We will start with a jig and a pea-green suit. It is what John Rann chose to do and wear on the day of his execution, at Tyburn on the 30th November 1774. Eighty per cent of those who ended their days at Tyburn in eighteenth-century England were young men in their twenties. Rann was 24. But he had packed a lot into his short life. His chosen profession was that of highwayman; what the Victorians would later like to call a ‘knight of the road’. And a lot of ‘knights’ ended their days at the Tyburn ‘fair’, though not always with the panache of ‘sixteen-string Jack’, as he was known. The nickname came from his habit of wearing brightly coloured ribbon-strings, rather than buckles, to hold up his breeches. John was a bit of a dandy, which made him seem all the more romantic, as did his youth and his good looks. The previous May he had been arraigned at Bow Street magistrates wearing an ‘improbable large nosegay in his bosom’; the gift of a besotted ‘lady’. The story goes that he spent his last evening in Newgate entertaining a bevy of female admirers. The pea-green suit was then entirely in character; he had worn it at trial a few weeks earlier, together with a spectacular hat ‘bound with silver strings’ and a demeanour of ‘the utmost unconcern’ (Moore 1998: 257–58; Paley 2019: 136–37). The latter was perhaps understandable given that he had been acquitted of the same crime on six previous occasions.

Not this time though. It was customary for those with a bit of money to make an effort on their big day. As an alternative, some put on their wedding attire; getting ‘noosed’ was slang for getting married. Rann was unmarried, but, already in possession of a very fine suit, did not intend to disappoint. The journey from Newgate to Tyburn, near present-day Marble Arch, was around three miles. Progress was slow, sometimes taking three hours or more, to include a lengthy stop at the Boar’s Head Tavern for the customary tankard of ale. The mood could vary. Rann was accompanied on his way by many of the admirers with whom he had spent his last night; this time dressed, rather improbably, in virginial white, tossing flowers into the applauding crowd. More common though was the ‘horrid aspect’ that Bernard de Mandeville described in his 1725 Enquiry into the Causes of the Frequent Executions at Tyburn; roads lined with ‘whores’ and ‘abandon’d rakehells’, the ‘sharp and
dreadful looks of the rogues, that beg in irons, but would rob you with greater satisfaction’, the ‘seas of beer that are swill’d’, the ‘laughter’, the ‘impudence, and unseasonable jests’ (Sharpe 2004: 81).

A grotesque carnival, as a glance at the final plate of William Hogarth’s *Industry and Idleness* confirms. But also necessary, for the reason Samuel Johnson urged. If ‘executions do not draw spectators they don’t answer their purpose’ (Boswell 1980: 1211). Some, such as Rann, might summon the courage to put on a show. But for most it could only have been terrifying. Many would have hoped to drink themselves into something of a stupor. If so they might have missed the final exhortations of the accompanying priest. John Wesley, who frequently accompanied the Tyburn carts, protested that so many should approach the Day of Judgement blind drunk. He urged cups of tea instead; an idea which did not catch on. Morality bothered Thomas Gisborne too, author of an *Enquiry into the Duties of Men in the Higher and Middle Classes*, published in 1792. The ‘enormity of vice’ had ‘fatal consequences’ (Hay 2011: 28). And nothing made the point quite so succinctly as a hanging.

The overwhelming majority of those who fell victim to the ‘Tyburn massacre’, as Johnson termed it, had committed the same offence (Linebaugh 2006: 74). They had stolen things. Some, like Rann, had stolen spectacularly. Most though had stolen bits and pieces, maybe picked a pocket, pilfered their employer. And mostly for the reason Defoe’s Moll Flanders pleaded: ‘Give me not poverty, lest I steal’. There were of course other crimes which could have

![Image 8.1 The Idle Prentice Executed at Tyburn. From Industry & Idleness, plate 11, by William Hogarth, 1747](image-url)
‘fatal consequences’ in Georgian England. There were plenty of murderers and rapists amongst the Newgate ‘deliveries’. But most were thieves. George Orwell, as we will see, would later suppose that murder was the quintessential Victorian crime; not because of its incidence, but because of its hold on the popular imagination. The same was true of the Georgians and theft. And the reason was simple; theft mattered so much, because an entire political culture had been founded on a sacred belief in property.

By mid-century there was a feeling, common amongst gentlemen at least, that the matter was reaching epidemic proportions. Even the King had been mugged, strolling around Kensington Gardens in 1753; relieved of his watch, money and shoe-buckles. The same had happened to Horace Walpole a couple of years earlier in Hyde Park. In a predictably breathless account despatched to a friend abroad, Horace concluded that he had ‘little news from England, but of robberies’ (Gladfelder 2001: 161). In 1751, the respected writer and magistrate Sir Henry Fielding published an essay on the subject, *An Enquiry into the Causes of the Late Increase of Robbers*. ‘The great Increase of Robberies within these few Years’, it confirmed,

is an Evil which… seems (tho’ already become so flagrant) not yet to have arrived to that Height of which it is capable, and which is likely to attain: For Diseases in the Political, as in the Natural Body, seldom fail going on to their Crisis, especially when nourished and encouraged by Faults in their Constitution.

(Fielding 1996: xii)

The insinuation was plain and predictive.

And so it came to pass. Reviewing the 1760s, a Parliamentary Commission soberly confirmed that there been an eight-fold increase in the number of burglaries committed in the city. The ‘enormity of vice’ was commonly blamed. At a variant, Jonas Hanway, writing in 1775, chastised the ‘dissipations’ and ‘extravagance’ of the middle classes, which was making the poor envious and ‘rapacious’. The editor of Hawkins’s *Pleas of the Crown* surmised as much in 1788; there was so much ‘opulence’ about, so little really to stop people nicking things (Hay 2011a: 20; Ignatieff 1978). It just seemed easier than working for a living. Fielding blamed the demise of the ‘prentice’ system, and the ‘introduction of trade’; both of which had ‘subverted’ social order. Hogarth insinuated the same. The final plate of *Industry and Idleness* is grimly intuitive; a necessarily transient career as romantic highwaymen coming to its inevitable end, whilst the next generation scurry about in the foreground picking pockets. Theft, they each inferred, had become a way of life.

English law has always evinced a particular concern in protecting the interests of people who own stuff. We have already looked at the evolution of property law during the early modern period, and we will continue with this narrative in the coming chapters. But property is not self-contained. Much might be ‘private’, a matter of dealing with conveyances and mortgages and so on. But property law also has a ‘public’ dimension, as Blackstone noted.
It is protected by the criminal law; the law of ‘public wrongs’. Henry Cook noted it too. Coming at the issue from a rather different perspective, Cook defended his activities as a highway robber in the same term. He was merely ‘raising contributions amongst the public’. A defence which proved successful at his first trial in 1741; but not, sadly, his second (Linebaugh 2006: 184–85). In this chapter we will take a closer look at how propertied Georgians protected themselves from men like Cook, and John Rann. We will start with Blackstone and theft, followed by a brief historiographical diversion. We will then take a closer look at two particular species of theft. And then, finally, at the growing debate which moved around how best to deal with the criminalised.

Crime and Property

In this first part of the chapter we are, then, going to set the broader intellectual context. And we will do so by taking a closer look at two very different texts. The first is Blackstone’s ‘commentary’ on crime. The second is Edward Thompson’s *Whigs and Hunters*, a study of the so-called Black Act enacted in the first part of the eighteenth century. The publication of Thompson’s classic study, in 1975, was a seminal moment in the evolution of a distinctively English kind of social history. It is difficult to imagine two more different historians, and two more different histories.

Property and Propriety

Few eighteenth century Englishmen, or women, disputed the principle of property. Even as they celebrated events across the Channel in the early 1790s, radical societies lined up to reassure their compatriots. ‘To render property insecure’, the Manchester Constitutional Society confirmed, ‘would destroy all motives to exertion, and tear up public happiness by the roots’. Their colleagues in Sheffield agreed. To abandon property would ‘desolate the world, and replunge it into the darkest and wildest barbarism’ (Dickinson 1985: 17). ‘Remember’, John Thelwell advised the London Corresponding Society in 1795, ‘equality of rights’ does ‘not mean equality of property’, a ‘wild and extravagant idea’ which could only establish a ‘tyranny more intolerable than anything of which you now complain’ (Philp 1985: 39). It is reasonable to assume that the vast majority of Englishmen felt much the same. Mitigating social inequality and reforming the constitution was one thing; contemplating the dissolution of property was quite another. God meant people to own things.

There again humanity was fallen, and it was broadly accepted that many of the same people would prefer just to nick stuff. It was, as Lord Hardwicke
conceded, the ‘degeneracy of human nature’ (Hay 2011a: 20). Locke put it succinctly in his *Letter on Toleration*: ‘Men are so dishonest that most of them prefer to enjoy the fruits of other men’s labour rather than work to provide for themselves’ (Kramer 1997: 121). It is a paradox of libertarianism; the desire to liberate human endeavour whilst noting glumly that those who fare less well in the ‘new world’ of free markets and free labour will more than likely return to their naturally ‘brutish’ state. Locke was certainly under no illusions. Neither was literary London. Any gentleman who ventured out to a performance of John Gay’s *The Beggar’s Opera* would have recognised the attendant ironies of theatre-life, especially those who were mugged on their way home over Hampstead Heath. An evening spent beside the fire with a good book might have seemed rather safer; though if the book was Fielding’s *Jonathan Wild* or his essay on the *Late Increase of Robbers* not much more assuring. House-breaking, by pretty much every account, was also on the rise. London was a fallen city; another Sodom. We will take a closer look at Gay’s *Opera* and Fielding’s despair in due course.

Hogarth cut his teeth painting scenes from Gay’s *Opera*. Most of his worlds were fallen, to some degree. *The Harlot’s Progress* was never likely to be upwards; neither was *The Rake’s*. A life of crime is the inevitable consequence, and for every criminal there is an egregious lawyer and a vicious judge. In 1757 Hogarth would paint *The Bench*; four judges of the Common Pleas, three dozing and a fourth, the loathed Pittite Chief Justice Sir John Willes, writing a judgment, or maybe just doodling. It was drawn to damn. *Industry and Idleness* had been completed a decade earlier; to like purpose. It depicts the parallel lives of two young apprentices. One conforms and enjoys a life of riches. The other falls, throwing away his indentures, embarking on a life of thieving and moral dissipation, and ends his days at Tyburn. Many, as we have already noted, supposed that the dissipation of youth was a principle cause of the apparently burgeoning crime-wave. Others contemplated the state of the Church, wondering if the indolent cleric was as much to blame as the indolent apprentice. Migration from the country to the city was also commonly cited. In sum, society was loosening its bonds, and losing control.

We can surmise that Blackstone, a man of firmly conservative temper, probably agreed with much of this. At the same time though he was cautious in treading the margin between ‘public wrongs’ and private. Thus public drunkenness should certainly be a crime; ‘its evil example makes it liable to temporal censures’ (Blackstone 2016: 4.27). But private dissolution was beyond the purview of the law, and so must be left to the ‘vengeance of eternal justice’. Interestingly Blackstone had little to say about prostitution. He did however have much to say about ‘offences against God’, as we have already noted, including apostasy and heresy, both of where were ‘by their bad example and consequence’ rightly subject to criminal sanction. And whilst the ‘present laws’ regarding non-conformity tended towards ‘indulgence’, there were limits. Any infraction of the ‘ordinances’ of the Church would be rightly
prosecuted too; precisely because it evidenced a public contempt. It was this attitude which so enraged Priestley and Bentham. Where the law touches on matters of political morality, it becomes a chronicle of prejudice. It is always thus, and Blackstone’s fourth volume is no exception to the rule.

In regard to theft, Blackstone assumed an entirely predictable position. Owning ‘things’ is natural, and so the presence of laws designed to protect the integrity of a person and their possessions is natural too. The responsibility of the legislature is to draft positive laws best suited to dealing with alleged offences in particular circumstances; when, for example, ‘the seizing of another’s cattle shall amount to the crime of robbery; and where’ conversely ‘it shall be a justifiable action as when a landlord takes them by way of distress for rent’ (ibid: 1.43). Characteristically Blackstone plods his way through myriad species of theft. Chapter 17 is entitled ‘Of Offences Against Property’; of which there are principally three. Most of the chapter is devoted to the first which is ‘larceny, or theft’. The second, also ‘attended with a breach of the peace’, is ‘malicious mischief’; in effect criminal damage. The third, which is ‘attended with no act of violence’, is forgery.

And here again much of what Blackstone has to say about larceny would have seemed entirely uncontroversial. It can be either ‘simple’ or ‘compound’, in other words aggravated. There must be ‘taking’ and ‘carrying away’ of property that is capable of belonging to another, and which in fact does. Blackstone pauses to take particular note of ‘larceny from a house’, and more especially burglary or house-breaking, a species of theft which many, including Fielding, thought to be increasingly rife. In an intriguing aside, Blackstone notes that many ‘learned modern writers’ have deduced that this incidence might be a consequence of ‘improvements in trade and opulence’ (ibid: 4.159–60). He then proceeds to consider another kind of larceny of especial contemporary interest, robbery. In comparison with other kinds of ‘private stealing’, such as pick-pocketing, robbery is a ‘heinous’ crime; defined by the presence of violence and ‘fear’. Indeed, the ‘mere apprehension of danger’, sufficient to make a ‘man to part with his property without or against his consent’ establishes guilt (ibid: 4.160–61). And as we will see, when Blackstone turns to contemplate the appropriate punishment for different kinds of thieves, there can be no mitigation, or ‘benefit’, for the violent robber. They should hang.

At this point we might follow Blackstone back into the Middle Ages once more, in order to contemplate a ‘title of no small curiosity’; the ‘benefit of clergy’. It might seem an odd, rather antiquarian, diversion. The notorious literacy test, with which felons might escape serious punishment if they could recite the 51st Psalm, had been removed by statute in 1706. Various other statutes had further restricted the reach of the ‘benefit’, now limited to a handful of so-called ‘clergyable’ offences. But, as it happened, a number of these remained lurking in the shadows of larceny. And so, in the hope of reducing the resultant ‘confusion’, Blackstone identifies those kinds of theft and
burglary which are no longer protected by the ‘fiction’ and those which, by necessary implication, are. Robbery is most certainly excluded. But a number of pettier thefts are still covered by the ‘fiction’; for which reason anyone convicted for the first time might still plead the ‘benefit’. Blackstone, who anyway rather liked a legal ‘fiction’, was approving, appraising the ‘wisdom of the English legislature’ for having ‘extracted by a noble alchemy of rich medicines out of poisonous ingredients’, a jurisprudence of ‘merciful mitigation’ derived from ‘popish ecclesiastics’ (ibid: 4.236, 239). Others were far less impressed. We can imagine Bentham, who disliked florid metaphors almost as much as he did legal fictions, shaking his head in despair. The lingering ‘curiosity’ was finally abolished by the 1827 *Criminal Law Act*.

Blackstone’s ensuing discussion of criminal damage is briefer, but interesting for a different reason. This is an ‘offence, done not for gain, but ‘out of spirit of wanton cruelty, or black and diabolic revenge’. And it is for this reason a ‘public crime’, as well as a private trespass, made ‘penal in the highest degree’ by a series of statutes. Blackstone lists them; from Henrician statutes intended to protect Fenland dykes to more recent Acts designed to punish the burning of haystacks or the scuttling of ships ‘to the prejudice of insurers’. We will encounter a notorious instance of attempted maritime insurance fraud in the next chapter. Each of these Acts has a particular historical context, many passed by Parliament in response to immediately perceived threats to social order. Amongst the more infamous was the Black Acts; to which we will turn very shortly. Blackstone though simply lists it with all the others, and passes on. There is no evidence of disapproval, obviously. Blackstone thoroughly approved laws which clamped down on expressions of public disorder.

Finally, he comes to the third of his species of ‘offences against private property’. Forgery was another crime of the moment, new only in its seeming. Historians have long supposed that its apparent rise coincided with the advance of capitalism. Blackstone clearly did. The ‘general act’, a kind of fraud ‘to the prejudice of another man’s right’, has mutated considerably ‘since the revolution’, when ‘paper credit was first established’. He lists the various kinds of forgeable credit note or security; from ‘south sea bonds’, more of which later, to army and navy debentures, to annuities, stocks and dividends, promissory notes, marriage licences and ‘mediterranean passes’ intended to protect His Majesty’s subjects ‘from the piratical states of Barbary’. The condemnatory tone was widely shared. As late as 1832 Lord Eldon could be found in Parliament affirming that forgery was the most ‘nefarious’ of crimes, fully deserving of capital punishment (McGowen 2010: 111). But with that Blackstone concludes his commentary on all the ‘species’ of criminal offence, theft and otherwise. Volume four is barely halfway through.

---

1 It would though be commuted just five years later, removed from the list of capital offences.
CRIME AND PROPERTY 291

Here we might pause once again to consider structure. Blackstone only devotes one complete chapter to theft, and it is not especially long. His chapter on ‘Offences Against God and Religion’ is far longer. This is not to diminish theft as a crime; though it certainly says something about Blackstone’s concern regarding ‘offences’ against the Church. The crimes of murder and assault are similarly treated, just a chapter each. There are, conversely, half a dozen devoted to crimes against the state. A whole chapter on ‘Praemunire’, as we noted before. Something else that mattered to Blackstone was procedure. The entire second part of the fourth volume is given over to procedure, a painstaking discussion of different kinds of criminal courts, of commitments, indictments and arraignments, and then the trial processes, convictions, ‘reversals’ of judgment, reprievs, pardons and executions of sentence. It is amidst all this that he makes his further digression into benefit of clergy. Various other antiquarian diversions too; into arrests by ‘hue and cry’, for example, courts of ‘pie powder’ and trials by ‘ordeal’. We have come across courts of ‘pie powder’ before, the ‘most inferior court of criminal jurisdiction in the kingdom’, according to Blackstone (Blackstone 2016: 4.1.179–80). Trial ‘by ordeal’ was no more. But there were still arrests by ‘hue and cry’, now usefully adapted for the purpose of hunting down highwaymen.2

As to the present condition of the criminal justice system Blackstone was largely, and unsurprisingly, approving; even if, as we will see, he had some particular, even progressive, suggestions intended to rationalise ‘penalties’ for lesser offences. He especially commended the jury system; as did pretty much every eighteenth century jurist. It is, Blackstone assures his readers, the ‘great glory of English law’. A ‘sensible’ juryman served two purposes, as an ‘investigator of truth’ and a guard against judicial ‘partiality’ (ibid: 3.379–80). And in case a jury gets it wrong there is, along with the measured discretion of the trial judge, the prerogative of mercy, to be extended in cases which ‘merit exemption from punishment’. It is ‘indeed one of the great advantages of monarchy’ (ibid: 4.255–56). Hindsight, of course, is cautionary. Criminal procedure in eighteenth century England was of the distinctly rough and ready variety. Cases would sometimes barely last an hour, even where the prospective sentence was capital. Juries, as commonly populated by insensible as ‘sensible’ men, often deliberated for a matter of minutes without even leaving the courtroom. The accused rarely enjoyed defence counsel. Evidence was usually hearsay, a credible defence dependent on persuading

---

2The process of arrest by ‘hue and cry’ could be traced back to the days of King Alfred, apparently. The original common law process required constables and private men to pursue suspected felons ‘with horn and with voice’ (Blackstone 2016: 4.191–92). By the eighteenth century, it had transmuted into a rather more orderly pursuit, with the added benefit of advertising rewards and immunities for information. Entirely sensible, according to Blackstone, who further observed how effective a similar strategy had been in the Mogul Empire.
character-witnesses to take a day off work and attend the Assize. It was the latter, as we shall see, which did for the notorious Dick Turpin; his witnesses never turned up. And if the judge was paying attention it was, as Hogarth intimated, a bonus.


But hindsight is also indulgent. Of course the eighteenth century criminal justice system fell woefully short of the kinds of standards, of due process and procedural fairness, to which we are accustomed today. And this is before we contemplate the brutality of the so-called Bloody Code. By the time that Blackstone came to assess the situation, in the 1760s, concerns regarding the latter were already surfacing; and to an extent Blackstone shared them. We should note the larger paradox. Georgian England was quite convinced that crime was pervasive, at least amongst the working-classes, and rising. It was, as a consequence, fearful. And the fear created a craving. Blackstone’s generation wanted reassurance. Extravagant statements approving the operation of the criminal justice system were a critical part of this process. Moreover,
criminal law, as Blackstone repeatedly impressed, was a species of ‘public’ law. If the constitution of England, as both Tory and Whig historian commonly agreed, was beyond reproach, so too must be its criminal justice system. More radical Whigs such as Bentham and Romilly might have dissented, Godwin more fervently still. But Blackstone never did.

**Whigs and Hunters**

In 1975 Edward Thompson published *Whigs and Hunters*. A seminal moment in the writing of modern legal history. It told the story of the ‘Black’ Act of 1723; the immediate consequence, and the larger context. Which began in Hampshire in late 1721, with a raid by a gang of poachers in a deer park at Waltham chase. Three deer were killed and four poachers captured. Two were subsequently released for lack of evidence, another pilloried and another sentenced to prison for a year and a day. Undaunted the same gang then raided the park again, taking 11 deer. A public proclamation was issued offering £100 for information leading to their arrest. The park belonged to the newly enthroned Bishop of Winchester, Charles Trimnell. Close friend of the King, recently appointed Clerk of the Royal Closet, well-connected, stridently Whig, and a keen huntsman; they had picked the wrong bishop to irritate. By now the press was interested. The poachers were known to blacken their faces in order to disguise their identity. They became known as the ‘Waltham Blacks’; a useful editorial handle. A series of similar raids took place around the county over the following months, culminating in the seizure of a shipment of wine intended for the Prince of Wales. A notorious ‘hanging judge’, Sir Francis Page, was despatched to Reading Assizes.

In the meantime, the ‘Blacks’ had extended their activities across the county line into the environs of Windsor Forest. There had been reports of similar activity in the area in 1720. By late 1722, a principle target appeared to be Caversham Park, owned by the Earl of Cadogan. Replete with all the fashionable features; winding paths, obelisks, a menagerie, even a quail yard, a canal full of fish and a deer-park of 240 acres. Lots then to nick. But mostly it was the deer; always likely to raise more on the ‘black’ market than a couple of skinny hares. And more romantic too. Robin Hood had started off as a deer-poacher, or so mostly eighteenth century balladeers liked to suppose. So too, it seemed, William Shakespeare. Stories that the young William had been caught deer-poaching at Charlecote Park first appeared in 1709. Not such a bad career-choice then, provided you did not get caught; which was not, it appeared, especially likely.

3Though not, according to Jonathan Swift at least, that good at giving sermons. That which he gave to the House of Lords in 1721 was, Swift recorded in his *Journal to Stella*, amongst the worst he had ever heard.
King George I, resident in nearby Windsor, expressed some concern, as did various other of the Earl’s neighbours with big gardens. Bad enough having highwaymen roaming the local heath. But now they had to put up with village lads raiding their deer-parks and stealing their fish. In summer 1722 it was being reported that ‘fresh ravages’ were being ‘nightly committed’ in Windsor Forest, ‘and fresh threatenings from all parts, deer killed everywhere in daytime and keepers insulted’ (Thompson 1990: 67). The raids were becoming more daring and more violent. A gamekeeper’s son was shot to death. The Lord Chief Justice became embroiled, warrants issued, and further proclamations. Cadogan, a military man, kept a detachment of his regiment nearby. Responding to mounting concern, in late 1723 Parliament passed An Act for the more effectual punishing wicked and evil disposed Persons going armed in Disguise and doing Injuries and Violence to the Persons and Properties of His Majesty’s Subjects, and for the more speedy bringing the Offenders to Justice. It became known as the Black Act.

The Act created around 50 new capital offences. Being found in ‘disguise’ in a park or Royal Forest became a capital offence. So too killing cattle, or setting fire to corn, hay, or straw, houses and barns. For a first offence of deer-poaching the punishment was a fine, for the second transportation. The Act further criminalised a range of other ‘offences’, including fishing and damaging fishing ponds, hunting hares and cutting down trees. Many of these ‘offences’ existed along the margins of what might be termed forest ‘custom’. Blackstone listed the Black Act amongst those statutes which had been enacted in response to particular incidences of public disorder. On this occasion it was ‘devastations committed in Epping forest’ by ‘persons in disguise or with their faces blacked’. He supposed that the malefactors had sought to resemble the ‘followers of Robin Hood’ who had ‘committed great outrages on the borders of England and Scotland’. Blackstone was not much of a romantic. He certainly exhibited no sympathy for the ‘Waltham Blacks’. Neither did the judges at the Reading Assizes, or King’s Bench, to which the more serious cases were removed for trial. In due course 39 alleged poachers were prosecuted. Seven were taken to London, where they were hanged. Others were transported, a few imprisoned or fined. By the end of 1723 the worst seemed to be over; though the Act would remain on the books for another century, periodically deployed in later incidents of agrarian disturbance. The ‘Blacks’ disappeared into the recesses of eighteenth century rural history; until 1975 that is.

As intimated earlier, Thompson used his ‘smaller’ history of the Black Act to venture a larger narrative of eighteenth century society. There is a context; both broader and narrower. The broader context sets the Act
within a statutory regime designed to tighten social and political control in early Hanoverian England. It was part of the so-called ‘Bloody Code’, a series of ‘repressive’ statutes which criminalised a whole range of previously customary activities, in most cases importing capital sentences (Thompson 1990: 209–11, 240–41). Other statutes enacted at much the same moment included the 1715 Riot Act, the 1719 Transportation Act and the 1723 Workhouse Act. But the narrower context is more particular to the ‘Black’

to the place they operated and the threat which they were supposed to represent.

The press, and the Government, very quickly decided that the ‘Black’ might be Jacobite sympathisers. There had been widely reported Jacobite ‘conspiracies’ discovered in 1722. The Earl of Cadogan, who had played a role in suppressing the 1715 Jacobite rebellion, did not take much convincing. His brother, who had stood in the Whig interest for Reading in the bitter election of 1722, had been shouted down by drunken Tories on the hustings; and, worse still, lost. The county, the Earl concluded, was swarming with Jacobite sympathisers. The Dutch Ambassador shared the same suspicions, reporting that a gang of suspected ‘Black’ had consorted with the former Tory MP Sir Henry Goring. The Goring, with a long history of chaotic cavalier politics, were a notoriously ‘disaffected’ family. The Ambassador’s suspicions were correct. Goring had written to the ‘Old Pretender’, James Stuart, confirming that he might readily persuade upwards of a thousand ‘Black’ to support the Jacobite ‘cause’. They were, he added intriguingly, originally a gang of smugglers, very probably in regular contact with Jacobite insurgents in northern France.

The smuggling context is particularly suggestive, for reasons we will revisit shortly. Black markets operate most virulently in times of economic crisis. The early 1720s was such a moment. Poor harvests were not unusual; though they added to the strain. But there was something else too. None of the ‘Black’ were likely to have made any investments in the South Sea Company. But they would still have felt the broader consequences of the Company’s collapse in 1720. More importantly so might many of the deer-park owners. There was a jurisprudence to consider too. Customary law acknowledged, tacitly at least, the reality of black-ish markets. For centuries the custom of the royal forests had tolerated various of the activities now proscribed in the 1723 Act; not perhaps the hay-rick burning, but certainly a spot of fishing and the occasional hare-run. But no more. There was no place for whimsy in the emergent political economy of eighteenth century England.

There were, then, various grievances and causes which lay behind the violence that broke out in Hampshire and Berkshire during 1722 and 1723; macro-economic and political contexts, financial crashes, Jacobite
insurgencies, together with myriad local factors, particular squabbles between rival Whig and Tory interests in the counties; and then there were all the personal factors, hunting bishops, neurotic retired Generals, grumpy gamekeepers; and particular gardening fads, canal-ponds full of fat carp, lots of pretty copses in which poachers might hide their horses. Thompson’s brilliant narrative drew out all of this complexity. But it is ultimately the larger argument that catches the jurisprudential eye; the suggestion that those who owned eighteenth century England used the law as the principle ‘instrument’ of terror and tyranny. It was, in Thompson’s words, definitive of the ‘Whig state of mind’ (Thompson 1990: 197, 206–207, 258–62).

*Whigs and Hunters* was an avowedly political history. Marxist history was of the moment. Twelve years earlier Thompson had published perhaps his most influential work, *The Making of the English Working Class*. Again revisionist in spirit, but aspiring to tell a bigger story. These books, together with myriad similar writings, inspired a generation and a genre; of histories written from underneath. Magisterial studies such as Peter Linebaugh’s account of eighteenth century crime and criminality, *The London Hanged*. Linebaugh, like Thompson, saw crime as something constructed by power to service profit. More immediately, a number of Thompson’s disciples contributed essays to a collection entitled *Albion’s Fatal Tree*, published as a companion volume to *Whigs and Hunters*. Ranging across a variety of criminalised activities in eighteenth century England. With the same aspiration, to write history from the bottom up. And the same premise, that criminal law was used as a principle means with which to secure the interests of a propertied few against the needs of an impoverished many. In the next part of this chapter we are going to take a closer look at two ‘crimes’ shaped to this purpose; smuggling and wrecking.

But first, we might note another co-incidence that is not really a coincidence at all. As Thompson was busy re-writing eighteenth century social history, and inspiring a new generation of English historians, so too across the Atlantic a generation of ‘critical’ legal historians was emerging. Also listening for quieter voices. And challenging some of the blander complacencies of Whig history and liberal jurisprudence. We have already encountered Duncan Kennedy’s deconstruction of Blackstone’s *Commentaries*. And, as we pause to notice critical coincidences, we might cast a glance across the Channel too. In the very same year that Thompson’s *Whigs and Hunters* appeared, the French sociologist Michel Foucault published his seminal study of the modern prison, *Discipline and Punish*. It suggested that modern society is conditioned by ‘disciplinary’ power, and the principle expression of this power is criminal law. We will take a closer look at theories of punishment at the end of this chapter. Law, Foucault concluded, services power. A conclusion which chimed, not just with the newer breed of critical legal historian, but with the many who had already decided that legal history after *Whigs and Hunters* had to be written differently.
Lives of Crime

Theft was then rife in the eighteenth century, or so it seemed. The causes might be variously attributed to ‘opulence’ and market forces, or to negligent priests and the dissolution of youth. It might conversely be blamed on local circumstance, too many local Jacobites, too many dopey deer roaming ill-fenced parks waiting to be cut down and nicely roasted. A life of crime could be hazardous. But in a world of limited career opportunities it was life that still retained a number of attractions, however transient. And there was a career-pathway too. It commonly started with pilfering and pick-pocketing, from which the more adept might expect to progress to mugging and house-breaking. Charles Dickens would chart this career path in the form of the odious Bill Sikes in *Oliver Twist*. At a variant, dependent on locale and market-opportunity, might be found the trades of poaching and smuggling. But for the truly aspirational thief, with a good horse, there was a further progression; to romantic highwayman.

Romance and Robbery

In 1834 a three volume novel was published by William Bentley, with illustrations by William Cruikshank. It was entitled *Rookwood, A Romance*, and the author was a young staffer at *Fraser’s Magazine* named William Harrison Ainsworth. It told the story of a highwayman called Dick Turpin, ‘dashing’ and ‘daring’, not unlike ‘our great Nelson’ indeed, and ‘chivalrous’ like all his fellow ‘knights of the road’, a man of ‘enterprise’ and ‘devotion to the fair sex’. The centre-piece of Ainsworth’s tale is Turpin’s desperate ride from London to York to escape the law. His horse Black Bess dies in view of the Minister, just as the bell tolls. Ainsworth got the idea from an account in Daniel Defoe’s 1727 *Tour of the Whole Island of Britain* of another highwayman known as ‘Swift Nicks’. There is a lot about Ainsworth’s Turpin which does not bear too close a scrutiny; not least the idea that he might have ridden 200 miles in a day. But Ainsworth was not writing for scrutiny. The life of the ‘real’ Turpin is not especially interesting, still less edifying. Apprenticed to a butcher, the young Richard Turpin had become bored; rather like Hogarth’s idle apprentice. The frequency with which bored butchers turned to a life of crime was noted by contemporaries like John Gay, who assumed that they had become inured to ‘Blood’s foul stain’ (Linebaugh 2006: 184–85). More likely it was a tough trade in which to make a decent living.

---

4 A few years later Cruikshank would sketch the illustrations for Dickens’s *Oliver Twist*.
5 He never really did. *Rookwood* was his break-through novel. By the time of his death, nearly half a century later, Ainsworth had written another 40 historical novels, a number of which sought to romanticise various events we have already encountered in earlier chapters, including *Guy Fawkes* and *The Lancashire Witches*.
Either way the young Turpin turned to petty crime, and drink. It started with deer poaching around Epping Forest; a familiar enough offence, for the reasons we have just considered. He joined the infamous Gregory gang, graduating to burglary; passing his evenings torturing farmers and raping their maids. Then came the highway robberies, and the murders. By the summer of 1737 there was a warrant out in his name. It described a man of medium build ‘of a brown complexion, very much marked with the small pox, his cheek bones broad, his face thinner towards the bottom, his visage short’. And there was a £200 bounty; which made him, in strictly monetary terms, the most wanted man in England. The press meanwhile was using his ‘flagrant’ and ‘undisturbed success’ as a tool with which to berate the Prime Minister Robert Walpole who, it seemed, was soft on crime (Sharpe 2004: 23–24, 137).

By then Turpin had decided to move north. For a while he lived quietly in East Yorkshire, trading a few horses. But then he got into a fight, threatened to kill a man, and was reported to the local magistrates. Proving rather more assiduous than might have been expected, the justices started investigations into John Palmer, as Turpin was calling himself. And they began to wonder where he got his horses. A few weeks later they had a pretty good idea. John Palmer was charged with horse-stealing, and moved to York prison. Turpin decided to write home to Essex for character-witnesses. It was pretty much the only defence that alleged felons could mount in a Georgian
court. But Turpin’s hand-writing was peculiar, and on the morning that his letter was received in the local post-office back in Essex his former schoolmaster was passing through. It was an extraordinary, and fatal, coincidence. The authorities in York were informed; John Palmer the ill-tempered horse-thief was really Dick Turpin the notorious highwayman. There was though no need to adjust the charge; horse-stealing was a capital offence. The trial proceeded at the York winter Assizes. The indictment, as was customary at the time, was a mess of inaccuracies, including charges of thefts taking place on dates when he was already in gaol. But Turpin was going nowhere. Denied legal representation, he did what he could, trying to stall, hoping for character-witnesses. None came. The judge was hostile, the end inevitable. The star-struck jury did not bother to leave the court. The verdict was announced within seconds.

And so, on 7th April 1739 the notorious Dick Turpin climbed up the ladder of the gallows at Knavesmire, just outside the city walls, slipped his head in the noose, and threw himself off; a violent life, ended violently. He had though made an effort, buying himself a new frock-coat for the occasion. He had also paid for five ‘mourners’ who would follow along behind the cart that took him to the ‘Three-Legged Mare’, as the York gallows were known, and distributed a few personal belongings. And as he passed along the road, contemporary account relates, he ‘bow’d to the spectators’. The crowd would have appreciated the gesture, perhaps even applauded. Turpin thus ‘went off this stage with as much intrepidity and unconcern, as if he had been taking a horse to go on a journey’; or so we are told (Sharpe 2004: 1–3). If he was trembling it was probably the cold; it had been snowing. All that was left was to squabble over the body. The ‘mourners’ were supposed to secure it from the body-snatchers; if they could be bothered. In the end it was taken for public display at the Blue Boar Tavern. Four days later, at three in the morning, the ‘snatchers’ came. But they were spotted. A riot broke out, as the crowd tried to retrieve Turpin’s putrefying corpse. A month later a York physician named Marmaduke Palmis found himself before the magistrates, accused of causing the affray, and bound over to the keep the peace. No one really knows for sure where the body ended up. There is a grave which purports to be the burial place of Dick Turpin, in St George’s churchyard in York. It is oddly large; but then legend has it that Black Bess is buried there too.

The Victorians were nothing short of obsessed. With the dash of a cultured pen any roaming thug might be transformed into a romantic hero. In truth it did not always have to be so cultured either. A ‘penny dreadful’ entitled Black Bess appeared over the winter of 1867–68. It purported to tell the story of four of the most notorious highwaymen in England who, it transpired, had all ridden together. Turpin and his reputed accomplice Matthew King were thus joined by John Rann and the ‘chevalier’ Claude Duval; a
super-group of ‘knights of the road’. The association between Turpin and King remains a matter of some conjecture. They did ride together. Ainsworth made them close friends; for which reason Turpin’s shooting and killing King was not easy to explain. Ainsworth preferred to think of it as a tragic accident. In reality Turpin probably suspected that his associate was about to turn thief-taker.

There was again a real Duval, albeit one who had been dead nearly a century before Rann was born. But the reality hardly mattered. The celebrated artist William Powell Frith spent all of 1859 working on a painting of Duval; inspired by a scene recounted in the third chapter of Macaulay’s History of England. Duval had ‘stopped a lady’s coach, in which there was a booty of four hundred pounds; how he took only one hundred, and suffered the fair owner to ransom the rest by dancing a coranto with him on the heath’ (Sharpe 2005: 38). The fact that Duval was French helped, and the ability to dance well was definitive of the really romantic highwayman. It seems that the teenage Duval had come over as a footman in the Duke of Richmond’s retinue at the time of the Restoration. He was also, by repute, a skilful alchemist; which might make a sceptic wonder why he needed to rob at all. Anyway it all came to a predictable end, at Tyburn in 1670. He was just 27 years old. Older than Rann, but young enough still to be romantic.

If there had been room for a fifth in the gang it would surely have been Jack ‘the Lad’ Sheppard. He was younger still when he died, aged just 22, in 1724. Building on the success of Rookwood, Ainsworth wrote up his story a couple

Image 8.4 Claude Duval, by William Powell Frith, 1860.

6 The association between Turpin and King remains a matter of some conjecture. They did ride together. Ainsworth made them close friends; for which reason Turpin’s shooting and killing King was not easy to explain. Ainsworth preferred to think of it as a tragic accident. In reality Turpin probably suspected that his associate was about to turn thief-taker.
of years later. Sheppard was another ‘idle’ apprentice who turned away from the dreariness of working-class life to embrace that of brilliant criminality. Having spent his formative years in the workhouse, the 15-year-old Sheppard found himself indentured to a carpenter in Drury Lane. He stuck with it for a while, but then began pilfering and burgling, and eventually broke his indentures. He escaped, though only as far as Fulham where he set up home with a notorious prostitute called ‘Edgworth’ Bess. He stole, she fenced the goods. In and out of local gaols, Sheppard’s first renowned ‘spring’ was out of St Giles Roundhouse in April 1724. He cut through the ceiling, removing

Image 8.5 Jack Sheppard in prison. Etching, author unknown, c.1724. Evidence of a previous breakout in the background.

7 Inspired by visits to Newgate with his friend Dickens, himself busy getting ideas for Oliver Twist.
the tiles as he went, before descending down the side by knotted bed-sheet, to the acclamation of a gathering crowd. Looking to broaden his skill-set Sheppard spent the next few months on Hampstead Heath trying his hand at highway-robbery. But then he decided to return to his core business; and made a fateful mistake.

As might be expected of an ‘idle’ apprentice, it was born of laziness. Jack decided to revisit a familiar haunt and rob his old master. It was a bit too obvious and the renowned thief-taker Jonathan Wild was called in. Discovering that Sheppard was holed up in the house of a friend’s mum in Aldgate, Wild sent a group of his men, and a few hours later Jack was back in Newgate. But not for long. He found a hole, made it bigger and squeezed out. The public was fascinated, ‘mad about him’ it was reported. Jack was spotted all over the place. Shopkeepers hired guards. But a few days later he was back in Newgate, this time to be fettered in irons. He occupied himself for a few weeks taking visitors, mostly female. And then he was off again, escaping his handcuffs, breaking his fetlocks, cracking various door-locks, before climbing onto the roof and jumping down; as ever landing with barely a scratch. The press went into over-drive. This time it was not the laziness that did for Jack; it was the cockiness. Rather than lying-low or vanishing into the country for a while, he robbed a pawnshop, taking a smart set of clothes and a silver sword and ‘other pretty little Toys’, after which he hired a carriage and some prostitutes and took to parading around the streets of Spitalfields, before taking a turn along the road outside Newgate. Hundreds gathered. And then he was captured again. And this time his luck was out. On 16th November Jack ‘the Lad’ was hanged at Tyburn; though not before a pen-knife had been discovered on his person. He died well though, with the anticipated bit of ‘flash’, waving as best he could in his handcuffs. As he swung in the breeze, draft copies of Defoe’s *The History of the Remarkable Life of Jack Sheppard* were being distributed amongst the crowd. Unlike Turpin, who had to wait a century before becoming romantic, Jack Sheppard was already a ‘picaresque’ hero. Near enough a Robin Hood of his age, except for the fact that he appeared to keep it all for himself.8

And he was about to be elevated into posthumous super-stardom. The idea of writing a play about highwaymen had been gestating in the mind of the dramatist John Gay since a chance encounter with Wild at Windsor races in 1719. The life and death of Jack ‘the Lad’ provided an immediate inspiration. *The Beggar’s Opera* went into production in January 1728, and took the London stage by storm. It told the story of the highwayman Macheath and his venal antagonist Peacham the thief-taker. Defoe rather sourly wondered the wisdom of presenting thieves in ‘so amiable a light’ (Moore 1998: 227–28). But the audiences lapped it up. The play made Gay a second fortune; having

---

8 The Robin Hood parallel was popular in contemporary accounts of highwaymen. Especially if there were rumours that the robber had indeed given some of his ‘earnings’ to the poor.
lost a first in the South Sea ‘Bubble’. It also made the fortune of his leading lady, Lavinia Fenton, who played Macheath’s girlfriend Polly. A besotted Duke of Bolton made her his mistress, and then his wife. Hogarth needless to say got in on the act, and issued a set of illustrative paintings. Smith’s *Lives of the Most Notorious Highwaymen* was re-issued, along with a new *Memoirs of Jonathan Wild* by the same author. All very jolly.

But also deadly serious, because Gay had not simply scripted a picaresque romance. Along with the fun came the fear. As they wandered home from the theatre, most of Gay’s audience knew that if their luck was out they were far more likely to encounter a violent thug than they were a cavorting Macheath. And nobody seemed able to do much about it. In 1693 Parliament had passed a *Highwayman Act*. But all it could do was ramp up rewards for informants. And no amount of hangings seemed to make the streets of London much safer. It was customary to blame the politicians; it usually is. Which, in 1728, meant the Prime Minister, Sir Robert Walpole. Awaiting his fate, Macheath muses: ‘Since laws were made for every degree/ To curb vice in others as well as in me/ I wonder we hadn’t better company/ Upon Tyburn Tree’ (Gay 1986: 118). Mired in corruption, soft on crime, Peacham seemed a lot like Walpole. The Tory Duke of Wharton suggested they hire Wild to find
out where Walpole had put the £8 million that was apparently missing from the Exchequer. Fielding would cast much the same insinuation in his later *Life of Mr Jonathan Wild*. The Walpolean *Craftsman* railed against Gay and his ‘insolent and seditious’ play, taking solace in the fact that it had apparently been disdained at Court (Moore 1998: 242–45; Uglow 1997: 142). The 1737 *Theatre Licensing Act* was Walpole’s blunt response. Henceforth the Lord Chamberlain would have complete discretion in deciding whether to approve the performance of any new, or newly re-written, play. It was however too late to catch *The Beggar’s Opera* which would stay in continuous production until 1886.

Wrecking and Smuggling

Highwaymen were not the only species of romantic hero abroad in Hanoverian England. There were pirates too. In reality of course a life of piracy had its down-side; the scurvy, the pervasive violence, the likely prospect of ending your days hanging from the yardarm of a Royal Navy frigate. Still, when times were hard, which in eighteenth century England was mostly, a life on the ocean waves, attacking other ships and nicking their cargo had its attractions. And no one was that surprised. The sea is where desperate men went; it was where Hogarth sends his ‘idle apprentice’. And there was something else that piracy had in common with highway robbery; it seemed to be on the increase. The passage of two *Piracy Acts*, in 1698 and 1721, was a testament to this perception. The former reinvested Admiralty Court procedures, enabling them to be convened anywhere in the Empire, and comprised not just of naval officers, but of ‘known merchants, factors or planters’. The 1721 Act was intended to encourage the merchant fleet to resist pirate attacks, offering rewards for those that did and punishments, including imprisonment, for those who did not. The Preamble to the Act opened with the observation that ‘piracies, felonies and robberies upon the seas is of late very much increased’, as a consequence of which ‘the trade and navigation into the remote parts will greatly suffer’. In other words, piracy was hitting profit.

And the same was true of certain ancillary activities, rather less romantic, and much closer to home. Unlike piracy, which had never been deemed as anything but criminal, smuggling and wrecking again existed along the margins of law and custom; or at least it had until the writing of the

---

9 When Walpole decided to tighten theatre licensing in 1737, he had two particular plays in mind. One was Gay’s *The Beggar’s Opera*. The other was a play entitled *The Golden Rump*. The rump to which the play alluded was that belonging to King George II, whose suffering from piles was mercilessly lampooned in the Tory press; and the man who wiped the puss was Walpole. No one was entirely sure who had written the play. But most suspected it was a young Henry Fielding.
‘Bloody Code’. Smuggling, most obviously, is a trade which follows fashion. There is no point in smuggling things no one wants. By the middle of the eighteenth century, as we have already noted, one of the most sought-after products was tea. But it was expensive, partly because the importation of tea from China was monopolised by the East India Company, and partly because tea tax was so high. And so tea-smuggling became rife; along with other criminalised activities such as tea-adulteration. By 1760 the East India Company was calculating consequential losses of around £400,000 a year. A 1745 parliamentary Committee was advised that around three million tonnes of black market tea was being imported per year; about three times the amount which entered the country legally. Metaphorically at least, England was awash in herbal contraband. Coming mostly from ports in northern France and the low countries, all it needed was enough willing seafarers; and there were plenty.

The Hawkhurst ‘gang’ first came to the notice of the authorities in 1739; smuggling brandy and ‘Dutch’ tea. By 1744 it was reported to be operating with impunity along the Kent and Sussex coast, the local magistracy having given up ‘putting the laws in execution against them’. The Duke of Newcastle’s agent sent variously excitable reports up to London, including an incident at Dover Customs House, where a group of approximately 200 arrived to release a smuggling cutter from dockside custody:

They rode through town about 5 o’clock in the afternoon with pistols cocked in their hands, each having two carbines and cutlasses, swearing and threatening destruction to the Officers of the Customs and to blow out their brains and burn their houses.

The whole town was put into the ‘utmost consternation’. It was the proud boast of the ‘gang’ that it could, within an hour, raise a force of 500 armed men. Nothing less than a ‘standing army of desperadoes’, the Solicitor to the London Customs House complained, the county of Sussex rendered a ‘scene of horror and confusion’. Similar reports poured in. Horace Walpole recorded trying to cross the Weald one evening. He likened his predicament to that of an unwary traveller who happened to find himself trying to secure safe passage through a battlefield. In April 1747 the Gentleman’s Magazine deployed the same metaphor, providing its readers with a shocking account of the ‘battle’ of Goudhurst.10 Besieged, it seems, by members of the ‘gang’ intent on smoking out an informer, literally (Winslow 2011: 122 – 23, 132). It was difficult to be sure how many smugglers were operating in the two counties, which left the field open for lots of scary guesses. The 1745 Parliamentary Commission was led to believe around 20,000.

---

10 A small Wealden village near Maidstone, hitherto more renowned for its hop-cultivation.
The punishment of transportation for convicted felons was facilitated by the 1719 Transportation Act. Those who would otherwise have faced the death penalty would be sentenced for a period of no less than 14 years. Early return was itself a capital offence. Other felons commonly received sentences of no less than 7 years. Initially convicts were shipped to the American colonies. The American Revolution closed that option. And so, from 1787, convicts were sent instead to the newly established colonies in New South Wales in Australia. Around 165,000 over the following 80 years.

The response of the authorities in London was predictable. On recommendation of the Committee, Parliament passed an Offences Against the Customs and Excise Act (1745), which effectively placed smuggling within the purview of the ‘Bloody Code’. In echo of its infamous predecessor, amongst the many capital offences listed in the 1745 Act was having a blackened face or wearing ‘any Wizard Mask’. Aiding and abetting a smuggler carried a sentence of a minimum seven year’s transportation. More effective perhaps were rewards for information; the kind of allure that led to the firing of Goudhurst. The end of the Hawkhurst gang might be dated to February 1748 and the murder of a customs officer named Galley. The Duke of Richmond, a prominent Sussex landowner, persuaded the Lord Chancellor to establish a Special Commission of Oyer and Terminer in order to stamp out what amounted to a kind of ‘treason’. The smugglers, he averred, were Jacobite insurgents. Army reinforcements were called up, judges despatched from London; the Duke advising that the Sussex justices could not be trusted. But the most effective weapon remained the informant, tempted by promise of pardon and bounty. The Duke was prepared to pay £100, the Government five times the amount.

It was risky of course. But the sums were considerable. And by the time the Chichester Assize was convened in January 1749, there were plenty enough smugglers to hang; and plenty more at successive Assizes at East Grinstead, Rochester and Lewes through the following spring and summer. The Duke kept a list; in all 35 were hanged, 10 more cheating the gallows by dying in gaol first (Winslow 2011: 136–40, 156–66).

At the end of the day, money talked. It tempted men to smuggle, and it tempted them to inform. It tempted them to roam the coastline looking for wrecks too, and indeed ships to wreck. Which brings us to our second customary ‘crime’. The idea that coastal dwellers might scour their beaches for pieces of incidental wreckage was bound up in the custom of ‘salvage’. It only became a ‘black’ market when statute law made it so. As one of those about to hang at Chichester in January 1749 declared, when asked to confess his guilt. Smuggling was just a ‘trade’, like any other (ibid: 165). Most wreckers felt the same. When a customs officer in Anglesey challenged local wreckers, he was told in no uncertain terms that their right to the plunder was just as good as his. Robert Heath, writing in 1750, reported that the islanders of Scilly referred to the ‘Hand of Providence’ and had even taken to worshiping a patron-saint of wrecking, St Warna. Defoe thought them little more than savages, ‘fierce and ravenous’. The Penzance customs office was certainly inclined, as far as possible, to leave them to their own devices (Rule 2011: 171–72, 176–77). The incidence of wrecking was commonly thought to be greatest around the navigable routes into the Bristol Channel. And business was good. Wrecking, like smuggling, represented a mutant strain in the emergent political economy. More trade meant more ships. But also more wrecks; because the weather was still rubbish, and so too the quality of many of the boats, and their maps.

By the late-1730s London merchants were petitioning Parliament urging action. In 1753 Parliament passed the Wreck Act, which added wrecking to the array of capital offences which comprised the ‘Code’. The Act made reference to the ‘wicked enormities’ which were being daily committed against his Majesty’s merchants. It also attempted to define more closely the associated crimes of ‘wrecking’. Which was to ‘plunder, steal or take away, cargo, tackle, provision or part of such ship’, as well as to put out ‘false lights’ with the intention of luring ships onto rocks. Hitherto, the meaning of ‘wrecking’, such as there was, was bound up in custom, and it was never entirely clear at what point picking up a bit of wood on the beach amounted to a criminal offence. Nor indeed when a handful of local seamen sailed out to a stricken vessel and offered to save a crew in return for receiving any remaining goods on board. Nor when a light was set to help a stricken vessel come into safer waters, but the collateral intent of then plundering it. The 1753 Act was not much help with any of this.
And it clearly did not much deter the inhabitants of Mount’s Bay in Cornwall. Twenty years on, the Home Office received the following report:

When news of a wreck flies round the coast, thousands of people are instantly collected near the fatal spot; pickaxes, hatchets, crow bars and ropes are their usual implements for breaking up and carrying off whatever they can. The moment the vessel touches the shore she is considered fair plunder, and men, women and children are working on her to break her up, night and day. The precipices they descend, the rocks they climb, and the billows they buffet, to seize the floating fragments are the most frightful and alarming I ever beheld.

(Rule 2011: 179)

The reporter might have added that the survivors would be stripped and left naked on the beach; a curiously English custom, it seems. But, the occasional affronted customs officer aside, it is clear that wrecking did not trouble the authorities as much as smuggling or highway robbery. Cornish clergy were generally thought to be condoning, if not implicit; so John Wesley insinuated. The public too. In 1767 an 80-year-old Cornishman was hanged for taking an ‘inconsiderable quantity of cotton’ off the beach. The sentence drew criticism, precisely because no one could recall a precedent for such savagery.

Eighteenth century statute law rarely made much difference to any of the assorted black market activities. In 1775 Burke introduced a new wrecking bill into the Commons, precisely because the 1753 Act had proved useless. Statute law did not do much to stop deer-poaching, highway robbery or smuggling either; even if it did lead to a few more Englishmen and women ending their days on the gallows. Poaching continued in the royal forests for decades after the break-up of the Waltham ‘blacks’. Eighty years on, Lord Ellenborough’s 1803 Act sought to reinforce the poaching laws, adding to the list of criminal offences the threatening of keepers with guns. It made little difference either. In the end it was ‘improvement’ which did for the wreckers and the poachers, as it did the highwaymen and the smugglers.

The market in poached deer subsided, in large part a consequence of advances in genetic science. Robert Bakewell’s principles of ‘selective breeding’ inspired Charles Darwin. They also made the breeding of healthy sheep easier, and cheaper. Mutton chops became standard fare at taverns up and down the country. And as they travelled from tavern to tavern, English gentlemen took less and less money with them. It was ironic that the contemporary picaresque alluded to highwaymen ‘going upon the accompt’. It was the ‘accompt’, or paper-credit, that put them out of business. Tea got cheaper too, dramatically so after the passage of Pitt’s Commutation Act (1784), which slashed duty from 119 per cent to 12.5 per cent. And boats got sturdier, steam replaced sail, flushed decks replaced stepped, and hulls were strengthened. And someone worked out how to properly found a lighthouse. In 1755 the Eddystone lighthouse outside Plymouth burned down. The previous structure
had fallen down in the wind 40 years earlier. This time the burghers of Plym-
outh asked a young engineer named John Smeaton to have a go. He used a
new compound called hydraulic lime that could set under water, and used
dovetail joints and marble dowels to secure the structure. The model would be
used for dozens and dozens of lighthouses up and down the coast of Britain
for the next century. His lighthouses did not fall down, and equipped with the
newly invented Argand lamp, neither did the lights blow out.

Pain and Punishment

The nature of crime might be changing, in step with technological revolution
and the emergent dynamics of political economy, but there were still lots of
criminals. For centuries the English had tended to hang their thieves. And few
demurred when it came to dealing with the likes of the Hawkhurst gang or
Dick Turpin. Tyburn was their destiny. A useful ‘terror’, Blackstone approved,
and a ‘comfortable sight to the relations and friends of the deceased’ (Black-
stone 2016: 4.113). By the second part of the century however an increasing
number of social reformers were beginning to wonder the incongruity of
the Bloody Code in a supposed age of Enlightenment. Tom Paine suspected
that the real purpose of the ‘hanging tree’ was to keep the English in a state
of ‘terror’ (Linebaugh 2006: 444). In this final part of our ‘history’ of crime
in mid-eighteenth century England, we will take a closer look at the debate
which began to move around the culture and the efficacy of the ‘Tyburn tree’.

The Death of Jonathan Wild

Sir Henry Fielding was an instinctive conservative, and something of a pessi-
mist. There was no happy ending projected in his essay on the Late Increase of
Robbers. The ‘Mob’ was at the door. He was also plagued by ill-health; beset
with gout, struggling with alcohol. The corporeal metaphor was a favourite.
Three years later he would undertake an arduous and ill-conceived trip to
Portugal in the hope that a warmer climate would do him some good. It did
not. His final published work was an account of his journey. The Journal of
a Voyage to Lisbon opens with an account of his being man-handled onto
the boat. He ‘presented’, he confessed, a ‘spectacle of the highest horror’.
His limbs were paralysed, his countenance ‘ghastly’. And all the time he was
subjected to ‘insults and jests’ from the watching ‘watermen’. The country, he
concluded, had gone to ‘the devils’ (Fielding 1996: 23–24). Small wonder that
crime was rife. Three months later he was dead.
The idea that physical decay might be an appropriate metaphor for the state of Georgian England was common enough. Defoe used it in his ‘picaresque’ novels, most notably *Moll Flanders*. Diseased Georgians, usually regretting ill-conceived sexual encounters with women like Moll, can be found in pretty much every Hogarthian ‘set’. And many of Fielding’s other writings were similarly couched; including his essay on *Robbers*. We might go back to 1743. It was the year in which Blackstone was elected to his fellowship at All Souls College in Oxford. It was also the year in which Fielding published his *Life and Death of Mr Jonathan Wild, the Great*. We have already encountered Wild, instrumental in the capture of Jack ‘the Lad’ Sheppard. Wild had begun his career predictably, with a spot of petty pilfering before moving on to house-breaking and robbery, and then finally establishing himself as an early-day East End crime-lord. At his later trial it was alleged that he had ‘form’d a kind of corporation of thieves, of which he was the head or director’ (Sharpe 2004: 100). Sensing that the authorities might be closing in, and spotting an opportunity to clean out the opposition, Wild turned informant and ‘taker’.

He relished the notoriety too, basking in his self-proclaimed office as ‘thief-taker General’. It is this which Fielding satirises. Possessed of a ‘bombast greatness’, a ‘vanity’ puffed up by a press, the epitome of the corrupt ‘Robinocracy’. But what is most interesting about the ‘life’ of Jonathan Wild is the dullness of his ‘death’ (Fielding 1996: 33, 96–97). Wild’s luck, and patronage, ran out in spring 1725. Rather incongruously perhaps given the enormity of his criminal reputation, he was done for receiving stolen goods. A crime which, less surprisingly, carried a capital sentence. He did not deny the facts, but pleaded mitigation on account of the many ‘services’ he had recently performed in the cause of law and order. It failed to persuade the court. Fielding stuck to the reality of Wild’s final moments. Riddled with agonizing gout, doped up on laudanum, famished having not eaten for days, Wild was barely conscious as he was hauled onto the cart at Newgate, still wearing his night-shirt. On arrival at Tyburn his closing ‘scene was then short, and he had little to do but stand up in the cart, and, the needful apparatus being made, be turned off with the rest’. And ‘thus was a life of horrid and inimitable wickedness finished’, with a vicious crowd baying his death (*ibid*: 256–57). Heroes were often thrown nosegays as they made their way from Newgate. They had thrown stones at Wild, to wake him up; ‘very unbecoming on so melancholy an occasion’, the *Daily Journal* observed (Moore 1998: 253).

12 The ‘world’s prototype gangster’ according to one modern historian (Sharpe 2004: 99). Arthur Conan Doyle would later confirm that Wild was the model for Holmes’s nemesis, Professor Moriarty.
And Fielding was not inclined to make any more of it. In 1748 he became a Justice of the Peace in the City of Westminster. He would have arrived with few illusions. St Giles, a principle parish in the City, had a population of around 30,000, and was policed by five constables, ten ‘headboroughs’, effectively his administrative support, and ten ‘scavengers’, who were supposed to keep the streets clear. St Mary le Strand, though smaller, boasted just one constable and a couple of scavengers. The following year Henry and his brother John, the renowned ‘blind beak’, opened up the Universal Register Office in Bow
Street, with the intention of bringing some administrative order to proceedings. It served as an employment agency, and insurance and lending brokerage; as well as furnishing the Fielding brothers with a set of grateful prospective informants. Rather later, in 1773, it started publishing a news-sheet entitled *The General Hue and Cry*, detailing activities and circulating information. A shrewd piece of marketing. Back in May 1749, having been elected to chair the spring Quarter Sessions, Sir Henry delivered the customary charge to the jury. Its subject was the 'better preventing street robberies'; and provided the draft for his essay on the *Late Increases in Robbers* which appeared two years later. By temperament a bit of a puritan, his first recommendation was to ban dancing-parties, brothels and gaming-houses.

Image 8.9 *View of the Public Office, Bow Street*. With Sir John Fielding presiding over a prisoner under examination, c.1760.
Just as important was finding a more effective way of policing the streets. Towards the end of 1749, the Fieldings started putting together a formal system of informants and ‘takers’. The difference was organisational. Their ‘runners’ were centrally managed from the Bow Street offices. There were, at first, only a dozen. But that changed in 1753 when the Duke of Newcastle sought Fielding’s help in quelling a gangland war. Fielding offered his policing services, at a cost of £600. Newcastle agreed. It was the birth of a modern publically-funded police force. In truth the ‘runners’ did not run around much. Chasing after pick-pockets and the like was left to the parish constables and watchmen, as it had been for centuries. The ‘runners’ went about more sedately, serving warrants and arresting people at known locations. And it took a while for the public to be convinced. The French might need a ‘state’ police ‘constantly making an open and insidious war against the people’, the Whig reformer Samuel Romilly surmised. But the English did not (Ignatieff 1978: 118–19). Except they did. A little later, Sir Robert Peel would argue his case for the 1829 Metropolitan Police Act on the success of Fielding’s ‘runners’. There would still be a need for ‘takers’; but it was no longer a dependency.

And Londoners would continue to enjoy their days out at the Tyburn ‘fair’, for a while. Fielding was amongst the first to argue against public executions; for much the same reason as Mandeville had in his 1725 Enquiry. The day ‘appointed by the law for the thief’s shame’ too often became ‘the day of his glory’. A ‘spectacle’ that should be dreadful had come to resemble nothing more than ‘some Shew or Farce’ (Gladfelder 2001: 170; Rogers 1979: 190). In time the argument would be won. The last Tyburn execution, of the highwayman John Austin, took place in 1783. The broader argument, regarding the morality of capital punishment, would take longer to work through. The common Englishman, as Blackstone’s contemporary Timothy Nourse urged, was ‘rough and savage’. The only way to control him was to ‘bridle’ him, and when necessary hang him (Hay 2011a: 18, 24–25, 36). In 1811, Parliament debated whether to abolish a century-old Act which made house-breaking and stealing goods to the value of 40 shillings a capital offence. Lord Chancellor Eldon had few qualms. Such a sanction was necessary if the ‘property of the industrious cottager should be protected’. Not many cottagers had 40 shillings to lose; but lots of Law Lords did.

Again though it is a matter of impression. In 1590 a convicted felon stood a one in five chance of being hanged. By the middle of the eighteenth century the chances had gone out to one in ten. It was one thing drafting statutes; it was another persuading juries to send teenage pick-pockets to Tyburn. The more reactionary cavilled at reports of ‘pious’ juries re-calculating the value of stolen goods in order to reduce felony charges. The Bench was wobbling too. By 1810, nine out of ten felons were being sentenced to transportation rather

---

13 The critical margin being 40 shillings. Anything lower reduced the charge to a misdemeanour, removing the danger of a capital sentence.
than the gallows. The existence of the Bloody Code, as Mary Wollstonecraft suggested, made a mockery of ‘enlightenment’; to ‘punish with death a man who steals a few pounds’. Even Blackstone wondered. Some crimes demanded the death penalty. But the ‘multitude of sanguinary laws’ suggested a deeper malaise. A ‘manifest defect either in the wisdom of the legislative, or the strength of the executive power’. It was, he added, a ‘melancholy truth’ that over 160 ‘actions which daily men are liable to commit’ were deemed, by statute in 1770, to be still ‘worthy of instant death’. Put simply, it suggested, not just a ‘quackery of government’, but a failing state (Blackstone 2016: 4.11–12; Posner 1976: 586–88).

And there were alternatives. Blackstone wondered if the ‘natural punishment’ for theft was not the concomitant ‘loss of the offender’s own property’. The problem of course is that many offenders, being so poor, could not pay a fine. Another alternative was to put them to work, ideally far away. There was a rapidly growing Empire which needed labourers, however unwilling. In early 1770 Blackstone suggested amendments to the 1719 Transportation Act which would facilitate the easier transportation of women and those convicted of petty larceny. It also ventured Australia as an alternative destination to America; a prescient thought given what would occur later in the century. And there was another possibility which intrigued Blackstone. From the more distant reaches of English legal history he retrieved the idea of ‘temporary imprisonment’. It was, he advised, a very ‘sensible’ idea (Blackstone 2016: 4.157–58).

Penitentiary and Panopticon

Hitherto prisons had been mainly used to hold those accused of crimes, or awaiting the carrying out of sentence. They were also useful for housing those deemed to be mad, and for those who had run out money and could, for this reason, no longer pay off their debtors. By the closing decades of the century however the idea that a prison might also serve as a reformatory was gaining intellectual traction. Early prison reformers such as John Howard, who published his treatise on the State of the Prisons in 1777, decried the brutality and degradation of places such as Newgate. It was hard to see how anyone incarcerated there was expected to ‘improve’ themselves. Nurseries of the ‘utmost corruption’, Mandeville had termed them (Rabin 2019: 97). Fielding was of similar mind and proposed the greater use of houses of ‘correction’, the origins of which could be found in Elizabethan bridlewells. Such houses were commonly used by magistrates for the incarceration of petty offenders and vagrants. Fielding popped most of his drunks and prostitutes in the Westminster Bridlewell. Howard, however, wanted something rather grander in design, something that seemed fitting to the idea of ‘improvement’. He recommended penitentiaries.
The defining idea of the penitentiary was that rigour would nurture reformation. Rather than simply storing inmates, penitentiaries were run on a principle of ‘improvement’. Rigour meant rules, lots of them. We might contemplate interior design and the placing of mugs. Each prisoner at Pentonville penitentiary, which opened in 1842, was given a list of what would be found in their cell, and where it might go. Each mug should be placed at a corner of the table, underneath which, squarely in the middle, would be found the pot and pot-cover. The cell broom would be in the middle rail of the table. Soap, comb and brush would be on the rail in front of the pot. Tidiness was essential. So was industry, and godliness. Along with all the rules there would be plenty of work, a fair amount of prayer, and very little interaction between prisoners. The ‘rule’ of silence, together with the innovative cell-like structure of the building, indicated the inspiration. The eighteenth century penitentiary was built to the same purpose as the abbeys founded at Fountains and Waverley seven centuries earlier. Testaments to faith.

It is no coincidence that so many prison reformers were dissenters. Elizabeth Fry was a Quaker. Howard a close friend of Richard Price.
But not exclusively. Another ardent supporter of the penitentiary principle was Blackstone, who added a new passage to the 1779 edition of his *Commentaries*:

In forming the plan of these penitentiary houses, the principal objects have been, by sobriety, cleanliness, and medical assistance, by a regular series of labour, by solitary confinement during the intervals of work, and by due religious instruction, to preserve and amend the health of the unhappy offenders, to inure them to habits of industry, to guard them from pernicious company, to accustom them to serious reflection, and to teach them both the principles and practice of every Christian and moral duty. And if the whole of this plan be properly executed, and its defects be timely supplied, there is reason to hope that such a reformation may be effected in the lower classes of mankind, and such a gradual scale of punishment be affixed to all gradations of guilt, as may in time supersede the necessity of capital punishment, except for very atrocious crimes.

(Blackstone 2016: 4.350)

There was an immediate context. In the same year, Parliament had passed a *Penitentiary Act* which Blackstone had played a part in drafting, along with Howard and another young reformer named William Eden. The reasons for the Act were variously prosaic and principled. The recent loss of the American colonies limited the possibilities of transportation, whilst the ‘pious perjury’ of the juries meant that fewer and fewer were being hanged. Which left the authorities with a statistical headache; thousands of criminals, and nowhere to send them. But there was a moral ambition too. Which found expression in the fifth clause of the Act:

if many Offenders, convicted of Crimes for which Transportation has been usually inflicted, were ordered to solitary Imprisonment, it might be the Means, under Providence, not only of deterring others from the Commission of the such like Crimes, but also of reforming the Individuals, and inuring them to Habits of Industry.

It is quite possible that Blackstone drafted this clause. Bentham wrote a letter of appreciation, commending a ‘capital improvement’ in ‘penal legislation’. And he enclosed a copy of his own ‘Observations’ on the draft legislation. He sent the same to all the judges. Only Blackstone responded; sending, as Bentham acknowledged, an ‘extraordinarily civil’ note of thanks (Prest 2008: 297–98). There was much upon which the two disagreed. But there was also a mutual respect.

And a shared interest. Both were fascinated with architecture and design. Here again though there was a familiar tension. Blackstone liked the classics. He had a ‘taste for the beauties’ and refurbished his college library and then later his local parish church in the classical style (Matthews 2009: 24–25). Bentham sketched bridges and factories, and penitentiaries. Rather more the modernist, he designed things to purpose. Most famously he designed his Panopticon. It was actually his brother Samuel’s idea. We will come across Samuel again in a later chapter, sat in the Portsmouth dockyard checking
on incidences of pilfering. He got the idea for a model prison whilst doing similar in the Krichev shipyard in Russia. The basic idea, confirmed in the 1791 prospectus, was to design a building

so contrived that any number of persons may therein be kept in such a situation as either to be, or what comes nearly to the same thing, to seem to themselves to be, constantly under the eye of a person or persons occupying a station in the centre of what we call the Inspector’s Lodge.

The construction was again cellular, with a series of wings radiating from the centre, where the watchtower would be located. Prisoners would spend most of their day working in solitary, let out of their cells only to exercise and to pray. Interaction was strictly limited and supervised. Everything was supervised. Even the guards would be watched, by other guards. Everyone was watching someone. And the public would be invited in, free of charge, to see how the watchers watched.

Bentham never got to see his Panopticon in bricks and mortar. Parliament rejected the idea once and for all in 1810. It is tempting to surmise that his model prison somehow represented Enlightenment; a more rational mechanism for reforming the recalcitrant. But we should be cautious. The Panopticon, its inventor confirmed, was purposed as a ‘machine for grinding rogues honest’ (Ignatieff 1978: 68). Before they might be reformed, men must be broken. An anecdote is sobering. In 1779 Bentham fired his old, nearly blind, servant called John Franks. The reason, perhaps improbably, was an ‘improper’ relationship. When Franks was discovered to have taken two silver spoons as he left the house, Bentham and his wife gave evidence at the Old Bailey leading to his conviction and subsequent hanging. The ‘calculus of felicity’ was not intended to make men compassionate, just more efficient.

Though the Panopticon never got off the drawing-board, there would be a handful of penitentiaries built. The 1779 Act had envisaged a large penitentiary in the London area. This eventually came to pass with the opening of Millbank penitentiary in 1816. Not a great location, built on marshland it was prone to influenza and dysentery epidemics. And not a great design either, so intricate that the cost of upkeep proved to be unsustainable. So a new penitentiary was built at Pentonville, and Millbank was converted to a transportation hold. The most notable provincial penitentiary was at Gloucester, opened in 1792 and run by another ardent reformist, Sir George Paul. Very much the Benthamite, Paul determined that his charges would be reformed by ‘terror’ rather than by a ‘misplaced tenderness of heart’. And by shame, for which reason their heads would be constantly shaven as a mark of mortification; a strategy which at least helped to deal with lice infestation (ibid: 100–101). It comes as little surprise to learn that Paul was a big fan of the treadmill, and lots of solitary confinement. But not such a fan of profit, except for his. Preferring instead to suppose that it would be the power of prayer which would ‘improve’ his charges, Paul disdained the idea of paying them for their labour.
318 1765: CRIMINAL LAW

Bentham, of course, was all about profit. The 1791 prospectus recommended the Panopticon, not just as a model for prisons, but for workhouses and workplaces too. The same ‘simple idea of Architecture’, done properly, would ensure the following; ‘morals reformed – health preserved – industry invigorated – instruction diffused – public burthens lightened – economy seated, upon a rock’ (Linebaugh 2006: 371). The pottery magnate Josiah Wedgwood was entirely persuaded. The same principle, applied to his factories, would ‘make machines of men who cannot err’ (Ignatieff 1978: 68, 112). The most important tool in his Etruria works, Josiah maintained, was the punch-clock. It made everyone turn up in the right place at the right time every day, and stay there. And just to be sure, the factory manager stood aloft on a central platform gazing down on his drones. Boulton and Watt operated their factories in just the same way. Arkwright his mills too.

The penitentiary, and the punch-clock, combined to shape what modern historians refer to as the ‘regulatory’ society. Each of the institutions had the same purpose; to make people more efficient in their work. As such they represented an essentially remedial approach to the problem presented by young men such as Jack Sheppard and Dick Turpin, and Hogarth’s idle apprentice. Indentures were never just about training young men to make things. As the many ‘Prentice’ manuals confirmed, an indenture represented a legally binding

**Image 8.11** Millbank Penitentiary. Engraving by James Tingle, after Thomas Shepherd, 1829.
commitment to conform to certain standards of social behaviour. In practical terms it limited mobility, whilst also reinforcing the place of the apprentice as a readily observable, as well as teachable, subject. And this was precisely what the penitentiary was designed to do. Interestingly the reason why Parliament finally rejected Bentham’s Panopticon was because so many troubled factory owners petitioned in fear of the competitive challenge. Getting enough people to work for next to nothing was proving difficult for everyone. Persuasion hardly worked, and neither it seemed did brutality. In his 1791 pamphlet *The Soldier’s Friend*, William Cobbett suggested better wages. But no one really wanted that, except of course the workers.

Cobbett, the most sceptical of observers, cut through all the romance. People stole, not for fun, but because they had no choice. ‘Poverty, misery, these are the parents of crime’, he confirmed a quarter century later in his *Political Register*. ‘When a man becomes a robber from want, it is because he cannot endure to become a beggar, or because he has resolved to set death at defiance rather than become a skeleton from starvation’. The real robbers, Cobbett insinuated, were all the politicians and ‘placemen’ (*ibid*: 159). It was dangerous talk. A year later, amidst rumours of possible sedition charges, Cobbett judged it wise to go abroad for a while. But the thought lingered. It explained why, despite all the statutes and all the hangings, so many Englishmen and women kept on nicking things.