 3s. 4d. or 12d.5

We may note that the “small” fine has crept up to 3s 4d, but the practice that Blackstone derided remained intact. Roughly a decade later, however, there are signs that notions regarding the proper punishment of assault had altered. The 1825 edition of Burn states that “the punishment usually inflicted upon persons convicted of assaults and batteries, is [a] fine, imprisonment and the finding of sureties to keep the peace.”6 This later edition indicates that the old practice had not disappeared entirely, but suggests that private negotiation was reserved for “cases where the offence more immediately affects the individual.” In such cases the defendant was “sometimes permitted by the court, even after conviction, to speak with the prosecutor, before any judgement is pronounced.”7 What had become clearer in the intervening decade was the explicit distinction between public and private interest in such matters. By the mid-eighteen twenties, it appears that the public interest in both controlling violence and in interjecting a greater degree of collective social sanction into sentences against violent offenders had become the preferred practice in cases of assault and battery.

Before the mid-eighteenth century, then, the courts did not take an interest in punishing most forms of non-lethal violence, first, because the state’s role in such prosecutions was ambiguous and, second, because the cultural underpinnings for a criminal justice system which took the control of a broad range of interpersonal violence seriously were not yet developed. But as attitudes towards violence changed, largely over the course of the eighteenth century, and as it was expected that the

5 Burn, Justice of the Peace, 22nd ed. (1814), III: 185. Burn is likely outlining the procedure at the quarter sessions.
6 Burn, Justice, 25th ed. by George Chetwynd, (1825), 231.
7 Ibid. The subsequent edition (1831) informs that “the offence of common assault is a misdemeanour, and is punishable on indictment and by fine and imprisonment, according to the more or less aggravated nature of the case.” Burn, Justice, 26th ed. (1831), 273.
state should take a greater role in the punishment of assault, the courts had to devise ways of managing the large caseload of assault prosecutions in a way that was not only efficient, but which also satisfied the demands of public and private justice. They turned to a solution already familiar to them: that is, they embarked upon a process of filtration and selection—facilitated by their wide discretionary power in misdemeanor offences such as assault—whereby the broad range of cases of interpersonal violence were broken down into degrees of severity. Those that could be dismissed by various techniques of arbitration were dealt with in that manner, while the remaining cases were sent on to trial. For property offences, a more narrow version of this process was already in place by the eighteenth century. As other historians have shown, despite an ostensibly harsh penal code, there was considerable exercise of discretion within the criminal justice system, allowing all participants in the trial process to play a part in the selection of the best people to hang.8 In a similar way, when it came to misdemeanor violence against the person, the courts also selected the best violence to punish.9 Strictly speaking, this difficult process of classification of violent offences was not official policy. But it did rest on shared understandings of official procedure as outlined in Burn's Justice, and magistrates were rarely if ever called before the King's Bench for abrogation of duty in their handling of assault charges. It would be nearly impossible to judge their behaviour in this regard in any case, since the cultural yardstick by which offences of violence were to be measured—the threshold of toleration—was itself undergoing constant change, revision, and reconstruction.

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Arbitrated Containment Strategies: Pre-Trial

In order for there to be a formal punishment of assault, there must be a formal prosecution. As we have seen, a large proportion of alleged assaults never got to court. Indeed, assaults and domestic violence could be dealt with informally or even not at all. Informal sanctions, such as shaming, "rough music," or the charivari, could work when the suspect was known to the community. Wife-beaters and some sexual offenders were punished in this way, according to E.P. Thompson, but such practices were not frequently used in urban settings such as London, where anonymity and social distance was more common.\(^{10}\)

As other scholars have shown, there were many disincentives to prosecution in the early modern period. Since indictable offences had to be tried at the quarter sessions or assizes, it was necessary to wait until the next sitting of those courts for the case to begin. The cost in time taken out of work to prosecute a case was always a factor, as were the actual costs of prosecution itself. Before the late eighteenth century, prosecutors had to shoulder the financial burden of a prosecution, which meant paying the fees for each successive stage of the prosecution process along with out-of-pocket expenses for witnesses, not to mention legal counsel. From the execution of a warrant to the execution of the condemned malefactor, every aspect of the English criminal justice system had its price, and for the most part that price was paid by the prosecutor. Costs in time and money were powerful disincentives to prosecution before the state began to absorb parts of the costs of administering justice. In trifling cases of assault and other instances of interpersonal violence, we can safely speculate that a very large proportion of cases were never prosecuted for these reasons. But even when prosecutions were pursued, it is certain that many of the victims who initiated formal proceedings later decided to drop their case for one reason or another, as is

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\(^{10}\) E.P. Thompson, "Rough Music" in *Customs in Common* (New York: The New Press, 1991), 488-90. Thompson notes two cases of "rough music" for various forms of assault from Berkshire and Buckinghamshire from 1839 and 1878 respectively (pp. 506-7).
suggested by the large proportion of unknown verdicts. Whether that decision was based on an inability or an unwillingness to prosecute, however, remains unknown.

A general point regarding the penal philosophy of the English courts is that they were all infused by what might be called a culture of arbitration. Historians have found that in various courts across the country—from ecclesiastical courts to the Courts of Chancery and King’s Bench—and over the entire course of the early modern period, individuals involved in many forms of civil and criminal dispute were encouraged to settle their differences informally out of court. This was true at both religious and secular courts. Lawrence Stone has argued that litigation in one ecclesiastical court “was as much blackmail as war, and as a result about 60 per cent of all matrimonial cases in the Court of Arches were settled out of court and never reached sentence.” It has been argued that, in the secular courts too, the legitimization of the culture of arbitration in the high courts by the 1698 Arbitration Act led to a greater willingness among high courts justices, especially Lord Mansfield, to turn to this solution in the eighteenth century.

As we have seen, the category of violent behaviour that the law defined as “assault” constituted a grey area between what Blackstone called “public” and “private” wrongs. Thus when it came to the prosecution of assault, judges and magistrates frequently sought to reach some kind of amicable settlement that would satisfy the needs of justice in regard to both the public and private elements of the offence. At both the lowest and highest courts, there was an obvious desire to

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11 The proportion of Middlesex indictments with unknown verdicts from the sample periods are: 1760-75 (38.9%); 1780-95 (24.6%); 1800-1815 (21.1%); 1820-35 (26.5%).


13 Lawrence Stone, Royal to Divorce, 37.

arbitrate charges of assault, and the judges and justices of the peace were granted wide discretionary power in such cases to encourage settlement and discourage further prosecution by indictment. In the mid-eighteenth century, the message to JPs that arbitration was the preferable remedy was clear. They were reminded in procedure manuals that they “may persuade an Agreement between the Parties for small Trespasses, but not where the King is to have a Fine.” And, in 1764, Burn’s Justice stated that although criminal matters such as “treasons, murders, felonies, and other offences indictable at the suit of the king, cannot be submitted to arbitratment,” in the case of “assaults and batteries, libels and the like; the damages he sustained or expects to recover, may be submitted to arbitration: for in such case the action is for himself, and not for the king.” Because of such advice, many assaults were never sent up to the quarter sessions by the local magistrate for a formal trial. The JP intervened to effect some speedy resolution, either by facilitating a simple apology or by sometimes ordering some special arrangement to keep the combatants civil. Magistrates could also impose a small, token fine (usually 1s.) or might even impose compensatory damages if they felt it was warranted.

As we saw with summary procedure before JPs, there was the greatest exercise of discretion at this level of the criminal justice system. Recent work has argued that the expansion of summary jurisdiction in the eighteenth century was encouraged because of its speed and relatively low cost. In addition, it “provided remedies where the common law proved inadequate, and (at least in certain cases) eased the evidentiary burdens faced by prosecutors.” This seems certainly to have been the case for assaults. As we have seen earlier, JPs could be rather creative in meting out punishment,

15 See p. 72, table 2.1 above.
sometimes relying upon a recognizance to keep the peace or some other social sanction to punish
the offender and maintain social order. A JP’s effectiveness in settling disputes in this way
depended, in part, on his social standing relative to the litigants. Ruth Paley has argued that
Middlesex magistrates “tended to be of lower social status than those elsewhere,” making it more
difficult for them to influence and cajole the apparently more litigious Middlesex residents into
reaching private settlements.

Earlier, we noted that Burn’s Justice recommended ways in which trifling prosecutions could
be settled without incurring the costs of a trial, and the aldermen and the Lord Mayor of London,
acting in their capacities as magistrates, were typical in their desire to see the parties to an assault
charge leave their court with a reconciliation rather than an indictment. Coming to an amicable
settlement was the preferred remedy at both the Mansion House Justice Room and the Guildhall
Justice Room. Like other hearings before a justice of the peace, these courts had wide discretionary
powers either to try and settle the case on the spot, or else to send it on to a superior court. Many of
the cases alleging violence heard in the Guildhall and the Mansion House were sent on to the quarter
sessions. The procedure was identical to that of their rural counterparts. Following an initial
hearing, if the matter could not be settled then and there, or if the justice decided that the offence
was committed with intent, the accused would be bound over by a recognizance, usually in £20 or
£40 with two other sureties of £10 or £20 each, and ordered to appear at the next sessions of the
peace for London. But the vast majority of the cases were settled and the parties discharged.

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19 See chapter 2, table 2.1 above.
21 See CLRO, MJR/MISC 7-10 for many examples.
22 CLRO, Mansion House Justice Room, Minute Books, MJR/M 1-6 (1774-1775).
Speaking in 1819 before a Parliamentary Committee, the clerk to the magistrate at Guildhall, William Payne, testified that

whenever the magistrate thought, after as strict an examination as could be made into the circumstances, that upon the recommendation of the prosecutor (an inquiry having been made into the character and situation of the party accused) he could with propriety, and consistently with the public interest, be permitted to be discharged with an admonition from the magistrate; there always has been on the part of the magistrates of the city, a great anxiety to have such persons discharged rather than to commit them.23

Payne's testimony offers some clues as to the conditions upon which such settlements were arranged. Clearly, the prosecutor had to consent to this procedure. As well, it appears that the magistrate was careful not to upset the "public interest" and so made some inquiry into the character of the accused and no doubt into the nature and circumstances of the alleged offence. However, he was usually careful to refrain from interfering too much and influencing the prosecutor to drop a serious case. Thus, in June of 1792, when Mary Green was brought before the sitting alderman for striking Ann Holland "a violent Blow on her Breast" he did not encourage any settlement and left Holland "to indict if she thinks proper."24

What was finally agreed to when settlements were reached was unique to each case. It could have been as simple as an apology and a handshake, while in other cases the magistrate may have imposed some form of monetary restitution. According to the surviving records of the court, some of the accused were "reprimanded" without any fine, especially in cases where only violent threats were made, or if the defendant was poor, or upon their "begging pardon" from the prosecutor.25 In many other cases, if the issue could be settled and the parties discharged, they were—although it is likely that in some cases the defendant paid some compensation to the victim, or at least his or her

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23 P.P. 1819 viii, p. 84.
24 CLRO, Guildhall Justice Room Minute Books, GJR/M/30.
25 CLRO, MJR/M 1 (24 November, 1784), (1 December, 1784); MJR/M 69 (16 December, 1802); GJR/M 33 (6 November, 1786).
costs, and also paid the small 1s fee to the court, symbolizing that the case had ended. In one case, a person was sentenced to seven days in the Bridewell for “riotous and disorderly behaviour” and the use of “very abusive lang[uzage],” but punishments of this nature for such petty assaults from this particular court were rare.

Sometimes prosecutors were willing to drop their case when the offender was willing to make a public acknowledgment of their errant behaviour. Among the public advertisements of a few London newspapers from at least the 1740s, we can find a growing number of public apologies for assaults and other minor offences. One newspaper, the Daily Advertiser, was a particularly popular venue for such notices. According to these ads, many potential or actual prosecutors in cases of assault demanded that some form of public apology be made as a condition of their dropping the case. One ad, taken out in April 1763 by Thomas Juchau, mentions that the prosecutor, John Barrow, “has (in Consideration of thus publickly acknowledging my Fault, and paying the Expences of a Prosecution justly begun against me) been pleased to stop such Prosecution.” In other instances, it is clear that such apologies were made on the specific recommendation of the magistrate hearing the complaint.

Other cases reveal that litigants felt compelled by magistrates to at least make the attempt to reach such unofficial settlements. According to one disgruntled prosecutor, it was impossible to find

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26 See the records of the Mansion House and Guildhall Justice Room generally. Also see Rachel Marguerit Short, “Female Criminality 1780-1830” (M.Litt thesis, Oxford University, 1989), p. 105 for similar settlements in Bedfordshire. The Surrey magistrate Richard Wyatt notes that the fee for an indictment for an assault case was 2s. 0d. (cited in Beattie Crime and the Courts, 41, n. 14). Ruth Paley has found that prosecution costs varied widely with the case, depending on whether witness’ expenses were paid, whether lawyers were involved, and so on. For example, in 1797, 2 men charged with assault were assessed costs of £6 2s. 10d., while 2 others paid £16 19s. 10d. only a year later (Ruth Paley, “The Middlesex Justices Act of 1792: Its Origins and Effects,” [Ph.D. diss., University of Reading, 1983], 75 n. 46).

27 CLRO, MJR/M 1 (12 November, 1784).

28 I am grateful to Professor Donna Andrew for bringing these apologies to my attention and kindly sharing her research with me. For more on these apologies, see Donna T. Andrew, “The Press and Public Apologies in Eighteenth Century London” in Law, Crime and English Society, 1660-1840, ed. Norma Landau (forthcoming).

29 Daily Advertiser, 12 April, 1763.

30 Daily Advertiser, 15 May, 1795. The defendant, Daniel Gable, was brought before the magistrate at the Worship-Street Public Office for assaulting a constable, “but upon my Application to Mr. Blacketer, [the prosecutor] under Direction of the Magistrates, he has consented to withdraw the Prosecution...”
any satisfaction from the courts in minor cases of assault as a result of this popular practice. J.H.

Prince claimed that the Bow Street magistrates were unwilling to do their “duty” when it came to
assault prosecutions. While he was waiting to make his own complaint on behalf of his wife, he
witnessed two women brought before the magistrate on cross-warrants for assault. But “instead of a
patient hearing and investigation,” Prince complained,

as soon as he [i.e. the magistrate] was informed they were cross warrants he exclaimed, “I
always discharge both warrants in such cases;” and in lieu of hearing what the other had to
say, tauntingly asked each of them, if they could not find something else to do with their
money than to spend two shillings a piece in warrants: one woman observed, she was a
house-keeper; upon which he said, “You won’t be a house-keeper long if you spend so much
money in warrants.” In this manner he continued to jeer them, for near a quarter of an hour,
and then did discharge each warrant.31

Fearing his action on behalf of his wife (who was assaulted by another woman who ran a vegetable
shop) would be similarly dismissed, Prince wrote to the husband of his wife’s attacker, a Mr. West,
and informed him that he was willing “to dispense with every other satisfaction, if you and your wife
will make a public acknowledgment, in the newspapers, of the unprovoked assault committed on
Mrs. Prince.”32

Many of these public apologies reveal significant details about the case, including the
occupations of the parties involved, the nature of the offence itself, and the terms of the settlement
that was reached. The following advertisement from the Daily Advertiser is typical:

Whereas I John Harcourt did on Monday last, between the Hours of Eleven and Twelve at
Night, violently and wantonly assault and ill treat Mr. Henry Jeffray of the Strand,
Undertaker, without any Reason or Provocation whatsoever, and for which Offence he has
justly commenced a Prosecution against me; but in Regard and Compassion to my Family,
has been pleased to forgive my Offence, upon my asking his Pardon in this public Manner,

31 J.H. Prince, A Letter to James Read Esq. Principal Magistrate at the Public Office, Bow Street. Containing Strictures on the
Administration of the Police of this Metropolis: and on the Author’s Treatment when suing for justice at the above office, respecting a Riot,
Assault, and Robbery, committed by several member of the Society of Excentrics. (London, 1808), 28.
32 Ibid., 35. West refused Prince’s request for a public apology, so Prince brought the case before the sitting magistrate at
Bow Street. The magistrate told Mrs. Prince that she should have quitted the shop when she was told to do so, even
though, according to Prince, the order was given in a rude manner. According to Prince, “we retired accordingly, but, as I
expected they still refused to ask pardon in the public papers, and I would accept no other satisfaction” (Ibid., 36-7).
Prince later decided it was not worth the time and expense to pursue the matter and dropped the case, but later received a
request from West for £2/5/10 for his costs and trouble. Prince simply refused to pay and the matter was abandoned.
which I hereby do, and confess that I am heartily sorry for what I did, and promise never to behave in the like Manner to any Person whatsoever; and hope this my public Acknowledgement [sic] will deter others from behaving in such Manner; and I do consent and desire, that this my Acknowledgment may be published in the Daily Papers. Witness my Hand this 12 Day of November, 1760. John Harcourt.33

The fact that these ads were taken out overwhelmingly by men tends to confirm the dominance of men in the perpetration of violent acts. Women do occasionally publish apologies for physical assaults, but more often they are apologizing for uttering slanderous or defamatory words.34 Whether or not this indicates a lesser proclivity for violence among women, as one might assume, is hard to say with any certainty. When this fact is combined with our earlier observations about the gender of defendants in cases of interpersonal violence, however, the general assumption that women were less violent than men seems to ring true. The fact that slanderous and defamatory utterances were more common sources of apologies among women, at least when they were willing to apologize, indicates that women were likely to resort to harsh words, rather than harsh acts, when they became involved in confrontational situations.

In many cases the offender, or at least those drawing up the ads, hoped that readers might “take warning...not to offend in the like manner,” implying a clear level of moral and behavioural standards underpinning the apologies.35 Other examples of such apologies indicate that sometimes more was required of the alleged offender than simple contrition or a potentially insincere apology to end a suit. George Millward, who was charged by Edward Badcock with an assault, noted in his public apology that Badcock had agreed to drop the suit not only “in regard to my Youth,” but also “on my entering into his Majesty’s Service, and asking his Pardon.”36 What is revealing about these

33 Daily Advertiser, 14 November, 1760.
34 For examples of such cases involving women, see The Gazetteer, 4 April, 1768; Daily Advertiser, 3 December, 1773; 19 February, 1789; 31 January, 1794. Professor Andrew’s forthcoming work on these advertisements will discuss their gendered nature.
35 Morning Chronicle, 11 August, 1794.
36 Daily Advertiser, 6 December, 1760.
apologies, and this case in particular, is the extent to which the idea that offenders could be
"pardoned" on condition of some other service or performance of some other task was shared by
the community at large. It hints at an innate flexibility in the penal ethos of the period, and suggests
that the expectations for punishment were greater than simple revenge or vindictiveness. Victims,
prosecutors, judges and juries all appear to have shared a common understanding of what
punishment was supposed to achieve and, in the case of petty assaults, it appears that part of that
complex idea was a desire to see offenders compensate the community at large for their offence.

Donna Andrew's forthcoming work will no doubt show how the popularity of these
advertisements as mechanisms of dispute resolution declined sharply during the last decades of the
eighteenth century, mirroring the changes in other less serious penal practices to be examined in
more detail below. The declining popularity of these apologies hints at larger changes in the
punishment of interpersonal violence that were going on at the time. In one sense, the published
apologies were ahead of their time, by offering a very public model for achieving two of the primary
aims of punishment—retribution and deterrence—through public humiliation in a rapidly expanding
press. However, since these advertisements were the product of private arrangements, the state was
excluded from the business of punishing violence. Their decline in popularity may, in part, reflect a
shift towards the kind of satisfaction of public interests in the punishment of violence for which
Blackstone was agitating.

As Prince's experience demonstrates, and as other cases mentioned in this section have
shown, the magistrates clearly had a sense of the general merits of cases involving violent behaviour
and were not willing to trouble themselves, or consume valuable court time, by prosecuting every
case that came before them to the very end. This suggests again that, more often than not, the cases
that were being tried before judges and juries at quarter sessions courts and higher, likely involved
some serious violence to the prosecutor. But as public toleration for violence in other areas of daily
social life began to decline, from roughly the 1780s on, it also became less acceptable for magistrates
to encourage unofficial settlements like those afforded by public apologies as freely as they had done
in the middle decades of the eighteenth century.

Evidence of many of these private settlements, solidified in general releases filed with the
courts, is to be found among the King's Bench cases too. Some prosecutors simply dropped their
cases there for no reason discernible from the records, though we might guess that expense and
inconvenience were significant factors. Some cases reveal a little detail about how such settlements
were arranged. They might, for example, be contingent upon the defendant making a full allocation
before the settlement would be officially agreed to. In other cases like the one between George
Bushby and William Slann, tried at the King's Bench in February 1815, the defendant was forced
into a settlement because of mounting financial pressures. Bushby was charged for assaulting Slann
following an exchange of words in a shop. Slann took the case to the King's Bench, but when the
financial burden of prosecuting the case became too much to bear, Bushby sent notice to the court
that he would "personally appear" in court and would "confess myself Guilty of the Assault with
which I am charged and submit to the Clemency and Mercy of the said Court."38

In his sworn affidavit in mitigation, submitted on the day of his confession, Bushby
recounted how, on 28 June, he went into a grocer's shop and became involved in an argument with
Slann. Slann, who was at the time serving as a parish constable, was clearly not enjoying his time in
that office, exclaiming generally that "he would be damned if he would serve the Office of
Constable another year for Ten pounds." Joseph White, the owner of the shop, enquired after an
arrest he had made some time earlier, saying "he supposed [Slann] got five shillings from him."
Slann replied, "O Damn him I made him tip half a Crown," indicating perhaps that he was not

37 For examples, see PRO, KB 1/14, Trinity 33&34 Geo. II, R. v. Hugh Pugh; KB 1/12, Hilary 33 Geo. II, R. v. Michael
38 PRO, KB 1/38, Part 2, Hilary 55 Geo. III, No. 1, Slann v. Bushby, Affidavit in Mitigation per George Bushby.
above taking a little advantage of his position of authority. Bushby, no doubt a bit of a busybody, observed to White that “he always understood that the Act of Parliament prescribed only four pence for serving a Shilling Warrant.” Slann responded to the insinuation that he had cheated the other man by calling Bushby “Mr Knowall and knew every thing,” but in truth he “was a Damned Rascal.”

With his ire raised, Bushby continued, warning that if he called him a Rascal again he should give him a Thump on the Head whereupon the said prosecutor replied that [Bushby] was a Damn’d Bloody Rascal and put himself in an Attitude to strike [him] …[Bushby] being much irritated at the Conduct of the said prosecutor immediately acted on the Defensive—And…conscious of the impropriety of his conduct he has regretted ever since that he should have committed himself and in consequence has frequently applied to the said prosecutor to bring about a reconciliation and offered every thing in his power to satisfy him but without effect and the said prosecutor has declared that he would ruin this deponent Imprison him and drive him out of the Town.19

Bushby was fined 1s and ordered to give security in £40 for his good behaviour, with two sureties of £20 each, for two years.40

What do such settlements reveal about attitudes towards assault and interpersonal violence in this period? We should be careful not to dismiss the settlement as simply an evasion of punishment. Though certainly not a punishment in the sense that it reflects the broader social outrage against the crime, or an outcome that was likely to deter future offenders, the settlement mechanism certainly afforded a great deal of satisfaction and advantage to the victorious party. Defendants in settled cases likely escaped more serious punishments. Prosecutors who continued to threaten a full prosecution—in the hope or expectation that a settlement would be reached at some point—likely were also satisfied by arbitrated settlements, and gained considerable satisfaction in censuring their opponents in some manner by having the courts force them to comply with a settlement. Since these settlements were usually sanctioned by the courts, often this was as good as an actual judgment and was certainly a less expensive and time-consuming route to a resolution.

19 Ibid.
40 Ibid.
Some settlements were generated forcibly, as in the Bushby case, due to financial pressures. Others, as we shall see in the next section, were arranged under the direction of the presiding judge. Still others—at least at King’s Bench—went to more formal arbitration. A very important individual in the Court of King’s Bench was the Master. This position was a life appointment made by the Crown on the recommendation of the Chief Justice, and the officeholder was usually selected from among the bar. The Master served as the King’s Attorney in criminal cases, except in cases where the Attorney General or Solicitor General prosecuted in person. But another of his tasks was to arbitrate cases where formal arbitration was deemed appropriate. Though this role was likely more important on the Plea Side of King’s Bench, where civil matters were in dispute, there are a number of assault cases among the surviving affidavits where it appears that the case was “referred to the master.”

Arbitration through Trial Procedure

Despite the magistrate’s best efforts to settle violent disputes at the pre-trial stage, there were further pressures, and indeed opportunities, for accommodation once the case moved on to formal trial before a judge and jury. Again, by the second decade of the nineteenth century, Burn’s Justice was outlining the nature of what was, by that point, common practice:

There are frequent prosecutions at the session for trifling assaults; in which case it is adviseable [sic] for a defendant, not to put himself to the expense of trying the indictment, but to give notice to the prosecutor that he intends to plead guilty to the indictment; in which case the prosecutor attends the court with his witnesses, and gives evidence of the nature of the offence; and then the court proceeds to fine the defendant for his misbehaviour towards

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41 Also known as the Clerk of the Crown, or the Master of the Crown Office, the King’s Coroner and Attorney, but usually simply as the Master.
42 Gude, Practice, I: 21-2.
43 For examples see KB 1/29, Part 2, Trinity 37 Geo. III, Affidavit in Mitigation for Stephen Shewell Hunt; KB 1/33, Part 2, Hillary 46 Geo. III, No. 1, Affidavit in Mitigation per John Galloway.
the prosecutor: but before that is done, the court will admit the defendant to call such
witnesses as he desires, and will examine them by way of mitigation.\textsuperscript{44}

An example of this process in action comes from October 1760, where Michael Nathan
initiated a prosecution against Daniel Campoff, Catherine Campoff, and Mary Campoff. A brief for
the defendants' solicitor reveals that they refused to enter a plea on the indictment preferred against
them at the previous sessions, but "upon a Meering had yesterday with the prosecutor all matters in
difference between them were Amicably Adjusted and General Releases Exchanged on each Side."
In this case the settlement was reached on account of one defendant's age. The solicitor's brief
notes that "The Deft Daniel Campoff is a very Antient [sic] Man and Confined to his Bed."\textsuperscript{45}
Following the agreement, the court was then asked to discharge the defendants from their
recognizances, which it no doubt did.

As we have seen, even though the authorities attempted to facilitate private settlements of
assaults before they reached the courts, once the case began its proceedings in the courts it was
sometimes necessary or desirable to employ a procedural trick of some kind in order to permit the
parties to settle the matter and drop the case. For example, as mentioned earlier in chapter 2, once a
case was started in the quarter sessions (that is after the indictment was found by the grand jury to be
"true"), a traverse might be entered after the defendant had pleaded not guilty. The traverse was
allowed in misdemeanour cases (such as common nuisances) because they often involved
complicated legal issues that required time to prepare. Once granted, the parties would then be
bound over in recognizance to appear at the next sessions. In some cases the traverse was certainly
used to allow the parties time to gather evidence or witnesses. But clearly it also provided a
convenient delay in the proceedings, allowing the parties time to reconcile their differences and

\textsuperscript{44} Burn, Justice of the Peace, 22\textsuperscript{nd} ed. (1814), III: 185-6.
\textsuperscript{45} LMA, MJ/SP/OCT 1760.
reach a private settlement. Since common assault was also a misdemeanour, defendants frequently took advantage of the traverse to attempt to reach a settlement at an early point after the indictment was found.

1. Stay of Proceedings

As we can see from table 6.1, a variable—and at times considerable—proportion of assault cases tried at the Middlesex quarter sessions ended with a stay of proceedings being granted by the court. A stay of proceedings is a suspension of an action at law. As a result, the court may order one or both of the litigants to do something and, until such time, the proceedings in their suit may be stayed. In the cases of assault we are dealing with here, however, it would appear that the court would grant a stay as a way of discontinuing the action altogether, likely on the condition that the parties settle on their own. By granting a stay of proceedings, the court effected an official break in the trial process and gave the litigants time to reconcile their differences. However, the precise manner in which this was done at the quarter sessions remains unclear. Officially, the power to suspend a criminal prosecution was vested in the Attorney General in the entry of a plea of nolle prosequi. However, such action is only entered when the likelihood of there appearing adequate

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46 Traverses were of two kinds: a denial of all the facts of the charge was called a general traverse, while a denial of a particular material fact was called a special traverse. To deny the charge on a point of law was a separate claim, called a demurrer. J.H. Baker, *Introduction to English Legal History*, 3rd ed. (London: Butterworth, 1990), 91-2. The following table, though dealing with only two years, shows that a little less than twenty per cent of all indictments at the Middlesex quarter sessions were followed by traverses:

<table>
<thead>
<tr>
<th>Traverses of Indictments at Middlesex Quarter Sessions</th>
<th>No. Indictments</th>
<th>No. Traverses</th>
<th>% of indictable cases traversed</th>
</tr>
</thead>
<tbody>
<tr>
<td>1812*</td>
<td>1494</td>
<td>249</td>
<td>16.7</td>
</tr>
<tr>
<td>1813**</td>
<td>801</td>
<td>144</td>
<td>18.0</td>
</tr>
</tbody>
</table>

Source: BL, Add MSS 38,363, f. 171.
*Includes 5 sessions.
**Includes 3 sessions.

Table 6.1
Techniques for Facilitating Arbitration as a Proportion of all Known Outcomes at Middlesex Quarter Sessions, 1760-1835

<table>
<thead>
<tr>
<th></th>
<th>1760-1775</th>
<th>1780-1795</th>
<th>1800-1815</th>
<th>1820-1835</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>N   %</td>
<td>N   %</td>
<td>N   %</td>
<td>N   %</td>
<td></td>
</tr>
<tr>
<td>Stay of proceedings granted</td>
<td>32 5.8</td>
<td>85 11.5</td>
<td>342 31.2</td>
<td>236 24.5</td>
<td>695</td>
</tr>
<tr>
<td>Juror withdrawn</td>
<td>2 0.4</td>
<td>6 0.8</td>
<td>6 0.5</td>
<td>11 1.1</td>
<td>25</td>
</tr>
<tr>
<td>Indictment Quashed or Resipted</td>
<td>7 1.3</td>
<td>11 1.5</td>
<td>13 1.2</td>
<td>6 0.6</td>
<td>37</td>
</tr>
<tr>
<td>Total</td>
<td>39 102</td>
<td>361 253</td>
<td>757</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: See Appendix.
Note: Total known outcomes: (1760-75, 551; 1780-95, 737; 1800-15, 1095; 1820-35, 964).

evidence to secure a conviction is remote. It seems unlikely that the Attorney General was
becoming involved with minor assault cases. Thus, it is more likely the case that the "stay" was
simply a shorthand for the court's acknowledgment that the prosecution had either failed to appear,
or that the parties had agreed to settle their score out of court. The fact that there is a significant
increase in the number of case records that end only with an indication of a stay of proceedings
being granted seems to suggest that such mediations were indeed being carried out with the court's
blessing. In the 1760s and 1770s, only about 6% of recorded cases mention a stay of proceedings.
In the 1780-95 period, the proportion doubled, and over 31% of cases were ending this way during
the 1810s (table 6.1).

This procedure was also employed in cases prosecuted at the King's Bench. The County
Attorney advised his readers that, "If the defendant means to settle the action, before further expense
is incurred, and you cannot arrange it with the plaintiff," they should then, a few days previous to the
return of the writ, instruct their agent at Westminster to take out a summons to stay proceedings.

49 Anonymous, The County Attorney's Guide to the Practice of the Courts of King's Bench, Common Pleas, and Exchequer; in a Series of
Letters, from An Agent in Town to a Young Man Commencing Business in the County, 2nd ed. (London: Henry Butterworth, 1829), 159.
The court would not sanction such private arrangements automatically, but would usually accept the arrangement if the parties both agreed. If the prosecutor refused to settle, the defendant was forced to take his chances in court. In 1821 the court of King's Bench took a more definite stand on cases in which an offer to settle had been made, principally in order to discourage prosecutors “from wantonly refusing what they mean afterwards to accept, for the purpose of harrassing the defendant with costs.”

The desire to forestall formal proceedings at court in cases of interpersonal violence was as strong at the King's Bench as at any other English court. There, an application could be made by the prosecutor to stay all further proceedings by issuing a writ of *cesset processus* on the indictment. In one case, John Bell was indicted at the quarter sessions at Hicks’ Hall for an assault on John Simpson, but the case was removed into King’s Bench. In the mean time, however, the parties were able to reconcile their differences and the prosecutor, Simpson, asked his attorney to apply to the King’s Bench for a “Warrant to stay all further proceedings upon the said indictment.” The request was granted, and the order to cease prosecution was made.

2. **Withdrawing a Juror**

Another procedural device by which a case could be brought to a speedy, private conclusion was by having a juror withdrawn. In assault cases prosecuted both at the quarter sessions and at the King's Bench, it appears that in cases in which there was clear fault on both sides, or where the facts were likely to remain unclear to the court, the judge could recommend that the parties agree to withdraw a juror from the sitting trial jury. This had the effect of stopping the trial at that point and allowing the parties to settle. In one case from 1790 at the King’s Bench, for the recovery of stakes

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51 PRO KB 32/23, R. v. John Bell, 1755: Cesset processus.
from a boxing match, this procedure was followed:

After the production of some perplexed and contradictory evidence, Lord Kenyon, under all the circumstances of the case, advised the parties to withdraw a Juror. This was consented to in consequence of which each party pays his own costs.52

Similar tactics were used in cases of assault. From evidence from the Palace Court, we learn that in at least two cases a juror was withdrawn. In one, a couple of rambunctious boys who were throwing eggs were chastised by a man whose sick wife was being disturbed by the noise. In the other, William Taylor, a lodger who was nine weeks late in paying his rent and who tried to move his possessions before paying, was prevented from doing so by his landlord, William Barrett. A juror was withdrawn and Taylor agreed to pay the £1/11/6.53 Middlesex magistrates permitted such tactics in a small number of assault cases tried there too (table 6.1), as did magistrates at the London sessions of the peace. James Oldham has shown that the procedure was also used at the King’s Bench.54 Again, the participation of the litigants themselves was integral to the success of such arbitrated settlements. And the notation that jurors were withdrawn “by consent” seems to indicate that the judges did not seek to extend their authority unjustifiably by dismissing cases out of hand and on their own terms.55

Though the particular reasons for invoking these procedural tricks, rather than continue the trial, are not always clear, it does seem that all of these devices were employed in order to facilitate an arbitration of some kind, leading to an informal settlement between the parties. What percentage of cases went to arbitration and were settled quickly is hard to say, since few records of arbitrated settlements survive. But it seems reasonable to assume that the likelihood of a swift and mutually agreed upon settlement was a major advantage to arbitration. Settlements were likely to be worked

52 The Diary; or Woodfall’s Register, 3 February, 1790.
53 PRO, PALA 9/1/2 (November 20, 1801); PALA 9/1/2 (April 15, 1802).
55 LMA, MJ/SB/3723, f. 3, notes the juror was withdrawn “by consent.” In a similar case from the London Sessions of the Peace involving two women, the court records that after the defendant pleaded not guilty, “now by consent a Juror withdrawn—all proceedings stayed and Recognizance respited sine die.” CLRO, SMP 1/OCT 1790.
out in a matter of hours or days, rather than weeks or months at the courts.

The final stage of an arbitrated settlement came with a “release.” This was a document issued by the court which marked the official end and abandonment of the suit, and usually made note of the terms on which the parties had settled. As we saw in our discussion of the London sessions of the peace in chapter 2, many resolutions ended with a general release. The release was a formal, legal necessity, as it discharged the plaintiff from his or her recognizance. In some cases, the terms of settlement are also noted in the release document. For example, we learn that, although a defendant named Needham was indicted at the London Sessions of the Peace for assaulting Amelia, the wife of John Blair, at some point between the indictment being found and the trial, the prosecution had been satisfied through an extra-legal settlement. The release paper notes that that “we the said John and Amelia Blair do hereby acknowledge to have received two Guineas from the said Mr. Needham in full for our costs and damages occasioned by such assault.” In the King’s Bench and at the London Sessions of the Peace, litigants frequently settled their disputes on their own and granted releases to defendants to end a formal prosecution. Although the Middlesex sessions papers are very incomplete for this period, a few releases survive from assault cases prosecuted there, too, indicating such settlements were widely used in all courts.

3. Financial Pressures

In some cases, litigants in assault cases were forced to drop the case because of the financial burden of mounting or defending a prosecution. Once again, we might reasonably assume that a

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57 CLRO, 226A, Sessions Papers, 1767-68 (25 March, 1767).

58 For examples, see KB 1/21, Part 1, Hilary 19 Geo. III, R. v. Richard Langford; CLRO, 226D, Box 1, Peace Bundle 1789; LMA, WJ/SP/JUNE/1804.
number of the cases with unknown outcomes begun at the quarter sessions were simply dropped when the financial pressure of continuing the prosecution grew too great. Even putting off a simple case with a traverse could cause substantial financial hardship. Indeed, one magistrate claimed that it was common for the defendant to enter a traverse, “not because he is not sufficiently prepared, but solely and simply because he knows that the traverse will occasion additional expense, which he does not regard so long as it is ruinous—as it must be ruinous—to the man whom he has injured.”

Wealthier litigants, or those with deep-pocketed supporters, also held considerable advantage on this front, as they were more at liberty to let a case drag on in the hopes of squeezing a settlement out of their poorer adversaries.

Not surprisingly, forcing another party into an arbitrated settlement, or into dropping the case altogether, was also common at the King’s Bench. The potential for incurring higher costs at the King’s Bench have already been mentioned in chapter 2. I have found two examples of how the litigants themselves engineered such tactical use of the courts, through the threat of costs, in order to force a settlement. In September 1812, an indictment was found at the Old Bailey against Charles Dunni, a surgeon living in Bell Savage Yard in the City, for an assault on David Evans. According to Dunni, Evans had actually assaulted him first at his residence in Bell Savage Yard, and Dunni had commenced a prosecution at the King’s Bench, presumably around the same time as the Old Bailey case. But, according to Dunni, “overtures having been made by the said Prosecutor [i.e., Evans] to compromise all differences between him and this Deponent—It was agreed that each party should give a full discharge or acquittal in writing to the other.” The two men agreed to drop their respective suits but, instead of signing the necessary releases, “as was so agreed upon,’ Dunni complained, Evans “artfully attempted to cause this Deponent’s recognizance and those of his Bail

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to be Estreated and detain[ed] the said Release." Dunni had (foolishly in retrospect) signed the release himself and then left the forms at Evans's residence, expecting him to sign and return them, which he did not do. Dunni now suspected "the whole to have been an artifice merely to prevent [him] from Proceeding to the Trial of his Cause" in the King's Bench, so that Evans's case might be heard first at the Old Bailey. Thus it was his desire that the cases be brought together somehow, so that he could "have that justice done him that his case deserves."61

In another case begun in July 1778, Robert Everden charged Edward Mander and his wife with assault, bringing an indictment to the Middlesex quarter sessions. The defendants caused the indictment to be removed into King's Bench by certiorari, and also entered into a recognizance to appear on the first day of Michaelmas term. Instead, they did not appear, but rather entered a request to put the trial off to a court of Nisi Prius and in the mean time sought their own indictment against Everden. Everden, quite rightly, felt he was getting the run-around and swore, in an affidavit in support of a move to quash the Manders' request, that

instead of performing the Condition of the said recognizance the said Defendants neglected to plead to or try the said Indictments as they ought to have done but on the last Day but one of the said Michaelmas Term preferred an Indictment against this Deponent for an Assault on the Wife of the said Mander thinking thereby as this Deponent believes to deter this Deponent from proceeding on the said Indictment by the Expences attending the making up of a Record in this Honourable Court...62

In both of these cases, it is clear that the litigants were wise to the idiosyncrasies of King's Bench procedure, and were willing to manipulate the system in ways that would exert the greatest financial pressure upon their (hopefully less well-healed) opponents.

Poor litigants might simply change their plea to avoid the costs of prosecution. In June 1767, Edward Read settled his case against John Paine when Paine agreed to plead guilty. Read was

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60 PRO, KB 1/38, Part 3, Trinity 53 Geo. III, Affidavit of Charles Dunni.
61 Ibid.
presumably too poor to prosecute as the settlement was arranged “without a General Release on account of the Defendant’s poverty.” And with no financial assistance coming from the local authorities for assault prosecutions at quarter sessions (at least not at this point), pleading guilty might well have seemed the best strategy in many cases.

As mentioned in chapter 2, poor litigants at the King’s Bench could apply to the court for permission to plead in forma pauperis, that is, as paupers, if they declared their personal net worth did not amount to more than £5. But such allowances were at the discretion of the court, and many litigants, such as George Bushby (mentioned above), were forced to take their lumps. Bushby chose to concede defeat and plead guilty rather than continue his defence. In his sworn allocution, he claimed that “he has already been put to great Expence and Trouble by reason of the said Indictment and is unable to bear any further expence.” Moreover, he pleaded that since he “is not worth the sum of Five pounds after all his Just Debts are paid his Working Tools and Wearing Apparel only excepted,” and “not having the means of employing Counsel or Attorney,” he was advised to confess to the crime and throw himself upon “the Clemency and Mercy of this Honorable Court,” which he did. Bushby was, in the end, fined 1s. and ordered to give security for his good behaviour in £40 for two years.

In another case, a defendant was forced to plead guilty to an assault charge because of the financial burden of defending his case. The incident concerned two men who had gotten into a fist fight in Threadneedle Street in the City. The prosecutor, William Anderson, was a servant to Lord Viscount Hampden and the defendant, William Simpson, was the son of an eminent woolen draper situated in Leadenhall Street. Thomas Wratten, a witness, testified that he saw Simpson strike Anderson “a violent Blow on the Face, which he repeated before [he] could come near enough to

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63 CLRO, 226A, Sessions Papers, 1767-68.
64 PRO, KB 1/38, Part 2, Hilary 55 Geo. III, Slann v. Bushby, Affidavit in Mitigation per George Bushby.
prevent him and he heard the prosecutor say ‘will no person take my part?...am I to be killed on the
Spot?’ According to Wratten, “a great Number of people immediately collected when the
Defendant proceeded to make Use of very vile and opprobrious Language reflecting seriously on the
Character of the prosecutor and tending to Charge him with an unnatural Crime.” Wratten
eventually intervened and separated the two. When things calmed down, Wratten brought the men
to the watch house. It soon became clear that Simpson’s “Mouth was much cut and that he had one
or more of his Teeth knocked out and was otherwise much bruised and hurt and his Cloaths torn
and much soiled with Dirt by falling under Defendants Blows.” Wratten believed that, “had it not
been for the Interference of himself and others the prosecutor was in Danger of suffering more
materially than he had done from the rash and violent Conduct of the Defendant, who several times
said he should not mind taking away his Life.”

It transpired that Simpson, aged sixteen years, had been pursued up and down the street by
Anderson as he returned home at around eight or nine p.m. from church. The area around the Royal
Exchange was well known as a homosexual cruising ground and, from his conduct, Simpson
immediately began to suspect Anderson “of Designs the most unnatural, in which suspicion [he] was
greatly Confirmed by hearing of Various Attempts having been made at different times on Lads of
his Age on the same spot.” Simpson confronted his pursuer and asked him “what Business he
could have with him...that he followed him in such manner from place to place and for what
Purpose he was walking about the Exchange.” Anderson replied that “he had Business there,” which
Simpson found

so evasive that he considered it rather a Confirmation of his Guilt and that he was in truth
one of the persons above described [in his affidavit] and under that impression this Deponent
being much flurried [sic] and heated in Mind by all the Circumstances was prompted to give

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65 PRO, KB 1/29, Part 2, Hilary 37 Geo. III, Affidavit of Thomas Wratten.
the prosecutor a Blow, but this Deponent did not repeat the Blow or commit any further or other Assault.67

But, as Wratten's testimony revealed, this was not entirely true. Indeed, the severity of the attack may have been part of the reason Anderson pursued the prosecution of this case so doggedly, though we might also assume that he was keen to protect his reputation. That fact was clear from his calling a number of character witnesses, one of whom testified that Anderson was "the last Man in the World he could ever suspect to be capable of committing the Crime before mentioned,"68 and another couple who swore "that the foul Aspersions cast upon the Character of the prosecutor by the Defendant...tending to Charge him with an Unnatural Crime are wilfully malicious Wicked and Untrue."69

The case was sent to the master for arbitration and, in his affidavits in mitigation (that is, the affidavits submitted to the master during his deliberations), Simpson stated how he had offered to "compromise the Matter with the Prosecutor and was ever ready to acknowledge the Rashness of his Conduct." But Anderson refused to settle and, "constantly spurred and rejected such Offers," in Simpson's view, "in Order to harrass and Oppress [him]...And to put his father (who is a Tradesman but of middling Circumstances having a Family of Nine Children to maintain) to Expence after [he] had pleaded to the Indictment at the Sessions." The case had already moved from the Mansion House Justice Room to the quarter sessions and was now removed by certiorari into the King's Bench. This had occasioned considerable expence for Simpson and, finally, "by the Advice of his Solicitor [he] suffered Judgment to go against him by Default upon the said Indictment As the most advisable Way of putting an End to a Cause that to Defend has already cost his father a very considerable sum of Money."70

67 Ibid.
68 PRO, KB 1/29, Anderson v. Simpson, Affidavit of Peter Hopes.
69 Anderson v. Simpson, Affidavit of Thomas Steel and Wife; also see Affidavit of Benjamin Noon and Six Others.
One final point might be mentioned briefly, regarding the law. Thus far we have been speaking chiefly of ways in which both the courts and the litigants themselves conspired to avoid formal prosecutions and punishments in cases of interpersonal violence. Such informal responses to violence allowed the courts to exercise considerable flexibility in dealing with such crimes in an age before imprisonment was more readily available. Whether a case could or would be settled through informal means by a magistrate depended not only on the nature of the offence alleged, or the conciliatory nature of the litigants, but also on the law itself. Changes in the law had direct bearing upon both the formal and informal practices of the courts. For example, in February 1785, William Bailey was brought before the Lord Mayor and charged by Phillip Crowther with “unlawfully presenting a Gun & threatening to fire the same at him.” At the time, the unlawful act was still enumerated among the misdemeanour definitions of assault. However, had the same case arisen eight years later, Crowther could have faced a stiff sentence, for by then he would have been charged with a capital offence under Ellenborough’s Act.

Verdicts in Assault Cases
What was likely to happen to someone charged with committing an assault in eighteenth century London? The answer would depend in part upon the persistence of the prosecutor and the obstreperousness of the defendant. When an assault case did come to be tried on indictment, the final decision was left to a jury. Jury verdicts were based on the trial evidence; thus an examination of verdict patterns in assault cases might suggest something about jury attitudes towards violence generally, as the nature of the attack and the degree of violence used would form the heart of the case. It is clear from studies of verdicts in property cases that jury behaviour can often reveal deeper

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71 CLRO, MJR/M 4, 17 February, 1785.
72 43 Geo. III, c. 58, s. 1.
attitudes towards the nature of the crime itself. Contemporary commentators noted, too, that juries considered the possible sentence in their deliberations over a verdict, and Beattie has shown how “partial verdicts” were in fact implicit comments on the severity of the law. Thus, it seems likely that juries in assault cases had more than the simple facts of the case in mind when deliberating over their verdicts.

How did Middlesex quarter session juries regard assault in our period? Unfortunately, a considerable proportion of verdicts in assault cases cannot be ascertained from the surviving records as they were simply not recorded on the indictments or in the court minute books. Still, among known verdicts, as table 6.2 suggests, we can detect a significant shift in acquittals over our period. There was a dramatic increase in the proportion of acquittals between 1760 and 1835, growing from 19.5% in the third quarter of the eighteenth century to 55.1% in the 1820s to mid-1830s. This might suggest a growing lenience towards violence and violent offenders. However, it should be noted

<table>
<thead>
<tr>
<th>Table 6.2</th>
<th>Known Verdicts for all Assaults, Middlesex Quarter Sessions</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1760-75</td>
</tr>
<tr>
<td></td>
<td>N</td>
</tr>
<tr>
<td>Not Guilty</td>
<td>99</td>
</tr>
<tr>
<td>Guilty</td>
<td>408</td>
</tr>
<tr>
<td>Total</td>
<td>507</td>
</tr>
</tbody>
</table>

Source: see Appendix.

that, before 1800, the proportion of guilty verdicts was still higher than acquittals by a ratio of over two to one. This suggests that juries were taking a tougher stand against trifling assaults and were

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73 See the testimony of Richard Phillips, a former sheriff of London, before the Select Committee on Criminal Laws, (P.P. 1819, viii, 93).
75 The proportion of unknown verdicts among all assault cases for the four periods are: 1760-75, 43.7%; 1780-95, 35.9%; 1800-15, 47.9%; 1820-35, 46.0%.
76 I have calculated the ratio of guilty to not guilty verdicts for the period 1760-95 as 2.5:1. For the 1800-15 period, before the 1828 Act, the ratio is nearly even at 1.1:1, and for the period including and following the act, 1.2:1. A large number of acquittals are the result of the prosecutor failing to appear at the trial. I have treated all acquittals the same: either the aggrieved party did not think it worth his or her while to pursue the prosecution, or else the jury did not think the act in
unwilling to substantiate petty cases with the court’s sanctions, instead reserving such power for
those cases in which actual physical harm resulted. Further evidence for this comes from the
concurrent shift in penal practices for assault, as we shall see later. In short, the courts were getting
tougher on more serious cases of violence, a change that indicates an overall shift in attitudes
towards interpersonal violence.

The relationship between verdicts and punishments must also be borne in mind. In 1760, if
a defendant was likely to face only a 1s fine, even if convicted of a fairly serious offence, it is equally
likely that juries would have had less compunction about finding the offender guilty in order to
send some kind of message to the community that violence was generally unacceptable. However,
as has been demonstrated in other contexts with regard to other offences, as the punishments grew
more severe juries began to take greater care in reaching their decisions.  

Arriving at an “appropriate” verdict in an assault case could depend on the will of the judge
hearing the case. John Langbein found evidence in Dudley Ryder’s judicial notes that at the King’s
Bench, verdicts were sometimes directed by the judge in actions for assault. In one case, Ryder
notes, “I directed the jury that they must find for the plaintiff” given the testimony presented at
trial.  Though there is no direct evidence that this went on at the Middlesex bench, the proportion
of cases ending with a “stay of proceedings” (and therefore an unknown verdict) suggests that the
court was frequently willing to interrupt a prosecution to avoid a jury verdict. It seems possible that
judges also directed jury verdicts in cases where the parties refused to settle the matter themselves.

One of the easiest ways of directing a verdict was to encourage the defendant to change his

question was worthy of condemnation. This generalization glosses over many of the subtleties of trial procedure, and
tends to lump very different kinds of violent crime into two categories. Nevertheless, if the defendant is let off, whatever
violence he may have committed still goes officially unpunished.

Columbia Law Review 96:3 (June 1996), 1191.
or her plea. At the London sessions of the peace, it is clear that some defendants in assault cases were encouraged to plead “guilty” and submit to a fine rather than pursue a prosecution. Even those who had already pleaded “not-guilty” were encouraged to change their pleas in order to facilitate a more speedy resolution to the case. For example, one Henry Argent was encouraged to change his plea to “guilty” in order that he be discharged from a recognizance and released from all further action by the prosecutor, Samuel Wheeler.

Punishing Assault

It is important to note that, although the state was willing to overlook certain forms of violent behaviour, and promoted arbitration and reconciliation in place of litigation, it did take an interest in others and always upheld the general principle that the wronged party deserved some satisfaction for their injury. As William Eden pointed out in his *Principles of Penal Law*, even in “inferior offences against the person, it hath been thought reasonable, not only to assign those marks of public disapprobation, which, for the sake of example, are due to all disturbances and oppressions of a public nature, but also to give to the party aggrieved that private satisfaction, which is due to him for the mere civil injury.” But, in order to avoid the fruitless task of enumerating every species of interpersonal violence that might come before the courts, custom and practice—“founded in humanity to both parties,” according to Eden—had left the courts with the power to assign a proportional punishment, “depending on the circumstances of the case.” The court could then recommend a pecuniary satisfaction be paid to the prosecutor which, if accepted, not only satisfied the offended party, but also released the court from the necessity of inflicting a suitable punishment.

79 For examples, see CLRO, London Peace Papers, 1788.
80 Ibid., (January, 1789).
This was no small consideration in an age before the widespread use of imprisonment when the range of suitable secondary punishments was limited.

1. Promises to Keep the Peace

Once the initial complaint was made before a magistrate, parties to an action for assault would usually be bound over in a recognizance. The recognizance constituted an agreement, backed by monetary sureties, to appear at the next session of the peace for that county and try the case. Failure to do so would mean that the sureties that the defendant and his or her supporters put up would be escheated to the crown. In most instances, the recognizances had a limited function, and when the parties appeared for trial they would be dismissed by the court. But in cases of assault, recognizances were subject to more creative use; that is, as an instrument for maintaining order in English society. This use of the recognizance has yet to be fully explained: in particular, the binding over of people in recognizance to keep the peace.

In a recent article examining the extent of the magistrate’s power to maintain the public peace in Elizabethan Cheshire, Steve Hindle emphasizes the importance of the practice of binding over. Hindle argues that binding over was a remedy, often used in cases of violence, which “acted as a non-aggression pact, initially precluding any further physical self-assertion, and subsequently allowing a cooling-off period” in which informal negotiation or more formal arbitration might take place. Binding over was popular because it was a remedy entirely within the sole power of the magistrate and also could be used whether or not a criminal offence had been proved. Hindle suggests that the growing popularity of this practice of demanding the peace might well be seen as early evidence of a transformation of attitudes towards violence in society. Its use in the sixteenth

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century, he argues, "implies a gradually emerging sense of abhorrence, especially amongst middling social groups, of deeds and words that had once been so commonplace as to cause little concern."93 Binding over continued to be popular in the eighteenth century, and Robert Shoemaker has further argued, for the early eighteenth century, that recognizances to keep the peace could also be used as a form of punishment for certain offences "as an alternative to filing an indictment."94 Though Shoemaker calls this "prosecution by recognizance," it would seem, given what has been said regarding settlement, that what he describes is rather an extension of the arbitration process, resulting in the plaintiff not prosecuting following their obtaining a recognizance to prosecute.

According to the records of the Middlesex quarter sessions, forcing defendants to enter into a recognizance to keep the peace and/or to be of good behaviour (both terms were used) as a court-imposed sentence in cases of assault, was only applied rarely from the mid to late eighteenth century.95 Only in the first third of the nineteenth century, in the 1820s and 1830s, was there a noticeable increase in the application of this sanction in such cases. The same seems to be true for cases prosecuted in the City as well, though the number of cases is small (table 6.3). According to the 1814 edition of Burn’s Justice, the range of behaviours deemed fit for this kind of control had greatly extended, which may explain the jump in its use after 1815 noted in table 6.3.

We might also pause to consider the types of offenders being controlled by the state with this particular tactic. The combined total of those punished in this manner for the entire period in London and Middlesex, is ninety-eight. Of that total, seventy-five were males and only fourteen of those (roughly 19%), were men who had been charged with assaulting their wives. The remaining 61 cases with male defendants were unexceptional. Only two of the twenty-three women so punished

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94 Shoemaker, Prosecution and Punishment, 95.
95 By the early nineteenth century, the recognizances for good behaviour and to keep the peace appear to have lost their former distinctions. See Hindle, “Keeping the Public Peace,” 219-22; Burn, Justice of the Peace, 22nd ed. (1814), V: 252-53.
Table 6.3
Known Punishments for Assault Convictions, London and Middlesex Sessions, 1760-1835*

<table>
<thead>
<tr>
<th></th>
<th>1760-75</th>
<th></th>
<th>1780-95</th>
<th></th>
<th>1800-15</th>
<th></th>
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<td>%</td>
<td>N</td>
<td>%</td>
<td>N</td>
<td>%</td>
</tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
<td>43</td>
<td>69.4</td>
<td>66</td>
<td>70.2</td>
<td>28</td>
<td>45.9</td>
<td>15</td>
<td>28.8</td>
</tr>
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<td>6.5</td>
<td>6</td>
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<td>72</td>
<td>76.6</td>
<td>36</td>
<td>59.0</td>
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<tr>
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<td></td>
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</tr>
<tr>
<td>Males</td>
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<td>21.0</td>
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<td>24</td>
<td>39.3</td>
<td>30</td>
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<tr>
<td><strong>recognizance to keep the peace</strong></td>
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<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
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<td>1</td>
<td>1.1</td>
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<td>1.6</td>
<td>6</td>
<td>7.7</td>
</tr>
<tr>
<td>Females</td>
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<td>-</td>
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<td>-</td>
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<td>-</td>
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</tr>
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<td>Total</td>
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<td>61</td>
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<td>49.6</td>
<td>99</td>
<td>31.1</td>
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<tr>
<td>Imprisoned</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Males</td>
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<td>61</td>
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</tr>
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<td>12.0</td>
<td>23</td>
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<td>146</td>
<td>45.9</td>
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<tr>
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<tr>
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<td>3.2</td>
<td>73</td>
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<td>408</td>
<td>100.1</td>
<td>405</td>
<td>100.0</td>
<td>341</td>
<td>100.0</td>
<td>318</td>
<td>100.0</td>
</tr>
</tbody>
</table>

*Sources: Middlesex: see Appendix; London: CLRO, SM 127-SMP 1-9.
* I have excluded 4 persons of unknown sex who were fined from the London totals, and 11 people sentenced in other ways (2 sent to the navy, 8 sentenced on another indictment, and 1 unknown) from the Middlesex totals.
were charged with assaulting their husbands, but this low number might say more about the reluctance of husbands to prosecute in such cases that about the court’s unwillingness to punish women in this way. Perhaps the timing of the use of this sanction is more telling. Eleven of the fourteen domestic assault cases involving male aggressors, and both the female cases, come from the 1820-35 period. Clearly, wives and husbands could and did demand sureties of the peace against their partners before the nineteenth century, but the increasing numbers after 1800 might suggest that there was greater incentive, perhaps even some expectation that spouses take action in cases of domestic violence.86

It is possible that some of the cases whose outcome is unknown from the records, and those falling under the “stay of proceedings” category (see table 6.1), were in fact the result of some recognizance to keep the peace being entered into. But in that case, the recognizance would be issued as a result of arbitration and, strictly speaking, not as a sentence of the court on a convicted offender. A more systematic inquiry into the recognizances themselves from this period may reveal this more fully that I am able to do here.

A more powerful intervention by the State in the control of interpersonal violence came with the exhibition of articles of the peace. Victims of violence—usually domestic violence—could present their case to the magistrate or another court (King’s Bench, assizes, or quarter sessions) to “swear the peace” against their aggressor.87 Once the prosecutor (or “articulant”) exhibited articles of the peace, by relating their story and asking the court’s protection, the aggressor would be summoned to appear before the court. The aggressor, frequently the husband of the prosecutor, would be forced to enter into a recognizance to keep the peace for a specified period of time against the plaintiff in particular, or sometimes the community at large. Such instruments were often the

result of a particularly violent episode although, in many cases, they reflect the culmination of a pattern of violent behaviour that had been building for some time. In April 1818 at the King’s Bench, for example, a woman exhibited articles of the peace against her husband in which she charged him “with violent ill treatment.” The husband appeared before the court as it was said “to answer the articles,” and the court ordered him to enter into a recognizance to keep the peace “towards all his Majesty’s Subjects, abut particularly towards his wife, for one year, himself in £200 and two sureties in £100 each.” The husband did as he was told and was discharged.88 At the Middlesex quarter sessions in July 1781, one William Arthur was ordered to enter himself into a recognizance for three years in £100, with two sureties in £50 each after articles of the peace were exhibited against him by Ann Ferry, the wife of George Ferry, in the previous May session.89

But it was not only women who sought the court’s protection from an abusive spouse or acquaintance. At the Middlesex quarter sessions in October, 1825, John Leslie exhibited articles of the peace against his wife Hannah. They had been married for five years but were now separated. According to the document, Hannah had apparently threatened her estranged husband’s life several times, but

particularly on or about the nineteenth day of…October when she threatened to stab him. And also on or about the 22nd day of the same month she said that if [he] came near her that she…would stick him to the heart with a knife and [she] has also threatened that she will set his…house on fire.90

It is possible that Hannah Leslie was reacting to five years of abuse at the hands of her husband and that he now feared for his life: the threat she made was that he not “come near her.” But, as we have said, it was less common for men to come court to admit they were in fear of physical danger from their wives or female friends. This was tantamount to an admission of weakness and a lack of

88 Times, 25 April, 1818.
89 LMA, MJ/SBB/1337, f. 85.
90 LMA, MJ/SR 4126, no. 43, October, 1825.
control over the household and over women in general. Unless they were in fear of imminent
danger and could not handle the situation themselves, most men would probably try to settle the
matter privately. In this case, however, one gets the sense that the husband truly feared for his life
and, given that they were already separated, and had been married for five years before that, one
would expect that John had ample opportunity to gauge her character and personality, and this time
suspected that her threats carried serious meaning.

2. Fines

At the Middlesex quarter sessions, at least until the end of the eighteenth century, the
majority of persons who were convicted of assault were faced with a small fine. As Beattie and King
have noted, and as we have already seen in chapter 2, the one shilling fine was usually only a
symbolic fee which was taken to indicate the court was finished with the case. But even with such a
small fine, it appears that at least some justices were careful to indicate where they felt the blame lay.
For example, when Henry Short and John Smallman were charged by Jacob Marsh for "assaulting
beating and otherwise abusing him by knocking a Tooth out and cutting his Lip,” the magistrate in
the Guildhall discharged Smallman, as "there app[ear]d no Evidence,” but fined Short the one
shilling. By the early decades of the nineteenth century, however, judges and magistrates began
moving away from the practice of punishing assault with nominal fines. During the period 1760-75,
roughly 76% of all of those known to have been found guilty of assault were fined (table 6.3). A
small proportion of those were fined and imprisoned or fined and bound over in recognizance to be
of good behaviour. But most were simply fined 1s and released. By the 1780s, however, we begin to
detect a change in sentencing patterns, with a growing proportion of offenders being sentenced to a

91 Beattie, Crime and the Courts, 609; King, "Punishing Assault,” 49. The Palace Court records revealed a greater proclivity
to impose higher fines than the other courts, but fining was the usual penalty for assault nonetheless.
92 CLRO, GJR/M 3 (21 April 1762).
term of imprisonment. Again, the unknown figures tend to mute the significance of this change but, if we assess only those cases in which a punishment is known, the shift in penal practice becomes much more striking.

Figure 6.1 demonstrates the shift away from the simple fine and towards imprisonment in assault cases prosecuted at the Middlesex quarter sessions. It reflects the same pattern of change in penal policy found by Peter King in his study of Essex.93 In Middlesex in the period 1760-75, 90% of people convicted of assault were sentenced to pay a fine and just under 10% were sentenced to a term of imprisonment (table 6.3). By the 1820s and 1830s, the proportion of those sentenced to imprisonment had swelled to nearly 46% of Middlesex cases, while the proportion being fined had shrunk to around 31%. In the City proper, the pattern was similar: roughly 76% were fined while 21% were to serve some form of imprisonment in the earlier period. But by the period 1820-30, magistrates in the City of London were relying on imprisonment in nearly 58% of convictions, while simple fines had declined to around 33%. Contemporaries noted the increase in the number of persons imprisoned for assault as a result of this changing penal policy. Henry Bennet, chairman of the 1816 Parliamentary Committee on the State of the Police in the Metropolis, felt “it was worthy of remark, that 800 persons were committed to Clerkenwell prison in one year, chiefly for assaults.”94 Clearly there was a growing willingness among metropolitan judges to see assault punished with a sentence more severe than a simple fine, and a term of imprisonment in either the jail or house of correction was the new punishment of choice. We shall return to the story of imprisonment in a moment.

93 King, “Punishing Assault,” 49-50.
94 P.P. (1816) v. 6, Report of Committee on the Police of the Metropolis.
Figure 6.1
Distribution of Sentenced Punishments, Middlesex Quarter Sessions: 1770-1835

As table 6.4 demonstrates, over the course of the period 1780-1820, even when fines were imposed, they were growing gradually stiffer. What had been the standard fine of 1s for almost all assault cases was gradually replaced by higher fines—or, as we shall see, at least the threat of higher fines. Fines of 1s or less counted for nearly 80% of all fines imposed in the 1760-75 period but, by roughly the first decade of the nineteenth century, the proportion of such fines had dropped to only 16.5%, rising slightly again to around one in five in the next decade. The value of fines, though not growing substantially, were more frequently in the 1s to £5 range or £5-10 range. For the entire period studied, only about 3-5% of fines assessed were over £10. In most cases where a very large fine was assessed, such as £50 or £100, the fine was later reduced to a nominal 1s. The purpose of imposing such high fines in the first place is never explicitly stated in the first place. Perhaps it was an attempt by the judges to convey their opinion regarding the gravity of the offence. Although by reducing the high fines, the judges were not punishing those offenders as harshly as they might, they
Table 6.4
Distribution of Fines for Assault Cases by Value, Middlesex Quarter Sessions, 1760-1825

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<tr>
<th></th>
<th>1760-75</th>
<th>1780-95</th>
<th>1800-15</th>
<th>1820-35</th>
<th>Total</th>
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<td>%</td>
<td>N</td>
<td>%</td>
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<tr>
<td>1/- or less</td>
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<td>79.8</td>
<td>235</td>
<td>63.0</td>
<td>38</td>
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<td>18</td>
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<td>100.0</td>
<td>373</td>
<td>100.0</td>
<td>230</td>
</tr>
</tbody>
</table>

Source: see Appendix.

may have known that by at least threatening heavy fines the courts could transmit a clear message indicating the state’s disapproval of such behaviour, while also placing the offender in need of mercy.95 Then, depending on the gravity of the circumstances, the court could elect to show mercy or not and would likely do so in order to make some kind of statement about the nature of violence in society.96 It is also likely that, in some such cases, that the court was trying, once again, to force the defendant to reach a settlement with the prosecutor. By imposing a hefty fine the defendant was pressured to show some real remorse for his or her actions, and to make some attempt to repair the rent in the social fabric with a more personal reconciliation rather than simply placing a monetary value on the harm done and the injuries suffered.

Sometimes forced reconciliation worked, other times it did not. At the Westminster sessions in February 1831, James Nevot was indicted for an assault on William Burnand. Nevot was found guilty and fined £40 to be paid “to the King.” The indictment also notes that Nevot was granted

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95 G.R. Batho suggests that this was in fact the logic behind similar procedures at the Star Chamber in the early seventeenth century, where considerable fines—sometimes in excess of £10,000—were later respited. G.R. Batho, “The Payment and Mitigation of a Star Chamber Fine,” Historical Journal 1:1 (1958), 31.

96 In January 1785, a man was fined £5 at the Middlesex sessions for an assault, but the court recorded that the fine was “remitted and [the defendant] discharged on Recognizance to keep the peace for one year” (LMA, MJ/SR 3432, fo. 16). In 1790, Martha Beard was fined £20 for a “violent assault” in which she struck another woman in the head “with a Patten.” Her fine was reduced to 1s. (MJ/SR 3520, f. 84). This practice continued well into the nineteenth century. Two cases from 1830 involved defendants who were fined £50 and £10 respectively, “with liberty &c.” and both saw their fines reduced to 1s. Presumably, the defendants were fined “with liberty” to speak to the prosecutor in order to work out some kind of reconciliation (MJ/SR 4225, f. 35; MJ/SR 4231, f. 20).
“liberty to speak to the Prosecutor,” which indicates that the court was probably willing to allow a lesser penalty if some contrition was shown. But Nevot was quite literally willing to pay for his actions; as the indictment notes, “he paid the £40 to the King.”

In the end, although roughly 54% of all offenders convicted and punished for assault at the Middlesex quarter sessions between 1760-1835 were sentenced to pay a fine of 1s or less, in fact 74%, a substantially higher proportion, actually ended up paying that amount to the court (table 6.5). Only 5.8% paid fines of over £5 as opposed to the 15.2% who were originally faced with them. Thus, many stiff fines were later reduced. Unfortunately, there is little evidence to indicate whether those few cases in which high fines were imposed (and which do not appear from the records to have been mitigated), were extraordinary in any way. In one of these cases, a man was fined £2 and ordered to enter into a recognizance of £100 for his good behaviour for assaulting his wife. Of those fined £5 or more, three involved assaults on constables. The highest fines assessed in assault cases tried before the Middlesex quarter sessions were both for £100. Both were assessed in separate cases in 1770, one in the case of a man who assaulted a woman under unknown circumstances, and another when a man assaulted a customs officer. The second offender was also sentenced to an unspecific term of imprisonment in the New Prison.

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98 813 fined, out of 3484 convicted (Table 5.5).
Fines were also imposed as punishments in assault cases brought before the King’s Bench though, when they were imposed, they were generally higher than those assessed at the quarter sessions. Indeed, litigants would often petition the court to lower the fine following a judgement at King’s Bench. In sworn affidavits, called Affidavits in Mitigation, defendants would attempt to have their fines lowered by pleading poverty for themselves or by having friends or employers appeal to the court on their behalf. William Herrick and Charles Jutkins, each fined 1 guinea for assaulting Mary Raynes in 1779, convinced their employer William Jacobs, a livery-stable keeper, to swear in an affidavit on their behalf that the two men were “employed by this Deponent as Coachmen at the Wages of Nine Shillings per week each to drive Job Coaches for him which is their only Subsistence save and except the Board Wages they receive from the Family by who they are respectively employed.”

Thus the fine would impose an inordinate burden upon them. As we have already mentioned, and as is clear from the records of the court, only a minority of cases of assault tried at the King’s Bench were finally settled with a judgement from the court, especially by the early nineteenth century. In general, the court made every effort to encourage private settlements.

The ambiguity of the civil and criminal nature of assault mentioned above, and in chapter 2, is again revealed in cases where the court sentenced both fines as well as costs or damages. It is clear from anecdotal evidence that damages were also awarded in assault cases. Evidence of how this might have worked comes form the records of the Palace Court at Westminster. The circumstances

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100 An 1821 Parliamentary Committee reported on the use of fining at the King's Bench:

<table>
<thead>
<tr>
<th></th>
<th>No. fined 1/-</th>
<th>No. fined 6/8</th>
<th>No. fined £1</th>
<th>No. fined other amount (fine amount)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1818-1821 London</td>
<td>1</td>
<td>-</td>
<td>1 (6/13/-)</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Middlesex</td>
<td>3</td>
<td>5</td>
<td>1 (5/-)</td>
<td>1 (£100)</td>
<td>12</td>
</tr>
<tr>
<td>Total</td>
<td>4</td>
<td>5</td>
<td>1</td>
<td>4</td>
<td>14</td>
</tr>
</tbody>
</table>

of the case, and specific evidence upon which damages might be assessed here and in other courts, are revealed by citing a few examples.

Of eleven assault cases tried between 1799 and 1805, seven were resolved in favour of the plaintiff with damages ranging from 20s. to £10—considerably stiffer penalties than the average from the Middlesex quarter sessions. Even from only a few cases, we can see that the Deputy Steward shared what we might call the general philosophy of punishment with regard to assault cases. That is to say, in minor incidents, the punishment was light, and the penalty was more like a symbolic slap on the wrist. Thus in one case, a drunken scuffle between two men was settled for the defendant with damages of 1s 4d.

Yet another case reflects the culmination of some past friction between a milk maid named Hannah Tarry and a milk man named Edward Williams. Upon meeting in the street, Williams gave Tarry’s yoke “a jurf with his shoulder which occasioned the pail to make a full swing.” Tarry lamented to another man, “It is very odd that I can never pass this man without being insulted.” She followed Williams into his shop and demanded that he give “satisfaction for what he had done.” Williams pushed past her out of the shop and “told her to go about her business,” whereupon she grabbed him, according to one witness, “caught his collar [and] struck his mouth two blows” and (another witness testified) “said she w[ou]ld drive his teeth down his throat.” Williams responded with a blow which knocked her down in the street. This only incited Tarry to pick up her yoke and take a swing at his head, but Williams “saved himself with his hand and had his knuckles cut.” Two months later, Williams took the woman and her husband to the Palace Court but, when Mr. Serjeant Marshall and the Deputy Steward heard the case, they determined that an indictment would not have been successful and effectively settled the matter by finding for the defendants. Such instances of

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101 See PRO, PALA 9/1/1-23 for examples.
102 PRO, PALA 9/1/2 (2 July, 1802).
spontaneous violence were dealt with at the discretion of the judges, with the court acting as an airing ground for establishing the relative severity of the incident.

When necessary, however, the court appears to have taken a rather stern view of more serious violent behaviour, especially when a weapon was involved, and was willing to impose relatively stiff monetary penalties on those who resorted to such violence. The use of a weapon always increased the probability of more serious injury, even death, and it seems that judges and magistrates took this into account in sentencing offenders in such cases. In November 1801, John Jackson was ordered to pay 40s in damages for beating William Ansil, cutting his nose and lip, and threatening him with a candlestick. In another case, John Whitbread was charged with assaulting Thomas Harrison with a chisel and a trowel. Whitbread was drinking in Harrison’s public house but refused to pay for his drinks, claiming that “he had not had his share of gin and water.” Harrison asked him to leave, “took him by the coat,” and showed him to the door. Whitbread, who, by his weapons of attack, was likely a mason or bricklayer, “took up [a] chisel and a trowel and struck [the plaintiff] in the Temple” from which he “bled very much.” Harrison then “clasped him round and called to the rest to prevent mischief,” whereupon Whitbread bit Harrison’s finger, again drawing blood. Such behaviour was clearly deemed unacceptable, and Whitbread was ordered to pay £10.103

Costs of prosecution could vary widely and were likely negotiated in cases where they seemed unusually high. Among the sessions papers of the Westminster sessions for April 1772 is a receipt signed by Mary Harris for the costs of prosecuting an assault in the previous November sessions which reads “Rec’d of Mrs. Pearman for Mrs Eastham, the sum of Two Pounds Eight Shillings in full for all Costs and Charges of an Assault on my Son Charles Harris.”104

Bringing an action into King’s Bench was even more costly, especially since lawyers were

103 PRO, P/LA 9/1/3 (31 May, 1805).
104 LMA, WJ/SP/1772/APR/1.
necessarily involved. In February 1804, when Robert Denton mounted a prosecution in the King's Bench, he was faced with a solicitor's bill for £47/8/6.115 Aside from these costs, damages might also be claimed, though by an Elizabethan statute, damages were limited to 40s in cases of assault and battery.106

3. Imprisonment

By the 1770s, and with greater certainty by the early nineteenth century, imprisonment had become the likely sentence for those indicted and convicted of assault at the Middlesex quarter sessions (table 6.3; figure 6.1). Even rural JPs like Richard Wyatt were turning to imprisonment as a suitable punishment for assault. In February 1771, Wyatt sent George King to the House of Correction for an unspecified length of time for assaulting his wife Ann and threatening to kill her.107 Though it was less likely to be used in more run-of-the-mill cases, imprisonment was not reserved only for the punishment of serious acts of violence. Table 6.3 suggests that city magistrates were more apt to use imprisonment than their counterparts in neighbouring Middlesex before the end of the eighteenth century. Though the number of assault cases tried there was relatively small, and the proportions are not wildly different from those from Middlesex, they do suggest that City magistrates made greater use of the larger number of places of incarceration available to them for the punishment of assault. Indeed, the various small City prisons under the control of the sheriffs, known as the Compters—the Poultry Compter, the Wood Street Compter, and the New Compter in

106 By the statute of 6 Edw. I, also known as the Statute of Gloucester, plaintiffs could recover costs in all cases where damages were recovered. However, this led to an abuse of the courts, with suitors bringing the most trivial causes to Westminster Hall. The inconvenience of this was quashed by 43 Eliz. c. 6, which enacted that, "if upon any personal action, nor being for any title or interest of land, nor concerning the freehold or inheritance of lands, nor for any battery, it shall be certified by the judge before whom tried, that the debt or damages recovered shall not amount to forty shillings or above, the plaintiff shall have no more costs than the debt or damages recovered." Among personal actions, the statute included assault and battery. See 43 Eliz. c.6, quoted in Crompton, Practice of the Courts of King's Bench and Common Pleas, 431.
Giltspur Street—were all used by the magistrates to punish such offenders, along with Newgate Prison and, occasionally, the House of Correction (table 6.6).

Table 6.6
Place of Imprisonment, London Cases, 1760-1830

<table>
<thead>
<tr>
<th></th>
<th>House of Correction</th>
<th>Newgate Prison</th>
<th>City Compters</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Wood Street</td>
<td>Giltspur Street</td>
<td>Poultry</td>
<td></td>
</tr>
<tr>
<td>1760-75</td>
<td>-</td>
<td>6</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>1780-95</td>
<td>-</td>
<td>7</td>
<td>7</td>
<td>21</td>
</tr>
<tr>
<td>1820-30</td>
<td>2</td>
<td>-</td>
<td>28</td>
<td>30</td>
</tr>
<tr>
<td>Total</td>
<td>2</td>
<td>28</td>
<td>14</td>
<td>88</td>
</tr>
</tbody>
</table>


While City magistrates preferred Newgate or the Compters, the Middlesex justices often sent their convicted offenders to the house of correction. The 1722 Workhouse Test Act had defined three general roles for the house of correction: to provide some meagre earnings for the poor; to partly reform the habits of the vagrant class; and to deter others from the evil effects of idle and disorderly behaviour. Over the course of the eighteenth century, the House of Correction came to be seen and used by justices as a common gaol and, later, they were taken as penitentiaries by the 1779 act.118 The house of correction at Cold Bath Fields was built between 1788-94. Thus, the metropolis was also at the forefront of penal policy in the late eighteenth century, responding to the demands of penalty raised by both the numbers of offenders and by changing attitudes as to how to best punish them.

Table 6.7 reveals the rapid escalation of sentencing to the house of correction, and also to the New Prison, between 1780 and 1815. Between 1815 and 1820, Middlesex convicts sent to

prison for assault were being sent to Newgate Gaol or to the New Prison with less frequency, and by
1820 virtually all were sent to the House of Correction. In some cases, for added security, some
offenders in assault cases were ordered to be bound over by recognizance to keep the peace after
serving their sentence in either the House of Correction or the New Prison at Clerkenwell. Judges
could also specify punishment at hard labour during their confinement, which was ordered in at least

Table 6.7
Place of Imprisonment, Middlesex Cases, 1760-1835

<table>
<thead>
<tr>
<th></th>
<th>House of Correction</th>
<th>Newgate Prison</th>
<th>New Prison</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>1760-75</td>
<td>6</td>
<td>3</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>1780-95</td>
<td>28</td>
<td>12</td>
<td>34</td>
<td>74</td>
</tr>
<tr>
<td>1800-15</td>
<td>92</td>
<td>3</td>
<td>65</td>
<td>160</td>
</tr>
<tr>
<td>1820-35</td>
<td>146</td>
<td>0</td>
<td>1</td>
<td>147</td>
</tr>
<tr>
<td>Total</td>
<td>272</td>
<td>18</td>
<td>112</td>
<td>402</td>
</tr>
</tbody>
</table>

Source: see Appendix.

four cases---two men and two women---in 1835. It would appear that imprisonment with hard
labour was used for particular types of violent offenders. When William Terrard was convicted of
an attempted rape on an eight-year-old girl, he was sentenced to be imprisoned for six months in the
house of correction with hard labour.\(^\text{109}\)

Table 6.8
Imprisonment Sentences for Assault, Middlesex Quarter Sessions

<table>
<thead>
<tr>
<th>Length of sentence</th>
<th>1760-75</th>
<th>1780-95</th>
<th>1800-15</th>
<th>1820-35</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>%</td>
<td>%</td>
<td>%</td>
<td>%</td>
</tr>
<tr>
<td>Less than 1 month</td>
<td>14.6</td>
<td>33.8</td>
<td>30.9</td>
<td>19.0</td>
</tr>
<tr>
<td>1 month</td>
<td>36.6</td>
<td>20.3</td>
<td>27.8</td>
<td>11.6</td>
</tr>
<tr>
<td>1 ¼ - 3 months</td>
<td>34.1</td>
<td>20.3</td>
<td>17.9</td>
<td>46.9</td>
</tr>
<tr>
<td>3 ¼ - 11 months</td>
<td>12.2</td>
<td>10.8</td>
<td>15.4</td>
<td>18.4</td>
</tr>
<tr>
<td>1 year</td>
<td>2.4</td>
<td>4.1</td>
<td>7.4</td>
<td>3.4</td>
</tr>
<tr>
<td>Greater than 1 year</td>
<td>0.0</td>
<td>10.8</td>
<td>0.6</td>
<td>0.7</td>
</tr>
<tr>
<td>N</td>
<td>41</td>
<td>74</td>
<td>162</td>
<td>147</td>
</tr>
</tbody>
</table>

Source: see Appendix.
Note: Three sentences of imprisonment for an unspecified length of time have been excluded.

\(^\text{109}\) LMA, MJ/SR 4246, ind. 9, February 1831.
Before the early nineteenth century, terms of imprisonment for those convicted of assault were usually in the range of two weeks to three months, but most often around a month. The real jump in the severity of prison sentences came in the 1820s-30s, when periods of five weeks to twelve months became more common (table 6.8). By that point, none were sent to Newgate, and virtually all were being sentenced to the house of correction (table 6.7).

The judges at King's Bench were not shy about sentencing offenders to longer terms of imprisonment than the Middlesex justices, but this may have had more to do with the nature of cases that received final judgement from the high court. Since most cases of assault tried at King's Bench were settled privately, only the most serious cases, (or those with wealthy or tenacious prosecutors), would proceed to a judgement. When officials of the State were the victims of violence, for example, judgements of this kind tended to be more severe. The Times reported in June 1790 that "Esau Shelley received the judgment of the Court [of King's Bench] for assaulting several officers of the Customs and for obstructing them in the execution of their duty—to be imprisoned in Newgate for a year and [a] half."110 Later that November, Thomas Whittington was sentenced to six months imprisonment in Newgate, "for assaulting John Rhodes and other Customs House Officers, and rescuing 19 out of 25 bags of tobacco." The prosecuting attorney, Mr. Bearcroft did not push for a severe punishment in the case, since the defendant had lost two of his fingers in the commission of the offence. Lord Kenyon took little pity on the man, however, saying that when a man had put himself in the situation of being maimed and mangled in violation of the Laws of his country, "he was not sure that this went far in extenuation of his offence."111

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110 *Times*, 10 June 1790.
111 *Times*, 30 November 1790.
Imprisonment was not widely used for the punishment of felonies before the late eighteenth century.\textsuperscript{112} But this was a matter of choice rather than strictly a matter of law. By 6 Geo. I, c. 19, JPs were empowered to “commit vagrants and other criminals, and persons charged with small offences, either to the gaol, or to the house of correction, by their discretion, for such offences, or for want of sureties.”\textsuperscript{113} Minor assaults and affrays could be considered “small offences” under this vague definition but, as we have seen, the fine remained the chief form of punishing interpersonal violence until the last third of the eighteenth century. What explains this shift in penal practice towards imprisonment at that time is less easy to determine. What I am suggesting here is that judges and magistrates were looking for more serious punishments for violent assaults, and as imprisonment became more serious by replacing transportation in the case of felonies, so too imprisonment for other offences, like assault, came to be seen as a more serious punishment. By the mid-nineteenth century, imprisonment was well established as the punishment of almost all forms of felony and many serious misdemeanours too.\textsuperscript{114}

4. Other Punishments

Other punishments were used on a very small number of men convicted of assault, too. A few were sentenced to join the army or navy. Sometimes this was a summary sentence made (perhaps unjustly) by the sitting magistrate, while in other cases it may have been a sentence for men convicted of more serious assaults who might have faced a stiffer fine or even imprisonment, but


\textsuperscript{113} Burn, Justice of the Peace, 9th ed. (1764), II: 323.

happened to be convicted during a period in which soldiers or sailors were needed.115 The two men
sent into the Navy who were convicted in April 1795 included one who had assaulted a woman, and
another who had assaulted a constable. Both were discharged upon entering the navy, indicating
that a form of pardoning went on in assault cases too, albeit to a limited extent, but clearly in cases
that would have been punished with severity had they been committed at a slightly different time.
Overall, though, it would appear that few men who were found guilty of assault or who were likely
to be convicted of it were enlisted in the army or navy.116

Another standard secondary punishment in use in the eighteenth century was whipping. Middlesex had a whipping post, and offenders convicted of petty larceny at quarter sessions and at
the Old Bailey were being sentenced to whappings, either in public or private, well into the
nineteenth century. However, whipping was not usually considered appropriate punishment in
assault cases, except in those cases, as Burn's Justice said, "of a very aggravated nature (e.g., with
intent to commit an unnatural crime)" or attempted rape. In such cases, Burn adds, the punishment
of whipping might be inflicted "in addition to that of imprisonment and finding sureties for good
behaviour."117 In one case of attempted sodomy from July 1795, the court ordered that Edward
Vernon be sentenced to one month's imprisonment in Newgate, and "he is to be stripped naked
from the middle upwards and sternly whipped upon Clerkenwell Green in this County until his back
be bloody."118 But assaults of a sexual nature were more often punished with a trip to the pillory, as
we shall see in the next chapter.

115 For comparable examples of this practice in other counties during the American War of Independence, see Stephen R.
Conway, "The Recruitment of Criminals into the British Army, 1775-81," Bulletin of the Institute of Historical Research 58 (137, May 1985): 46-58, esp. 50-1; see also Clive Emsley, "The Recruitment of Petty Offenders during the French Wars, 1793-
116 This is in keeping with Conway's conclusion that "the number of known and putative delinquents enlisted [during the
American Revolutionary War] was fairly small" (Conway, "Recruitment of Criminals," 57).
117 Burn, Justice, 25th ed. by George Cherwynd, (1825), 231.
118 LMA, MJ/SR 3588, fo. 23.
The Shift

The long-term changes in the patterns of punishment in assault cases prosecuted in the metropolis are clear. In general, we can trace a steady shift away from the fine as the principal punishment for nearly all forms of interpersonal violence to a more variegated range of punishments made possible by the turn to imprisonment. But what does the trend in sentencing away from the simple fine suggest about the nature of assault cases being prosecuted in the metropolis? One explanation for the increase in severity of punishments for assault would seem to be that more violent offences were, in fact, occurring more frequently. This would suggest a general increase in violent behaviour, a significant social change which has not been detected by previous historical research. But in fact, both contemporary observers and modern historians have argued that just the opposite changes were occurring.119 As we saw in chapters 3 and 4, violence was generally falling under greater circumscription. A closer examination of the court records will prove helpful in clarifying the nature of this change.

The most significant transformation in sentencing patterns for assault in this period is the move away from the menial fine. In the mid-eighteenth century, and indeed for a long time before, a fine was the standard punishment for a simple assault. Many eighteenth-century JP’s manuals cite Burn’s direction that offenders shall be fined “according to the heinousness of the offence,” but most minor assault cases that did reach a conclusion in court ended with the payment of a minor fine of one shilling. This was the common fine for punishing other minor offences, too, such as swearing profane oaths.120 Thus, the message behind such punishments was that the offence itself

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119 Francis Place, Autobiography of Francis Place, ed. Mary Thale (Cambridge: Cambridge University Press, 1972), passim; Beattie, Crime and the Courts, 137; Langford, Polite and Commercial People, ch. 10; King, “Punishing Assault,” 54. But see J.S. Cockburn, who argues that, on the contrary, the eighteenth century was becoming more brutal: “Punishment and Brutalization in the English Enlightenment,” Law and History Review 12.1, (Spring, 1994): 155-179. This argument is examined in greater detail in chapter 7 below.

120 See CLRO, London Sessions Papers, 12 & 14 May, 1766 for examples of convictions for swearing.
was of no grave concern to the state or to society. However, evidence from the Middlesex quarter sessions reveals that, over the course of the eighteenth century, the sentencing patterns in assault cases changed markedly in character. By the latter third of the eighteenth century, there is a noticeable change in the philosophy of punishment for assault revealed most clearly in the changing sentencing patterns of the courts. The fine was no longer being applied as consistently by magistrates. As table 6.3 demonstrates, the proportion of those convicted of assault who were then fined was a whopping 90% in Middlesex in the 1760s and 1770s, and nearly 76% in the City. But by the 1830s, the respective figures were 31.1% and 32.7%. This marks a significant change in the sentencing patterns of the courts in their dealing with assault convictions: from a system in which virtually all convicted offenders were fined, to one in which less than a third were fined and fined higher amounts, and in which the majority were imprisoned for some length of time.\footnote{Some forms of assault had always carried mandatory prison sentences. For example, assaulting or threatening a juror for reaching a verdict against an defendant was “highly punishable by fine and imprisonment.” And if the juror was actually struck in the presence of an Assize judge, the offender “shall lose his hand, and his goods, and profits of his lands during life, and suffer perpetual imprisonment” (Burn, Justice of the Peace, 18th ed., sect. 719).}

Why this shift in penal policy at this point in the late eighteenth and early nineteenth century? One might expect explicit comments on such fundamental changes in sentencing to come from the judges and juries themselves. Yet both are silent on this issue. The reasons for this change must therefore be implied from other, external causes. The most likely of these would be a change in the law. But as we saw in chapter 2, the legislation that affected prosecution patterns in cases of interpersonal violence followed on the heels of the changes documented here. Instead, I would argue that these changes reflect deeper changes in attitudes towards violence in society more generally. But that is not to imply a whiggish explanation of “reform” or “progress”. Rather, these changes mirrored larger anxieties about the place and role of violence in everyday life in the metropolis. The courts were the venue in which such aspects of life’s darker side regularly came to
light, and it was there that the some of the first steps were taken to minimize, marginalize and regulate the exercise of violent behaviour. The courts had both the power and legitimacy to control violence simply through their common, daily practices, and could effect changes in the way interpersonal violence was regarded more subtly than through overt legislative changes. Since the courts depended on local networks of community and social control for their smooth functioning, they were best suited to co-opt those networks into a re-fashioning of views towards violence. To be sure, this process was deeply reciprocal, with the courtroom serving as a conduit or battleground for ideas about what was and what was not tolerable or acceptable when comparing the alleged violence to normative behavioural codes. But, through the frameworks of the courts, and through their balancing of private arbitration with public censure, there emerged new cultural standards by which various acts of interpersonal violence could be judged. And, in the end, what emerged was a pattern of growing severity in the way such cases were dealt with. Private settlements were eschewed, at least in cases where the parties were unwilling to settle, and where prosecutors sought some greater sanction that only the court could provide. In those cases where the violence involved demanded some larger public statement be made about its unacceptability, the courts acted more severely. This reveals a move towards ensuring that public opinion was interjected into the solutions to, and sanctions against, such behaviour. The changes in the punishment of interpersonal violence outlined in this chapter might therefore also be seen as reflections of larger cultural shifts in the attitudes and anxieties about violence that were occurring during this period.

Arbitrated settlements and private agreements permitted individuals to punish the offender but, in fact, much of the penal power in such arrangements was delegated to the prosecutor. Such settlements also worked well in a system of manageable size. But one final element that must be included in this general explanation is the demographic impact of the growing metropolis, and the
increase in the number of cases that all metropolitan courts had to deal with. The problem of the

rush of numbers was particularly acute for the Middlesex quarter sessions.

Hints that the number of cases was creating additional duties for the magistrates and justices

of the metropolis had been surfacing since the middle of the eighteenth century. But by the 1780s,

people were beginning to speak up about it and to float possible solutions. The pressure of business

was being felt at all of the courts. Lord Mansfield complained, uncharacteristically it seems, to the

Duke of Rutland at the end of 1785 that “load of business [at the King’s Bench] grows too great;

since the last term I have 107 causes in Middlesex and 118 in London, and they must all be

dispatched before Christmas day.”122 By the late 1820s, a parliamentary commission looking into the

business of the superior courts reported that “the Court of King’s Bench is immoderately over

burthened. The Judges of that Court make extraordinary efforts to dispose of the accumulation of

business. Yet the arrear both of term business and of causes at Nisi Prius, is excessive.”123 At his

first meeting of the Court of Aldermen as Lord Mayor, Sir Watkin Lewes brought up what he

considered to be a “matter of great grievance,” that being “the many trivial offences recognized by

the sessions.” Lewes informed the Aldermen that the crush of business was resulting in unusually

long sessions and, consequently, higher incidental costs in the administration of justice. He

122 Cited in Oldham, Mansfield Manuscripts, I: 123.
123 P.P. (1829) ix, 17. The growth in the number of causes entered was precipitous:

<table>
<thead>
<tr>
<th>Year</th>
<th>London</th>
<th>Middlesex</th>
</tr>
</thead>
<tbody>
<tr>
<td>1823</td>
<td>788</td>
<td>686</td>
</tr>
<tr>
<td>1824</td>
<td>971</td>
<td>724</td>
</tr>
<tr>
<td>1825</td>
<td>1202</td>
<td>962</td>
</tr>
<tr>
<td>1826</td>
<td>1914</td>
<td>1178</td>
</tr>
<tr>
<td>1827</td>
<td>1834</td>
<td>1228</td>
</tr>
<tr>
<td>Total</td>
<td>6709</td>
<td>4778</td>
</tr>
</tbody>
</table>

The report also notes that although “there is no return of the numbers in each year” the King’s Bench passed judgement in about 39 misdemeanour cases per year.
proposed that some offences be subject to “a summary mode of punishment,” especially minor felonies, though he may have had misdemeanours like assault in mind, too. This was objected to by many Aldermen who opposed trial without jury, “not merely upon public popular principles, but as a very dangerous expedient.” Some thought summary trial lacked the terror of jury trial and argued that the “law of the land had not invested Justice[s] of the Peace with a power of treating felonies so leniently.” In the end the Lord Mayor backed down, but clearly the issue of numbers was weighing sufficiently heavily upon some important and influential minds.124

As more and more of the trifling assaults were siphoned off from the business of the quarter sessions with the growth of summary procedure, the courts could concentrate on the more serious cases of violence that they were hearing, and use their decisions in those cases to make broader statements about community standards and attitudes towards violence. Before statutes divided assaults into summary and non-summary cases, the quarter sessions had developed a two-tiered system by which minor cases of violence were dismissed as quickly as possible through procedural legerdemain, while the more serious cases were given greater attention and punished more severely. Thus, when the legislation granting magistrates wider summary power in assault cases passed in the early nineteenth century, it was, as many commentators at the time remarked, only granting official sanction to what had been going on since the later decades of the eighteenth century.

By allowing those litigants who were willing to settle their disputes out of court to do so, the court, to some extent, legitimated the use of violence, at least to a certain degree, as long as the parties could work out a settlement between themselves. As the business of the courts increased, this policy was continued, as it permitted a form of self-selection from the numerous cases of assault that were brought to court every session. And as long as there was no public interest in such matters, assault cases were left, in the first instance, to pursue a quasi-civil mode of prosecution in which the

124 The British Mercury and Evening Advertiser, December, 1780.
victims' goal was usually some form of compensation, even if was as simple as a public apology in the newspapers. But as the matter of violence began to take on a more public character, becoming more of an issue of general social concern, it seems the courts became attuned to these larger cultural shifts. The selection process that had developed was now seen not so much as a means of keeping large number of assault cases out of the courts, but of keeping large numbers of particular kinds of cases from moving on. The courts began to look for the more serious cases of violence, selecting those in which the degree of violence seemed to press upon the outer thresholds of acceptability. As a result, over the eighty years covered by this study, the punishment of interpersonal violence grew increasingly harsh. Those "assaults" in which little or no injury occurred continued to be settled privately whenever possible, but those that went on to trial were more likely to involve the kind of violent behaviour that was no longer regarded as acceptable. By the end of the eighteenth century, then, the cultural forces that had begun to reshape attitudes towards violence had also begun to work themselves out in the metropolitan courtrooms. The procedural changes that had evolved to expedite the management of the growing case load, reflected the new attitudes towards violence inherently in place in the criminal justice system before they received concrete form in the new legislation of 1803 and 1828.

Conclusion

The role of the courts in early eighteenth century was not to punish violence. Most cases were settled privately, as we have seen. But punishing violence did become a principal concern of the courts by the end of the eighteenth century. Moreover, along with taking on this responsibility, the courts also tried to punish more serious violence more harshly. The process that led to the 1828 act, that of separating out lesser violence from the total pool of assault cases coming before the courts, was developed in practice over the course of the late eighteenth and early nineteenth century,
a process which left only the more serious acts of violence to the consideration of judges and juries. And it would appear, from the evidence of the metropolitan courts, that those judges and juries grew increasingly stringent in their assessment of interpersonal violence, a fact revealed in the shift towards harsher punishments either in the form of jail terms or more substantial fines. The results of this data from the metropolis therefore confirm the trends uncovered by Beattie and King for other parts of England. Legislation both complemented and mirrored this transition too. A minor reorganization of the nature of the caseload came with the 1803 act, which removed trials of the most serious forms of violence into the assizes, by making assaults amounting to attempted murder serious felonies. But the more substantive process of singling out the most appropriate cases of violence for punishment had been going on for most of the eighteenth century, though in the metropolis, it was accelerated by the growing case load and refined by a hardening of attitudes towards violence. The provisions in the 1828 act which encouraged the transfer of the bulk of assault prosecutions to the petty sessions were greeted as “a great public benefit”—since in many assaults it was believed that “the prosecutor is often as guilty as the defendant”—but they really only enshrined in law what had been going on in practice in the English courtroom for decades.

Given the rather wide discretion allowed to judges and magistrates in punishing cases of assault, it might be expected that there would be diverse and inconsistent sentencing patterns. However, as we have seen, the records reveal remarkably consistent sentencing patterns over the period under study and, more interestingly, they demonstrate a clear shift in penal thinking among judges and magistrates. Whereas for much of the early eighteenth century, and for long before, assaults were punished with a relatively insignificant fine, by the end of the eighteenth century and into the nineteenth the courts took a greater interest in the punishment of non-lethal interpersonal

125 Beattie, Crime and the Courts, 609; King, “Punishing Assault,” 53.
126 “Lord Landsowne’s Act,” Law Magazine, 1 (June, 1828), 139.
violence. When they could, and when it was clearly advantageous to everyone, including the amorphous society that the judge represented, the courts were keen to encourage more civil behaviour through the facilitation of settlements. Judges and magistrates used their discretionary powers (sometimes rather creatively) to create a situation in which the civilized reconciliation of disputes could be achieved.

On the other hand, serious violence or violent assaults that threatened civility were increasingly treated with greater severity and punished more harshly over the course of our eighty year period. The punishments for assault became stiffer as more people were sentenced to a term of imprisonment rather than a simple fine, and those who were still fined faced more substantial penalties than those in the past. This change in sentencing was not the result of any particular legislative development, or other concerted initiative, but had its roots in much less tangible forces. As this chapter has suggested, and as the next will demonstrate, the judges seem to have inferred from more general changes in social and cultural attitudes that the threshold of toleration for acts of violence was sinking lower and lower as tastes, beliefs, and standards of practice became more “civilized.” In the emerging “polite and commercial” society of late eighteenth-century Britain, there was less tolerance for behaviour that was cruel, vicious, and offensive to shared cultural norms. This chapter has explored the consequences of this mental or cultural shift as they were being realized in the practice of the English courts, at least in the metropolis, in the prosecution of non-lethal interpersonal violence. The ironic development that I have pointed to here is that, even though the metropolis was considered by many contemporaries to be a more violent place at the end of the eighteenth century, there were, nevertheless, significant developments in the official and public levels of intolerance of violence within that very context. In the midst of anxiety about rising crime, and fears of the growing depredations and evils of the city, the metropolis was, in fact, growing tougher on violence in many of its usual manifestations. Metropolitan authorities were clearly willing to make
use of the new penal options in order to punish violence more severely than they had only a few
decades before, again, reflecting new sensibilities towards the place of violence in society. There
were other examples of this change in thinking and change in the nuances of this “civilizing process”
occurring simultaneously with the changes in penal practice described here. To what extent they
were the result of the broad shifts in sensitivity to violence is the subject of the next chapter.
Chapter 7

VIOLENCE AND PUNISHMENT

In this final chapter, I want to explore some of the principal themes that have been developed in the previous chapters regarding the nature of violence in English society in another context. We have already discussed at some length the fundamental change in the ways that interpersonal violence was experienced and controlled both by individuals and by institutions of the state. We have looked at public anxieties about violence, particularly in “polite” or “respectable” public spaces. We have also seen how attitudes towards pain, suffering, cruelty and death, though clearly rooted very deeply in the rhythms of everyday social experience, were similarly subject to re-evaluation. What unites all of these changes is the fact that they point to a remarkable transformation in the cultural boundaries which governed how people responded to violence in society. They reveal a fundamental shift in sensibilities which reconfigured the ways in which violence was conceptualized and reacted to, in both the public and private spheres of daily life.

Concurrent with those major changes in attitudes towards violence and its punishment at law was a remarkable change in the techniques of criminal punishment between roughly 1760 and 1840. Within that period, the majority of the punishments in common use were severely circumscribed or eliminated altogether. This shift in penal practice, and in the public attitudes towards punishment generally, has attracted considerable attention from historians. Most work has concentrated on changes to the capital code, specifically the movement to repeal or at least restrict the death penalty, and the campaign to eliminate executions from public view. But other reforms to
penal practice were also undertaken in this period. In particular, we can point to the restriction and/or abolition of such corporal punishments as the pillory and public whipping which had long served the needs of English justice. Historians and social theorists continue to puzzle over the meaning of this shift in penal practice, and there has emerged no satisfactory explanation of why the majority of those punishments were severely circumscribed or eliminated altogether in the period under study.

In this chapter, I want to explore some of the ramifications of the larger changes in public attitudes towards physical violence to the person—that is, in the sensibilities to such behaviour—in terms of how state-sanctioned violence, particularly in the form of judicial punishment, was reformed. This chapter will argue that this change in penalty was shaped by the larger social and cultural changes that had sharpened attitudes towards interpersonal violence, in the ways we have seen in the previous chapters. Those same cultural forces also had a direct bearing on how many of the traditional judicial punishments that lay at the heart of the English penal repertoire were problematized, and re-conceived as no longer effective, justifiable, or necessary.

It is astonishing how swiftly, in relative terms, these changes in penal practice came about. Early histories explained what happened as indicative of a general “humanitarian” trend, sparked by reformers sensitive to the suffering of the criminal and the poor. Other interpretations, reacting to that liberal or whig interpretation, attempted to explain the changes in penal practice in Marxist terms by relating them to shifts in the value of labour. Though that view gained little acceptance, it did spark a more radical interpretation of the history of punishment as a history of the technology of

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2 I employ the term “penality” as used (and developed most clearly) by David Garland, to refer to “the whole of the penal complex, including its sanctions, institutions, discourses and representations” (Punishment and Welfare: A History of Penal Strategies [Brookfield: Gower, 1985], x).

repression, which found its most sophisticated and philosophical expression in Michel Foucault's *Discipline and Punish.*

Foucault argued, contrary to the liberal, humanitarian interpretation of changes in penal policy, that reforms to punishment were not necessarily effected in terms of progress of sentiments or moral ideas. Instead, he argued that penal practices changed as part of changing political tactics, and are representative of how the evolving "technology of power" or the creeping power of the state, needed to humanize the penal system in order to punish offenders more efficiently.

Public executions grew ineffective, in Foucault's view, as did other punishments that focused on the physical body, as the vital target for discipline and deterrence shifted from the body to the mind. Grisly spectacles of death, he argued, were ineffective because they removed the offender's body from the world altogether. In the larger calculus of developing power structures that Foucault posited, such punishments appeared short-sighted and wasteful. Bodies, as Foucault said, including those of criminal offenders, "become a useful force only if [they are] both a productive body and a subjected body." The criminal, once executed, was no longer useful in constructing a larger image of state power and repression. Punishment could, however, be reformed along more rationally "calculated, organized, technically thought out" lines, and Foucault argued that this was precisely what happened in the late eighteenth and early nineteenth centuries. The emergence of the prison in particular was the ideal substitute for the death penalty as it kept the criminal body alive, but subjugated; free to live, but condemned to serve the greater, repressive aims of the state. Thus in Foucault's vision of penal reform, the changes that occurred in our period were linked to larger

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5 Foucault, *Discipline and Punish,* 23.

6 Ibid., 26.
changes in the relationship between the individual and the state’s ability to exert its power over all its subjects.

This powerful interpretation was adopted by a number of historians and sociologists for more general interpretations of the relationship between penal practice and state power, and Foucault’s writings continue to attract attention today. As a rigorous historical interpretation of the changes in penal practice, however, Foucault’s work has been sharply criticized. He did not concern himself with explaining precisely how or why these changes took place, nor did he identify the major forces or individuals behind those changes.

Foucault’s general theory found a more careful application, in the British historical context, in Michael Ignatieff’s book, *A Just Measure of Pain*,\(^7\) though even those specific applications of Foucault’s theory were criticized, not the least vigorously by Ignatieff himself.\(^8\) Foucault and his followers were criticized for focusing on the functionalist relationship between the state and the individual which, although insightful and instructive, fails to explain fully the relationship between individuals in society. The interpretations of penal change offered by Foucault and his followers may be criticized for their failure to explain how power structures change or what role there may be for symbolic or cultural forces in those changes. When human bodies are reduced to symbols and metaphors of power, as in Foucault’s analysis, the fact that there were real, sentient beings in pain, is often lost. This perspective minimizes the historical individual’s experience and obscures the relationship between his or her pain and suffering and the feelings and sensibilities of the crowd that surrounded them. Explanations for historical change which follow Foucault’s analysis, along with some other Marxist approaches, therefore fail to account for the full range of precipitating conditions—social, psychic and environmental, as well as economic and political—that play upon

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the minds of those advocating or effecting change. They minimize the realities of human motivation, action and reaction, which are, by their very nature, random and even chaotic. As well, such models make no allowances for the results of diverse intentions, or the proclivities of unintended consequences.

That said, one of the accomplishments of Foucault's study was to refocus the attention of historians interested in the nature of punishment in the past away from seeing the individual mechanisms as simply adjuncts to the administration of the law, and rather to understand punishment itself "as a complex social function." What is needed now is an approach to the history of punishment which accounts for mentalities and sentiments, as they provide the context within which structural changes may be formulated, realized and legitimated. This insight was embraced by David Garland who has recently reiterated the necessity of situating all explanations of punishments within their cultural and social context. He makes a convincing case for the study of penalty as a cultural construct—that is, as something which manifests repression, suffering, even pain—and that the particular coercive models adopted by any one society are "social artefacts embodying and regenerating wider cultural categories" that are historically grounded in time and place.9

Punishments therefore exist in direct relationship to the system of beliefs, values and ideas that legitimate them. These are elaborated, he says, in "the whole range of mental phenomena, high and low, elaborated and inarticulated" that constitute the culture of a society. Moreover, these "mentalities' or ways of thinking" are the stuff of cultural patterns and are of fundamental importance to the ways that people feel about and react to social phenomena. Relevant to our discussion here is Garland's point that punishments, specifically "the intensity of punishments, the means that are used to inflict pain and the forms of suffering which are allowed in penal

9 Foucault, Discipline and Punish, 23.
institutions,” are similarly a function of these cultural forces. In order to explain the changes in penal practice, then, we must pay closer attention to “the reality and determinative capacity of feelings, sensibilities, behavioural properties, and cultural values.”

This chapter, and, indeed, this thesis, has attempted thus far to provide an illustration of this kind of analytical account. In my attempt to explain some of the cultural complexity of penal reform in the last decades of the eighteenth and early decades of the nineteenth century in England, I have narrowed this task, somewhat, by focusing on the social experience of violence. The foregoing chapters have demonstrated that the kinds of cultural patterns or mentalities that Garland is talking about are inherent in the attitudes towards violence that appeared in a myriad of episodes of daily life. This chapter suggest that the changes in the formulation, practice, or legitimating underpinnings of punishments are illustrative of the kinds of changes in the wider culture already noted. As this is an historical study, the discussion has been bounded by the available records, and thus the focus has leaned heavily upon the records of the courts and the patterns of reaction to violent behaviour inherent in such records. However, we have also looked at the experience of violence in other aspects of daily life in a attempt to establish a sense of where the thresholds of toleration for violent behaviour might lie. Perhaps what emerges most clearly is the sheer confusion of ideas, beliefs and attitudes that characterize the social experiences of violence in this period.

Much of the recent historiography of punishment has revealed, further, how “deep” (in the Geertzian sense) such “social artefacts” are, and how penal codes and penal practice, in fact, offer a point of entry into the rich cultural, social, and political worlds of the past. Through penal practices we learn much more than how one society dealt with criminals. There is something deeply revealing in the punishments themselves: in their style, in their form, their location, and in what they reflect by
way of attitudes towards the human body, to gender, to class, as well as towards the offence being punished. Changes to those punishments, either in their frequency of use or in their method of application, similarly reveal changes in the broader socio-cultural context that supports and legitimates them.

What then is the relationship between the variegated social experiences of violence and changes in penalty? Essentially they are both manifestations of the same process. And instead of separating the changes in penalty from other aspects of social and cultural change, as most historians have done, here I suggest a way forward in our explanation of penal change. The broader interpretative framework suggested by this approach is useful for a study of such complex phenomena as "violence," as it allows for the multiplicity of voices, opinions and experiences that play upon it to be considered. It is also an approach which allows us to take the rhetoric of humanitarianism and sensibility more seriously.

One of the concerns of this chapter, then, is to show how the "civilization" of punishment reflected and reinforced attitudes towards violence and towards the public presentation of the physical body. Such ideas, which developed in the latter decades of the eighteenth century, are connected with emerging notions of the self, with new understandings of class and gender roles, with changing notions about public space, and with the emergence of bourgeois sensibility.\(^{13}\) The transformations in punishment in eighteenth-century London were the result of a convergence of diverse forces, including fluctuating execution rates, humanitarian sympathy, concern for public order, and the fear of rising crime. But as this chapter will argue, the modifications in punishments, particularly corporal punishments, were also due in part to the transformations in the character of public space in the metropolis. These were brought about by improvements and changes in street

maintenance, in the emergence of more clearly defined commercial space, and by evolving gender roles for the "civilized" individual.

As I mentioned in chapter 1, the work of Norbert Elias on the sociogenesis of civility encourages the consideration of a wide scope of influences and factors which may be included in our study of changing penal practices. These changes in penal practice were intimately linked to the same broadly-based cultural assumptions that provided the impetus for changes in class and gender norms. And though I do not share Elias's vision of the civilizing process as one that moves essentially from the top down, it is perhaps inevitable that the historical record of such changes has survived most obviously in the thoughts and writings of elite and middle class observers. However, other sources, including court records and newspapers, do sometimes offer glimpses of the attitudes and ideas of other sections of society whose voices are often overlooked in explaining this episode of cultural change.

The Norms of Penal Practice in Early Modern England

Sociologists, social theorists, and historians have often noted the implicit links between sentiments, values, and attitudes, and the logic of penal institutions and punitive strategies within societies, without exploring how such cultural patterns fashion the ways in which punishments were legitimized or at least tolerated within their distinct historical context. Cultural norms have been employed in all ages to rationalize and justify certain punishments and to prohibit others. Support for violent, even brutal, physical punishments directed to the body serves to highlight the power that the fear of crime holds to excite the appetite for brutal physical punishments. Even those that relied upon pain and torture directed to the body have been justified in the past in the furtherance of maintaining social order. Harsh punishments were maintained and often justified in "eye for an eye" arguments that played on both religious justifications, as well as the notion that brutes only
understand brute force. Examples of this kind of “cultural defence” of old systems of penal practice deserve greater attention, as they reveal the deep antipathy to wholesale reform of practices which many believe are innately and sufficiently flexible to permit modification, or mitigation when necessary.\textsuperscript{14} The close scrutiny of particular penal strategies can expose what Elias styled the culturally imposed “thresholds of repugnance.”\textsuperscript{15} And if we accept that those thresholds are a function of culture, it suggests that when punishments are criticized, circumscribed and then eliminated altogether, such changes are the result of much more than simple administrative decisions.\textsuperscript{16}

In the eighteenth century, few had faith in the reformability of criminals. Those who had transgressed the boundaries between right and wrong were supposed to be shamed, shunned, and even eliminated altogether. Cruel, degrading punishments, as well as public executions, were important for their exemplary role in the management of the crime problem. One anonymous author’s line of argument is typical of the logic of moral degeneration that was often employed to justify the severe laws:

if a young thief is not cut off in the beginning of his career, he generally grows up into a hardened sinner, and the gallows at length ends his days, when he has done ten times more mischief to the community than he otherwise could have done; besides if we suppose that only one person is terrified from the pursuits of vice, by the force of his being made a public example, we must own that his death was a real benefit to the Community.\textsuperscript{17}

The conception of serious criminal behaviour as the nadir of a life of moral decline was well established by the eighteenth century, and once a malefactor reached the gallows, his or her hopes for salvation and restoration rested entirely beyond any earthly authority. Punishments were thus

\textsuperscript{14} See for example Carolyn Strange, ed., \textit{Qualities of Mercy: Justice, Punishment, and Discretion} (Vancouver: UBC Press, 1996), esp. Introduction, chapters 1, 4, 5.


\textsuperscript{16} For a study that challenges the application of Elias’s theory to the history of punishment in the German context, see Richard J. Evans, \textit{Rituels of Retribution: Capital Punishment in Germany, 1600-1937} (Oxford: Oxford University Press, 1994).

\textsuperscript{17} [n. a.] \textit{The Tyburn Chronicle or, Villainy display’d in all it branches. Containing an authentic account of the lives, adventures, trials…of the most notorious malefactors.} (London, [1768]), vii.
designed not so much for the correction or reform of the offender, as they were for the moral
edification of those who were encouraged to witness them being inflicted. Violence played a major
role in these punishments as it was physical violence to the body which evoked immediate and
visceral responses: screams, shrieks, and moans from the victims, and gasps, cries, and winces from
the audience. With violent punishments, the state's moral lesson was quickly and easily taught.
Even in the case of crimes of interpersonal violence, the state relied on its repertoire of violence to
deter: murderers were hanged, as were rapists, while those who attempted rape could be whipped or
pilloried. Punishments were driven by violence and force in a culture that relied on such things to
prevent crime through fear. And many who denounced cruelty in other aspects of life saw in violent
punishments, even cruel ones, a form of behaviour that was regrettably necessary. The author of a
contemporary pamphlet, who counted himself "among the number of those who...looked with
horror on some of those laws" of which others had complained as "cruel" and "sanguinary,"
nevertheless could offer no alternative sanctions.18

As other historians have shown, some of those who witnessed the infliction of these
punishments cheered and revelled in their violence for its own sake. Others voiced more considered
reasons for supporting violent punishments. No less a cultural observer than Bernard Mandeville
noted that "the first Care...of all Governments is by severe Punishments to curb [man's] Anger."
Only by increasing the fear of punishment might the state prevent the regrettable consequences of
anger and violence. But as long as the law was severe, and "strictly executed, Self-Preservation must
reach [Man] to be peaceable...The only useful Passion then that Man is possess'd of toward the
Peace and Quiet of a Society, is his Fear, and the more you work upon it the more orderly and
governable he'll be."19 Even authors generally opposed to the use of violence were yet willing to

18 The Genuine Life of William Cox, Who is now under Sentence of Death, in Newgate, For Robbing Mr. John Kendrick of Bank-Notes
and Cash to the Amount of more that Four Hundred Pounds (London, 1773), 1-2.
19 Bernard Mandeville, Fable of The Bees, II: 206.
 tolerate harsh punishments in the expectation of order: “exemplary penalties are essential to good laws, to give them their due influence, without which they would be empty terrors.”31 In the age before imprisonment was both a widely available and meaningful deterrent, exemplary, physical punishment was believed more suited to achieving many of the ends of punishment precisely because it was more sensual. The belief was that punishment, like justice itself, had to be seen to be done.

In the mid-eighteenth century the range of punishments open to judges and magistrates would not have looked terribly unfamiliar to their colleagues from one or even two centuries earlier. For most capital offences, hanging in public was the means of imposing the death penalty. Disembowelling and burning at the stake for men convicted of treason, and burning at the stake for women convicted of petty treason (which included coining), was a more grisly form of execution for what law makers deemed the most serious crimes. Capital sentences could be commuted to transportation to the American colonies and later to Australia for a fixed time, and after 1718 transportation had become a common sentence for non-capital felonies. Transportation extended the possibilities for the punishment of those convicted of felonies, and relieved judges and juries to some extent from having to manipulate the law in order to prevent unconscionably high numbers of capital sentences.21 In the case of non-felonies, or misdemeanours, the range of punishments was much wider and included imprisonment, whipping, branding, a stint in the stocks or the pillory, fines, or a combination of these. All courts made use of these punishments when sentencing offenders for various misdemeanours, or other offences not covered by statutes, including the metropolitan courts. Of interest to us here are the patterns of their use and, more importantly, the

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31 Beattie, Crime and the Courts, ch. 9. On “partial verdicts” and pardons in felony cases, see idem, 410-20, 424-49.
changing relationship between their intended cultural meaning as a punishment, and their actual message as an example of state power.

A common feature of all of these punishments was their spectacular appeal; by this I mean that their evocative, disciplinary power relied upon the theatrical and public infliction of pain and physical harm for their moral and punitive effect. The procession of condemned men and women to Tyburn, the floggings through crowded city streets, and the pillories erected in public squares on market days were all constructed public exercises in "displaying order." For a very long time, these punishments were thought effective because they shamed and humiliated the offenders before their community and reasserted the power of the state. Crucial to bear in mind, though, is the fact that these degrading, corporal punishments were constructed around particular acts of brutality which, when recast within a frame of judicial and legal legitimacy, sanctioned violence itself as an acceptable disciplinary tool.22

The most gruesome and spectacular of these public punishments was to be hanged, drawn, and quartered. One of the last recorded incidents of this punishment was in 1781. Francis Henry De la Motte was convicted of high treason for being a French spy.23 The presiding judge, Buller J., called it a "painful task" to pronounce the sentence of the law that was prescribed for such an offence. That is, he was to be hanged to the brink of death, cut down, disembowelled and decapitated. Yet despite the prescribed sentence, as one pamphlet describing De la Motte's execution related, "To the honour of the Sheriffs, they humanely disobey'd the law, and did not suffer him to be cut down alive, as the sentence directed, but suffered him to hang exactly an

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22 Foucault provided a now famous example of this in the opening pages of Discipline and Punish, with the description of the execution of Damiens in 1757 for attempting to assassinate Louis XV of France. Other developments of this point include Pieter Sperenberg, The Spectacle of Suffering: Executions and the Evolution of Repression: from a Preindustrial Metropolis to the European Experience (New York: Cambridge University Press, 1984); McGowen, "Body and Punishment." For a similar expression of this idea in the German context, see Richard Van Dulmen, Theatre of Horror: Crime and Punishment in Early Modern Germany (Cambridge: Polity Press, 1990); Evans, Rituals of Retribution.
23 The trial is reported in the OBSP (July, 1781).
hour.”24 By the nineteenth century, Bentham could claim that this punishment was no longer practiced, but thought it still an affront to humanity that the law remained yet on the books.25 In February 1813, when a bill came before the Commons ordering the repeal of certain elements of the punishment, Samuel Romilly denounced the practice of disembowelling and beheading persons convicted of high treason. Such a “shocking and ignominious” punishment had, he claimed, fortunately fallen into disuse. And though in recent years “no such horrible exhibitions [had] taken place, except by accident,” nevertheless, he did not want the chance of having this barbarous sentence carried out in the future because of “the tenderness or cruelty of judges.” It was a punishment which had grown intolerable and, indeed, Romilly argued, “the increasing humanity of the age forbids it.” When the bill came back from Committee on 9 April 1813, Romilly could not contain his anger at the opponents to his proposal (which was just to eliminate the disembowelling part from the sentence of the law). “I had flattered myself,” he said that at least in this one instance, I should have secured your unanimous concurrence. I certainly did not foresee that in an English House of Commons, in the nineteenth century, one voice would have been heard in defense of a law which requires the tearing out of the heart and bowels from the body of a human being, while he is yet alive, and burning them in his sight; and least of all did I anticipate that such barbarity would have been supported by any member of the profession in which I have the honour to be engaged.26

Penal reformers’ arguments about the humanitarian treatment of criminals in the late eighteenth century focused on the broad array of punishments available to the English state. The fact that over 200 capital offences existed in England at the turn of the nineteenth century has launched many discussions of the brutality of English criminal law. This view has been substantially revised by recent scholarship, but the study of mercy in the English penal system has usually centred

24 J. Williams, The Life and Trial of F.H. de la Motte, A French Spy, for High Treason, at the Sessions-House in the Old-Bailey. On Saturday the 14th of July 1781, and was hang’d, drawn, and quartered at Tyburn, on Friday the 27th following. (London, 1781), 34.
on the mitigation of death sentences alone. If we look at trials at the Old Bailey, we can see that judges were also willing to mitigate non-capital sentences for reasons similar to those that brought them to act in capital cases—because the law permitted their exercise of discretionary power in such cases, and because the judges had recourse to a wider range of secondary punishments that they thought more appropriate.

Beyond the debate over such extreme examples of violent punishment, faced by a handful of traitors, there is also significant evidence throughout a wide range of sources—from newspapers, popular prints and pamphlets, to judges’ reports and new legislation—that attitudes towards violent punishment, based on a new sensitivity towards the individual’s experience of pain and suffering, began to be re-examined and reconstructed in this period. And as these sentiments changed, it became harder for judges and magistrates to see the utility in sentencing people in the conventional ways. People still wanted criminals to be punished but, increasingly, they did not want them to be punished in the same kinds of ways as in the past. There was something unacceptable about the forms and functions of certain corporal punishments, specifically the secondary punishments available until the end of the eighteenth century. Brutality and cruelty, which in former times had been thought to intensify the sting of correction, were now seen as excessive and incongruous with the new aims of punishment favouring deterrence and reform. As one anonymous contributor to the London Magazine put it,

It is not the Intenseness of Pain that has the greatest Effect on the Mind, but its Continuance; for our Sensibility is more easily and more powerfully affected by weak but repeated Impressions than by a violent but voluntary Impulse.---The Death of a Criminal is a terrible but momentary Spectacle, and therefore a less efficacious Method of deterring others than the continued Example of a Man deprived of his Liberty....

This anonymous author, in fact cribbing the work of Cesare Beccaria, whose essay On Crimes

--- The quote is from ‘Philanthropos’ in Thoughts on Capital Punishments. In a Series of Letters, that is, letters to the editor of the London Magazine, 36 (June 1767), 307.
and *Punishments* was translated and published in English in 1767, captured the essence of what historians, with the benefit of hindsight, are now beginning to reveal: that for many complex reasons, those punishments employing violence itself to effect their disciplinary ends no longer provided appropriate solutions to the larger problem of crime. Moreover, the author implies that punishments directed upon the body of the offender—punishments which for some might inflict only some short-term physical discomfort—would never be as successful as those measures which instead undermined his very identity as a free-born Englishman and circumscribed his rights and liberties.

The larger question of whether or not such punishments should be retained arises whenever the ends of punishment seem to have been transgressed or overshadowed by the excesses of the particular act of punishment, as when the hangman’s rope breaks, when the lash is used in a particularly severe way, or when the pilloried offender is pelted to death. All such episodes remind us, through their reevaluation of the boundaries of excess, that not only are penal systems constructed around cultural norms and social orders, but also that they are, by their nature, imperfect, temporary and historically contingent. But to question the role of violent punishments is not simply to critique a particular penal technique; the question goes to the very heart of the penal ethos and forces a re-examination of the cultural norms of penal practice by throwing the issues of punishment and the administration of justice into high relief. It forces those states which claim “civilized” status for themselves to face the vexatious question of whether painful, physical punishments do, in fact, retain a place in their society.

At the turn of the nineteenth century, English people confronted the perplexing question of the role of violent punishment—that is, punishment upon the body—within the penal repertoire of a “civilized” society. By the last decades of the eighteenth century, most corporal punishments were falling into disuse, as judges and magistrates employed other penal strategies not intended to be
violent. But these changes in penalty were not simply the result of administrative changes or campaigns for law reform. Rather, I would suggest that they were products of concurrent, but not necessarily related, forces. The diffusion of humanitarian sentiment, for example, was only one voice in a chorus of movements and ideas, ranging from pragmatic and expedient moves to effect practical reforms for administrative reasons, to the spread of commercial ideology and consumerism, and more broadly, to the impact of changing gender roles, on penal practice. Modifications to the penal repertoire occurred both through intentional interventions and as unintended consequences of social, intellectual, economic and administrative change.

The Spectacle of Terror Undermined

In punishing crime and disorder, the English state had relied for hundreds of years on the power of public displays of force and terror through a number of violent acts upon the human body. Included among the panoply of terrible punishments still in use in the mid-eighteenth century were public hangings, burnings, whippings and the display of offenders in the stocks or pillory. The implementation of these punishments usually came at the crescendo of a more or less scripted ritual of repression, a state sanctioned public spectacle of terror. The actual infliction of the punishment was often brutal and intentionally disturbing. These punishments, that worked upon the physical body of the offender, were designed to maximize the pain and suffering of the victim. And though only the “hanging days” seem to have followed any kind of pattern of regularity, following the Assize sessions, or the Old Bailey sessions in the metropolis, all such penal moments were ritualized forms of repression and all relied on the fact that violence had become deeply embedded within

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28 Simon Devereaux, “Convicts and the State: The Administration of Criminal Justice in Great Britain During the Reign of George III,” (Ph.D. diss., University of Toronto, 1996) examines how English penal practices were affected by the exigencies of state governance, and demonstrates that changes in the administration of the law were pursued cautiously, with close attention paid to local concerns.
legitimate, state-imposed punishments, and on the knowledge that violence played a central role in maintaining order and disciplining others in various realms of daily life.

Hanging in public was the principal means of executing felons for most offences throughout the eighteenth century. In London before 1783, the procedure for public executions in the metropolis, as contemporaries and modern historians have shown, had developed into a highly ritualized "cultural" event: a grisly episode of public theatre. Following the sessions at the Old Bailey, men and women convicted of capital offences and sentenced to death were returned to Newgate Prison to await their execution. On the day of execution, the condemned were placed in a cart and trundled, along a three mile route, through the streets of London to the gallows at Tyburn located on the fringes of the metropolis, near present day Marble Arch. On the way, crowds would gather to cheer or chastise the convicts as they made their way towards their final destination. The procession was intended to shame the prisoners and terrorize the populace as they contemplated the awful fate that awaited all such convicts. Thus besides getting rid of some dangerous offenders, the gallows served an equally important role as a terrifying example of the wages of sin. The offenders themselves, through their contrition (forced or spontaneous), their "last dying speeches," and by their general behaviour in their final few minutes of life, served as harbingers of doom to all who designed to imitate their criminal deeds.

Whether or not such executions served their chief aim—that of deterrence—is impossible to gauge. Jonas Hanway, the prison reformer, claimed the public executions were both too frequent

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30 Whether the speeches made from the gallows were as articulate and well crafted as J. A. Sharpe suggests is difficult to know. However, we can imagine that any final words, no matter how incoherent, would have had a powerfully tragic ring to them. See J. A. Sharpe, "Last Dying Speeches: Religion, Ideology and Public Execution in Seventeenth-Century England." Past and Present 107 (May, 1985): 144-167.
and lacked the necessary solemnity to be effective:

I fear there are some, who every year lose at least 9 of 300 working days, in going to see a poor wretch hanged by the neck, without profiting by this dreadful scene, in regard to their own follies or sins. Others, whose turn it may be to swing, are no less fond of this spectacle. The indecent manner of conducting our executions, has often been a subject of wonder and complaint; perhaps we may introduce more serious fashions, were it only for the love of variety.31

Bernard Mandeville and Henry Fielding were two early and prominent critics of the procession. Mandeville, in 1725, complained of the thieves and pickpockets who fleshe out the crowd. Indeed “all the Way, from Newgate to Tyburn,” he complained “is one continued Fair, for Whores and Rogues of the meaner Sort.” The jostling and fighting among the gin-soaked crowd “the terrible Blows that are struck, the Heads that are broke, the Pieces of swingeing Sticks, and Blood, that fly about, the Men that are knock’d down and trampled upon, are beyond Imagination” and made for a dangerous cavalcade of disorder. But most significantly, “we shall be forced to confess, that these Processions are very void of that decent Solemnity that would be required to make them awful.”32 Henry Fielding writing a generation later agreed, complaining that the public executions at Tyburn had lost all meaning, save “to make a holiday for, and to entertain, the mob.”33

The object lesson in order and deference to a superior state and social order was utterly corrupted. Indeed, a Scottish clergyman commented that it was his “conviction that, in a moral view, a great number were made worse, instead of better, by the awful spectacle. Of the ragamuffin class a large proportion were gratified by the sight; and within my hearing many expressed their admiration of the fortitude, as they termed the hardness and stupidity, of one of the sufferers. ‘Well done, little coiner!’ ‘What a brave fellow he is!’”34

31 Jonas Hanway, The Defects of Police the Cause of Immorality, and the continual Robberies committed, particularly in and about the Metropolis. (London, 1775), 240.
32 Bernard Mandeville, An Enquiry into the Cause of the Frequent Executions at Tyburn, (1725), 20, 24.
33 Henry Fielding, An Enquiry into the causes of the Late Increase of Robbers, (1751), 123.
In 1783, the procession was abolished and the Tyburn gallows were removed permanently. The disruption that the procession caused to street traffic, to business, and to the work day are the usual arguments put forward for why the Tyburn procession was ended. Historians have generally agreed, suggesting that the decision to end the Tyburn procession and move the gallows to Newgate was due more to “frequent riots” and a “concern for public order rather than a change in penal philosophy.” Peter King has suggested that concerns for public order were certainly of importance to the Essex magistrates who ended their procession on the heels of London’s move.

Certainly not everyone was glad to see the end of the Tyburn procession. Dr. Johnson, in an often-quoted discussion with Sir William Scott on the subject, criticized the move as a consequence of “the fury of innovation.” Johnson argued “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 don’t answer their purpose.” But even after the gallows were removed from Tyburn, the crowds continued to gather to watch the executions in front of Newgate, and they were no better behaved. As late as 1864, Lord Henry Lennox was complaining to a Parliamentary committee about the inappropriate behaviour of the crowd; “they were joking, laughing, pelting oranges, bbbbing [sic] each other, throwing up the hats of those who had foremost places in the crowd,” thereby restricting the view of those at the back, “and hailing the practical joke with bursts of laughter.” Like Fielding and Mandeville before him, Lennox saw in the mob “the scum and refuse of [the] population.”

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But it was not simply the anxiety over the carnivalesque crowd which prompted agitation for the procession to cease. That explanation does not account for the precise timing of the change. Simon Devereaux has recently reminded us that the abolition of the Tyburn procession coincided with a particularly harsh period of executions in the metropolis. The move also occurred amidst the search for a suitable secondary punishment in the face of the disruption to transportation caused by the American Revolution, and the anxieties about the response public executions had elicited in the particularly bloody years of the 1780s. Third, the City officials were involved in a protracted discussion over the aims and costs of punishment during the reconstruction of Newgate following its destruction in the Gordon Riots. Those riots had also raised general anxieties about disorder in the metropolis, and the authorities were keen to exert greater control over public gatherings generally, especially those that were likely to attract a significant proportion from the “rabble.”

Finally, it is also important to bear in mind that the debate over the execution of criminals at Tyburn was enmeshed in the debates over law and order generally.

The timing of this change is clearly significant. The 1780s were notable for the number of people executed, and the unusually high numbers of those being capitaly punished became an awkward issue for the Home Office. James Boswell recalled “the shocking sight of fifteen men executed before Newgate” in June of 1784. The terror of such punishments was in danger of being dulled by its frequency. Indeed it was clear to The Times that large numbers of executions, especially of young offenders, were devoid of any deterrent value as spectators were overwhelmed by the carnage. One correspondent argued, “The necessity of cutting off criminals of tender years is

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a defect in our police, which is really shocking to humanity. The whole continent of Europe does not execute as many criminals in four years, as England and Ireland do in one." The experience of the early 1780s was clearly important to the broader transformations in the way capital punishment was perceived. But as Randall McGowen argues, other critics of the “Tyburn Fair” perceived the fundamental faults of the early modern execution well before its demise.

Even with the removal of the Tyburn Tree and the end of the processions, the central problem with public execution was still not addressed: that it had lost its meaning for the community as a collective entity. At the execution scene itself, McGowen argues, the crowd “saw only a punishment inflicted upon an individual offered to a crowd of individuals.” The execution of men and women had been drained of its judicial terror—and most significantly, its power to galvanize the community in collective condemnation of the offence for which the malefactor suffered. By the late eighteenth century, the gallows “only produced a powerful emotional response that one either felt or was indifferent to. The execution had become an inarticulate shock; it had been reduced to the single dimension of pain.” Pain, however, was not the primary objective of these terrible spectacles. Some degree of pain was acceptable, even desirable, in order to seize the attention, to touch the hearts of the spectators, but sheer terror of what could happen was the deterrent force that the state wanted to demonstrate. These awful death scenes merely confirmed that these were not empty threats. Jeremy Bentham recognized the intentions behind such punishments, but articulated the long-term problem that was beginning to be more widely understood:

It may be objected that in seeing an execution the circumstances of its duration acquires more weight. But it is to be remembered that after a certain time the prolongation of the punishment loses its effect: and a feeling is then excited in the minds of the spectators

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directly opposite to that which it is desirable should be produced. Pity is awakened, the heart relents, the voice of suffering humanity is heard.\textsuperscript{45}

The empathetic experience of pain alone signalled the wrong message because it failed to strike terror into the hearts of the men, women, and children who watched. Not surprisingly, and a point that Foucault’s interpretation tends to overlook, observers were almost always struck emotionally by the barbarity of the event. The fact that pain became the sensation most prominently associated with the public execution was of great importance to the reformers who sought its abolition. Indeed pain, which produced suffering, would be the issue around which abolitionists and reformers would largely focus their campaign to end executions altogether. This is a terribly significant point, and indeed the sticking point on which much recent historiography of the topic turns. On the one hand are those who argue that it reveals a change in emotional focus from the criminal as a sacrifice to the law and state order, to the criminal as sufferer of a punishment repulsive in itself. Thus, it provides evidence of a growing uneasiness with the place of violent behaviour within society generally.\textsuperscript{46}

On the other hand, we have the view, recently articulated by V.A.C. Gatrell, that rather than invoking sympathy for the suffering offender, the elites and plebeians who crowded around the gallows were in fact excited by this realization of the pain of others. The rabble revelled in the pain and suffering—it being a more familiar aspect of their daily lives—and diffused any emotional attachment with the suffering individual though their Rabelaisian rhetoric, bawdy songs and gallows cant, and ubiquitous “plebeian texts.” The best convicts, to their minds, were those who put on a good show, those who “died game.” The more sophisticated observers, the more “self


controlled...people of feeling” developed their own coping mechanisms too, in being “squeamish” witnesses or else by affecting “ignorance of what happened” on Albion’s fatal tree.47

But this bifurcation of the scaffold crowd (by which Gatrell really means the society as a whole) into patricians and plebs allows him to side-step the messy complexity of the discourses surrounding not only capital punishments, but corporal punishments too. The “plebeian” rabble are excused for their Rabelaisian excess, and even enjoyment of the gallows scene, because at the end of the day, the only thing of importance, as Johnson remarked, was that the crowds came and that the moral message of the execution worked on them. People left knowing that murderers, forgers and thieves would be executed. The elites, who did not attend, or who attended executions and expressed feelings of shock or as Gatrell says, “anxiety, shame or guilt,”48 are similarly dismissed as insignificant historical actors, with only marginal roles in effecting the changes in penalty, because their feelings, he argues, were in truth unintended, subconscious and usually repressed.

Gatrell does not entirely discount the role of sympathy, or humanitarian sentiment, or the structural changes in the criminal law and in the administration of justice in the eighteenth century in explaining the demise of public executions. But he is largely content to exclude them any real place in the movement to dismantle the Bloody Code before the 1830s. When push comes to shove, Gatrell largely ignores the fact that many of the changes in penal practice discussed in this chapter coincided with the significant break from custom inherent in the demise of the Tyburn ritual. When pressed on what finally brought public execution to an end, Gatrell demurs, leading us back into the complexity of multiple factors and the messiness of historical change. He admits that humanitarianism and the vigour of reform-minded Evangelicals had their part, though both of these familiar explanations are pushed to the margins of his account. Ultimately Gatrell relies on the

47 Gatrell, *Hanging Tree*, 23.
48 Ibid., 240.
explanation that in end the system essentially suffered a functional collapse. The structure could not
bear the weight of the numbers, without becoming an even more brutal, bloody factory of death.

Whether it is possible, or even necessary, to fix one particular reason for the end of the
Tyburn procession remains an open question. What is certain is that the end of the Tyburn
procession on London’s hanging days marked a paradigmatic break with customary practice in the
means of judicial punishment. It altered forever the way public executions were managed, and what
messages it conveyed to the crowd. It was also an important step towards the removal of all
punishment from the public sphere. As Steven Wilf argues, by moving executions to the smaller
Newgate site, the “punitive aesthetics” of the execution scene were drastically modified as the new
ritual “shortened the duration of the visual experience and limited the number of spectators.” The
post-1783 executions thus “placed decreasing emphasis on overt visual imagery,” signifying an
important move to rein in the violence traditionally associated with this particular punishment.51
This shift was due, in large part, to the unique experience of the metropolis, but had ramifications
for other parts of the country, as we have seen, and for other forms of public punishment as well.

Women and Physical Punishment

Eighteenth-century London was not only the hub of political administration and commerce,
but also the cultural and social centre of English life. With its thriving commercial enterprises and
growing population, the London metropolis provided fertile ground for the evolution of class and
gender norms. It provided the examples of fashion, thought and behaviour for the larger provincial
towns and, most importantly, was the home of parliament and thus the most likely source of

50 Wilf, “Imagining Justice,” 72, 74.
51 Peter Borsay, The English Urban Renaissance: Culture and Society in the Provincial Town, 1660-1770 (Oxford: Oxford
University Press, 1989); Peter Eade, The Making of the English Middle Class: Business, Society and Family Life in London, 1660-
influence upon the ebb and flow of political policy making. How these changes affected the experience of punishment in the metropolis are more clearly revealed in the discussion of particular punishments of women.

By the latter decades of the eighteenth century, the demands of the market created opportunities for women to expand their public roles and for working men and women to establish new relationships with each other, within similarly emerging social and economic spheres. The augmentation of their public roles pressured women to project a self-disciplined and civil public face that mirrored male standards of gentility, honour, and fair dealing. Thus as women were gradually integrated into spheres of social life traditionally dominated by men, and gained some acceptance in their new roles, structural features of society which formerly drew boundaries between men and women in other areas of daily life also fell under critical gaze.

At the same time, notions of civility towards women were also shifting. As women were recognized as rational human beings, worthy of egalitarian treatment in at least some social spheres, there was mounting pressure on men to modify ostensibly "savage" behaviour towards and around women. Women, as Barker-Benfield has suggested, were even seen as creatures from whom men could learn a thing or two about manners. Women were, in many respects, on the leading edge of

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53 L.D. Schwarz, is less optimistic about the extent of this in his London in the Age of Industrialization: Entrepreneurs, Labour Forces and Living Conditions, 1700-1850 (Cambridge: Cambridge University Press, 1992), 14-22. Anna Clark, is rather more willing to see an emerging place for middle class and even working class women in the public sphere (The Struggle for the Breeches: Gender and the Making of the British Working Class [Berkeley: University of California Press, 1995], 126-131, 159-64, 266).
civility and sensibility, and attacks upon them—both rhetorical and physical—might also be read as implicit attacks on civilization.54

This perspective was made clear in the movement to abolish the punishment of burning for women convicted of treason. We have seen how men convicted of treason were supposed to be punished. Women found guilty of treason or petty treason on the other hand, were to be burned at the stake, although in practice they were strangled to death by the hangman before their bodies were consumed by the flames. The last burning of a woman for high treason occurred in 1685 with the execution of Elizabeth Gaunt. However, the practice of burning women for domestic treason continued for another century. Blackstone explained the strangulation of the victim as a mitigation of the punishment, “as the natural modesty of the sex forbids the exposing and publicly mangling [of] their bodies, the sentence (which is to the full as terrible to sense as the other) is to be drawn to the gallows, and there to be burned alive.”55 In practice, Blackstone noted, “through the humanity of the English nation” the condemned woman was strangled to death before her body was burned, occasioning “very few instances (and those accidental or by negligence) of any person being embowelled or burned till previously deprived of sensation by strangling.”56

Within three years of the demise of the Tyburn procession, other punishments carried out in the heart of the metropolis were to come under increasing scrutiny, including the burning of women. In the debate over whether to abolish that punishment altogether, it was the experience of London that moved a few members of parliament to propose the repeal of that grisly practice. Despite Blackstone’s assurances, the indignity and sheer barbarity of the punishment was such to provoke the disgust of William Wilberforce, one of a handful of reform-minded MPs. In 1786, Wilberforce

54 Barker-Benfield, Culture of Sensibility, 139-40.
56 Blackstone, Commentaries, IV: 370.
introduced a bill which would have discontinued the sentence of burning for women and saw it through the Commons. But the House of Lords found other parts of the bill, calling for the dissection of the bodies of criminals other than murderers, unacceptable, and rejected it.\(^57\)

The issue was revived in May of 1790 when Sir Benjamin Hammett, MP for Taunton, and a former sheriff of London, moved to bring in another bill to abolish this practice. As one of the sheriffs in 1788, Hammett would have been aware of the execution by burning of the convicted coiner Margaret Sullivan and was likely responsible for seeing the execution of Christian Murphy carried out for the like offence in March of 1789. Hammett was no doubt aware of the incongruity of this unusual punishment given the climate of the times. As one correspondent to The Times remarked, following the execution of Sullivan: "Must not mankind laugh at our long speeches against African slavery, and our fine sentiments on Indian cruelties, when...we roast a female fellow creature alive for putting a pennyworth of quicksilver on a halfpenny worth of brass.\(^58\)" Hammett informed the House that it had been "his official duty to attend on the melancholy occasion of seeing the dreadful sentence put in execution" and, having consulted with several judges, asked for leave to bring in a bill to alter the law with respect to this punishment. The burning of women was, he claimed, "the savage remains of Norman policy, and disgraced our statutes, as the practice did the common law." Hammett was confident that his proposal reflected the spirit of the age, and that the "the House would go with him in the cause of humanity"\(^59\) and repeal the sentence. High minded patriarchs could easily support the change too, and agree with the Times that "as the weaker sex, they are entitled to more compassion," although it was also reported a few days later that Hammett’s "late

\(^57\) Parliamentary History, (London, 1816), vol. 36, (1786-88), cols. 195-202; Radzinowicz, History, vol. 1: 209-213, 476-77. Duncombe and Michael Angelo Taylor, who would latter be strong supporters of the anti-pillory bill, supported this initiative. The paradoxical attitudes towards punishment at the time are also revealed by this attempt at legislative reform. "Progressive and humanitarian" changes, as Radzinowicz called the sections regarding the repeal of burning of women, were coupled with new measures to brutalize and defile the human body. Combining the two measures may have been conceived of by the bill’s drafters as an attempt to appease both camps, but in the end it satisfied neither.

\(^58\) Times, 24 June, 1788, quoted in Cockburn, "Punishment and Brutalization," 156.

motion...was at Lady Hammett’s suggestion, and that she lays claim to all the merit of it.”

Nevertheless, Benjamin’s proposal was said to be “the favourite female toast through all the regions of the Minories.”

The swift passage of the bill was important, as a woman convicted of coining was to be executed by burning on May 19. William Grenville informed George III that a Bill was then before Parliament altering the sentence of death by burning to hanging, although there was a provision in the bill empowering the King to respite anyone sentenced to the old punishment before the bill was passed. Grenville also mentioned a petition from local residents stating the “great inconvenience and disorder which arise from the execution of the sentences for burning women...such sentences being now executed almost in the centre of the town.” The King responded quickly to this information by respiting the woman sentenced to be burned, but ordered that she be held to suffer the punishment of death by hanging after the bill had passed into law. The bill was passed in the Lords on 5 June 1790 and gained royal assent in the same session.

Streets and Refinement

Over the course of the eighteenth century, building in London occurred in cyclical booms. Much of the growth was concentrated in the West End of London, which saw much new building as well as the consolidation of estates and the refurbishment of other areas. According to one historian, in the second half of the eighteenth century “improvement was in the air—improvement of the facilities for comfortable living, improvement in lighting, in road-making, in travelling and in

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60 Times, 12 May, 1790; 14 May, 1790.
62 30 Geo. 3, c. 48. By the Act of 9 Geo. IV, c. 31, s. 2, petty treason itself was abolished. The Times, in a reference to the contemporary fracas over ‘The Monster’ (see Chapter 4 above) quipped “That Bill for preventing the burning of women is a monstrous good one,—will not be disputed by the friends of the sex,—yet, at the same time it cannot be supposed the Monster had any hand in it!” Times, 7 June, 1790. By the Act of 9 Geo. IV, c. 31, s. 2, petty treason itself was abolished.
the architectural design of public buildings." The gentrification of public space was also well under way, and was subtly changing the character of the metropolis. Horace Walpole offers a hint of this in a casual aside in a letter to a friend, dated 1 September, 1763. He recounts a "bon mot" of his friend, Lady Townshend, who had "taken a strange little villa at Paddington near Tyburn. People wondered at her choice of location, and asked her, in jest, what sort of neighbourhood she had—"Oh," said she, "one that can never tire me, for they are hanged every week." Even granting the glib remark, it seems unlikely that such a lady of fashion would take such a place unless she expected that her new neighbourhood, despite its infamous reputation, was undergoing a wave of development.

Indeed, within a few years, fashionable residents in the vicinity of the Tyburn gallows grew less inclined to tolerate the permanent gallows as a macabre, historical curiosity and began pushing for its removal. A petition from "several Proprietors of Estates and Inhabitants in the Parish of Saint George Hanover Square and Saint Mary Lebone" addressed to Samuel Turner, the Lord Mayor of London (1768-69), and to the other judges at the Old Bailey, indicates that in their view, the Tyburn execution site no longer served the needs of public justice—at least for London's better sort—and the executions there were in fact offensive to the increasingly "elegant" demeanour of the neighbourhood. The petitioners contended that as a result of the

-great Increase of Additional Squares Streets and other Elegant Buildings which of late years have been laid out and Built in the Parishes of Saint George Hanover Square Oxford Road Saint Mary le Bone and Hyde Park Corner That Neighborhood is become very Populous and many of your Petitioners Houses being Situated near to Tyburn the Place for the Execution of Criminals in the County of Middlesex your Petitioners are greatly Annoyed and Disturbed by the Vast Concourse of People that always Assemble there upon Days of Execution whereby great Tumults Disturbances Riots and Nuisances happen and not only your Petitioners are prevented from going in and out of their Houses and Prejudiced in their Property But also the Publick Roads leading from London to Oxford and Paddington are for

63 Christopher Trent, Greater London: Its Growth and Development through Two Thousand Years (London: Phoenix House, 1965), 118.
several hours so Thronged that neither Horsemen nor Carriages can Pass or repass without the greatest difficulty and danger, as the widest part of the Road at the said Place of Execution doth not Exceed Seventy Feet.65

Executions had, in the past, been confined to areas outside of town which literally placed the event on the margins of society. Thus, in medieval London executions were held at or near Smithfield market, outside of the City walls. However, with the growth of London and the surrounding areas, the execution site was again removed, further afield, to the Tyburn site. The petitioners themselves pointed this out too, noting that “it was always intended that the Place of Execution should be appointed at a Convenient Distance from the Town so as not to Annoy the Inhabitants thereof and upon that account was fixed at the above mentioned Place.” But given the inevitable growth of the metropolis, and so as not to offend the refined sensibilities of those in the increasingly gentrified neighbourhood of Tyburn, the time had come, once again, for the officials of the state to reconsider the suitability of the execution site. And since

the Gallows is moveable your Petitioners humbly Conceive it will be far more Eligible and Convenient for his Majesty’s Subjects in general and your Petitioners in Particular...to Order the Place for the Execution of Malefactors Convicted in London and Middlesex to be at an Open and Wide Place in the Parish of Saint Pancrass where the Two Roads from Hampstead and Kentish Town meet the Road from Tottenham Court being One hundred and Sixty five feet Wide which said Place is as your Petitioners Apprehended Capable of Containing the great Concours of People which usually assemble at Executions and is not Contiguous to any Houses Except Two Public Houses called Mother Red Caps and Mother Black Caps, and is moreover at a Considerable less distance from the Common Gaol of Newgate than the Present place of Execution.

That the petitioners had gone to the trouble both to measure the site and include a map testifies to their seriousness in this matter. And this was no small minority speaking either: the petition was signed by 105 people.66

65 CLRO, Misc MSS 21.3.
66 Ibid. Attached to the petition is a map of the proposed new area, 300 feet by 165 feet at the fork of the roads to Hampstead and Kentish Town and Highgate. A few years later, the Dowager Lady Waldgrave expressed her wish to have the gallows moved away from her new house near Tyburn. See the Gazetteer, 4 May, 1771.
In these two cases, then, of hangings and burnings, we can see that the unique experience of public punishment in the metropolis was of fundamental importance to the modifications in the manner of executions there. The impetus for reform was related to the personal experience of prominent Londoners, and to the public discussion of punishment in both the Commons and in the press. The public burning of women touched on the relationship between decorum and public space, and revealed how the use of the female body in particular, as an object of punishment, became a problematic issue for a society grappling with both the mounting demands of politeness and civility, as well as the changing expectations for women entering new public roles. However, the difficulty in repealing the sentence of burning for women is a fine example of the philosophical uncertainty that underpinned penological thinking in this period and that perpetuated the belief that modifications in one area of penal policy necessitated regressive moves in others. Polite society’s objections to the Tyburn site similarly demonstrates how urbanization and the consequent modifications in the character of public spaces, in this case an entire neighbourhood, played into the process of cultural change. In particular, it shows how traditional, violent penal practices came to bear the brunt of these waves of the civilizing process. But, as we shall see, London’s encounter with these highly ritualized techniques of penal practice was not manifestly different in character from other forms of public punishment more frequently witnessed in the metropolis.

**Physical Pain and Public Shame**

For less serious crimes, or as a mitigation of certain minor capital offences such as larceny or sodomy, the law had recourse to other corporal punishments. Felons who were spared the death penalty by pleading benefit of clergy were “glummed in the paw,” that is burned in the ball of the thumb. For a short time in the reign of William III, prisoners were to be branded in the face but this
practice was discontinued later in Anne's reign. Branding in the thumb had been left to the judge's discretion by the 1779 Penitentiary Act. The legislators felt that such a punishment, besides being "disregarded and ineffectual," was unjust because of the lifelong stigma that could attach to it. Branding, they said, "sometimes may fix a lasting mark of disgrace and infamy on offenders, who might otherwise become good subjects and profitable members of the commonwealth," and thus it was replaced by either public or private whipping, or an altogether less ignominious fine. In 1827, benefit of clergy was abolished for commoners, and two years later the secondary punishment (burning) was also abolished.

Other non-capital punishments were regularly employed by the state until the early nineteenth century. As we shall see, they were designed to maximize their punitive force through a combination of violent physical pain and public humiliation. At the lowest end of the violence scale were the stocks, which had originally been intended for the temporary confinement of prisoners. But according to Burn's Justice, "by divers statutes, the stocks is also appointed for the punishment of offenders in sundry cases, after conviction," and in 1826 the stocks still were being used: in one case, as a threat if fines were not paid, and in another case as punishment for bathing in public on a Sunday. Though not intended to be an overtly violent punishment, the stocks did expose the offender to his or her community in a manner that invited shame and ridicule.

Shame through humiliation was a vital component of all of these secondary punishments.

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67 On the operation of benefit of clergy, see Beattie, Crime and the Courts, 141-46, 490-492.
68 Shaming was an important element of non-capital punishments in other European jurisdictions too. Germany used public whipping, the pillory, and forms of dismemberment and mutilation which were designed for maximum publicity. See Van Dulmen, Theatre of Horror, passim.
69 Burn, Justice of the Peace, 9th ed. (1764), III: 379.
70 LMA, P73/015/23, 3 July 1826. George Keppell was charged with breaking the Sabbath when a Beadle caught him washing his dog in the Grand Surrey Canal. He was ordered to pay a fine of 3/4 for Sabbath breaking or be placed in the Stock. He paid the fine. The same day, two men were charged by another constable with bathing in the same canal, and when they could not pay the fine of 2/6, were placed in the stocks.
from the stocks, to the pillory to whipping. No less an authority on punishment than the Rev. John Villette, the Ordinary of Newgate, held that “the Fear of Shame as often preserves a person from the Commission of a Crime, as the Expectation of a Reward for his continuing in the Paths of Virtue.” But when caught and convicted, offenders were punished in shameful ways. The punishments were intended to expose the offender, in various ways, to the moral opprobrium of the community and each in its own way reflected the central role that shame played in the penal ethos generally. In a society with few alternative methods for segregating offenders from society, the cultural process of demarcating those people as “others” through public shaming rituals served that particular need of justice well.

1. The World turned Upside Down: The Pillory

Though all punishments were devised as vehicles for shaming the offender, some could also unintentionally pose very serious threats to his or her well being. The pillory, which John Beattie has suggested was a punishment paradigmatic of eighteenth-century penal practice by combining physical pain with public shame, could lead to serious suffering. In 1829, after its use had been severely limited, Francis Place referred to the pillory as a “barbarous punishment” and a “disgrace to the laws and to the nation,” largely because of the unreasonable suffering that the punishment often caused. With their heads and hands locked through the holes of the device, the prisoners were rendered helpless in the face of taunts, jeers and missiles from the crowd. The unchecked brutality of the pillory has not always been appreciated and its severity is often undermined by focusing on the relatively pleasant experiences of Daniel Defoe and John Williams at the beginning and middle of the century, or of the radical printer Daniel Isaac Eaton on the eve of its abolition—all of whom

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73 BL Add MSS 27826, f.172.
were lauded by the supportive pillory crowd. The more common reality, however, was an hour of largely unqualified abuse and attack from the crowd, which was, in fact, the unofficial purpose of this punishment. In a vivid description of his experience at the beginning of the eighteenth century William Fuller related how he was

no sooner on the Pillory, and my head thro’ the Hole, but Dirt and rotten Eggs came about my Head, Body and Leggs, as thick and fast as Hail; amongst them came several Stones and some of them struck me, others I heard hit against the Pillory. There was indeed a great many Constables and Watch-men, and part of them did me what service they could; but others suffer’d Fellows to come even within the Ring, that they made and flung at me at their pleasure.

Sometimes, the officials might intervene on behalf of the prisoner if things got out of hand, as again in Fuller’s case:

One of the Sheriffs Officers seeing me almost dead, and the People’s Barbarity continuing to fling, tho’ Thousands thought me dead already; he went to a Judge at Serjeants Inn and had Orders to take me down, which they where[sic] forc’d to do from the Pillory, for I do not remember when I was taken down, but as they tell me, I was dragg’d by several to the King’s Head Tavern, but the door was shut against me by reason of the Crowd[sic]... all agreed that had I stood three Minutes longer, I had certainly expir’d in the Pillory.

Sympathy for the sufferings of a fellow being were similarly revealed in 1791 when an “invalid” was set in the pillory at Portsmouth. As the Times reported, the man, who had been convicted of an attempted rape upon a seven year old girl, stood for only “a quarter of an hour” before “he attempted to strangle himself; and just at that time, a turnip, of a very large size, was thrown by one of the mob, which deprived him of his senses; the Mayor, through humanity, then thought proper to interfere, and ordered him to be released.” In another case, a man convicted of sedition was

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75 William Fuller, Mr. William Fuller’s Trip to Bridewell, With a true Account of his barbarous Usage in the Pillory. The Characters of the several People, who came to see him beat Hemp, and discourse’d with him. His Repentance for Offences past. The Discovery of the Whiggs that Employ’d him. Together with his Reception in the Queen’s Bench (London, 1783), 2, 5.

76 Times, 26 September, 1791.
sentenced to stand in the pillory at Charing Cross. But as Lord Eldon recorded in his notebook, “on account of the Defendant’s illness the Sentence as to the pillory was never executed.”77

City officials also tried to protect prisoners from the abuse of angry crowds to some degree, but there was a distinction to be made between curbing excessive cruelty in the name of humanity, and interfering with the due process of the law.78 Patrick Colquhoun chided constables attending upon the pillory crowd “to prevent all outrage or violence towards the offender from taking place, and to keep in view that the pillory is a punishment of great and lasting infamy, by the ignominious exposure of the delinquent, and not intended for personal suffering, according to the will or unrestrained licence of a turbulent populace.”79

Judges did not take kindly to attempts to thwart the intentions of justice either. For example, when Arthur Beardmore the Middlesex Under Sheriff was asked to supervise the pillorying of Dr. Shebbeare in 1759 for a libel, Beardmore failed to fasten him properly within the contraption and permitted him merely to confine his hands, with his head peeking through the hole. Beardmore was fined £50 for his “highly improper and insufficient manner of executing this rule of the court” and Denison J. in his judgment, reprimanded Beardmore for “suffering a gross offender, an infamous libeller of the king and government, to stand in triumph, erect upon the pillory, with a servant holding an umbrella over his head, instead of standing with his head in the pillory, by way of disgrace and ludibrium (which is the intent of this kind of punishment).”80 Again, shame and dishonour are highlighted in the judge’s words as explicit penal objectives—especially when it came

77 Middle Temple Library, Dampier Mss., Notes of Judgments, f. 136.
78 Annual Register 4 (1761), 145.
79 Patrick Colquhoun, A Treatise on the Functions and Duties of a Constable: containing Details and Observations Interesting to the Public, as they relate to the Corruption of Morals, and the Protections of the Peaceful Subject against Pearl and Criminal Offences (London: W. Bulmer, 1803), 18.
Clearly, the pillory was the ideal form of popular, retributive justice. The prisoner was literally left to the will of the people and the representatives of society who happened (or planned) to pass by the prisoner were free to bestow their 'just deserts' upon the unfortunate person. In one sense, the pillory was a concession to the more brutal urges of the populace, allowing the public to exact a degree of vengeance that the law itself was unwilling to employ—at least officially. As one contemporary observer commenting in 1764 on the punishment of thief-takers put it, “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.”

The hidden potential of the pillory in terms of its severity lay with the crowd itself. But, as we shall see, it was that variable that most dramatically exemplified the uncertain, and non-uniform nature of eighteenth-century punishments that Beccaria and others sought to eradicate. Paradoxically, the problem for those who both supported and objected to its use, was that the pillory was a punishment that was occasionally too severe for the crime.

The shame and dishonour associated with this punishment were universally recognized. Dr. Johnson argued with Boswell that even those, like Defoe and Williams, who escaped the physical abuse of the crowds were nevertheless tainted by the fact of their sentence: “People are not very

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81 The commonplace of brutality was recognized in the following lines from an early-eighteenth century broadsheet: Hail! thou great Engine that for shew, Holds Villains to the publick view; Whose Platform bears the odious weight Of many a perjur'd Rogue and Cheat: Tho' hundreds have upon thee stood And thou art oft bedaub'd with Mud, Yet each one pites thee that do's it, 'Tis but their missing aim that throws it, For no one owes thee any spite, But those whose Neck thou hopes to bite. The Clergyman and Goldsmith, in the Trap; Or, A new Hymn to the Pillory (London, 1701).
82 Select Trials...in the Old-Bailey, (1764), 3:153, quoted in Cockburn, “Punishment and Brutalization,” 172-3.
83 Some liked this fact: see Andrew Knapp and William Baldwin, The Newgate Calendar: comprising Interesting Memoirs of the Most Notorious Characters who have been convicted of outrages on the Laws of England... (London, 1825), II: 378.
willing to ask a man to their tables who has stood in the pillory.” This was most certainly because the pillory was the usual punishment for offences that transgressed moral or social boundaries—offences not so much against liberty or property, but rather those that exposed moral failings, that evidenced a weak or diseased character, and whose commission disdained not just the amorphous state, but the particular streets and neighbourhoods of the parish. But punishments like the pillory increasingly worked at the edges of English conceptions of liberty and justice. The fact that they relied on public vengeance and physical pain tarnished the image of the law as an impartial and equal arbiter of justice. As well, the punishment thwarted class divisions and threatened truly equal punishment for equal crimes. Latent in Johnson’s comment is horror at the prospect of any person of his social station being exposed and judged by the common mob surrounding the pillory. One of the champions of its abolition in the early nineteenth century, Michael Angelo Taylor, suggested the pillory tainted the higher class offender with an unequal dose of ignominy. “The punishment,” he insisted, “was unequal: to a man in the higher walks of life, it was worse than death: it drove him from society, and would not suffer him to return to respectability; while, to a more hardened offender, it could not be an object of much terror, and it could not affect his family or his prospects in the same degree.”

For some offences, the pillory was a summary punishment to be used when the magistrate thought it was appropriate; in other cases, the sentence was prescribed. Libellers were punished in this way, and at least one magistrate’s handbook advised that the pillory might be added to fines and imprisonment in aggravated cases of riot and rout. But more often it was a punishment associated with crimes that betrayed trust, such as fraud or informing, or those of a dishonourable sexual nature. Arthur O’Hara was convicted of keeping a common bawdy house in October of 1760 and

84 Boswell, Life of Johnson, 965.
85 P.D. 1st ser., vol. 30 (1815), col. 355.
86 LMA, ACC1209/1, Anon. Handbook for Magistrates. (October, 1784), f. 13.
ordered to stand in the pillory for one hour as well as pay a ten pound fine and spend three months in Newgate. At the Middlesex quarter sessions, among my sample of cases, only five people—all men—were sentenced to stand in the pillory. In three of the cases, all from 1765, the men had been convicted of attempted rape. The other two were from 1795, one being for attempted rape, the other attempted sodomy. All were sentenced to a term of imprisonment as well, with the suspected sodomite receiving two years in Newgate.

Though it was the usual sentence for persons convicted of the offences outlined above, magistrates were urged by Burn to exercise caution in sentencing people to the pillory:

...the justices of the peace should be well advised before they give judgement of any person to the pillory or tumbrel, unless they have good warrant for their judgement therein. Fine and imprisonment, for offences finable by them, is a fair and sure way.

Like the public execution, the crowd's reaction to the intended victim was unpredictable in some cases, and could undermine the penal designs of the authorities. There was no guarantee of consistency and certainty of punishment when the pillory was the sentence. The newspapers and Gentleman's Magazine reported many incidents in which persons set in the pillory were lauded in various ways, quite in defiance of the intention of the punishment. For example, in March 1763 "Parsons, the fellow who was principally concerned in the affair of the Cock-Lane ghost, stood on the pillory at the end of Cock-Lane, and instead of being pelted had money given to him." Similarly, one of three men set in the pillory for perjury in Westminster in 1763 "was upwards of 70 years" and his age and "grey hairs drew compassion from the people, and instead of being pelted, money was collected for them." There are numerous other reports of perjurers enduring their hours in the

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87 CLRO, SF 930, October, 1760.
88 He was also ordered to stand in the pillory in Oxford Street “near St. Giles in the Fields” on two occasions for one hour each. MJ/SR/3591, ind. 40.
89 Burn, Justice of the Peace 7th ed. (1763), II:517.
90 GM, 33 (1763), 144.
91 GM, 33 (1763), 311.
pillory “without the least insult” from the mob. Occasionally, offenders were rescued entirely from the punishment. The *Gentleman’s Magazine* reports that in November 1761, William Bailey was ordered to stand in the pillory in Gracechurch street for attempted sodomy, “but by means of a press-gang, escaped without being pelted,” thereby escaping serious injury. The mob, however, which was headed by a group of butchers, took exception to being cheated of their opportunity—perhaps to their minds even their right or duty—to punish the man and to see justice done. In an ensuing quarrel between the press gang and the butchers the officer leading the press gang “was terribly handled.”92 Given his offence, Bailey, though impressed, probably got off lightly.

The nature of the punishment faced by frauds or perjurers who were sent to the pillory was subject to the whims of the crowd and the character of the individual offender. This was less true when sexual offenders were similarly exposed to the crowd, since the feelings against rape and homosexuality (two crimes frequently lumped together) were so strong that violent treatment from the crowd was almost guaranteed. One man convicted of “criminally assaulting his own daughter with intent to ravish her” stood his hour in April of 1766 and, according to the *Gentleman’s Magazine*, “was severely handled by the populace.”93 That the likelihood of this kind of treatment was common knowledge is evident in the case of Peter Danneley, convicted in 1763 of an “assault with intent to ravish.” He was fined 13s. 4d., sentenced to three months imprisonment in Clerkenwell Bridewell, and ordered to stand once in the pillory, but he appealed to have the pillory part of his sentence mitigated.94 He probably knew that being set in the pillory would not only cause terrible damage to his reputation, but could possibly cost him his life.

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92 *GM*, 31 (1761), 532.
93 *GM*, 36 (1766), 196.
Homophobia was strong in the eighteenth century and sodomy was a capital offence. It was, however, difficult to prove. Convictions were more likely if the charge was attempted sodomy, since that was only a misdemeanour. As such, it could be punished with the pillory (often two trips) along with fines and imprisonment. The charge of homosexuality itself was deeply infused with feelings of disgust and revulsion. To call a man a “Sodomite Dog” was among the most abusive epithets of the time. Thus it is not surprising that the stand in the pillory for men accused of the criminal offence was rarely a civilized affair. Offenders so sentenced often feared for their lives. In 1763 in Essex, a man was stoned to death while standing his hour in the pillory for sodomy. When the magistrates prosecuted the man’s killers, the Assize jury acquitted them. In another case, a man convicted of attempted sodomy attempted to bargain with the judge, offering to reveal other sodomites if the pillory portion of his sentence were remitted.

Even when the accused was convicted of a sexual offence on false information, the crowd was often unwilling to show any mercy, which suggests that their participation in the ritual shaming of the offender was as much a form of public commentary on the nature of the offence itself as it was about the individual offender. When a linen draper named Savill was charged with assaulting a nine year old girl and convicted at the Dover quarter sessions in June 1800, he was “instantly put in the pillory” and claimed later in a pamphlet that he was denied the opportunity to make a speech to

95 5 Eliz., c. 17 (1562).
96 Even while speaking out in favour of the pillory’s abolition, Edmund Burke was resolute in his belief that sodomy was “a crime of all others the most detestable, because it tended to vitiate the morals of the whole community, and to defeat the first and chief end of society.” Edmund Burke, The Speeches of the Right Honourable Edmund Burke, in The House of Commons and at Westminster-Hall 4 vols. (London: Longman, Hurst, Rees, Orme and Brown, and J. Ridgway, 1816), II: 158.
98 PRO ASSI 35/203/2, cited in P. King, “Crime in Essex,” 350. Again, this likely reveals more about popular attitudes to sodomy than to the violence of the pillory. In 1732, John Waller (a man with a less than sterling reputation) was set in the pillory for laying a false information in a robbery case. But before he could properly stand his time, he was set upon by a group of men who beat him senseless and eventually killed him. Three men were eventually charged with murder and two were sentenced to death. See OBSP (May, 1732) and (September, 1732). Thanks to Andrea McKenzie for these references.
the jury which would have exonerated him. He was informed by the constables that by order of the
Mayor and the court he was to suffer his punishment straight away—which he did. Savill offers a
vivid description of his experience:

I had no other reason but to believe the Mayor and King [the deputy mayor] were
determined that [I] should be murdered, if they could have done it genteelly, and afterwards
brought it in accidental, having upwards of forty constables under a kind cloak of deception.
About eight or ten of the ignorant sea-faring, and blackguard Ruffians, who knew not what
they were about, were admitted into the circle, close to the pillory, to pelt me with stones and
all manner of filth; and one of the villains even came up and took the filth from under my
feet several times, without any interruption by the magistrates or constables when they might
have been prevented with ease.  

Savill argued that because of the nature of the crime charged against him, the city officials were
willing to tolerate his ill treatment, even if it led to his death. Savill claimed that “afterwards [he] was
informed that Manteel, Mayor, and King, Deputy Mayor, stood and laughed at the sight.”

Meanwhile, the crowd grew more vicious and Savill feared for his life:

I was used in such a manner, that I expected nothing but death; many of the spectators
thinking the same, cried out open shame, and said that I should be a murdered man. One
man, to a certainty, fainted away at the sight; others said it was worse than murder, and if the
corporation wished to murder me, why did they not blow my brains out at once. My face
and head were cut in a most shocking manner. The blood flow’d from my head and temples
as though I had been struck with a knife, through which I was quite blind of one eye for
several days, and my friends who saw me did not expect my recovery. I cannot express bad
enough the cruelty I experienced....

In April of 1780, the use of the pillory again led to manslaughter, when William Smith and
Theodosius Read were sentenced to stand their hour at St. Margaret’s Hill in Southwark. The details
of the incident as reported in The London Courant and Westminster Chronicle were as follows:

Yesterday morning, at about three quarters past eleven o’clock, Read and Smith, convicted
of sodomitical practices at the Magdalen Coffee-house some little time since, stood in the
pillory at St. Margaret’s-hill, pursuant to their sentence. They were escorted from the New Jail
at ten o’clock, in a very private manner, in a hackney coach, to prevent the rage of the mob,
and locked up in the Ball-dock belonging to the Sessions-house till the time aforesaid. The
Under Sheriffs, with their officers, and a very great number of constables, attended,

100 The Trial of Mr. Savill, Linen Draper, Margaret, who was Falsely and Maliciously Charged with Assaulting Mary Bayle, with Intent her
Carnally to Know and to Abuse, and Found Guilty, Without Proof, after Proving his Innocence (London, 1800), 22-23.
101 The Trial of Mr. Savill, 23.
notwithstanding which they were severely treated by the populace. When they had stood
about half an hour, the coachman sunk down, and endeavoured to strangle himself, in which
position he remained till he appeared black in the face, the blood gushing from his ears, when
he was taken out, and laid on the pillory. The plaisterer stood the whole time.
When Smith the coachman was brought back to the New Gaol, a surgeon was sent for,
who bled him, but he was quite dead. Reed, the plaisterer, was so severely treated, that it is
doubtful whether he will recover.”

This detailed report reveals a number of key features of the pillory: first, the time of the
incident, 11:45 a.m., confirms the notion that these events were timed to attract the largest possible
audience. Again, as Francis Place noted, “the time for standing, or rather walking around, on and
in the Pillory was one houre, usually, from 12 to 1 o’clock at noon, the common dining hourse of all
sorts of persons who earn their livings by the labour of their hands, and consequently the time when
the streets were crowded by such people.” Charing Cross was a popular site for this punishment.
It was one of the busiest locations in the metropolis, and a pillorying there was well known in
advance. Many in the mob planned to attend such events, Place noted, and “brought with them on
donkeys, and in baskets, rotten eggs, which they procured form the egg warehouses, decayed
cabbages &c. &c. the refuse of Covent Garden Market.”

A second point of interest is the “very great number of constables” who were on hand in
this case. This suggests that not only the mob, but also the local authorities, took such punishments
seriously, as so many attendants would incur no small expense. Third, if Smith really did try to kill
himself, as the report suggests, it serves to underline Johnson’s point about the depth to which
contemporaries believed standing in the pillory would disgrace the offender’s name and character.
Finally, the graphic description of the injuries both men received reflects the degree of viciousness
and passion that such a humiliating and degrading punishment could excite in the crowd.

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102 The London Courant and Westminster Chronicle, 11 April 1780.
103 Beattie, Crime and the Courts, 467.
104 BL Add MSS 27826, f. 172.
105 Ibid., ff. 172-73.
After reading the newspaper reports of how Smith was killed in the pillory, Edmund Burke brought the issue of the pillory’s violence before the House of Commons. He raised the point in terms of the necessity for proportionality in punishment and remarked that “the Punishment of the Pillory had always struck him as a punishment of shame rather than of personal severity. In the present instance [however] it had been rendered an instrument of death, and that of the worst kind, a death of torment.” The attorney general, Alexander Wedderburn, complimented Burke for his “humanity” in raising the matter, adding that he would initiate an inquiry into the incident but would reserve judgment on Burke’s appeal for the abolition of the pillory until he had consulted more widely.\footnote{Burke, \textit{Speeches of the Right Honourable Edmund Burke}, II:157; \textit{Parliamentary History}, vol. 21, (1780), cols. 390-391.}

Sarah Smith, the wife of the deceased, appealed in a petition to Edmund Burke to continue his inquiry into the incident. She seemed to think the device itself was partly to blame, arguing that the Coachman who drove him [Smith] to the pillory will Swear if call’d on that the hole for his Neck was too High and only his toes touch’d the Stand, [and] there is likewise another person ready to attest that he heard the deceased plead with the Mob for Mercy and Compassion...[and]...several others who saw it says that he was, Absolutely hung in the pillory. Your Petitioner humbly implores you to persevere in the work you have begun and be the Instrument of punishing such abuse of the Law.

She also implored the Attorney General to give some assistance to her and her family, claiming that the death of her husband, which, rightly speaking was not the intention of the state, but which was caused by the punishment it imposed, had driven the family “to the greatest distress imaginable, being now in want of the common Necessary’s of Life.”\footnote{PRO, T1/556, ff. 390, 393. Thanks to Simon Devereaux for this reference.} Yet despite the private tragedy of this case, and the public alarm that it raised, there was no immediate support in parliament for Burke’s call to reform the law. Protests against the pillory’s use continued to be raised. However, it was the uncertainty, rather than the brutality of the punishment that was often criticized. “The punishment of the pillory,” stated the \textit{Times} in 1791, “is a disgrace to a civilized country, and ought to be
abolished on account of its uncertainty.” One wonders, would the Times have supported the pillory’s retention if it had been consistently brutal?

Women were punished in the pillory too, though not as frequently as men were. Women could be pilloried for sex-related offences too, but were usually only punished as accomplices or facilitators, as when Mary Connolly was set in the pillory in May 1783 “for keeping an infamous house in Kent-Street.”\textsuperscript{108} It was more likely for women to be punished in the pillory for crimes of deception or fraud. For example, following her conviction on charges of perjury, the magistrates at the Middlesex quarter sessions sentenced Bridget Jackson to be imprisoned for three months in the New Prison at Clerkenwell and also “to be set in the pillory at that end of Great Queen Street nearest Drury Lane for the space of one hour.”\textsuperscript{109}

Though women were not pilloried as often as men, sometimes they were ordered to make more frequent trips. In 1758 a fortune teller in Newcastle-upon-Tyne was ordered imprisoned for one year and to be set in the pillory “once each Quarter.”\textsuperscript{110} Another woman was reportedly sentenced to stand in the pillory “every execution day, for the space of a whole year” as a punishment for her third conviction of robbing children of their clothes.\textsuperscript{111} Another woman was to stand in the pillory in Oxford Road for defrauding Alderman Sawbridge.\textsuperscript{112}

By the early nineteenth century, there are some slight suggestions that the crowds that came to witness or participate in this spectacular punishment were beginning to alter their behaviour, at least in the case of women. Whether this was due to changing sensibilities to public violence or to more stringent policing of these events, is less clear. In one case, it seemed that both features were

\textsuperscript{108} [Whitcball Evening Post, May 10-13, 1783.}
\textsuperscript{109} LMA, MJ/SBB/1312, f. 104 (May, 1778).}
\textsuperscript{110} Petition of Susannah Fleming to Lady Wlackett to apply for a pardon on Flemming’s behalf. SP 36/140, f. 307. Thanks to John Beattie for this reference.}
\textsuperscript{111} GM, 53 (1783), 446.}
\textsuperscript{112 Times, 13 May, 1791.}
evident. The *Times* report of the pillorying in Surrey of Mary Bently, "a notorious procuress," in October 1800 notes that "the populace shewed some symptoms of refinement against her," yet others in the crowd were clearly unruly, and "were prevented from open violence by the activity of the Peace-Officers." In another incident, it appears that the pillory crowd was in greater danger of injury than the offender, when a few people were killed due to "overzealous policing." 

Petitions to have the pillory part of a sentence remitted were not uncommon before the movement in parliament to abolish its use. But James Cockburn has found that once the brutality of the pillory was brought to the attention of parliament by Burke, the Secretary of State was more willing to remit pillory sentences. Thomas Wallis and Robert Sangster appealed to Burke for a mitigation of their sentences after they were convicted of fraudulently obtaining money. In their petition they claimed that their prosecutor did not consider "the Fatal effects of such a Sentence" and believed they had "every reason to fear the Dreadful and Dangerous consequences that may attend that Ignominious Punishment more especially when the treatment of those two wretches who stood in the Borough is so Recent before us." They requested that Burke intervene on their behalf, so that the "scandalous part of our sentence may be taken off." In the weeks following the Smith fiasco, Burke received an appeal for clemency, apparently from a pair of men convicted of fraud, who were ordered to stand an hour in the pillory. Burke wrote to Wedderburn asking that only their sentence to six month's imprisonment be enforced, fearing that "if the men are once in the Pillory, and the Mob from wantonness or Malice, begin to be unruly," they would surely suffer "more than it is the intention of the Law to measure out to them." 

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113 *Times*, 18 October, 1800.
115 In February 1737 Thomas Coates petitioned the King for a pardon from this part of his sentence for uttering a bad guinea. See SP 36/40, f. 152. Thanks to John Beame for this reference.
117 PRO SP 37/14, 95 (April, 1780).
Another man named Kelly, pilloried at Reading in late 1789, clearly felt he had suffered more that than the law had intended. The *Morning Post* reported how he had decided to “bring actions against those who pelted him” adding that this was “a new cause of trial, but clearly a legal one.” Perhaps he felt the authorities had not done their best to protect him. Local officials in London, sometimes including even the Lord Mayor or aldermen, but more frequently JPs and constables, were often present at pilloryings. Constables and petty constables were obliged to attend at the pillory as well as at public executions to maintain order when ordered to do so by the Sheriff. Of course this was the ideal to strive for, rather than what happened in practice.

As a number of examples demonstrate, the care with which constables and other local officials carried out their duties in taming the crowd was far from uniform. In some cases, the officials were no match for the crowd, as when the “mollies” of the “Vere Street coterie” were set in the pillory in September 1810. As the six men convicted of attempted sodomy took their stand, the mob grew particularly vicious. The *Times* reported how “No interference from the Sheriffs and Police officers could restrain the popular rage.” The fact that this kind of behaviour was routine and predicted by the authorities explains why the condemned men were taken to the Haymarket by “the Sheriffs, attended by the two City Marshals, with an immense number of constables.” The mob’s reaction to these men was described in detail:

> Numerous escorts...constantly supplied the party of attack, chiefly consisting of women, with tubs of blood, garbage, and ordare [sic] from their slaughter-houses, and with this ammunition, plentifully diversified with dead cats, turnips, potatoes, addled eggs, and other missiles, the criminals were incessantly pelted to the last moment.

After their hour “they were completely encrusted with filth.” As the carriage proceeded back to

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120 According to the constables’ minute book, 112 constables were employed that day “to Escort five Prisoners out and in the City in their way to & from the Pillory at the Hay Market—the Vere Street Gang charg’d with an Unnatural Crime,” at a total cost of £16.16.6 (CLRO 562A, Day and Night Patrole Books, 1806-1812, [27 September 1810]).
Newgate, the mob followed "and the caravan was so filled with mud and ordure as completely to cover them." Louis Simond, a visitor to England in 1810, remarked on the punishment of these six men, which received wide reportage in the newspapers. He deplored "the public and cruel punishment of the pillory" and questioned "what are we to think of a people, and women too, who can for hours indulge in the cowardly and ferocious amusement of bruising and maiming men tied to the stake, and perfectly defenceless!" The effects of this punishment were, in Simond's opinion, to debase and brutalize the populace further: "Tame tigers must not taste blood; and once let loose, cannot easily be muzzled again at pleasure. What a singular anomaly in a government of laws are these mob executions!"

Many contemporaries made the argument that brutal punishments made for brutal people. They shared Beccaria's belief that violent, physical punishments were out of place and unacceptable in a society that valued human life, shunned pain and suffering, and encouraged sympathetic feeling. Thomas Talfourd, one of the most eloquent critics of the pillory, argued that the "pain" and "evil" of that particular punishment did little to reform the offender, and served in fact "to render evil more abundant." Violent punishments like the pillory provided nothing more than "the preparation for the scaffold, though a stormy interval of rapine and crime frequently elapses between them." Equally disturbing were Simond's comments charging that such punishments threatened to undermine social order because they were themselves lawless, disorderly, and anarchic. At a time when refined writers were beginning to call upon women to civilize men's coarseness, this was

especially evident, as both Simond and The Times noted, when women were the leaders of the uncivilized mob.\footnote{Francis Place noted the special role for women in the pillory mob too (BL Add MSS 27826, f. 174).}

From a modern penological standpoint, an interesting aspect of the pillory is that it was a punishment that confused deterrence and vengeance with retribution. The retributive element of punishment, as Ernest van den Haag points out, “is not inflicted to gratify or compensate anyone who suffered a loss or was harmed by the crime—even if it does so—but to enforce the law and to vindicate the legal order.” Furthermore, “retribution is to restore an objective order rather than to satisfy a subjective craving for revenge.”\footnote{Ernest van den Haag, Punishing Criminals, (New York: Basic Books, 1973), 11.} But the punishment of the pillory served a directly opposite purpose. By allowing free vent to the emotions of the populace, the pillory violated the principle of proportionality that Beccaria and his followers called for, and vindicated the unchecked fury of revenge by creating a public arena for the extra-judicial settlement of class, gender, and legal scores. The pillory offered “an instance of ‘licensed’ community justice,” in John Stevenson’s phrase, but it was offered to the wrong part of the community.\footnote{John Stevenson, Popular Disturbances in England, 1700-1870 (London: Longman, 1979), 50.} Indeed, as Talfourd suggested, in the case of the pillory “the judge vacates the august chair of justice to the mob” by which act “the intention of solemn decisions is wholly frustrated by the appeal to [the mob].”\footnote{Talfourd, “Brief Observations,” 542, 544.} He adds, perhaps playing upon the anxious memories of an only recently defeated Napoleon, that the ideas underpinning the legitimacy of the pillory are “of the wildest republican cast; and would, if generally admitted into our system of jurisprudence, subvert its deepest and most sacred foundations.”\footnote{Ibid., 544.}

That punishments like the pillory no longer fit the aims of nineteenth century penal practice was a point clearly recognized by Michael Angelo Taylor, one of the principal proponents of the pillory abolition bill introduced in 1815. He stated that “the first end of punishment was the
reformation of the offender” and only in the most severe cases “when the crime committed was of so deep a dye as not to admit of a hope of amendment” was the severity of the punishment, (in that case, death), supposed to admit the additional force of deterrence. The punishment of the pillory was not attended with any good to the spectator, because it only gave rise to the assemblage of a tumultuous rabble, who either contravened the sentence of the Court by exalting the criminal, or violated the law by an outrageous attack upon him. It was therefore evidently a punishment of a very unequal nature.

Moreover, in the worst circumstances, as when men died in it, the punishment engendered “a species of violence which...ought to be avoided.” Taylor later said that his principal reason for pushing the abolition of the pillory “was that it was a punishment which could not be measured or dealt out by a court of justice, but was apportioned solely by the caprice of the multitude.” Thus, an even more persuasive reason to end the pillory than its brutality and uncertainty was the very real opportunity it afforded for the kind of proletarian usurpation of judicial authority which could occur when the ferocious mob nearly killed the offender for a non-capital crime. The escalation in the severity of punishment that the pillory encouraged, beyond what may have been intended by the authorities, undermined the notion of just punishment, making the law capricious and punishment the result of luck or chance. Similarly, the diminution of the punishment that occurred when offenders were lauded by the crowd undermined the intended severity of the punishment, and in effect granted him or her a kind of pardon—a power that was supposed to be the exclusive preserve of the monarch. Indeed, the monarch showed his or her mercy, even “civility,” by not punishing beyond the law and by granting frequent pardons. Thus to continue a judicial practice which allowed the lowest of mob hooligans to undermine the authority of the sovereign was, truly, a world turned upside down!

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13b P.D., 1st ser., vol. 30 (1815), cols. 354, 355.
Perhaps even more overtly than at the Tyburn executions, the carnivalesque potential of the pillory scenes created public sites in which class and gender norms were easily overturned and the legitimacy of state-sanctioned violence was openly criticized or, in some cases, blatantly thwarted by the lowest class rabble and, worse, women.\textsuperscript{131} Whereas at the scaffold, even if the offender was lauded, or put up a struggle with the hangmen, in the end, the state always had the final word once the malefactor was “turned off.” At the pillory, the boundaries of when the prisoner had suffered “enough” were much more fluid, depending on the ferocity of the mob. Although the public display and the labelling of the offender with the offence charged constituted the official limits of the punishment, everyone knew that in most cases the crowd would have its say too, and usually that meant through the use of violence. We might wonder, then, whether some objections to the pillory and the Tyburn mob were not reflective of a class-specific way of constructing “civility” or “respectability” against the lower orders who could be portrayed as being always keen to participate in the most foul displays of disorder and rebellion.

Following Elias, one might say that the removal of the pillory is an example of the increasing monopolization of violence by central authorities. Today it is deemed unacceptable to hurl eggs or other missiles at police vehicles carrying criminals to and from trial or prison, and witnesses at executions in the United States are kept behind a protective barrier. By taking the job of punishing certain offenders out of the hands of the people, the state imposed another layer of proper conduct in social settings involving criminals, one that demanded greater self-restraint and which circumscribed an opportunity for public violence. As we have seen, mobs and offenders interacted much more intimately in the eighteenth century, but the relationship between the two had clearly changed by the middle of the nineteenth. The civil distance that was created between the angry mob

and the convicted felon was a product of cultural change and evidence of a fundamental shift in the roles for violence and vengeance in the realm of judicial punishment.

The class dimension of Taylor’s argument for abolishing the pillory was excited in many minds when, in 1814, a colourful radical MP for Westminster was implicated, along with two others, in a Stock Exchange fraud. One of the convicted, Thomas Lord Cochrane, was sentenced to twelve months’ imprisonment along with a £1,000 fine and ordered to stand for an hour in the pillory. Cochrane’s sentence became the subject of much debate especially since it would see the pillorying of a gentleman, quite possibly by the same sort of unruly, female-led mob that pelted the “mollies.” To make things worse, Sir Francis Burdett, Cochrane’s fellow Westminster radical, threatened to stand in the pillory with him should he be forced to serve his sentence. Fearing that the pillorying would incite a riot, the government remitted this part of his sentence.132

The class inequality of the punishment was certainly on Thomas Talfourd’s mind when he penned his tract calling for the abolition of the pillory. It was clear that he thought the punishment itself detestable for reasons already mentioned here, but he was also clear in his reasons for deploiring the pillory as “exceedingly unequal,” ironically because it was a radical and brutal form of social levelling. Certainly its severity was unpredictable as the examples of Defoe, Eaton and the Vere Street coterie had shown but, moreover, its shame was shouldered unequally by those from “the respectable walks of life,” and any person who had “any thing of public character, who has been accustomed to the applause of the insulting populace” would, if subjected to the pillory, surely suffer a punishment “more terrible than a thousand deaths.”133 Of course, Lord Cochrane was, in Talfourd’s opinion, such a man. But not only did the upper class suffer more shame from such a

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133 Talfourd, “Brief Observations,” 538, 539.

punishment; it was suggested that they were even discriminated against because of their social station. Thus judges, cautious of upholding the myth of equality before the law, especially in notable cases, were likely to forego the exercise of discretion and mercy and see the law carried out with its full rigour.

Samuel Romilly, the nineteenth-century champion of capital law reform, noted in his diary that Cochrane’s case had sparked calls for the abolition of the pillory. The next year (1815) saw the first attempt to pass such a bill, although it was thwarted by the House of Lords.\textsuperscript{134} The Lord Chancellor, Lord Eldon, opposed the bill on the grounds that no substitute for the pillory had been proposed. Lord Ellenborough—then Chief Justice of the Court of King’s Bench (who, incidentally, had tried and sentenced Lord Cochrane)—made it clear that he found the pillory, in fact, an adequate and suitable punishment, particularly for fraud and perjury. In his view, the punishment had already been curtailed, claiming “the practice was milder at present, from an attention to some peculiarities in the time,” during which judges sentenced the offenders to stand. However, there is little evidence of this happening among the Old Bailey or Middlesex quarter session records.\textsuperscript{135}

Undeterred, Taylor re-introduced the matter in the next session and did not hide his disappointment with “the indisposition of the noble lord on the woolsack [i.e., the lord chancellor].”\textsuperscript{136} Sir Robert Heron, though a supporter of the pillory’s abolition, felt the government was turning soft on crime. To his mind, “the improved and mild morality of the present times had been disadvantageous so far as it was too lenient to crimes.” Alluding chiefly to sodomy, he feared “certain offenses had of late much increased...owing too much to the prevailing mildness and indulgence.”\textsuperscript{137} The pillory had been declining in use, at least by Old Bailey judges, from the late eighteenth century (except in the

\textsuperscript{135} \textit{P.D.}, 1st ser., vol. 31 (July 5, 1815), cols. 1125-1126.
\textsuperscript{136} \textit{P.D.}, 1st ser., vol. 32 (February 22, 1816), col. 803.
\textsuperscript{137} Ibid., cols. 804-5.
case of attempted sodomy) as table 7.1 suggests, and in 1816 a compromise was reached. The pillory would be restricted only to cases of perjury and subornation of perjury. In 1837 it was abolished altogether.138

2. “‘Till their backs be bloody”: Public Whipping in England
i. Whipping as criminal discipline

By far the most common form of corporal punishment was whipping. Whipping, privately in prison, or in public, was usually employed as the punishment in the case of petty larceny. According to Michael Ignatieff, whippings were employed instead of transportation for first offences and for servants who stole from their masters.139 Whipping was sometimes preferred to transportation in the eighteenth century, even in cases where the value of goods stolen clearly made the offence a transportable one. However, juries’ deliberate undervaluing of stolen goods at a nominal 10d. meant that offenders could escape a grand larceny charge and escape more serious punishment. Those convicted of petty larceny at the Old Bailey faced whipping, and in misdemeanours prosecuted at the quarter sessions, whipping was frequently sentenced in those cases too. Beattie found that in the 1750s, whipping was “suddenly and mysteriously” extended to grand larceny.140 He suggests that this was due in part to a mid-century loss of faith in transportation as a reasonable deterrent to larceny, although there is no evidence to suggest that whipping was being considered as an alternative to transportation entirely. Indeed whipping was still seen as only expedient in cases of minor offences.141

138 56 Geo. III, c.138 (1816) abolished the punishment of the pillory except for perjury and subordination of perjury; 1 Vict., c. 23 (1837) abolished it entirely.
139 Ignatieff, Just Measure of Pain, 20.
140 Beattie, Crime and the Courts, 544.
141 In my work on the Middlesex quarter sessions for this study, I focused on cases of assault almost exclusively. However, I did scan other indictments over the period 1759-1830 to establish a qualitative impression of the sentencing patterns in other kinds of cases. My impression is that the magistrates at the quarter sessions made more frequent use of the types of corporal punishments being described here than did the judges at the Old Bailey. Private whipping, that is,
From simply reading the cases reported in the OBSP, one might come away with the impression that whipping was a common sentence for offences prosecuted there. However, a sample of sentences from the period 1766-1821 reveals the fact that whippings were less common than that first impression might suggest. For most years, whipping sentences accounted for just under 5% of the total sentences. The sudden increase in the period 1776-1781 is explained by the penal crisis and particularly the suspension of transportation caused by the American Revolution. The precipitous drop in transportation sentences, from well over 70% for both men and women in the early period, to between 4 and 5% during the war, is countered by increased use of all other punishments, especially imprisonment. Once imprisonment took hold as an accepted alternative to transportation, the resort to whipping retreated to its earlier numbers, at least for men. Beattie has shown that whipping, both in public and in private in the jails and houses of correction, was declining significantly for both men and women, especially in the last decade of the eighteenth century.142 Interestingly, the proportion of women sentenced at the Old Bailey to be whipped remained higher than that of men until the early nineteenth century. We shall return to this point in a moment.

Whippings could be performed at a public “whipping post” which was fixed at some prominent spot in the city (in London, before 1780, there was one outside of Newgate) but often the publicity of the act was fully exploited by having offenders whipped through the streets of their neighbourhood, as the courts ordered, “till their backs be bloody.” The public whipping of people through the streets of London was a well established feature of English penal culture. In 1524, whippings to be carried out in the prisons or in the house of correction, were sentenced in many cases of petty larceny. Public whippings, always on prescribed routes, were less frequent than private ones, but still fairly common—I would hazard a guess of roughly one such public whipping being sentenced each session. Men received twice as many public whipping sentences as women in my unsystematic sample (10:6), but many women were ordered to be whipped in prison. The pillory was also used by quarter sessions justices in at least five cases (4 men, 1 woman). In a future version of this study, I intend to examine this issue in greater, quantitative detail.

vagabonds “mighty of body” were ordered “lated a cart’s tayle [and] beaten by the Sheriff’s
officers with whippes in dyuers places of the Citie.”143 Thus both male and female offenders could
be flogged, as it was said, “at the cart’s tail,” whereby they were tied to the back of a cart, stripped to

Table 7.1
Distribution of Punishments at the Old Bailey, 1766-1821

<table>
<thead>
<tr>
<th>Years</th>
<th>Death %</th>
<th>Transported %</th>
<th>Imprisoned* %</th>
<th>Whipped %</th>
<th>Fined %</th>
<th>Pilloned %</th>
<th>Other** %</th>
<th>Total Sentences N</th>
</tr>
</thead>
<tbody>
<tr>
<td>1766-1771</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Men</td>
<td>16.9</td>
<td>73.4</td>
<td>0.8</td>
<td>4.9</td>
<td>-</td>
<td>3.7</td>
<td>-</td>
<td>485</td>
</tr>
<tr>
<td>Women</td>
<td>5.3</td>
<td>79.7</td>
<td>-</td>
<td>10.7</td>
<td>-</td>
<td>4.3</td>
<td>-</td>
<td>187</td>
</tr>
<tr>
<td>1776-1781</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Men</td>
<td>30.0</td>
<td>3.7</td>
<td>28.0</td>
<td>12.1</td>
<td>-</td>
<td>6.8</td>
<td>17.2</td>
<td>547</td>
</tr>
<tr>
<td>Women</td>
<td>10.5</td>
<td>5.2</td>
<td>51.9</td>
<td>28.1</td>
<td>-</td>
<td>4.3</td>
<td>-</td>
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</tr>
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<td>1786-1791</td>
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<td></td>
</tr>
<tr>
<td>Men</td>
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<td>50.2</td>
<td>18.8</td>
<td>8.0</td>
<td>0.4</td>
<td>0.1</td>
<td>-</td>
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<td>31.0</td>
<td>52.2</td>
<td>8.6</td>
<td>1.3</td>
<td>0.4</td>
<td>-</td>
<td>232</td>
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<td>1796-1801</td>
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<td>Men</td>
<td>21.4</td>
<td>33.3</td>
<td>34.7</td>
<td>4.5</td>
<td>1.2</td>
<td>-</td>
<td>3.5</td>
<td>1199</td>
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<tr>
<td>Women</td>
<td>12.7</td>
<td>31.5</td>
<td>44.6</td>
<td>8.0</td>
<td>3.4</td>
<td>-</td>
<td>-</td>
<td>330</td>
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<td>1806-1811</td>
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</tr>
<tr>
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<td>33.9</td>
<td>38.6</td>
<td>4.7</td>
<td>2.3</td>
<td>-</td>
<td>-</td>
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<tr>
<td>Women</td>
<td>10.3</td>
<td>38.7</td>
<td>46.1</td>
<td>1.0</td>
<td>3.9</td>
<td>-</td>
<td>-</td>
<td>406</td>
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<td></td>
</tr>
<tr>
<td>Men</td>
<td>16.3</td>
<td>40.8</td>
<td>33.8</td>
<td>4.6</td>
<td>4.1</td>
<td>0.2</td>
<td>-</td>
<td>1919</td>
</tr>
<tr>
<td>Women</td>
<td>9.7</td>
<td>37.4</td>
<td>43.1</td>
<td>0.2</td>
<td>9.7</td>
<td>-</td>
<td>-</td>
<td>404</td>
</tr>
</tbody>
</table>

Source: OBSP.

*Includes whipped and imprisoned, fined & imprisoned, branded and imprisoned.
**Includes sent to be a soldier or sailor, hard labour.

the waist, and whipped as the cart travelled a particular route through the city and until their backs bled from the wounds.

Among the Middlesex and London court records, it is difficult to find any notice of the number of lashes to be made, or how long the punishment should last. The magistrates frequently did specify the particular route the procession should take: for example “from Wapping New Stairs to Wapp[ing] Old Stairs and back again” or “from the end of Russell Street in Tottenham Court Road to the Tabernacle there” or “to be publicly whipped at a Carts Tail round Spittal Fields Market.” But the severity of the whipping and the morbid duty to determine when “enough was enough” was probably left entirely to the hangman who carried out the sentence. That the maintenance of public order was also a concern in the use of this punishment is suggested by the regular employment of constables to attend these floggings.

A whipping, like a stint in the pillory, was often sentenced precisely because of its humiliating power. At the Westminster sessions in January 1790, Samuel Hinchcliffe was sentenced to be whipped for fraud and extortion. Mr. Mainwaring, chair of the sessions, felt that the fraud the prisoner had committed—that of overcharging people for carrying goods—was a daily occurrence, and thus “it was necessary to make an example of those offenders against whom the charge was proved.” Hinchcliffe was therefore sentenced to three month’s imprisonment and “to be publicly whipped from the Admiralty to Charing Cross, and from thence to Bridge Street, Parliament Street; which was inflicted amidst the approbation of the spectators.”

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144 A mid-eighteenth century Dutch chronicler noted an average of 35-40 lashes at Amsterdam whippings (Spierenburg, Spectacle of Suffering, 68).

145 See Beattie, Crime and the Courts, 462. LMA, MJ/SBB/1166, f. 70, f. 103; MJ/SBB/1302, f. 110.

146 A constable’s minute book from the City reports that 22 men were “on Duty in Thames Street, attending the Sheriff to Flog a Man” on 31 July 1810; 14 men to do the same duty, also in Thames Street, on 4 January 1811; and 13 men on 13 April 1811. In the last case, the cost of hiring these men was noted at £2.6 (CLRO 562A, Day and Night Patrole Books).

147 Knapp and Baldwin, Newgate Calendar, 160.

148 Ibid.
Clearly, whipping could be ordered as part of a combined sentence. However, public
whippings in particular were used to cast shame and dishonour upon the convicted offender in ways
that judges presumably felt other punishments, like fines or imprisonment, were simply incapable of
doing. For example, William Cranner was convicted in 1768 of assault with attempted rape and was
sentenced to pay a twenty pound fine, along with twelve months in prison, and to be “publicly
whipped from the one End of Great George Street to the other.” This was a stiff sentence indeed,
but likely given by a judge who suspected but could not prove that he had been guilty of rape (a
capital offence). Nevertheless, Cranner appealed to the “great Compassion and Humanity” of the
Justices of the Peace of the City and Liberty of Westminster, pleading with them on various grounds
to grant a reprieve from all three parts of his sentence. It appears from Cranner’s petition that in the
case of a whipping, people so punished were openly exposed to the wrath of the mob as much as
those set in the pillory, and were similarly disgraced. Thus Cranner was concerned to secure some
remission from this part of his sentence “not only with regard to him self (who is of a very weakly
Constitution) but also for the great Scandall that will on his Honest and Creditable Relations and
Friends that reside thereabout besides the Danger of his being Murdered by the popolace [sic]. The
Ignominy whereof may never be wiped off.”\footnote{LMA, WSP/1768/OCT/35.}

Like the pillory, the public flogging drew much of its punitive force from the shame and
personal ignominy that it heaped on both the offender and upon his or her family and friends.
When, in October 1760, Elanor Steed was sentenced to be “whipped publickly in Holbourn from
the end of Grays Inn Lane to the end of Red Lion Street” for larceny, her son George wrote to the
magistrates to petition for clemency in her punishment.\footnote{LMA, MJ/SBB/1163, f. 64. Her crime was stealing a piece of pork, MJ/SR/3105.} He was especially keen to see the
whipping replaced by some other punishment. Clearly, the offender’s shame was shared by his or
her family and friends too. As a master bricklayer, George feared he would lose business and local respect should the sentence be carried out on his mother. Thus George wrote, in his own phonetic style, on behalf of his mother for some mitigation to her sentence. He feared that since she was to be publicly whipped, “in the Nabourhood Ware you Humble Pertisinor Gitts His Bread,” the stain upon his reputation would be irredeemable. Moreover, he

...Imploys Men & Cheaply in that Nabourwood Wool’d to God Pray all Your Humble Pertisenior Beggs of the Cort is to Grant Him the favor of Having Hir Sentence altered to Be Punished any Way the Cort Shall think Proper But Publickly Wipt it Being Shuch a Grate Scandell to Me in My Business & Wood Go Nere to Be My Ruin iff the Clemancy of the Cort Don’t Consider the above afare...151

We learn from cases such as these that reputation and standing were vital personal qualities for men and women of all social stations, and the modification of punishments in order that they not jeopardize one’s character was not an issue with exclusive class or gender boundaries. In the Steed case, George realized the consequences of his mother being whipped, for both his personal reputation and for his reputation as an honest businessman. But clemency would not necessarily be exercised for reasons of reputation alone. Indeed, as has already been mentioned, these corporal punishments drew a great deal of their penal purchase from the ability to shame and demean. As George knew, they did so through the use of physical violence and even if the shame could be endured, the physical pain and torment might not. Thus George also appealed to the magistrates’ humanity and to the general sense that the public, physical punishment of certain persons was simply unacceptable, especially that of elderly women. George had a clear idea of the severity of the punishment and feared his mother’s life would be endangered should the whipping be carried out:

...the Unhappy Woman Age is 62 Years & Very Much Giveing to the Goute & frequently at this time of the Yeare Wich iff Shee Should Be forst to Go through the Doue Sentence It is Thought Would Be hir Death Wich Would Be Ever a Sting a Pon Me & My famely....152

151 LMA, MJ/SP/OCT 1760.
152 Ibid.
In this last sentence, George’s appeal for clemency indicates that perhaps some moral threshold was about to be transgressed if this punishment were carried out. Regardless of her guilt, and for a mix of reasons, ranging from selfish pride to humanitarian concern, George could not bear to see her mother punished in this particular way for her offence. His appeal, then, touches on one of the central concerns of this chapter: that is, to expose the degree to which punishments were able to serve their discrete ends when their power and legitimacy were contingent on inherently malleable cultural norms that may be in flux. In that case, it seems, the consequences of this punishment, based as it was on shame and dishonour, were to be felt more strongly by the offender’s family, than by the offender herself. And the physical violence that the punishment involved was both degrading and threatening to the offender’s physical well being. In that case, as with the pillory, the public whipping of offenders was another punishment that could potentially punish beyond the intention of the law.

When the new sessions house was being constructed in Clerkenwell, a sub-committee of county officials was asked to decide whether a permanent or moveable whipping post was needed. The committee recommended a permanent post to be prominently displayed in front of the session house. But a little over a year later, in 1786, it was decided “that a Moveable Whipping Post be prepared for the punishing [of] offenders sentenced to that Punishment.”153 This change of plans might suggest another subtle shift in sensibilities. It suggests the waning of the need for such an object—itself a kind of icon of brutal punishment—whose psycho/spatial permanence in a prominent place in the square had grown rather more problematical. A moveable whipping post eliminated the permanent, physical reminder that violence was tolerated by the state from public view. It is interesting to note the timing of this change, which came only three years after the end of

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153 LMA, MJ/OC/11, f. 271.
the Tyburn procession. When taken together, all of these discrete changes in penal practice seem to suggest a more general shift in attitudes about how public spaces, particularly the streets, ought to be used in the service of the ends of punishment. They signal a certain determination to diminish the association of public sites with public violence.

ii. Gender and Whipping

A little less than two decades after Mrs. Steed's unhappy experience, legislation was passed that revealed that whipping women in public was growing less acceptable. The 1779 Penitentiary Act contained a provision for replacing burning in the hand with either a fine or whipping. Though the fine was likely the preferred substitute, for those cases when magistrates did choose to employ whipping cases involving women, the act contained a small concession to female decorum, stating that women were to be whipped "in the presence of females only," effectively eliminating the public whipping of women who received benefit of clergy. Further changes came with an act of 1792. Under that statute, females convicted as "loose and disorderly" persons, as "rogues and vagabonds", or as "incorrigible rogues" (the three categories of vagrancy) were explicitly exempt from the punishment of whipping, though the same Act ordered men to be either publicly whipped, or sent to the house of correction for a minimum of seven days.

In some places, the practice of sentencing women to be whipped had already begun to decline around mid century, well before legislative changes. According to Peter King, "the public whipping of females had been largely abandoned in Essex by the late 1750s." George Rudé has argued that in Gloucester, (whose records he claims are more complete than those used by Beattie in

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154 19 Geo. III, c. 74, s. 3 (1779).
155 32 Geo. III, c. 45, s. 3.
his study of Sussex), women were virtually never whipped.\textsuperscript{157} The picture for the metropolis is less clear. Beattie found that in Surrey, the proportion of women sentenced to be whipped for property offences declined from 27.7% in the period 1749-75, to 13.1% in the period 1783-87, declining to only 2.4% by the period 1799-1802.\textsuperscript{158} In London at the Old Bailey, we have already noticed the increase in the proportion of whippings sentenced at the Old Bailey during the transportation crisis (table 7.1). This is more easily understood, given the context of the increase and the lack of suitable alternatives to whipping in an age before imprisonment was widely accepted. But what was remarkable about the Old Bailey figures was the persistent use of whipping as a sentence for women to a slightly greater degree than for men in the period after transportation resumed. This trend likely reflected the nature of the crimes committed by women, more than a judicial proclivity to whip women more often. Since petty larceny and other minor thefts were most likely to be punished by a whipping—either public or private—and given that women were more likely to commit such offences, it is perhaps surprising how few were actually punished in this way.

Two acts, in 1814 and 1817, further restricted the practice of whipping women and an 1820 act abolished all corporal punishment for women everywhere.\textsuperscript{159} As Beattie has shown for the counties of Surrey and Sussex, and as the records of London’s Old Bailey Court also reveal, this legislation followed rather than dictated judicial practice. A marked decrease in the number of women sentenced both to public and private whippings in the jails and houses of correction, was evident by the end of the eighteenth century.\textsuperscript{160}

Private whipping of women had long been attended with feelings of misgiving, evidenced in Ned Ward’s \textit{London Spy} which offers a description of a whipping at the Bridewell. In his account, the

\textsuperscript{158} Beattie, \textit{Crime and the Courts}, 539, Table 10.3; 612, Table 10.14.
\textsuperscript{159} 54 Geo. III, c. 170, s. 7 (1814); 57 Geo. III, c. 75 (1817); 1 Geo. IV, c. 57 (1820).
president and governors of the Bridewell were present during whippings which would terminate when the president signalled with his hammer. When women were flogged, according to Ward, the calls from the audience to "knock" were strenuous: "Oh, good Sir Robert, knock! Pray, good Sir Robert, knock!"\textsuperscript{161}

There exists further evidence of the rationalization of whipping in the eighteenth century. James Cockburn has found signs that the judiciary sought to rationalize corporal punishments so that "the severity of the whipping was carefully proportioned to the circumstances of the offense."\textsuperscript{162} The records of the central government also expose a more widespread and popular dissatisfaction with the use of corporal punishments. The Home Office was flooded with appeals from all over the country to have the whipping and pillorying part of sentences respited, many of which were granted.\textsuperscript{163} As the Elanor Steed case revealed, there was some sense even at mid century that the public, physical punishment of certain persons—especially that of elderly women—was simply unacceptable.

Why it was thought necessary to shield women from violent, physical punishments before men, probably has much to do with emerging notions of female respectability and of the incivility of inflicting violent punishments upon female bodies in public. Men continued to be whipped in public well into the nineteenth century. A Parliamentary Committee learned in 1834 that at the Cold Bath Fields House of Correction, those men who displayed "very refractory conduct and gross indecency" were punished by whipping.\textsuperscript{164} Indeed, men, including juveniles, continued to be subject


\textsuperscript{162} Cockburn, "Punishment and Brutalization," 172.

\textsuperscript{163} For examples, see the criminal entry books in PRO, HO/13; also HO 42/26/748-9, HO 42/43/57-8.

\textsuperscript{164} P.P. (1834) xli, 158. The same report also noted the other forms of restraint then in use: leg irons were used "when Prisoners are exceedingly violent or attempt to Escape; Handcuffs or the Strait Waistcoat, or Leather Shackles, for unusual Violence, Assaulting or threatening to Assault the Officers, wilfully destroying their Cells, Bedding or Clothing." But perhaps as a signal of the humanity of the age, the director who was testifying added "these restraints are invariably removed the moment it can be done safely."
Table 7.2
Public versus Private Whipping Sentences at the Old Bailey, 1771-1821

<table>
<thead>
<tr>
<th>Year</th>
<th>N</th>
<th>% Whipped in Jail</th>
<th>% Whipped in Public*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1771</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>18</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>Female</td>
<td>17</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>1781</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>27</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>Female</td>
<td>32</td>
<td>-</td>
<td>100.0</td>
</tr>
<tr>
<td>1791</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>61</td>
<td>93.4</td>
<td>6.6</td>
</tr>
<tr>
<td>Female</td>
<td>7</td>
<td>100.0</td>
<td>-</td>
</tr>
<tr>
<td>1801</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>87</td>
<td>32.2</td>
<td>67.8</td>
</tr>
<tr>
<td>Female</td>
<td>21</td>
<td>100.0</td>
<td>-</td>
</tr>
<tr>
<td>1811</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>70</td>
<td>75.7</td>
<td>24.3</td>
</tr>
<tr>
<td>Female</td>
<td>3</td>
<td>100.0</td>
<td>-</td>
</tr>
<tr>
<td>1821</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Male</td>
<td>192</td>
<td>74.0</td>
<td>26.0</td>
</tr>
<tr>
<td>Female</td>
<td>0</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Source: OBSP.
Note: Includes those sentenced to be whipped and imprisoned.
*For 1771 and 1781 sample years, the OBSP does not indicate whether whippings were public or private. Since they were supposed to be in public, I have counted them all as such.

to public and private whipping in the Houses of Correction as well as in factories and the new prisons until the Criminal Justice Act of 1948 did away with the penalty altogether.

As table 7.2 demonstrates, whipping was a punishment whose implementation had a clear gender dimension. Public whipping of women had ended by the 1790s and except for a sudden leap in 1801, the total number of annual whipping sentences for women followed a steady decline from the 1780s. By the time the legislation of 1820 abolishing the whipping of females altogether was passed, the whipping of women had already been eliminated in practice. Indeed, no women tried at the Old Bailey were sentenced to public whippings after 1791. For both men and women, however, when public whippings were sentenced, it is not always clear where such punishments were to be carried out. In those cases where convicts were sentenced to be “whipped and discharged” or
imprisoned for a specified length of time, "and during that time to be publicly whipped," it is not clear from the OBSP whether the sentence was to be carried out in prison, in public or private, or else through the public streets.

The Middlesex quarter sessions were often more precise in their sentences of whipping, as we have seen, but the Old Bailey judges could be specific too, especially when they were trying to send a message to a particular group in society. For example, by the early nineteenth century, we find that men sentenced to be whipped in public were often ordered to suffer their sentences on or near London's dockyards. The court records suggest a growing problem of petty thefts created by the increase in commercial activity and the importing of goods. Many of the men sentenced to be whipped at the Old Bailey sessions in the early part of the nineteenth century had clearly been unable to resist the temptation to pilfer luxury items like sugar, coffee, indigo, tea, as well as other commodities that were arriving in large numbers at London's docks. When convicted of stealing such goods, the Old Bailey judges tried to make an example of these men by sentencing them to public whippings "for 100 yards on Paul's Warp" or "on Cox's Quay," no doubt in the hopes of encouraging their fellow labourers.

Public Space and Public Punishment, or, From Mean Streets to Clean Streets

What accounts for the general shift in penal practice indicated in the foregoing discussion? What accounts for the changes in the way punishments such as the pillory, whippings, the burning of women and even the death penalty were conceptualized? Why were these punishments, which had passed, for a very long time, as acceptable kinds of punishment, now seen by many as unacceptable, intolerable and unjustifiable? Why should this change have happened at this time? The answers to these questions are bound to be extremely complex, as much scholarship in this area has shown. But, as we have seen, a distinct shift in penal practice and in the ideas informing that
practice—ideas about the role of violence in society—were clearly under way by the 1770s and 1780s. Those trends in practice evident from the court records also seem to coincide with a change in the nature of the discourse surrounding these punishments. What larger conclusions can we draw from this coincidence of trends? As a preliminary step towards my answers to these questions, let us return briefly to William Grenville’s point regarding the impropriety of executions in the centre of town, as it seems to allude to a whole constellation of changes which formed the very real and, in fact, crucial social and cultural background to all of the modifications to penal policy discussed here.

It should now be clear that two of the fundamental principles of eighteenth century punishment were that it should be public and that it should be violent. Violence alone was ineffective. If that were not the case, all violent punishments could have been carried out in private. But in order to maximize the symbolic power of that use of violence, over time, punishments were orchestrated in the most shameful, humiliating and spectacular ways possible. There was nothing historically inevitable about the construction and refinement of these punishments, just as there was nothing inevitable in their eventual demise. What we must bear in mind, however, are the cultural underpinnings of those punishments. Clearly, they were the product of a culture which placed considerable symbolic and disciplinary power upon violence and, for that reason, these punishment continued to be utilized and legitimated. By the eighteenth century, these corporal punishments had been refined to the point where they concentrated violence and publicity in a technologically sophisticated spectacle of state power, which was intentionally graphic and which maximized the physical and psychological pain of the sufferer. That they were carried out in the public squares, and in the streets of the metropolis simply reinforced the notion that these were proper places or “sites” for the use and display of violence. The consequential disorder of the crowds who watched such spectacles was also tacitly tolerated, if only within fairly narrowly defined boundaries. That the authorities thought that such punishments worked to convey larger penal messages of discipline and
power suggests they thought the culture had a high threshold of tolerance for violence when used as a disciplinary tool.

After about the mid eighteenth century, however, the degree to which this shared tolerance for public displays of violence could still be justified by the majority of people was a much more openly ambiguous point than it had been for centuries beforehand. By about the 1780s, the use of physical violence directed upon the body of the offender was beginning to raise serious doubts, anxieties and objections from a number of people. It was the public nature of these punishments—the fact that violence to other human beings was being legitimized in public places in public spectacles—that drew the critical gaze of social commentators. These changes in penalty had a good deal to do with the relationship between industrialization and social change and the effects of commercialization on the city of London. As the civilizing processes continued in the metropolis, and as manners, attitudes and expectations began to endorse the gradual retreat from open displays of violence—especially in the latter half of the eighteenth century—the physical punishments of old were more easily seen as incongruous holdovers of a passing age.

This is not to say that these feeling were unique to this age. I mentioned earlier that from medieval times, the execution sites were situated in unpopulated areas, usually on the outskirts of town. In London, public hangings were once held in the area of Smithfield Market but were moved to Tyburn in the early fifteenth century because of the growth of the areas around the market. By the eighteenth-century, London “was growing more rapidly in brick and mortar than in population” and surrounding areas, notably Westminster and Middlesex, expanded rapidly. London’s West End grew into a fashionable neighbourhood and the old Tyburn site, in particular, was literally butting up against the ever expanding boundaries of taste, refinement, and civility.165

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One consequence of this kind of urban growth was, as Elias's model notes, the creation of “pacified social spaces” which, in their regular existence, “[were] normally free from acts of violence.”\(^\text{166}\) Attempts to integrate violent behaviour, especially highly ritualized and potentially disorderly acts—such as hangings or burnings, or the pillory and its attendant mob—into the normative rhythms of those spaces grew increasingly difficult. Grenville’s recognition of the petitioners’ concerns about the “inconvenience” of burning women near “the centre of town” indicates clearly how such reformed notions regarding the proper uses of public spaces had penetrated urban discourse by this time.

The noise and disorder created by the crowds at the Tyburn executions by the eighteenth century has been mentioned as a threat to the symbolic power of the event. But equally important were the reactions to that event. We know, for example, that residents of “Quality and Distinction who Inhabit[ed] the Great Squares & Streets” in the increasingly fashionable area of Paddington had complained from the late 1750s about “the Great inconveniences of the Situation of the Gallows” and how the regular flow of traffic along the Acton and Edgeware roads and the Paddington New Road was “very much incommode[d] by the great Concourse of Idle & Disorderly Persons who usually attend all Executions [thereby defeating] the Chief use of [the New Road] as designed by Parliament for a safe and easy Communication between the great Eastern, Western, and Northern Roads, and the different Parts of the Cities of London and Westminster and County of Middlesex.”\(^\text{167}\)

Studies of urban planning in Britain have revealed the conscious effort in the eighteenth century to reform public space.\(^\text{168}\) The character of street culture was to be completely changed over

\(^\text{166}\) Elias, *History of Manners*, 447.
\(^\text{167}\) The New Road is today Marylebone Road and Oxford Street. Gatrell, *Hanging Tree*, 602-3.
the course of the eighteenth century through the commercialization and urbanization of the
metropolis. Roads were improved, through better paving and lighting, for speed and efficiency, as
well as cleanliness and safety. London’s shopkeepers demanded a city that was attractive to its
citizens of quality and unthreatening to potential customers. Also, the cartage of goods and persons
depended on the quality of the roads and the regular flow of traffic. By the mid eighteenth century,
two of the city’s main thoroughfares, Fleet Street and Holborn, were frequently terribly congested
which prompted the building of the “New Road” running north of the developed parts of the city at
the end of the 1750s. In 1760, the City obtained an Act of Parliament granting it special authority to
improve the streets. The following year, all but one of the old gates were demolished, a move which
opened up the City proper to a regular and growing stream of pedestrian and vehicular traffic.
Already, businessmen, lawyers and others of greater means were commuting from the more refined
areas of the metropolis like Mayfair, St. James’s, and Bloomsbury, into the city on a regular basis.\(^{169}\)
Londoners such as Horace Walpole quickly became accustomed to the growing ease and speed of
travel and complained when their journey was delayed by traffic congestion. “The town cannot hold
all its inhabitants,” he griped on one occasion. “I have twice been going to stop my coach in
Piccadilly, thinking there was a mob; and it was only nymphs and swains sauntering or
trudging....T’other morning...I went to see Mrs Garrick and Miss Hannah More at the Adelphi, and
was stopped five times...for the tides of coaches, chariots, curricles, phaetons, &c. are endless.”\(^{170}\)

One visitor to London, describing a stroll through the streets in early 1775, complained of
the “ballad singers who, forming circles at every corner, dam the stream of humanity which stops to

\(^{169}\) Paul Langford, notes that after the 1770s, as neighbourhoods to the north-east of the City became more and more
middle-class enclaves, “commuting became commonplace and much remarked on” (Public Life and the Propertied Englishman

listen and steal.” Residents and local officials were also voicing greater concern about the condition of the streets and the many hindrances to the steady flow of traffic. In their regular reports to the Middlesex Grand Jury, the Parish Constables would draw the court’s attention to the various nuisances and disturbances that upset the peaceful and orderly operation of daily commercial intercourse. For example, the inhabitants of King Street in John Taylor’s ward of Saint Margaret Westminster complained of how “the servants are Always a Cleaning the horses upon the pavement that the passings Cant pass By for them and are Very a Buisen to people if they speak to them.” Such reports reveal how concerns about street traffic and the need for the smooth flow of pedestrian and vehicular traffic were preying upon the minds of the constables. Of course, they were also concerned with other disruptions of city life. Boisterous ale houses and the drunken brawls that spilled out of them were constant problems. As well, Constables such as Wright Turnell of St. John Clerkenwell, repeated regular fears that some publicans, such as Francis Palmer of the Roebuck Alehouse in Turnmill Street kept an “Ill governed house to the terror of the King’s subjects at large, and disturbance and terror of the neighbours in particular by harbouring a number of dangerous thieves, prostitutes and vagrants.” The maintenance of order and the regulation of morality that went hand in hand with this kind of surveillance was all part of a growing desire to create what has been called a “polite and commercial” society. In the urban metropolis, the crucible for this process was the street.

Streets develop rhythms of activity which, over time, become increasingly regular and normalized and which exclude activities that do not “fit” the new rhythm. This is an historical process, and requires both a substantial population of both regulars—neighbours and residents—

172 PRO, KB 32/14, 1786.
173 PRO, KB 32/14, 1790.
and strangers who will pass through a given neighbourhood in more or less frequent patterns.

Recent criminological literature suggests that activities that are out of step with those rhythms—criminal events in the modern literature—occur when offenders find amenable places in which to carry out their activities. Those “amenable places” are those which lack “effective place managers,” that is, individuals such as police officers, building managers, shopkeepers, and homeowners who discourage criminality by their position within the community as stakeholders. These are people with something to lose by permitting crime to flourish in their neighbourhood. They are therefore an integral part of the informal web of social control, whose power lies in their ability to discourage criminal behaviour primarily “through their presence and daily activities at specific places.”

This idea of place managers provides a theoretical guide to describing how social networks and patterns of daily intercourse develop, not only to discourage criminality, but to foster aspects of the “civilizing process” more generally. The rhythms of life that normalize civility and standardize codes of behaviour at the same time marginalize incivility. The influence of cleanliness, order and safety on larger notions of what is proper and what is deemed acceptable may not have been part of the conscious plan of parliamentarians, local authorities, and property owners to reduce crime and limit the role of violence in society. But such improvements did encode certain expectations of

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175 Mazerolle et. al., 372.

orderliness and passive social control which served to reinforce habitual standards of behaviour. As the streets themselves took on a more orderly, refined appearance, being both well paved and better illuminated at night, and cleaned on a regular basis, the pedestrians and residents who also frequented such social spaces on a regular basis came to associate them with order, regularity, and a certain degree of safety. 177

The appeal of such changes to the senses is also significant, and more work needs to be done on the connections between the transformation of the senses and intellectual and cultural change. 178 Still, it does seem reasonable to see some links between the sensual experience of the world and cultural processes of social conditioning. Clearly, homeowners and shopkeepers have a direct role in this process by paying both watch and paving rates, but also in being personally responsible for the cleanliness and order of the areas in and around their shops and homes. In the process—perhaps seen as the process of civilizing the streets—these local “place managers” effect a gradual transformation of the public streets into new spaces with new defining characteristics. The streets change from public areas with social and civic/cultural uses, where displays of violence are expected and accepted, to more narrowly functional uses, where violence is disruptive, disturbing and offensive. The streets became safer, more orderly and organized, with vehicles in the street and pedestrians, hawkers and criers on the pavement. But concurrent with this “civilizing” trend was the realization by judges that the use of the streets as a public “civic” space and, particularly, as a venue for the application of punishments—which manipulated, coerced and exploited that publicity—had


177 Stephen Wulf argues the changes in the urban landscape of the metropolis affected the nature of public executions there (“Imagining Justice,” 73).

became more unseemly, more of a nuisance and a hindrance to the regular flow of commercial
traffic, and out of step with the emerging roles for the new public man and woman.

This change in the nature of the streets was also influenced by concurrent changes in
traditional commercial practices. For example, the streets shed their role as market places as new
spaces for commercial activity were constructed. In the City, the Borough Market in the Borough
High Street was removed by a 1756 Act to a site near the south end of London Bridge. In that case,
the impediments to commercial traffic had grown intolerable as the streets came to be relied upon
more and more for strictly functional uses. The process I am describing, then, is one by which the
streets are gradually purged of their old cultural trappings as they take on new roles. It just so
happened that the nature of the activities that came to be associated with the public streets—free
flowing traffic, the safe transportation of people and goods, and the sensually appealing street, free
of offensive sights, smells, and sounds—were themselves emblematic of the forces of order and
regularity that characterized the new capitalist ethos, and were encouraged by the spread of
consumerism. In such a reformed setting, displays of disorder, or of neglect, or even of open
brutality were thrown into higher relief, and seemed more and more at odds with what was
acceptable, desirable, and with what had become normalized. Behaviours that led to “an offensive
sight and disagreeable associations,” as Elias termed them, were placed under tighter control or
prohibited altogether. Thus public displays of violence and disorder, such as that associated with
the pillory crowd, or with the scene of a half-naked malefactor, tied to a cart and being whipped by
the hangman through otherwise orderly and commercially oriented streets must have seemed more
and more out of place with the social and cultural changes going on at the time. Increasingly, the
public use of physical violence by the state to transmit messages of order and justice were seen as

179 Trent, Greater London, 139.
180 Elias, History of Manners, 104.
throwbacks to a different age, relying on practices and methods of social instruction which appeared
out of concert with the improved moral and physical character of the modern metropolis.

Finally, we must not ignore the role of historical circumstance, administrative expediency,
and unintended consequences in the demise of public corporal punishments. Most importantly, the
"rise of the prison" as a suitable secondary punishment must be seen as crucial. We have already
seen in chapter 6 how imprisonment was quickly adopted for the punishment of assault, and Beattie
and Ignatieff (and others) have examined its increasingly significant role in the punishment of other
offences. A much needed study of bridewells and houses of correction in this period might also
reveal the extent to which those institutions were used in place of the old corporal punishments.

Records of the business of the Corporation of London suggest that the administering of
corporal punishments presented a considerable financial burden and an added bureaucratic nuisance
for the City authorities. Aside from the fees to the common hangman himself, who often carried out
many of the other punishments, there were costs for erecting and dismantling scaffolds, pillories,
and stakes, and for the cleaning and repair of the streets following the terrible event. Many
constables had to be hired to maintain order.181 The City Lands Committee, one of the key
administrative bodies for London, was perpetually concerned about the mounting costs of
punishment in the City. The mayhem of the Gordon Riots in June of 1780 saw the destruction both
of Newgate Prison and of the stage and the post before the prison that had formerly served as the
sight for public whippings. Yet six years later, the City Sheriffs were still complaining to the City
Lands Committee that since the riots "there has been no proper whipping Post or Scaffold erected"
and feared, moreover, that "the want of a similar Stage or Scaffold prevents the proper Execution of

181 CLRO, 562A, Day and Night Patrole Books, 1806-1812. The men usually received 3s. each for attending executions
or, for example, a pillorying at Smithfield market (see Volume 1, 24 April, 1807). On 20 May of the same year, twenty
five constables were "employed to attend an Execution to prevent Carts &c from standing at the top of the Old Bailey" at
a cost of 3s. per man.
the Sentence, and defeats the Intention of the Judges, that the Punishment should be publick, and attended with Shame to the Culprit.”

Other elements of the old Tyburn rituals also fell under critical gaze soon after the demise of the procession. Only a year after the executions had been moved from Tyburn to Newgate the Common Council enquired into the “Expence of the Platform and Bell used at the public Execution of Criminals in this City.” Through much of the next year the committee for repairing Newgate Prison dithered over who should pay the bill for over £309 for constructing the temporary gallows, and the nine guineas that would have to be paid each time to have the gallows re-erected and removed. By November of 1786, the matter had still not been resolved and the sub-committee struck to resolve the issue reported to the Grand Committee of City Lands that they “[were] of Opinion that those expences ought not to be paid by the Corporation.” Then, in December, after being presented with the bill for “raising and fixing the Pillory in Mark Lane,” the City Lands Committee resolved that “no charges for preparing or fixing the pillory ought to be paid by the Corporation.” Of course these petty administrative concerns were not enough to effect the wholesale reform of the penal order. The point is to illustrate the complexity of forces acting on the minds of legislators and reformers, and to weave these everyday concerns into the larger story of transition.

Clearly the argument I am putting forward here demands a larger conceptual frame than historians are usually wont to use. However it seems to me that it is only by expanding, rather than narrowing, our scope that we can hope to arrive at a satisfactory account of penal change in this

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183 CLRO, Misc. MSS 185.8, Committees: Newgate Papers, 1783-85.
185 CLRO, Journals of the Court of Common Council, vol. 70 (16 November, 1786), f. 91.
186 CLRO, City Lands Committee, Journals, vol. 78 (1786-1787), f. 314.
period. What I am saying is that the broader cultural context of the age needs to be more clearly understood, as it sheds light on the motivations as well as the impediments to decision making in the past. The larger account that I am moving towards—of which this thesis is a preliminary step—will therefore reserve a primary role for the wide range of social, cultural and intellectual forces that must be brought into play. This is in contrast to the explanation of the changes in penal practice in eighteenth and nineteenth century England put forward recently by V.A.C. Gatrell in *The Hanging Tree*, and supported, to some extent, in an essay by J.S. Cockburn in *Law and History Review*. Both accounts seek to downplay the importance of sympathetic reaction to the brutality of public punishments, and to public hangings in particular. As mentioned earlier, Gatrell argues that the crowds that witnessed the terrible deaths of men and women developed various defence mechanisms against any deep connection or relationship with the condemned which they projected in their squeamish reactions.

Though he agrees that those onlookers who felt something for the suffering offenders were sympathetic to the victims’ fates, Gatrell often chooses to dismiss their concern as cool, uncaring, or “phlegmatic.” There is thus a curious division between “squeamishness” and humanity in Gatrell’s account. His scorn for the elite sensibilities that cultivated squeamish or sentimental reaction to this and, by extension, other punishments, (though Gatrell is largely silent on reactions to corporal punishments), leads him to disassociate those reactions from the civilizing forces evident in other manifestations of culture, and frequently attributed to the same elites. But in Gatrell’s account their “squeamishness” was disingenuous, and should be understood not as a sign of visceral sensibility, but rather as a more distanced and aesthetic emotion: in fact, a sophisticated form of denial, which “refuses to accept the pain which sympathetic engagement threatens.”

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187 Gatrell, *Hanging Tree*, 267.
scaffold was thus “extruded...from conscious feeling” which allowed the death penalty to continue as a kind of tolerable evil.\textsuperscript{188}

This view places considerable weight on the psychological motivations of the elites, and tends to obscure the fact that there were actual men and women who suffered in violent, public, and often disturbing ways, at the hands of the state. It also completely undermines the possibility that the authors who took the time to record their “squeamishness” did so because what they saw touched their emotions and disturbed them, saddened them, perhaps even moved some to take action. Their reactions to the violence inherent in these punishments are so deeply sublimated within the psyche of those who watched, in Gatrell’s account, to be of little use to historians.

Gatrell denies the emotive and impelling force of such scenes of terror and suffering to motivate action for change. He minimizes the historical actors who suffered those punishments, who cried and moaned and shrieked as they feared for their lives, often with good reason. He denies their agency in evoking the sensibilities of those who watched. And by dismissing the emotions of commentators and spectators of grisly punishments as “coping mechanisms” for their own bourgeois natures, he misses a valuable opportunity to explore the connections among violence, punishment and culture. Clearly those changes in penalty that did come about at this time were neither uniform, immediate, nor without mixed motives. And Gatrell is to be praised for his ability to disturb the whiggish view of reform of the capital criminal law. But in the process of doing so, he denies wholesale the significance of some of the most obvious indicators of cultural change that characterized the period. Certainly there were strong currents of resistance to penal reform. There are those who did truly believe in the efficacy of physical punishment, and others who justified the most brutal punishments with simplistic religious calls for an eye for an eye. But these views did not

\textsuperscript{188}[I]t became a matter of diminished urgency to demand the process’s curtailment; it was possible to continue hanging people with relative equanimity.” Gatrell, The Hanging Tree, 279.
prevail and did not form the basis for penal practices in the nineteenth century.

Second, as I have mentioned above, Gatrell’s account does not account for the timing and coincidence of widespread criticisms of the death penalty with other changes in penalty like the ones documented here. In fact, the temporal frame for his explanation, in the end, retreats almost entirely from the eighteenth century and, instead, ascribes the real force of change (the crush of numbers on the pardon system) to the 1820s and 1830s.

J.S. Cockburn attempts in his article to bring qualitative evidence to bear on those interpretations of the eighteenth century that see it as a period in which a “decisive shift in attitudes towards violence” took place. Cockburn argues that when the index of “judicial violence”—that is, the range of physical punishments—is used to trace shifts in attitudes towards violence generally, the experiences of the metropolis figure disproportionately large in modern historical accounts. He argues that the metropolis offered a “culture of punishment that was quantitatively and qualitatively distinct from that pertaining elsewhere in the country.” He suggests that patterns of penal change and shifts in attitudes towards violence may have followed different trajectories in other parts of the country. This may well be true, but his evidence for this is as curious as it is selective. Cockburn paints a picture of an increasingly violent metropolis—one in which the rituals of punishment became more deeply entrenched, and increasingly more disorderly—but by the end of the eighteenth century, he is still faced with the trend in the application of punishments, such as the decline of public whipping for women, and the criticisms of the pillory described above. These shifts pass unnoticed in his sources. As well, his examples from Bradford suggest that at roughly the same time as in the metropolis, the kinds of “civilizing” tendencies being applied to London’s penal practices

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169 Cockburn, “Punishment and Brutalization,” 165.
were indeed evident elsewhere.190 And though Cockburn is probably right to point to inconsistencies in the changes to penal practice, and the absence of a smooth progression from barbarity to "enlightenment," his evidence is rather too selective to permit any solid grounds for commenting on larger trends. It is indeed ironic to hear this view from a distinguished scholar who has done much to illustrate the value of quantitative methods in the study of English criminal justice history. By focusing on the metropolis, however, where the number of examples of punishments is more substantial, and where longer-term trends may be more adequately traced, there seems to be more evidence by the end of the eighteenth century of a retreat from the particular forms of violent punishment that had, as Cockburn says, "institutionalized brutality" within the English penal repertoire.191

Whether or not historians have exaggerated the "popular hatred of institutionalized violence" as Cockburn concludes, remains debatable, as do so many conclusions about the experience of violence in the past. As I stated earlier, whether or not violence is tolerated or "hated" in any age depends very much on the context, and upon who is asked. Finally, Cockburn's other conclusion, that "levels of judicial and scaffold violence throughout the eighteenth century were consistently higher than they had been during the early modern period"192 seems less tenable, given the evidence presented in the present study. We have seen a general decline in the use of such punishments, as well as a growing sense of anxiety and disillusionment when they were employed.

Though I have followed the argument of Norbert Elias that the decline in public punishments might be seen as part of the "civilizing process," it is not argued that these changes were the result of a top-down transformation spearheaded by a band of humanitarian elites. As this

190 Ibid., 173; Wilf also traces the influential lead of the metropolis in penal reforms elsewhere in England ("Imagining Justice," 76).
191 Cockburn, "Punishment and Brutalization," 177.
192 Ibid., 178.
chapter has demonstrated, the attitudes of the crowds—the spectators of the penal spectacle—were integral to the successful operation of those public punishments. The crowd’s reaction played an important role in the process of legitimization that each penal episode had to construct in order that the proper disciplinary messages be transmitted. The public played a key role in generating shame and heaping in upon the offender through witnessing public punishments. The problem, however, was that attitudes towards the underlying, legitimating concepts of penal practice began to shift. As the role of public violence became less desirable in all social settings, the use of violence to convey messages of submission, correction and terror through the machinations of the state came to lose their justification and moral backing too.

Also, as offenders came increasingly to be seen as rational, moral agents, the nature of the punishment inflicted upon them began to require more complex punitive goals than simple “just desserts” or, worse, public vengeance. Those punishments that relied on violence did little to serve broader penal objectives. There is no proof, for example, that they deterred offenders. And given that they were grounded in violence themselves, they were unlikely to be reformative if our understanding of the experience of violence in other contexts is any indication. Eighteenth-century corporal punishments were more likely to elicit natural reactions like anger, resentment and defiance because of their heavy reliance upon rituals and practices of what one modern criminologist calls “dis-integrative shaming.”193 Such penal practices form an ideal recipe for future aggression rather than for the reformation of the offender. They also exclude or “dis-integrate” those who suffer such punishments from the community in ways that largely preclude their successful re-integration into the norms of social life once their punishment has ended, as the punishments themselves leave indelible marks (both real and metaphorical) upon their bodies which forever label them as outsiders.

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Conclusion

This chapter has suggested that the significant changes in penalty that occurred in England in the period from 1760 to 1840 reflect more basic changes in attitudes and beliefs, and thus changes in the culture itself. As part of this broader explanation, one that must be worked out more fully through further research, I have suggested that the social and economic changes in the period inspired new conceptions of how public spaces were to be utilized, and wrought changes which themselves facilitated deeper shifts in the thresholds of toleration for various forms of violent behaviour. This chapter has also argued that the phenomenon of judicial punishment can not be divorced from these other cultural concerns, as they share many of the same deep foundations. We have seen how the specific forms that punishments take are variable and change with the attitudes, sensibilities and political and social objectives of the day. The experience of the late-eighteenth and early-nineteenth centuries has shown that even when the state had recourse to a very wide range of sanctions spanning the whole range of severity, there was no clear idea that any punishments in particular, or in combination, "worked" in the sense that they satisfied short-sighted ideological objectives.

Public whippings and hangings, and the pillory were all punishments that relied on their theatricality and publicity for their effect. Like the procession of condemned men and women to Tyburn, these were public exercises in "displaying order." It was important that the offenders be shamed and humiliated before their community and thus these degrading punishments were carried out at specific times and for specific audiences. But, more significantly, these punishments were all centred around acts of brute physical force—behaviour that, as we have seen, was growing increasingly intolerable in other contexts. The anxieties about violence as a feature of everyday life grew more pronounced after 1760 and when violent behaviour was brought to account, increasingly
the response from official bodies such as judges and juries, (who Garland dubs "the primary 'bearers' of penal culture") was to take a more definite and harsher stand against that behaviour.\textsuperscript{194}

Corporal punishments were suited to an age when shame and pain encouraged, or were believed to encourage, self-restraint and moral edification. They were only effective as long as the offender and the spectator shared some common understanding of the acceptability of pain and violence as corrective tools. Whipping and the pillory relied on such beliefs in order to fulfil their penological aims. Yet a growing number of critics began to argue that these punishments, which relied on violence to the physical body, had lost their cultural significance and appeared increasingly out of step with the cultural and social forces of the day. To continue their application, one observer claimed, served only to reverse the benign intentions of the law, that is to "humanize society" and temper justice with mercy, and tended instead "to bring us back to our state of original barbarism."\textsuperscript{195} They failed in their chief penological purpose to deter and to correct, as their spectacular ability to publicly shame and degrade was seen more and more as a nuisance, a stain, a blot on the character of the society as a whole.

As Beccaria had stated in the 1760s, one of the main drawbacks of cruelty in punishments was that the proportionality of violence or brutality was difficult to fix with any certainty. "It is not easy" he argued,

\begin{quote}

to establish a proper proportion between crime and punishment because, however much an industrious cruelty may have multiplied the variety of its forms, they cannot exceed in force the limits of endurance determined by human organization and sensibility. When once those limits are reached, it is impossible to devise, for still more injurious and atrocious crimes, any additional punishment that could conceivably serve to prevent them.\textsuperscript{196}
\end{quote}

Thus even if violence and cruelty could be minutely apportioned according to the heinousness of the crime, there would still have to be an upper limit, an extreme sanction, that might well fall short of

\textsuperscript{195} Talford, "Brief Observations," 546.
\textsuperscript{196} Beccaria, \textit{On Crimes and Punishments}, 44.
the demands of society for future offences. In addition, he argued, cruel punishments tended to perpetuate and legitimate the place of violence and cruelty in society generally, and “very strong and sensible impressions” as manifested in spectacular, violent punishments, were only really necessary among a people of “callous spirits,” one that “has just emerged from the savage state.” Among many eighteenth and nineteenth century English nations, none was further from this state than Britain. That this notion was widely shared may help to explain the popularity of Beccaria’s views in England. His treatise appeared at a time, as we have seen, when similar sentiments were gaining greater currency in English circles, and amidst a change in the climate of opinion regarding violence in everyday life.

As we have seen in this chapter, the effect of this broad cultural shift was to sever the links of legitimacy between violence and punishment which had served the English state and people for a very long time. But once violence itself came under the increasingly sharp critical gaze of a “polite and commercial people,” it became clear to the authorities that violent punishment would no longer serve the penal aims of a modern society.

No penal option was spared this wave of criticism, modification and reform as the changes which had quickened in the 1780s became more fixed by the 1810s and 1820s. By 1826, Robert Peel was convinced that even transportation lacked the kind of “salutary terror” that one used to expect from punishments, yet he was stymied in finding a suitable secondary punishment to replace it. And other alternatives, as he declared to Sydney Smith, such as “Public exposure by labour on the highways, with badges of disgrace, and chains, and all the necessary precautions against escape, would revolt, and very naturally I think, public opinion in this country. It is the punishment adopted

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197 Ibid.
198 For the influence of Beccaria’s ideas, see Coleman Phillipson, Three Criminal Law Reformers: Beccaria, Bentham, Romilly (orig. pub. 1923; repr. Montclair, N.J.: Patterson Smith, 1975); Beattle, Crime and the Courts, 553-56, 558, 628-29.
in some countries, but we could not bear it here.”199 Clearly, the age for punishments which highlighted publicity and shaming in an indecorous assault upon the human body was over. And Robert Peel, for all his “villainy” when it came to pardoning (or rather, not pardoning) convicted offenders, nevertheless recognized the obvious contradictions between penal practice and prevailing cultural norms.200 The emotional bias against physical punishments and the administrative impracticality of their widespread application in the old customary ways forced officials to redirect offenders into a new penal regime, dominated by the prison and the fine. Imprisonment, including the greater use of bridewells and houses of correction and the committing of prisoners to the prison hulks and hard labour along the Thames, as the option of transportation became more complicated, all provided suitable alternatives—both in terms of their feasibility and public acceptability—to the violent, physical punishments that preceded them.

By the 1840s, most corporal and capital punishments had been abolished or had disappeared from public view while those few that remained, the public whipping of men and the execution of felons, had been severely circumscribed. We have seen how these legislative and administrative changes were intimately linked to a wide, even disparate, range of cultural, social, and economic forces. The concerns over public order and public morality were inherent in the way in which public spaces were reconceptualized and physically modified for changing purposes. The class inequality inherent in the manner in which physical punishment was meted out upon the individual was highlighted in a handful of early nineteenth-century cases. Changing gender norms and the transformation of notions concerning the female body, the treatment of women generally, and the


200 According to Garell, “the main legal structures of the ancien régime were safe in Peel’s hands” (Hanging Tree, 568). For a critique of this portrait of Peel as “the villain”, see Boyd Hilton, “The Gallows and Mr. Peel,” in History and Biography: Essays in Honour of Derek Beales, ed. T.C.W. Blanning and David Cannadine (Cambridge: Cambridge University Press, 1996): 88-112, quote at 90.
rising degree of decorum increasingly expected of them, all reveal their place in this complex story too. As I have tried to explain here, if we are to come any closer to explaining the swift and extensive reforms to the English criminal law, and to penal practice specifically in roughly the eighty year period after 1760, we must begin to explore the deep cultural tensions of this period and try to work out more fully what the normative functions of those punishments were. This chapter has presented some indication of where such an explanation must begin.
Chapter 8

CONCLUSION

It is difficult, in our modern world, to escape the deluge of images and reports revealing the levels of violence in society. Violence appears to us today as a ubiquitous social phenomenon that manifests itself in various forms, and many people would argue it has been a characteristic of all civilizations in all time periods. Research into the causes of violent behaviour, its consequences, and possible responses to it, touch on a wide variety of academic disciplines and is therefore the subject of much cross-disciplinary and comparative study. For modern commentators trying to make sense of violent behaviour in the late twentieth century, easy comparisons are often made with either of two imagined past eras: one, a “golden age” in which child abuse, date-rape, and serial murders were all but unknown; and the other a period in which lethal violence was common, and in which crowds of libertines, reprobates and pickpockets jockeyed for a better view of the grisly scene at the public scaffold to watch a poor malefactor strangled to death, before returning to their nasty, brutish and dangerously short lives. Both such images are obvious simplifications. And though they might prove useful in the service of narrow polemical ends, the extent to which we can refer to either a past “golden age” or to a previous more brutal age when we construct modern arguments about the state of society and the levels of violence within that society is highly dubious and demands close historical scrutiny.¹

This thesis is a contribution to that broad understanding of the historical experience of violence. I have focused on the period 1760-1840 because it was an era of English history in which

the boundaries between the old world of the ancien régime, and the new world of industrial
capitalism were only beginning to be worked out. To say that it was an age of anxieties may sound
trite; still, it is fair to see a myriad of social, political, and economic changes within this time period,
each of which challenged old systems of belief, old practices, and old relationships. During the last
three decades of the eighteenth century in particular, English society entered into an entirely new
social paradigm, and that transition naturally wrought a range of attendant anxieties, doubts, and
misgivings. In some respects, perhaps, the continuities between the old world and the new were
more apparent and more resilient than some have suggested. But as this study has demonstrated,
there is considerable evidence for truly fundamental changes in the deep belief structures and the
patterns of social intercourse that governed the regular forms of behaviour in daily life.

Of course, the cultural process that I have described here did not begin and end with my
terminal dates. Many of the forces of change that I have identified here had long antecedents and
their effects continued to be felt throughout the nineteenth and twentieth centuries. I have suggested
that Norbert Elias’s theory of a “civilizing process,” which suggests a long-term, gradual and, most
importantly, ongoing series of social changes and cultural transformations provides a helpful
explanatory model. It offers us a way to explain the changes in underlying social structures and
mentalities informing the tolerability of violence and the cultural defence of violent punishments. I
have tried here to amplify the methodology that Elias suggested in his study—which relied on
qualitative, ethnographic explanation of the minutiae of daily life—by adding some of the empirical
evidence inherent in the patterns of behaviour in the courts.

I have taken as my task to examine a wide range of sources from this period in order to
detect the influence of general forces of social change upon a central aspect of English society in the

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2 The argument for continuity is made most forcefully by J.C.D. Clark, English Society, 1688-1832: Ideology, Social Structure and Political Practice during the Ancien Régime (Cambridge University Press, 1985).
past; that is, its tolerance for violence. Through the study of violence, we are able to recapture, in small part, the everyday emotional and physical experiences of the past. The manner in which English men and women experienced or perpetrated violent behaviour demonstrates something of the culture within which they lived. The reactions to violence are similarly illuminating, as they imply the boundaries or thresholds of toleration for that form of behaviour and suggest the place or role for violence within the rhythms of daily life. But as those boundaries were themselves contingent upon wider beliefs and broadly shared assumptions about how people should behave towards one another, or towards other beings, the study of violence offers one way into a finer appreciation of the cultural history of past societies.

It is now clear that in the eighteenth and early nineteenth centuries, violence, in both its legitimate and illegitimate forms, played a familiar and significant role in the daily lives of English men and women. Violence was a form of social experience, and a characteristic of interpersonal relationships, that was familiar to every member of society. In this study, I have examined the wide range of violent behavior that seemed to characterize life in eighteenth and early nineteenth century London. I have examined a wide range of sources with an eye to what they reveal about attitudes, belief systems, and feelings when it came to the experience of violence. I have tried to give some flavour of the sensual experience of violence, and suggested that that everyday, familiar experience was fundamental to the larger processes of cultural formation. Violent experience was certainly a feature of daily life, as we have seen, but the ways in which the violence was contextualized, sanctioned or condoned were not the product of universal strictures or laws but, rather, were themselves negotiated responses. They were thus subject to modification and change to fit the expectations of the culture itself.

Some social settings were more clearly designed for the negotiation of the cultural boundaries of violence than others. The courts are the most obvious example. There, persons who
had suffered from violence in some way were afforded a legitimate and moderated venue in which to justify their behaviour against a larger set of cultural codes. As we have seen, however, the formal codes, usually embodied in the law, could be rather limited. Before the early nineteenth century, the state played a relatively minor role in the control of interpersonal violence. Assaults were considered private affairs, and victims of violence were more often encouraged to settle their disagreement and restore the balance of order through a private settlement. Thus the negotiation of the boundaries or thresholds of toleration for violent behaviour in many cases was necessarily a cultural event.

One of the chief findings revealed here is the decisive shift in the punishment of interpersonal violence, beginning in the last decades of the eighteenth century. From the evidence of the court records, it is clear that there was a shift in practice in the punishment of assault. The courts moved away from the civil-type remedy, where the parties were encouraged to settle matters privately, towards the criminalization of interpersonal violence, in a way that allowed the state to manifest its displeasure with the use of violence through meaningful penalties.

Before the late eighteenth century, the court, as the official agent of the state involved in the negotiation of thresholds of tolerance for interpersonal violence, often went out of its way to facilitate private settlements, rather than encourage a formal prosecution and trial. By the end of the century, however, this practice had changed entirely. Though the precise chronology is difficult to establish, and was by no means uniform, it does appear that from roughly the 1770s, the courts began to take a greater interest in the prosecution of violent behaviour. By the 1780s, once other punishments became available—notably imprisonment—the punishment of serious violence became an issue of much greater import. With the implicit support of juries and prosecutors, the courts began to make interpersonal violence more of an issue of public concern than it had been before. To do so, not only did they take a greater interest in facilitating the prosecution of interpersonal violence, but when offenders were convicted of such offences, judges and magistrates
punished violent offenders more severely than they had done in the past. Whereas most persons convicted of assault had faced a small 1s fine, by the latter decades of the eighteenth century, such offenders could expect a more substantial fine, a term of imprisonment or both.

These changes were not the result of new legislation. Indeed legislative changes with regard to interpersonal violence did not come until the early nineteenth century. The vast majority of such behaviour was not covered formally by legislation until the 1828 Offences Against the Person act. Nevertheless, despite this legislative vacuum, the courts managed the business of prosecuting assault tolerably well. It is because of the wide flexibility granted to the courts in dealing with misdemeanours such as assault that they were able to negotiate settlements in such cases in more individual ways.

In the metropolis, this procedure was uniquely affected by the expanding population. The resulting increase in the business of all courts in the latter half of the eighteenth century began to put pressure on the old patterns of the administration of justice. In the case of assault prosecutions, which accounted for a considerable proportion of indictable offences at the busy Middlesex quarter sessions, the court adopted an unofficial streaming process by which less serious affairs were siphoned off to be settled through the older, more civil-style forms of dispute resolution: that is, through private settlement, trivial fines, and reconciliations and releases between litigants; while on the other hand, the more serious cases were encouraged to come before the judges and juries. In serious cases of assault, prosecutors were rewarded for their efforts with exemplary punishments being given to those who had attacked them. And since this move towards the more severe punishment of interpersonal violence was the product of neither legislative change, nor judicial fancy, it must have reflected a larger public concern for the role of violence in society generally. Juries convicted people who used excessive force and violence, and judges punished them because they believed it was the right thing to do. Their verdicts and punishments must be seen as a cultural
manifestation, and indicative of a larger movement to censure and limit the place of violence in the experience of everyday life.

The process of filtering out cases that came before the courts permitted the state to concentrate its energies and reserve its exemplary power for the control and punishment of more serious forms of violent behaviour. Through the process of winnowing cases from the large pool of assault charges, magistrates and juries were, in effect, engaged in a process of honing a sharper definition of criminal behaviour. As we saw, the court facilitated this separation of cases in which the state’s interest was minimal, through the application of various techniques to foreshorten or suspend the trial process and encourage the parties to work out a settlement. What is significant is that before the late eighteenth century, that process was less explicit, and there was also little distinction between serious cases punished through formal trial and private settlements—both usually ended with the payment of a minimal fine. However, as the process of selection was sharpened, so too, the methods and aims of punishment became more substantial. Thus we see the shift away from the simple fine of 1s in the earlier period, towards both heavier fines, but more importantly, significant terms of incarceration. Through these dual processes, then, the state expanded its capacity both to punish the more serious forms of violence, and also to punish that behaviour more seriously.

As we might expect, most of the violence experienced by people in the past was not planned. Rather, the resort to violence was usually a consequence of emotional outbursts, or the result of intoxication. But throughout our period it appears that in the public sphere, men and women used violence with relative facility. Violence among intimates, in both public and private settings, was also widely known, and the use of force to correct or discipline others was generally tolerated. Women appear more frequently as prosecutors in assault cases than they do as defendants, at least among those cases that came before the courts, which suggests that men were
the predominant actors in criminally violent episodes. The court records also suggest that violence was usually directed towards other men too. However, more work needs to be done on the resort to other means of dispute resolution, especially in cases involving violent women. There were many disincentives to the formal prosecution of such women through the courts, and it is likely that their violence was controlled and censured in less formal, and more personal ways.

The more open attitude towards violence in the past had sustained an elastic approach to its control. Thus assault was dealt with largely as a civil matter, and in nearly all instances, the state and the authorities who were supposed to maintain order willingly minimized their role in forcing settlements in such cases. The culture of arbitration which pervaded English civil and criminal courts from at least the late seventeenth century did little to encourage judges and magistrates to use the power of the court to make official statements about the boundaries of inappropriate violence in society. This was the nub of Blackstone's objections to the custom of allowing litigants in assault cases to settle their differences privately. In the "slippery slope" mentality common to eighteenth-century causal arguments, Blackstone saw in the practice of allowing assault litigants "licence to speak," the beginnings of the end of the freeborn Englishman's right to trial by a jury of his peers.¹ He perceived in that practice a clear threat to the trial as it existed, and feared the erosion of English public justice into a private system of justice in which matters of import to the society as a whole—in this case violent behaviour, which went to the heart of social order and national unity—would never achieve the official censure they deserved. Perhaps others foresaw this too, and perhaps Blackstone was merely articulating a sentiment that was latent in the minds of judges and magistrates in other parts of the country. Clearly, something changed over the course of the last decades of the eighteenth century. There was a change of heart about violence in the England of the late eighteenth

¹ Blackstone, Commentaries, IV: 344.
and early nineteenth century and the public was willing to pass the control of violence out of their hands (as evidenced by their willingness to give up some discretion in dealing with it) in exchange for the state's control of it. But also, English men and women seemed content with the increased severity with which the state was willing to punish violence in all of its forms. I have suggested here that the same kinds of economic, social, and cultural forces that other scholars have identified at work in this period, and which disrupted many traditional belief systems and institutions, also created the necessary preconditions for the cognitive shift in attitudes towards violence. Those changes, in turn, made the injection of a greater public voice into the punishment of violence seem appropriate, necessary, and possible.

How violence was punished when cases of interpersonal violence did get to court was dealt with in chapter 6. There we saw there how new standards of justice evolved over our time period in cases of interpersonal violence; changes which I suggested were grounded in broader systems of belief and the commonplace assumptions about the place of violence in society. As new thresholds of intolerance for the exercise of violence in other aspects of daily life came to be normalized, we traced a clear shift in the patterns of punishment of interpersonal violence. As expectations of civility were suffused more deeply into the culture of an emerging "civil society," through the breakdown of older networks of social ordering and social control, there emerged a new kind of heightened sensibility for the physical sufferings of other strangers. The courts, as interpreters of the law and as the arbiters of communal notions of justice, were pressed to formulate more austere statements on the place for violence in English society in conformity with those new sensibilities, as the flesh and blood participants in the legal system itself—the judges, the juries, and the litigants—began to conceive of violence in more magnanimous ways.

As the state extended its interest in the suppression and punishment of violence, and the tightening of control over violent behaviour, it also increased the severity of punishment for such
behaviour which may have discouraged further violent outbursts. But more significantly, it made those procedural changes within a larger cultural context in which all forms of violent behaviour came increasingly under criticism and restraint. As the state became more secure in its command and control over the English people, and as more citizens were taken into the fold of largely middle-class, hegemonic control, with its ethos of “polite and commercial” social interaction, it gained the necessary public justification for the increasingly stringent use of power to promote order and stability. Anxieties about political turmoil, spurred in part by the French Revolution and revolutionary wars, must also be taken as an important element in this larger cultural backdrop to the particular changes enumerated here.

Another of the principal concerns of this study has been to develop our understanding of that broad cultural backdrop even more. The social world in which these changes in attitudes and sensibilities occurred were very much the function of the larger culture. As all of the chapters have shown, to a greater or lesser degree, there were clear signs on a number of other fronts that violence in society was both a topic of widespread concern, and was also a social phenomenon whose shape and structure was influenced by the changes in society generally.

In particular, the metropolitan social world in which those anxieties about violence were shaped and reconstructed was itself shaped by the arrival of new technologies and other innovations. The case of Renwick Williams, “The Monster,” demonstrated this point concretely. The public frenzy that surrounded the case was very much a product of its age, especially in they way that it reveals the growing power of the press, by the late eighteenth century, to disseminate knowledge on the one hand and, on the other, to shape public opinion by generating interest and anxiety about a particular event. In this early example of a “media circus” the case of the mysterious attacker who had been lurking the streets of London’s West End was appropriated by the cultural mainstream. Journalists, poets, and entertainers all seized on the borderline hysteria surrounding the Monster’s
violent deeds for their own purposes and transformed the case into a cause célèbre. The publicity attracted by the case revealed the limitations of both the law, when it came to punishing such violence, and of the society more generally in detecting such men and preventing their appearance in the future.

Finally, we saw how the most serious objections to the place of violence in the public sphere were voiced by those who criticized the state’s reliance upon public, physical violence in the punishment of offenders. For hundreds of years, various manifestations of violence had been used by the English state in its repertoire of punishments in order to discipline and control people, and to enforce standards of conduct. But within a few decades, significant changes in that penal order began to emerge, characterized by a clear retreat from those forms of violent punishment that inflicted brute force, physical pain, public shame and suffering upon the offender. The restriction of the procession of criminals to Tyburn was one example of this. Other examples came with the abolition of branding, the modifications to the use of whipping in public, and in the use of the pillory. All of these punishments relied upon the use of shame and physical violence to convey the message of retribution and condemnation that the punishment was meant to effect. But again, their legitimacy, and the legitimate use of violence to achieve those penal ends, was brought under sharper scrutiny in the latter decades of the eighteenth century in the face of new cultural demands. In the realm of judicial punishment, there was a marked shift within our time frame in the role that public physical violence directed to the body played in the methods of punishment.

A good deal has been written about the changes in penal practice in the late eighteenth century. From the so-called “birth of the prison” to the critique of public executions, historians have chronicled the changes to English penalty in the late eighteenth and early nineteenth centuries and have generally agreed on the chronology of that change. Those seeking to pinpoint the emergence of penal critiques within philosophical developments often begin their discussion by
denoting more rigorous theoretical arguments for the reform of punishment. Dominant among those was the work of Cesare Beccaria in his influential treatise *On Crimes and Punishments*, translated into English in 1767. Generally, Beccaria and his followers (Blackstone among them) argued that punishments should be modified to conform to increasingly understood notions of rationality and certainty. Cruel punishments were “barbarous and useless torments.” They were also inefficient, Beccaria argued, in that rationalistic calculus common to many thinkers of the Enlightenment, and ought to be replaced by those of a more scientific nature.¹ Barbaric or unnecessarily cruel punishments lacked deterrent power—the chief aim of early-modern punishments—since they threatened experiences that were intangible and foreign to most people’s experience. Their barbarity was beyond the ken of the average person, even those familiar with violence in their daily lives. Though violence may have played a larger, more familiar role in everyday life in earlier historical periods, by the late eighteenth century, the brutality and suffering that such punishments elicited was growing ever more strange, unfamiliar, and unseemly. And since, Beccaria argued, “men are regulated in their conduct by the repeated impression of evils they know, and not according to those of which they are ignorant,” the most effective punishments could only be those which a living being could conceive of in realistic and personal terms.² Severe punishment applied selectively was an inadequate deterrent, according to Beccaria, as the certainty of punishment would not weigh as heavily on the mind of potential offenders.

In addition, cruel punishments legitimated cruelty more generally, and could be rejected on those grounds too. The use of violence by the state to convey its penal messages implied a certain justification of brutality in the public sphere, and legitimated the use of violence to discipline and correct other people. But such punishments worked better in a community that was more closely

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² Ibid., 43.
knit and more personally oriented, and the metropolis was moving rapidly from this scenario. As I suggested, the changing nature of the community in shaping notions of legitimacy and toleration that informed attitudes towards violence, especially as the city became more of an anonymous cultural centre, must also be taken into account when discussing the norms of penal practice. In London in particular, where commerce and administration went hand in hand, those with a material interest in stability were largely in favour of the changes that encouraged the removal of displays of violence from the public sphere. The forces of “civility” and “politeness” that regular, orderly, commercially oriented rhythms of life sustained and perpetuated, might therefore be seen as the ascendant social forces which created the preconditions for sympathetic action.

The phenomenon of judicial punishment can not be divorced from these other cultural concerns, as they share many of the same deep foundations. We have seen how the specific forms that punishments may take are variable and change with the attitudes, sensibilities and political and social objectives of the day. The experience of the late-eighteenth and early-nineteenth centuries has shown that even when the state had recourse to a very wide range of sanctions, spanning the whole range of severity, there was no clear idea that any punishments in particular, or in combination, “worked” in the sense that they satisfied the objectives of penalty. But many no doubt realized that by opening up the debate about punishment they would be drawn into a much more complex evaluation of the fundamental characteristics of society. Indeed, the public discussion of violence inherent in the debates over the death penalty and over the place for corporal punishments, also helped alter the way people thought about the society they lived in and contributed to the broader (and seemingly perpetual) discourse about the definitions and goals of a civilized society.\(^6\) Thus Jeremy Bentham, one of the most incisive thinkers of the age—and one who well understood the

deeper connections between punishment and social order—argued that to continue to support those physical punishments founded upon violent acts revealed a limited degree of social control: “A government that persists in retaining these horrible punishments can only assign one reason in justification of their conduct: that they have already so degraded and brutalized the habits of the people, that they cannot be restrained by any moderate punishments.”

But by the late eighteenth century, this was clearly not an accurate description of English society; one that saw itself as “the most civilized people” in the world. The English state was very well developed, with extensive networks of control and order embedded within the structures of governance themselves. And by the early nineteenth century, the general sense of improvement that such structures had brought was widely shared. Francis Place’s impressionistic assertion, in the early nineteen teens, that the English people were “a much better people than we were [half a century ago], better instructed, more sincere and kind-hearted, less gross and brutal, and have fewer of the concomitant vices of a less civilised state,” thus seems emblematic. It was a sentiment echoed by those following more formal inquiries too, such as the government’s 1819 Select Committee on Criminal Laws, which concluded confidently that “in general...it appears that Murders, and other crimes of violence and cruelty, have either diminished, or not increased.” In the metropolis, especially, by the 1830s, the forms of violent conduct which had been common features of everyday life were drawn under great control. Public demonstrations were less frequent. Popular recreations involving the violent treatment of animals, such as bull baits and cockfights, or to persons, such as boxing matches or outbursts of violent retribution, were less easily tolerated and more quickly suppressed when they did occur. We have seen how refashioning urban space played a part in the

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8 Francis Place, Autobiography, ed. with an introduction and notes by Mary Thale (Cambridge: Cambridge University Press, 1972), 82.
9 P.P. 1819, viii, 4-5.
nature of violence in the city, both in its interpersonal manifestations and in the way violence was displayed and manipulated by authorities of the state in order to achieve more discrete penal ends.

Violence is present in almost all societies. When it is obvious, it dominates the social discourse and becomes a visual display of power which directs behaviour with considerable acuity. When it is latent, it remains psychologically compelling and its repression and control feeds a different stream of domination and power. This thesis has been concerned with the expression of violence, mainly interpersonal violence, and the cultural manifestations of that process of expression. We have seen that the processes by which violence was controlled was historically contingent and shaped by cultural context. In late eighteenth and early nineteenth century England, that cultural context underwent a fundamental change, as the evidence presented here has shown. Whether the period 1760-1840 marked a crucial, elemental, or only transitory stage in the long-term history of attitudes towards violence, however, is a question that awaits future historians.
Appendix

NOTE ON SOURCES

The material used for the quantitative elements of this study include the quarter sessions records for Middlesex and Westminster as well as the City of London, the records of the Court of King’s Bench, the records of the Old Bailey (including the unofficial OBSP), and records from various other courts as noted in the text. The indictment bundles of the Middlesex and Westminster quarter sessions from the period 1760-1835 form the primary data base. Reliance upon these documents, particularly the indictment rolls, was complicated by two related factors: the condition of the documents and the restricted access to them. The indictments produced for the Middlesex and Westminster quarter sessions have not survived in their entirety and for many sessions the indictment rolls are in very fragile condition. This has led to restrictions being placed upon access to only those files deemed fit for production by archivists. Consequentially, I was unable to take absolutely regular samples from the sessions. I have sampled all cases of assault from the quarter sessions in quinquennial samples, taking four of the eight sessions. Whenever possible, I tried to use every second session (January, April, July, and October), but when that was not possible, I took the next closest session either before or after the intended session (see table A.1). Charges of “riot and assault” were counted, though “riot and rout” were not, as it was not always clear that an assault involving violence to the person, in the sense described by Burn’s Justice of the Peace, had been committed. Though the basic court record for the count was the indictment, the basic unit for the count was the individual offender. Thus indictments with a single defendant counted as a “case”, while indictments with multiple defendants were broken down such that each defendant counted for
an individual case too. The separate outcome for each defendant in such situations was usually recorded by the court officials, in the same manner as in those indictments with a single defendant. This left me with a total of 4583 cases over the period 1760-1835. The records of the City sessions were sampled in a similar manner.

The indictments themselves did not always contain full details about the case, particularly regarding sentences. In some instances, this was due to the condition of the records themselves. In others, the record of what later happened in the case was not noted on the indictment itself. Fortunately, I was able in many cases to supplement the information from the indictments with that contained in the court minute books or the sessions papers. This was generally true of both the Middlesex and City quarter sessions.

The records of the court of King’s Bench have not been used much for the study of interpersonal violence. However, I have made extensive use of these exceptionally rich files, especially the affidavits located at PRO KB 1. These affidavits, along with other supporting documents, have survived intact, and virtually untouched since they were sorted and bundled in the nineteenth century. Though fairly complete for almost the entire eighteenth century, the affidavits themselves are a poor index to the actual volume of business done in the King’s Bench. Nor are the indictment rolls a reliable guide to the full range of cases of assault being brought there either, due to the peculiarities of King’s Bench procedure. A more reliable index seems to be the controlment rolls, located at PRO KB 29. These parchment records list every new prosecution begun in each term.1 The charge is also stated here, along with the names and occupations of the defendants. However, since prosecutions were always in the name of the crown, (though on behalf of the prosecutor), the names of prosecutors were not recorded there. The controlment rolls were sampled

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in five year blocks, every ten years, and all assault cases were noted in each of the four terms. Thus, all cases have been noted for 1760-75, 1770-75, and so on. These records form the sources for the tables in chapter 3.

Finally, the Old Bailey Sessions Papers (OBSP) were sampled in order to track changes in sentencing at that court. The tables in chapter 7, pertaining to punishments generally and to whipping in particular, are based on those samples. The first sample, dealing with all punishments awarded at the Old Bailey, comprised a count of all sentences from one mayoral year, taken every five years. Thus the first sample is from 1766, then 1771, 1776, and so on, to 1821. Table 7.2 relies on an annual count of all whippings, taken every ten years, between 1771 and 1821.

Table A.1
Middlesex Sessions Rolls (LMA, MJ/SR[1760-1835]) Consulted for Sample

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</table>

Note: Number indicates session roll number, e.g. 3096 = MJ/SR/3096. When a roll was inaccessible, the substituted month is noted in square brackets along with its reference number.
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