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Articles

Sympathy for the Criminal: The Criminal Celebrity in Eighteenth-Century London

Robert B. Shoemaker

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Introduction

- 1 On the 13th of September 1750, in the midst of the crime wave which struck London following the end of the War of the Austrian Succession in 1748, James Maclaine was tried at the Old Bailey, London's central criminal court, for highway robbery. The son of an Irish Presbyterian minister turned "gentleman highwayman", Maclaine was charged with the theft at gunpoint of two guineas (£2 and 2 shillings) and some clothes, including a coat, a pair of silk stockings, and a pair of silver shoe buckles, from Isaac Higden, a passenger on the Salisbury Flying Coach. Maclaine mounted a weak defence, and was convicted and sentenced to death. During the robbery, which took place between one and two o'clock in the morning, Maclaine and his accomplice James Plunket, both "armed and masked", had ordered the passengers to get out of the coach and "threatened to blow [Higden's] brains out" for concealing some of his valuables. At a time of significant public concern about the increasing frequency and audacity of highway robberies, which led to the offer of a £100 reward for the conviction of robbers, the passage of new criminal legislation, and the publication of Henry Fielding's polemic, *An Enquiry into the Causes of the Late Increase in Robbers* (1751), this was one of 128 robberies tried at the Old Bailey between 1749 and 1753. And yet, Maclaine was the target of substantial sympathy, and became, in the positive sense of the term, a criminal celebrity: the public purchased numerous books and images depicting his life

and crimes, ladies cried at his trial while “nine gentlemen of credit [and some ladies] gave him a very good character”, and thousands visited him in prison, bringing him gifts (Hitchcock, Shoemaker, 2006, 170-180). Even more incredibly, several of his victims refused to prosecute him, and others attempted to secure him a pardon. While not everyone was convinced by his claims to special status as a gentleman highwayman, the substantial public sympathy Maclaine received threatened to undermine official efforts to encourage the prosecution of robbery.¹

- 2 This article investigates how it became possible for a small number of criminals like Maclaine to become celebrities in London in the “long” eighteenth century.² In doing so, it will shed light on the history of both attitudes towards crime and celebrity itself. Since the 1990s celebrity has become the subject of substantial scholarly attention, but much of the focus has been on contemporary life, reflecting the importance of the mass media in generating the requisite publicity.³ More recently, however, historians have pointed out that celebrity has a long and significant history. In his important recent book, Antoine Lilti takes the story back to the mid eighteenth century, arguing that the history of celebrity dates from Jean Jacques Rousseau’s emergence as a celebrity with the publication of his *Discours sur les sciences et les arts* in 1750 and his ambivalent attitude towards that status, though Lilti argues that full-fledged celebrity culture did not emerge until early nineteenth-century Romanticism (Lilti, 2017).⁴ Other scholars, notably Brian Cowan, have convincingly argued that celebrity was also an early modern or even medieval phenomenon, but research on pre-modern celebrity is still at an early stage. In any case, since studies use varying definitions of the term it is difficult to trace a coherent history and point of origin.⁵
- 3 Celebrity is an elastic concept, and it is useful to adopt a narrower focus than the modern idea of a person who is simply “known for his well-knownness” (Boorstin, 1973, 57). By using the definition, contemporary to the eighteenth century, of celebrity as the result of being “celebrated”, this article focuses on a positive type of fame achieved by individuals who the public had sympathy for, and felt they could engage with, at a virtual if not a personal level.⁶ We will explain how celebrities themselves were able to seek this status for their own benefit, and discover that this opportunity was available to some criminals, who in the eighteenth century successfully sought celebrity status and received it, and for whom there was a remarkable degree of mutual engagement between the public and the criminal. While, like all celebrities, criminals were unable to maintain full control of their image, that they were able to achieve the recognition they did provides valuable new evidence of the agency those accused of crime.
- 4 While individual famous criminals have received some scholarly attention, the history of the criminal celebrity as a collective phenomenon has yet to be written. To do so it is necessary to identify common patterns in the stories of the small number of criminals who achieved celebrity status, and to identify the social and cultural conditions, notably the growth of print culture, the increasing importance of public sociability, and the emergence of the cultural movement of sensibility, which facilitated the emergence of the criminal celebrity in the late seventeenth and early eighteenth centuries. It has been argued that “celebrity is inherently bound up with transgression;” the phenomenon of the celebrity criminal allows us to see how celebrity could allow criminals to obtain sympathy and support from observers throughout society (Rojek, 2011, 177). But this particular type of celebrity was relatively short-lived, and an explanation of why the celebrity criminal disappeared in the early nineteenth century

sheds light on changing attitudes towards crime as well as the non-linear nature of the history of celebrity.

Towards a history of criminal celebrity

- 5 Criminal celebrity originated in the mid seventeenth century in England and was centred on London, the centre of print culture. It was only then that a significant number of criminals were able to read and write, and participate in their own self-mythologization. As Paul Griffiths notes, “[B]efore 1660... [t]here are no first-hand stories of criminal lives with a protagonist’s care for feeling... No lower-class thief or vagrant put his/her life down on paper...” (2008, 137). In contrast, the subsequent 130 years was a propitious time for the creation of criminal celebrities in London. The vibrant cultural life of Restoration London included the expansion of places of sociability, including coffee houses and the reopened theatres. A lively print culture further expanded with the expiration of press licencing in 1695, which facilitated a dramatic increase in printed publications, accompanied by a parallel growth in literacy (particularly reading) rates. Crime was a key facet of several expanding print genres, including newspapers, biographies, trial reports, and printed images, whose purchase was encouraged by the growth of consumerism (Shoemaker, 2009). Moreover, the development of the culture of sensibility in the latter half of the eighteenth century encouraged emotional engagement between the public and criminals; as Thomas Dixon argues, there developed “a world of moral weeping which extended from condemned criminals to their judges, chaplains, and executioners, and from philosophers, preachers and philanthropists to prostitutes, forgers, highwaymen, and thieves” (2015, 96).
- 6 This printed literature, particularly criminal biographies, has been sensitively analysed by a number of scholars, including Lincoln Faller, Hal Gladfelder, Andrea McKenzie, and Gillian Spraggs. But while their works effectively delineate the wide range of socio-cultural meanings conveyed in these texts, including the often subversive implications of the portrayal of criminals as heroes or “social critics”, their analysis rarely extends beyond the texts, to consider the wider context of their creation and impact (Faller, 1987; Gladfelder, 2001; McKenzie, 2006, 2007, 2012; Spraggs, 2001). This article takes a different approach. It considers, first, how individual criminals sought publicity for their stories in a wide range of activities, both by cooperating with authors, publishers and artists and through their behaviour in London’s courts, prisons, and places of sociability. It then goes on to consider how the public responded to these texts and activities, and actually engaged with these criminals, according some of them celebrity status.
- 7 The focus of this article is therefore on a small number of criminals who sought and received significant public support for, and positive engagement with, their stories during their lifetimes. The public did not celebrate those who failed to seek and reciprocate their attentions; nor did it celebrate those whose activities they totally deplored. Criminals who were in the public eye but were widely condemned, such as Jonathan Wild, the thief-taker who was executed in 1725, do not meet this definition. Wild was publicly censured for his activities as an informer and thief-maker (which led to the hanging of innocent people), and his involvement in the arrest of the celebrity Jack Sheppard (discussed below); on his way to his execution at Tyburn Wild he was,

unusually, attacked by the execution crowd (McKenzie, 2004). Despite public interest in his case following his arrest, the robber and murderer Dick Turpin's criminal exploits were only celebrated a century after his death (Sharpe, 2004, 137-138). Similarly, murderers such as Theodore Gardelle and murderesses such as Mary Hobry, Sarah Malcolm, Mary Blandy, and Elizabeth Jeffryes, all of whom were the objects of substantial public attention but attracted little sympathy, were not celebrities.⁷ Some, such as Malcolm, sought publicity in order to protest their innocence (she sat for a portrait by William Hogarth), but there is no evidence that the public warmed to her.⁸ The murderer James Hackman attracted more public sympathy, but he did not seek such attention and in any case there was little opportunity for the public to engage with him before he was executed twelve days after his crime (Brewer, 2004, ch.1-2). Forgers, such as Caroline Rudd and William Dodd, also received some public sympathy, but their public image was entirely defensive, denying or downplaying the crimes for which they were convicted.⁹

- 8 For criminals to be celebrated (and not merely seen as infamous), they needed to seek publicity not simply to defend themselves, but to project a positive image, and the public needed to engage with these representations and sympathise with the criminal. Before 1660 there is no substantial evidence of any criminal who contributed significantly to their representation in public. The royalist highwayman James Hind (d. 1652) was the subject of several (mostly fictional) pamphlets and gained the reputation of a gentlemanly robber, but although there are some indications that he sought and received celebrity status, the evidence is very limited.¹⁰ There is also uncertainty about the status of Mary Frith ("Moll Cutpurse"), transvestite, actor, thief and receiver of stolen goods in the early seventeenth century. Frith could not write, but may have contributed to her posthumous biography, published in 1662, three years after her death. Like Hind, it appears that Frith's life was a convenient vessel into which to pour conventional picaresque stories, and her role in shaping both her biography and pictorial representations was minimal.¹¹ Moreover, there is little evidence that the public sought to make a personal connection with her.
- 9 While many criminals possessed elements of potential celebrity status in the "long" eighteenth century, this article will examine the stories of the seven criminals who both sought this status and were granted it by the public:
- Mary Carleton, the "German Princess". The daughter of a chorister or fiddler, Carleton posed as a wealthy German gentlewoman who had come to London, where she married John Carleton despite the fact she was already twice married. When her deception was found out, he prosecuted her for bigamy at the Old Bailey in 1663, but she was acquitted. She was later convicted of theft on two occasions and executed in 1673.
 - James Whitney (executed 1693), a butcher's apprentice and Jacobite highway robber who claimed to have been involved in a plot to assassinate William III, and was the subject of numerous ballads and broadsides.
 - Jack Sheppard (executed 1724), son of a carpenter and the young thief famous for escaping from prison four times.
 - James Maclaine (or Maclean, executed 1750), "the gentleman highwayman" with whom this article began.
 - William Cox (executed 1773), son of a ribbon weaver, who also styled himself a gentleman highwayman but attracted a more mixed reception from the public.

- Jack Rann (executed 1774), “Sixteen-String Jack”, an attention-seeking young highway robber of obscure origins but with genteel pretensions.
 - George Barrington, the son of artisans who became a gentleman pickpocket. Barrington is an unusual example of a criminal who managed to maintain his celebrity status for a long time (1775-1790). Following transportation to Australia, Barrington had a successful career as a judicial official, but this article will only focus on his time in England.
- 10 Despite their generally humble origins, highwaymen with aspirations to gentility dominate this list, as they sought to differentiate themselves from the lowly and more threatening “street robber” (Shoemaker, 2006). But also included are a bigamist and thief, a thief and escape artist, and a pickpocket.

Seeking celebrity

- 11 How did these criminals achieve celebrity status? With the exception of Carleton’s bigamy and Sheppard’s escapes, attention was drawn to them not primarily through stories about their crimes, which were for the most part fairly mundane thefts and robberies, but through the exposure they were given, and they themselves sought, through the press and their public appearances. As part of the massive expansion of printed literature about crime in this period, the activities of criminals were publicised as never before. Even before the expiration of press licensing in 1695, Carleton was the subject of at least twenty-six publications in 1663 and 1673, while in the early 1690s nine broadsides and ballads, as well as a biography, were published about Whitney.¹² Criminals were depicted in several different types of print: in addition to longstanding ballads and broadsides, new forms of publication emerged in this period, notably biographies, trial reports and newspapers. Both the *Ordinary of Newgate’s Account* (biographies of soon-to-be executed convicts compiled by the chaplain of Newgate prison) and the *Old Bailey Proceedings* (which provided reports of every trial which took place in that court) date from 1674. These publications not only provided extensive accounts of crimes and criminal lives, but through defendant testimonies and interviews with convicts they also to some extent allowed criminals to tell their own stories.¹³
- 12 After 1695, the growth of newspapers disseminated crime reports even more widely. Sheppard’s escapes in 1724 were the subject of intense reporting; according to Philip Rawlings, “[t]o a large extent Sheppard’s fame was a product of newspaper reporting — perhaps the first instance of newspapers building up a popular image of an individual” (1992, 40). Later in the century Barrington’s criminal exploits were extensively reported in the London papers between 1775 and 1790, describing him as the “celebrated” Barrington as early as 1777.¹⁴ He seems to have been aware that his performances in the courtroom (discussed below) would be reported in the papers, and the press also regaled its readers with details of his disguises and possible whereabouts.
- ¹⁵ Barrington further contributed to this publicity by sending several letters to the papers defending his reputation; in 1777 the *General Evening Post* claimed that he had “puffed off [sic] his honour and honesty in several of the papers” (14 January 1777).
- 13 Barrington was one of the few criminals who wrote material for the newspapers; for the most part criminals could not control their representation in this medium, and coverage was often negative. But they could, and did, participate in the construction of their image in other forms of print, notably the increasingly popular genres of

biography and autobiography. Influenced by the fictional depiction of criminals in novels such as *Moll Flanders* (1722) and plays including *The Beggar's Opera* (1728; partly inspired by Sheppard's life), these narratives provided the opportunity to present themselves sympathetically as individuals, explore their motivations, and create an illusion of intimacy with the reading public.¹⁶ Admittedly most texts were published anonymously and probably authored by hack writers, and we cannot be sure how much they reflect the point of view of the criminal. To satisfy their audience authors had to acknowledge the sinfulness of the crimes committed, while separately depicting them in a more positive tone as “adventures”, “enterprises”, and “artful robberies”. As Fred Inglis noted in his study of the painter Joshua Reynolds, attitudes towards celebrities are often ambivalent, interweaving “envy, admiration, generous acclaim, malicious denigration, prurient attentiveness, [and] swift indifference” (2010, 57). Thus, the criminal, according to John Richetti, was “both hero and anti-hero to his eighteenth-century audience” (1969, 34-50). *An Account of John Rann* declared that “[t]o trace out the various alterations and vicissitudes in a life such as that of Mr Rann, would not be extremely agreeable, and yet we must not pass by what herein occurs, especially as it may be entertaining as well as instructive” (Anon., 1774b, 6).

- ¹⁴ While celebrities could not control these narratives, they contributed substantially to their content. Publishers often stressed that their information came directly from the subjects. Mary Carleton is identified as an author of *The Case of Madam Mary Carleton* (1663), which defends her innocence as part of an entertaining biography. The text is written in the first person, but recent textual analysis suggests she was only one of several authors (Todd, Spearing, 1994, xlvi). As a carpenter's apprentice, Jack Sheppard's writing skills are doubtful, but he seemed to be aware, when interviewed in prison by the Ordinary and Daniel Defoe, that the outrageous and provocative comments he was well known for would be reproduced in print. When asked by the Ordinary “how he could use poor People so” by stealing from them, “he reply'd, I wish that you and I were as Rich; thereby making it no Crime in him to steal from those in better Circumstances than himself”. Defoe's *History of the Remarkable Life of John Sheppard* includes several of Sheppard's jokes and subversive expressions, such as his comment, when asked who had provided him with the tools for his escape, “ask me no such Questions, one File's worth all the Bibles in the World”.¹⁷ Perhaps owing to their purported authenticity, these pamphlets were enormously popular, selling thousands of copies; the anonymous *Narrative of Sheppard's crimes* went through eight editions in two months.¹⁸
- ¹⁵ The popularity of criminal biographies reached a peak at mid-century. Between 1747 and 1754 the lives of least ten English (primarily London) highwaymen were published in separate pamphlets, and several went into multiple editions. Six were purportedly written by the robbers themselves, or at least compiled on the basis of information provided by them (Hitchcock, Shoemaker, 2015, 200). These include one about Maclaine by the Reverend Richard Allen, whom Maclaine chose as a spiritual counsellor instead of the Ordinary. This *Account* was “drawn up and published at the earnest desire of Mr Maclaine himself”, and depicts Maclaine as no ordinary poor robber, but one who came from an educated background, knew the scriptures, and had a conscience (Allen, 1750, 5, 7). Maclaine's side of his story was also reported through the publication of the full texts of his defence testimony at the Old Bailey and the speech he planned to make following his sentencing; only he could have provided the latter for publication. Although he was unable to give the speech because he broke down in tears, it was

reproduced “in all the public papers”.¹⁹ Of the four biographies of William Cox published in 1773-1774, two claimed the involvement of Cox or his “intimate acquaintance”.²⁰ *The Only Authentic Life and Trial of William Cox* claimed to provide “an account of the many Notorious, Artful, and Dangerous Robberies committed by this hero in Villainy in the course of nine years... faithfully compiled from the offender and his associates declarations” (Anon., 1773c, title page). Similarly, biographies of the pickpocket George Barrington published in 1790 were shaped by details he or his accomplices provided and the speeches he gave in the courtroom.²¹

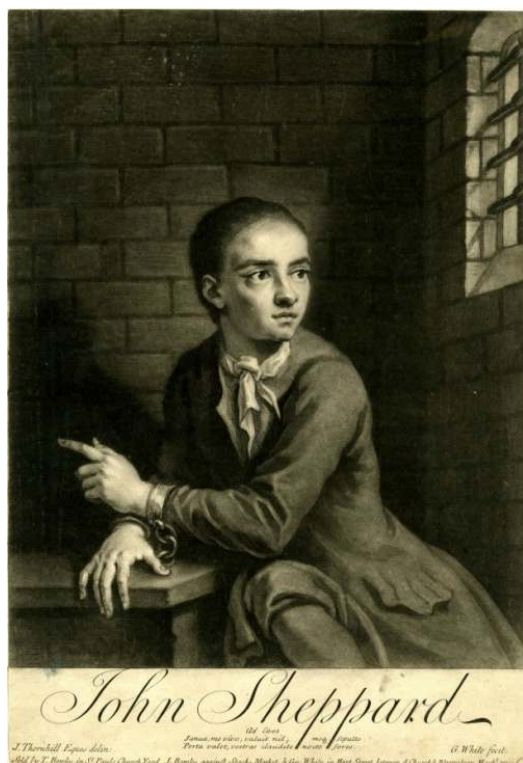
- 16 Celebrities had greater control over their public performances, which helped shape readers’ imaginary engagement with these texts. Their first opportunity to attract attention typically occurred in the courtroom. Mary Carleton’s celebrity status started with her performance at her first Old Bailey trial, when she defiantly and convincingly acted the part of the victim and successfully undermined the prosecution case (Anon., 1663). As the contemporary Thomas Ruge noted, “at the sessions time for hir trial she needed not many Councillors for that she declared hir cause as briefly and as fully as anyone in her condition could doe”.²² Following the advent of trial reporting in the *Old Bailey Proceedings* and newspapers criminals seemed to know that their courtroom behaviour would be published. Maclaine played to the gallery as he stood in the dock, giving a long speech in which he protested his innocence, which evoked tears among the ladies in the audience.²³ While Maclaine portrayed himself as a respectable gentleman, Rann sought attention by acting audaciously.²⁴ When he appeared before Justice John Fielding for a preliminary hearing at Bow Street in June 1774, according to the *Public Advertiser*, he “came into the office with a nosegay of immoderate size, and his irons decorated with blue ribbons. His behaviour was daring to an uncommon degree...” (2 June 1774). Barrington’s attention-seeking behaviour was more polite: his “long, florid speeches” in the Old Bailey evoked the support of both audiences and the court (Palk, 2012). As the *Gazetteer* and *New Daily Advertiser* reported in February 1777, “the celebrated George Barrington made a very elaborate speech to the Bench at the Old Bailey [and t]he Bench was very attentive to hear this well-connected, ingenious harangue” (26 February 1777).²⁵ Like Rann, clothing was an important part of Barrington’s performance. According to the *General Evening Post*, he “affected the image of a gentleman of fashion”, appearing at an earlier appearance at the Old Bailey “his hair dressed a-la-mode [sic]; cloaths quite in the taste; a fine gold-headed taper cane, with suitable tassels, and elegant Artois buckles. In short... he is the genteelest thief ever remembered to have been seen at the Old Bailey” (14-16 January 1777).²⁶
- 17 Celebrity criminals also sought and received attention in London’s spaces of sociability, where the public could participate in their celebrity status. After her trial Carleton performed as herself in a play, *The German Princess*, staged in April 1664, which was apparently popular, though Samuel Pepys did not like it.²⁷ No doubt excited by the attention he had already received in the press, Sheppard returned to his familiar haunts in London following his final escape in October 1724, where he burgled a pawnbroker, dressed himself like a gentleman and visited a brandy shop.²⁸ Cox dressed himself “rather in a gay stile”, and attended the races (Anon., 1773a, 9, 25). Similarly, Rann appeared at races and spas, dressing himself as a peer when he appeared at Barnet races, where in the sarcastic commentary of one of his biographers, he “was followed by hundreds from one side of the course to the other, whose curiosity was excited to behold a genius, whose exploits were so notorious to the world”. Commenting on this public interest, one observer wrote that “this circumstance proves

the curious disposition of the people of England, who are equally happy at the sight of a prince, a patriot or a highwayman. It is no matter what the person is, so the character be but a distinguished one, they will be certain of being followed by the mob”.²⁹

Visual representations

- 18 The increasingly popular medium of portraiture, characterised by Cheryl Wanko as “the genre most relevant to celebrity because of the way it visually celebrates an individual and invites viewers to do the same”, provided another means of promoting celebrity (2011, 357-358). In the eighteenth-century portraiture became “a relentlessly public art”, with painted portraits widely exhibited and frequently turned into inexpensive engraved prints which circulated widely. By portraying celebrities, even criminal celebrities, artists advertised their skills and attracted further business.³⁰ All the criminals discussed in this article had portraits or full-length images published of them, and some were also depicted in prints which showed them committing crimes or in prison or a courtroom. Unfortunately, we know little about how actively involved the subjects were in the creation of these portraits. At the very least, even when incarcerated in Newgate, the subject had to agree, possibly for a fee, to sit for an artist, and there is some evidence of criminals doing just that. One of the three portraits of Mary Carleton, published as the frontispiece of her 1663 *Case of Madam Mary Carleton*, was “taken by her own order”. Her husband and the prosecutor of the case against her, John Carleton, expressed astonishment at the “unparallel’d confidence with which she permitted the Counterfeit Effigies of her ill-shapen painted face” to be published.³¹

Figure 1. John Sheppard, by James Thornhill, engraved by George White (1724)



National Portrait Gallery, D40697. © National Portrait Gallery, London.

- 19 Perhaps the most remarkable portrait of an eighteenth-century celebrity criminal is that of Jack Sheppard, by King George I's painter, Sir James Thornhill, which was immediately engraved by George White and sold for a shilling (Figure 1).³² While we do not know how the painting of this portrait came to pass, Sheppard apparently influenced its content. As the *London Journal* reported, when asked for his opinion on an initial sketch of his face Sheppard reportedly commented that he thought it made him look too old, "whereupon some Amendments were made to it" (14 November 1724). The significance of the resulting image (in which he does appear youthful), Marcia Pointon argues, is that he "is presented as a young martyr in soft mezzotint in the pictorial tradition that looks back to engravings of Charles the Martyr" (1993, 89). With Latin verses underneath, the portrait was clearly aimed at an elite audience.
- 20 Echoing Sheppard's portrait is one of Rann, by an unknown artist in 1774, of a similarly youthful offender depicted in Newgate with a cell window in the background (Figure 2). Rann, however, is, as was his wont, dressed more fashionably, wearing a hat with a flower, a ruffled shirt, a cravat and a pale jacket, and holding a wine glass with a bottle on the table beside him. Maclaime, who was the subject of five different prints, was depicted most fully standing in a rural landscape, though the image was based on a sketch taken in the Gatehouse prison (Figure 3). As is the case in this image, criminal celebrities were usually dressed in genteel clothing, reflecting their social ambitions. Even Sheppard was depicted in one print wearing a hat, waistcoat, stockings and buckled shoes.³³

Figure 2. John Rann, alias Sixteen-String Jack by A.R. (1774)



British Museum 1902, 1011.7321. © The Trustees of the British Museum All rights reserved.

Figure 3. The Ladies Hero or the Unfortunate James McLeane Esqr. (1750)



National Portrait Gallery, D9435. © National Portrait Gallery, London.

- 21 Pointon argues that these portraits normalised criminals, as they displayed “subjects whose external features and demeanour show no sign of their supposedly diseased characters”, thereby legitimizing their social deviance; “portraits are indelibly associated with empowerment” (1993, 83; 2013, 2). While it is true that the subjects’ poses and dress in these images were conventionally respectable, portraits and other images frequently referenced their subjects’ criminality. Several were situated in prison, and Whitney, Sheppard and Barrington were depicted as shackled. The caption to Rann’s portrait informs the viewer that he was “now under sentence of death... after being tried 17 times”. Only one of the six contemporary prints of Barrington failed to refer to his crimes, a painted portrait of him in genteel clothing by William Beechey (who was later to paint a portrait of the Queen), which may in fact be a misattribution.³⁴ Images of Maclaine depict his crimes or show him fettered, in court or in prison. In the one full length representation of him a mask (as used in masquerades, but also by highway robbers) is depicted lying on the ground next to him (Figure 3). While Pointon is right that the creation of these portraits went some way towards presenting these criminals in a positive light, their deviance was rarely hidden, and in a few prints it was depicted as threatening. In one Maclaine is shown, with his accomplice Plunket, robbing Lord Eglington at gunpoint, while a print showing Barrington “detected picking the pocket of Prince Orlow” in Covent Garden Theatre portrays a semi-violent tussle.³⁵
- 22 Nonetheless, the publication and dissemination of these prints does appear to have contributed to their subjects’ celebrity status. While we have no direct evidence of how they were interpreted by viewers, observers certainly feared that these images idolized their subjects in the public mind. An anonymous poem in the *British Journal* claimed

that Thornhill's much reproduced picture of Sheppard "gild[ed him] with fame" (28 November 1724, 3), while Horace Walpole complained that the prints as well as published lives of malefactors like Maclaine were "set forth with as much parade" as that accorded to important public figures such as the French general Marshall Turenne (Lewis, 1937-83, xx, 199).

- 23 Artists were able to gain access to criminals in Newgate owing to the open nature of the pre-reformed prison. Granting permission to talk to prisoners was a lucrative business for prison officials, and all the celebrities discussed in this article received many visitors, often of elite status. Carleton was visited by "many hundreds", including Pepys and "many persons of quality".³⁶ Similarly, Whitney's "numerous" visitors included "great numbers of gentlemen".³⁷ Sheppard's turnkeys allegedly earned £200 in fees by charging each visitor up to four shillings for access, suggesting he had more than a thousand visitors.³⁸ Following Maclaine's conviction for highway robbery in 1750, Walpole famously complained of the "ridiculous rage... of going to Newgate", claiming that three thousand people visited him the Sunday after he was sentenced to death (Lewis, 1937-1983, xx, 199). As the print *Newgate's Lamentation, or the Ladys Last farewell of Maclean* suggests, many of these visitors were elite women (Anon, 1750d). Cox's visitors were alleged to have been less respectable; "the far greater part" of the "great numbers of people" who visited him in Newgate were women, prompting the ironic comment in a biography that "many of [them were] the fairest, and, *apparently*, the most amiable of the sex" (Anon., 1773b, 24).³⁹
- 24 Cox claimed that those admitting visitors to see him got "more money by making a show of me, than ever I did by thieving", suggesting that he was uncomfortable with all the attention. It is not clear whether prisoners were able to refuse visitors; it was reported that Cox was "averse to making a public show of himself in Bridewell [house of correction], so would only admit his particular acquaintances", but ultimately it was the prison officers who governed access (Anon., 1773a, 24, 26). Carleton complained of the "harsh usage" she received from visitors and attempted to avoid them by hiding her face behind her hood, but most criminal celebrities welcomed the attention and indeed performed for their visitors (Kietzman, 2004, 261-263). Whitney "behaved himself with a sort of a pride and strut, as if he seemed pleased with so popular a vanity as making a raree-show" (Anon., 1693c). In return, many visitors, particularly elite men and women, rewarded them for their efforts with handouts, even when they were unrepentant. Prisoners seemed to enjoy being the centre of attention, but they also exploited the opportunity for profit. Sheppard "was always cheerful and pleasant... turning everything that was said into a jest and banter"; he made his wrists bloody "so as to exact compassion and donations from spectators".⁴⁰ Convicts also asked visitors to petition the king to secure reduced punishments or pardons for them, and some complied, though, with the exception of Barrington (see below), these petitions were not successful.⁴¹

Popular and elite responses

- 25 Criminal celebrities did not have full control over their stories, which were likely to be told anyway by a press hungry for sensational tales, which rarely failed to condemn their crimes and, as we have seen, sometimes adopted a sarcastic approach. Nonetheless, these criminals played a significant role in shaping their representations,

both through the provision of content for authors, artists and publishers, and by their behaviour in courtrooms, prisons and in public. In doing so they sought attention and sympathy and created imaginary and sometimes real bonds with members of the public. But how do we know that the public responded by according them a degree of adulation and engagement, granting them celebrity status? The thousands of people who purchased portraits and printed literature, visited criminals in prison, and attended their hearings, trials and executions, indicates a high degree of public interest, but it is substantial anecdotal evidence which provides the most compelling evidence that Londoners were often personally, and positively, engaged with these figures in the public eye.

- 26 Facilitated by the visual representations, criminal celebrities were readily recognised in public. As Pointon argues, by the eighteenth century the practice of portraiture contributed significantly to the ability to recognise individuals in public spaces (1993, 61). William Hill, a postilion to Princess Amelia, testified at Rann's last trial that he had seen him near the scene of the crime, stating "I know Rann by sight very well".⁴² It was claimed that Barrington was sighted in public on several occasions, not only in London but also in Lincolnshire, Bath, Newcastle and Dublin, prompting people to take steps to protect their valuables. When seen at a race in Enfield in September 1790, "several persons watch[ed] him minutely". All the printed accounts and images that had been disseminated about him meant that his reputation preceded him. In 1783 when he was brought before the Old Bailey following his banishment as a condition of a pardon (he had failed to leave the country as directed), he told the judges "I was merely for a name apprehended".⁴³
- 27 Stimulated by this widespread publicity, people talked about these criminals, and while some condemned their crimes, others took the side of the criminal. Pepys recorded a conversation he had with Lady Elizabeth Batten following Carleton's acquittal in 1663, in which "my Lady Batten enveighd mightily against the German princesse and I as high in the defence of her wit and spirit, and glad that she is cleared at the Sessions" (Latham, Matthews, 1970-83, iii, 177, 7 June 1663). According to the contemporary writer Francis Kirkman, in 1673 Carleton "was the only talk for all the coffee-houses in and near London" (1673, 92). As the "Jacobite robber", Whitney was "much talked of abroad for his great exploits" (and no doubt his politics), but, as with most highwaymen, opinions were divided: "one party are for crying, he is a very fine gentleman, a bold brave fellow... the other party... are bellowing out on him for a great villain".⁴⁴ According to Defoe, Sheppard's escape from Newgate "made such a noise in the town, that it was thought all the common people would have gone mad about him, there being not a porter to be had for love nor money, nor getting into an alehouse, for butchers, shoemakers and barbers, all engag'd in controversies and wagers" about him (1724, 27). Maclaine was a frequent subject of Walpole's correspondence in 1749-1750 (Walpole found the story fascinating, even though he was one of Maclaine's victims), while Rann was the subject of frequent speculation about the source of his nickname, "Sixteen-String Jack" (there were several theories), and of debate between James Boswell and Samuel Johnson. While Boswell noted that Rann "was remarkable for foppery in his dress", Johnson commented more positively that "Sixteen-String Jack towered above the common mark".⁴⁵
- 28 Evidence of the sympathy and compassion criminal celebrities received, even from elite quarters, can be seen in the fact that victims sometimes refused to prosecute them,

witnesses refused to identify them or provided good character references at their trials, juries refused to convict them, and elites petitioned on their behalf to obtain pardons or reduced punishments.⁴⁶ Rann was acquitted in four of his five Old Bailey trials, and Barrington in four of seven trials (including one in Dublin). At the sentencing following Barrington's conviction in January 1777 for picking the pocket of Ann Dudman, "a gentleman who appeared as the prisoner's friend, begged remission of the usual punishment for this offence on this extraordinary ground, that Mr Barrington being bred up in a genteel line of life, would not be able to undergo the laborious fate of a common thief". As a result the usual sentence of seven years transportation (to be served on the hulks, since transportation was in limbo at this time), was reduced to three, but when it was later claimed that even that punishment proved too severe, "a gentleman of rank and consequence [was so moved by Barrington's] emaciated and squalid appearance... that he applied for the remission of the remaining part of his sentence" (which was granted, in return for banishment).⁴⁷

- 29 We can only speculate on why so many people were supportive of these criminals, but the public appear to have been convinced by their claims and attracted by the possibility of expressing emotional identification with figures who could be accorded sympathy. For the lower classes (and perhaps others), observers may have been convinced by claims of wrongful accusations and harsh punishments, and by the excuse that crimes were committed out of necessity; they may have even personally shared those experiences. More speculatively, they may have been attracted by the possibilities of social mobility and freedom demonstrated by lives led outside normal social constraints. Mary Jo Kietzman has argued that Carleton's "performance of the German 'princess' claim appealed to the collective social fantasy of wanting to be royal... [the case] appealed because it represented the possibility that virtually anyone could act on their own behalf by constructing and deploying a life story" (1996, 106-107).⁴⁸ Similarly, according to Léa Lebourg-Leportier, Sheppard's ability to outwit the judicial authorities through his escapes allowed readers to "temporarily escape from the fetters of morality and authority" (2016, 38). Cox and Rann's appearances at the races, dressed in genteel clothing, demonstrated the possibility that plebeian Londoners could rub shoulders with high society.
- 30 The attraction for elites was different. As suggested by the example of the gentleman who obtained a pardon for Barrington to liberate him from the hulks, voicing compassion for criminals gave elites the opportunity to demonstrate their capacity for sympathy. With the rise of the sentimental novel and the culture of sensibility in the middle of the eighteenth century it became fashionable for both men and (especially) women to demonstrate their compassion for others, even "across traditional social boundaries" (Hunt, 2007, ch. 1, quote at 36).⁴⁹ This sensitivity was expressed in a refined but overt manner, including through the shedding of tears.⁵⁰ Public examinations, courtrooms and prisons proved perfect places for this: criminals aspiring to celebrity status crafted speeches which invited their audiences to treat them as appropriate receptacles of compassion, while also seeking (both directly and indirectly) to influence the jury and judge (Dixon, 2015, 170-174). When Macleane was examined by a justice of the peace before his trial, according to a hostile account from the Ordinary of Newgate, "He shew'd a mean dastardly Spirit before the Justice, [and] shed many Tears, which endued the female Part of his Audience to accompany him [to prison], and some to present him with a Purse of Money". This behaviour continued at his trial, when, as depicted in the print *James Macleane, the Gentleman Highwayman at the Bar*, his defence

speech evoked tears from elite women holding fans in the balcony; in a separate print, similar weeping women (and at least one man) are depicted visiting Maclaine in Newgate shortly before his execution.⁵¹ As the sex deemed to have the more sensitive nerves and greater moral authority, women, particularly from respectable backgrounds, were keen to demonstrate publicly their sensitivity to the plight of less fortunate souls (Barker-Benfield, 1992, xxvii, 23-26).

- 31 But sensibility was not only for women (Carter, 2005). For both male criminals seeking celebrity status and the men observing them, it offered the possibility of demonstrating their own refinement.⁵² Maclaine was purportedly unable to deliver his speech prior to his sentencing in court because of “his excessive grief... his countenance plainly wore the appearance of real contrition for his past crimes” (Anon., 1750c). While this failed to gain Maclaine any mercy, Barrington, for whom tears were “a standard part [of his] repertoire”, successfully used the language of sensibility to avoid conviction four times. When he was tried in Dublin, he told the court “it was impossible for any mind, possessed of sensibility and reflection, not to feel sentiments of compassion in his favour”; he was acquitted. Similarly, when tried at King’s Bench for outlawry, he painted a sentimental domestic image of himself as a family man: “[h]e requested every person in Court to put himself in the situation of a man, against whom a proclamation of outlawry may be issued. He may know nothing of it — he may be returning home to his family; and in the instant of receiving their congratulations on his return, he may be torn from their embrace, [and] be confined to a loathsome prison.” The outlawry was overturned.⁵³ Whether, as jurors or judges, or just as spectators in the courtroom or prison visitors, men, too, were receptive to the claims of sensibility. But men retained their self-control; there is no evidence that male observers joined in the shedding of tears.
- 32 Women may also have been attracted to the information provided in printed texts about the love lives of celebrity criminals, an example of the growing public interest in private life at this time,⁵⁴ and a key feature of modern celebrity culture. As single men, Maclaine and Cox were depicted as being particularly attractive to women, while considerable attention was also paid to the “amours” of Whitney, Sheppard, and Rann, which sometimes had tragic consequences. In *The Jacobite Robber*, one woman reported that Whitney was “a very charitable man... and withal, is very favourable to Ladies, who generally give him the character of a civil obliging robber” (Anon., 1693b, 22). It was his mistress, however, who allegedly turned him in to the authorities, prompting a ballad, *Whitney’s Dying Letter to his Mistriss that betray’d him* (Pepys, 1929-1932). Sheppard’s downfall was blamed on his weakness for his mistress, Elizabeth Lyon alias Edgworth Bess (Defoe, 1724, 2-3). Rann apparently had two lovers, Eleanor Roache and Catherine Smith, both of whom received particular attention in his biographies, with one title advertising that it contained “his adventures and Enterprises, his numerous escapes from Justice, and his amours with several ladies”. Roache, apparently his favourite, was the subject of a ballad, *Miss Roach and Jack Ran’s Parting*, which takes place just before his execution.⁵⁵
- 33 In the eighteenth century, it was as mistresses, readers and observers that women got closest to criminal celebrity, as all of the celebrities identified in this article with the exception of Mary Carleton (whose most publicised crime took place in 1663) were men. This is not because women could not become celebrities at this time; despite the disadvantages of exposing women to the scrutiny of the public sphere, many actresses,

notably Sarah Siddons, became celebrities, as did several prostitutes.⁵⁶ But women rarely committed the types of crimes, notably highway robbery, which were most conducive to celebrity because they were not too threatening. The types of female crimes which attracted the most public attention, murder and forgery, were widely condemned, so while both the murderess Sarah Malcolm and the forger Caroline Rudd achieved considerable notoriety, there is little evidence that the public warmed to them. Instead, at a time when women were celebrated for their tenderness and sensibility, the public found Rudd's combative "masculine" approach in her substantial printed writings to be "disturbing" (Andrew, McGowen, 2001, 132, 209).⁵⁷

- 34 It has been suggested that celebrity is a feminising phenomenon, making it difficult for men to embrace, but this does not ring true (Zionkowski, 2009, 169). The male criminal celebrities discussed in this article do not seem to have suffered from gender insecurities (or to have acted in any way to compensate for that), and indeed seem to have relished the attention they received, as men, from their female admirers. Just as men could engage in sensibility, they could join in celebrity culture; the criminal celebrity involved a new form of masculine identity made possible by print and the public sphere.

Conclusions

- 35 The emergence of the celebrity criminal in the "long" eighteenth century supports arguments that celebrities emerged earlier in English history than is generally thought (Cowan, 2016).⁵⁸ Facilitated by the increase of printed texts and images, the late seventeenth and early eighteenth centuries witnessed a step change in the ability of individuals outside the formal structures of power (though with the involuntary assistance of the courts and prisons) to achieve public recognition and celebration, as we have seen in the lives of Carleton, Whitney and Sheppard. Supported by further expansion of the press and the rise of sensibility, as is evident in the cases of Maclaine, Cox, Rann and Barrington, criminal celebrities attracted even more attention in the second half of the eighteenth century, concurrently with the expansion of celebrity culture to include artists, actors, and writers.
- 36 But attitudes towards criminal celebrity were necessarily ambivalent. No one wanted to be the victim of a crime, even when committed by a polite "gentleman", and, as the legitimacy of the laws against theft was not in doubt, the public was always torn between the attractive humanity of the celebrity criminal and disapproval of the crimes he committed. Moreover, accepting the claims of the celebrity criminal became increasingly difficult with the growth in negative representations of crime in the press in the late eighteenth century, including worries about the threat violent crime posed to social order. Attitudes towards Maclaine hardened after his trial, and his claims to the status of a gentleman highwayman, together with the later claims of Cox and Rann, were treated sceptically by some commentators. As Andrea McKenzie has argued, by the "overperformance" of their public gestures, especially their pretensions to gentility, these "covert challenges to authority" prompted criticism, and their crimes were more frequently condemned (2012, 247-256).⁵⁹ Rann, the last highwayman to obtain celebrity status, was slated by the *Public Advertiser* for his ostentatious behaviour before Justice Fielding, which, it said, deserved "the severest reprehension" (2 June 1774). Barrington was the last criminal who can be identified as a celebrity. His crime of

picking pockets involved less implicit violence and prompted fewer critiques, but over his long criminal career his reputation collapsed. In a book falsely titled his *Memoirs*, published in 1790 following his final conviction, he was described as “universally noticed”, but “generally despised” (Anon., 1790b, 3).

- 37 With Barrington’s transportation to Australia in 1791 our story ends. While further research is needed, it is difficult to find criminal celebrities who both elicited and received public sympathy in the first half of the nineteenth century. The strongest potential candidate is Isaac (Ikey) Solomons, who achieved fame as a receiver of stolen goods, and owing to his escape from custody in 1827 and subsequent voluntary journey to Australia, but his reputation was entirely negative, and unlike the criminal celebrities discussed in this article he does not appear to have sought publicity (Tobias, 1974; Anon., 1829). In the nineteenth century conditions no longer facilitated the achievement of celebrity by criminals. In part, this was the result of changes in the types of publication in which crime was represented. The criminal biography declined, while changes in the editorial approach of newspapers and trial reports meant that favourable representations of criminals became rare (Shoemaker, 2017, 99-100). Some eighteenth-century thieves, notably Sheppard and Turpin, received sympathetic treatment in nineteenth-century literature and drama, but this was historical fiction.⁶⁰
- 38 The decline of the criminal celebrity was also the result of wider changes in both attitudes towards crime and penal practices. From the late eighteenth century the idea of crime as something “everyman” had the propensity to commit if they succumbed to the temptations of sin began to be replaced by the idea that crime was a manifestation of social depravity, and its practitioners were increasingly conceptualised as part of a separate “criminal class”.⁶¹ Particularly following the end of the Napoleonic wars, increasing concerns about crime and social conflict rendered the criminal a more threatening figure, and one in need of reform, in a strictly disciplined penitentiary, rather than compassion. Moreover, the decline of capital punishment from the 1820s significantly reduced the number of convicts for whom the prospect of imminent death invoked sympathy, while the public was no longer able to engage in mass visiting in reformed prisons.⁶² In any case, with the passing of the fashion for sensibility, there was less impetus to find targets for compassion (Dixon, 2015, 121-122). It would take some time before the real-life criminal celebrity would return as an object of sympathy, facilitated by changes in the media. Following a large expansion of newspaper readership and the advent of public interest-focused “New Journalism”, some newspapers in the late nineteenth century treated convicted murderers sentenced to hang with a remarkable degree of sympathy (Wiener, 2007). Attention also shifted to the cause célèbre, defendants accused of a crime they claimed they did not commit, such as Arthur Orton (the “Tichbourne Claimant”) in the 1870s and 80s, and Florence Maybrick and Beatrice Pace (accused of poisoning their husbands, in 1889 and 1928 respectively), thus creating a new kind of criminal celebrity.⁶³
- 39 The criminal celebrity in the late seventeenth and eighteenth centuries was thus a distinctive and remarkable cultural phenomenon, with important ramifications for our understanding of the histories of both criminal justice and celebrity. The fact that significant sections of the public could treat those accused of felonious theft with a degree of admiration and sympathy, in spite of concerns about the threat posed by violent crime, suggests that eighteenth-century attitudes towards crime were much less homogeneous and censorious than existing scholarship suggests (Shoemaker,

2017). Whitney, Sheppard, Maclaine and Barrington all committed crimes during periods of perceived post-war crime waves, times characterised by historians as episodes of moral panic. Yet while legislators responded to these crises by attempting (with limited success) to establish new means of ensuring the conviction and severe punishment of what were deemed the most threatening criminals, public responses were mixed, with many observers undermining this agenda by adopting a sympathetic attitude towards some of the criminals in the public eye. While as we have seen claims for sympathy were met with some scepticism, many people were more interested in learning about these criminals' lives and crimes, and in saving them from severe punishments, than in condemning them. In this sense, crime as an abstract collective phenomenon was less important for most people than individual stories; this helps explain why selective prosecution and discretion were such important features of eighteenth-century justice (King, 2000). This is one reason why attempts to marshal public and legislative support for the harsher treatment of criminals, including the adoption of new forms of policing and punishment, proved so difficult (Hitchcock, Shoemaker, 2015, especially ch.5).

- 40 Reflecting the multifaceted history of celebrity itself, the criminal celebrity has its own narrative. While Lilti shows that Romanticism and mass politics allowed the development of celebrity for artists and politicians in the nineteenth century, the criminal celebrity flourished earlier, in part owing to the expansion of printed representations of crime in the late seventeenth century (Lilti, 2017, ch.7). As previously recognised, new forms of celebrity have typically been enabled by changing means of communication, whether in the media or through practices of sociability. Changes in the late seventeenth and eighteenth centuries enabled a small number of criminals to obtain favourable publicity through both their words and deeds. Their lives were widely discussed in both public and private venues, while cultural factors, notably the rise of sensibility, encouraged compassion and sympathy; cultural change, too, is a key driver of celebrity. We have seen that this type of celebrity did not last, owing to the decline of sensibility, changing public attitudes towards crime and the reform of the penal system. But for more than a century, the fact that criminals such as James Maclaine were able to cultivate such a positive form of celebrity demonstrates not only the often overlooked agency of the criminal, but also the empowering nature of the type of celebrated celebrity that is the focus of this article. It has been argued that celebrity can serve a “conservative function in society... containing cultural anxieties”, but the phenomenon of the celebrity criminal suggests that it can also be subversive, promoting sympathy for the criminal and undermining efforts to control crime (Luckhurst, Moody, 2005, 9).

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NOTES

1. For scepticism of Maclaine, see McKenzie (2012, 255).
2. The “long” eighteenth century is shorthand for a period conventionally defined as roughly from 1660 to 1830 in Britain, though it is often used for somewhat shorter periods. The primary focus of this article is the period from 1660 to 1790.
3. As epitomised in the creation of a new journal, *Celebrity studies*, in 2010. For the celebrity as fundamentally a contemporary phenomenon, see Rojek (2001, 16, 19, 28).
4. Lilti (2017).
5. Cowan (2017), Wanko (2011), Tillyard, (2005, 61-62, 69), Kleinberg (2011, 393-397), Rublack (2011, 401-402).
6. *Oxford English Dictionary* (2006, s.v. “celebrity”).
7. For Hobry, see McMahon (2004, 67-78). For Blandy and Jeffryes, see Gonda (2001).
8. For Malcolm, see Hitchcock and Shoemaker (2006, 121-130). For the Hogarth portrait, see Uglow (1997, 232-233).
9. For Rudd, see Andrew and McGowen (2001). For Dodd, see Howson (1973).
10. White (2004b), Spraggs (2001, 163-170). Similarly, Claude Duval (d. 1670) “remains more a figure of literary invention than of history”: White (2004a).
11. Griffiths (2004), Todd, Spearing (1994, x-xv), Ungerer (2000), Anon. (1662).
12. Suzuki (2006, x), Faller (2004).
13. Shoemaker (2006). Full text editions of both the *Ordinary’s Accounts* and the *Old Bailey Proceedings* are available online at Hitchcock et al. (2018).
14. *Daily Advertiser* (29 January 1777), *Gazetteer and New Daily Advertiser* (26 February 1777).
15. Rickard (2001, 9-11).
16. Richetti (1969, 34-35), Hunter (1990, 321). More generally, see Stauffer (1941) and Mascuch (1997).
17. Hitchcock et al. (2018, *Ordinary’s Account*, September 1724, OA17240904), Defoe (1724, 50), Hitchcock, Shoemaker (2015, 92-93).
18. Skirboll (2014, 165, 195, 202), Holmes (2004, xvii-xviii), Defoe (1724, 31-34), Anon. (1724).
19. Anon. (1750b, 25-31), Anon. (1750c), Anon. (1750a, 53), Hitchcock, Shoemaker (2015, 201-204).
20. Anon. (1773b), Anon. (1773c).
21. Rickard (2004), Anon. (1790c, 29), Anon. (1790b), Anon. (1790a, 2-3).
22. British Library, London (thereafter B.L.), Add Ms 10117 Thomas Rugge, “Mercurius politicus redivivus”, vol. 2, fol. 73v.
23. Anon. (1750c), *London Evening Post* (13-15 September 1750), *Gentleman’s magazine* (1750, 390).
24. *Public Advertiser* (2 June 1774), Anon. (1774b, 12).
25. See also *The Times* (20 September 1788).
26. Rickard (2001, 11), *Public Advertiser* (28 and 29 December 1776).
27. Todd and Spearing (1994, xxx), Latham, Matthews (1970-83, vol. 124, 15 April 1664).
28. Andries (2010, 86), *Weekly journal or British gazetteer* (7 November 1724).
29. Anon. (1774b, 15-18), Anon. (1774a, 16-20, 28).
30. West (2010, 219), Pointon (1993, 2-3), George (2004, 191).
31. British Museum, London (hereafter B.M.), 1867,0309.819, “The true originall Picture of Mary Carleton also called by the name of the German Princess as it was taken by her own order”, 1663. M. Carleton (1663, frontispiece), J. Carleton (1663, 41), Chalmers (1992, 181).
32. Paulson (1971, i, 135-138).
33. B.M., 1851,0308.594, “Portrait of John (‘Jack’) Sheppard”, 1724.
34. National library of Australia, Canberra, Rex Nan Kivell collection, NK13, “Portrait of George Barrington”, 1785, Garvey (2008, 49).

35. B.M., 1894,0611.79, “An exact representation of Maclaine the highwayman robbing Lord Eglington on Hounslow Heath on the 20th of June 1750”, 1750. B.M., 1932,0330.26, “Barrington detected picking the pocket of Prince Orlow”, 1790.
36. Todd (1987, 73), Latham and Matthews (1970-1983, iv, 163, 177), B.L., Add Ms 10117 Thomas Rugge, “Mercurius politicus redivivus”, vol. 2 fol. 73v.
37. Anon. (1693c), Anon. (1693b, 23-24).
38. Sugden (2004), Skirboll (2014, 194).
39. Emphasis in original.
40. Defoe (1724, 31, 34), Anon. (1724, 18).
41. Skirboll (2014, 195), Anon. (1750b, iii), Garvey (2008, 27), *The Times* (27 June 1788).
42. Hitchcock *et al.* (2018, trial of John Rann *et al.*, October 1774, t17741019-50).
43. *Gazetteer and New Daily Advertiser* (4 September 1790), Lambert (1930, 129), Hitchcock *et al.* (2018, January 1783, o17830115-1).
44. Hitchcock *et al.* (2018, trial of James Whitney, January 1693, t16930116-26), Anon. (1693a).
45. Hill, Powell (1934, iii, 38, 11 April 1776). Rann’s fame lasted into the 1820s: McKenzie (2012, 256-257).
46. Hitchcock, Shoemaker (2015, 202-4, 271), Anon. (1774b, 10), Hitchcock *et al.* (2018, trial of John Rann *et al.*, December 1773, t17731208-1).
47. *Gazetteer and New Daily Advertiser* (26 February 1777), *Morning Chronicle and London Advertiser* (27 June 1777), Anon. (1790c, 35).
48. See also Richetti (1969, 34-35).
49. See also Ellis (1996, ch.1).
50. Carter (2005, 156-173), Dixon (2015, ch.7).
51. Hitchcock *et al.* (2018, *Ordinary of Newgate’s Account*, October 1750, OA17501003), Anon. (1750c), Anon. (1750d).
52. Carter (2005), Dixon (2015, ch.7).
53. Garvey (2008, 18), Anon. (1790a, 90), *Caledonian Mercury* (21 November 1789).
54. McKeon (2005).
55. Anon. (1774b, 24-27), Anon. (1774a, 26-29), Anon. (1774c).
56. Nussbaum (2005, 148-168), Engel (2011), Dabhoiwala (2012, 296-313).
57. Andrew, McGowen (2001, 132, 209).
58. See also Knights (2010, 85-122).
59. See also Shoemaker (2009, 18), Shoemaker (2006, 398-403). The term “overperformance” comes from Walter (2009, 100).
60. Sugden (2004), Mackie (2009, 26-34 and ch.3), Sharpe (2004, ch.5), Spraggs (2001, ch.18-19).
61. McKenzie (2007, 252-255), Godfrey *et al.* (2010, 10-13).
62. On this see Gatrell (1994).
63. McWilliam (2007), Davenport-Hines (2004), Wood (2012).

ABSTRACTS

This article investigates the rise and fall of the criminal celebrity in London between 1660 and 1790. It explains how, through the dramatic expansion of print culture and the rise of sensibility, a small number of highwaymen, thieves and a bigamist were able to seek and receive substantial

public sympathy, despite widespread concerns about the extent of crime in London. However, in the early nineteenth century, changing attitudes towards crime and new penal practices led to the disappearance of this type of positive criminal celebrity. These findings contribute to our understanding of both changing attitudes towards crime and the wider history of celebrity.

Cet article propose une enquête sur la célébrité criminelle à Londres entre 1660 et 1790. Il explique comment au travers de l'expansion spectaculaire de la culture de la presse écrite et l'émergence de nouvelles sensibilités, un petit nombre de bandits de grand chemin, de voleurs et un bigame ont pu rechercher et obtenir une importante sympathie du public, en dépit des inquiétudes généralisées concernant l'importance de la criminalité à Londres. Toutefois, au début du XIX^e siècle, l'évolution des attitudes à l'égard de la criminalité et les nouvelles pratiques pénales ont entraîné la disparition de ce type de célébrité criminelle positive. Ces constats contribuent à la fois à notre compréhension de l'évolution des attitudes à l'égard de la criminalité et, plus largement, à une histoire de la célébrité.

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Crime and Violence in Brazilian History

A Century-Long Trend in Minas Gerais State (1830-1929)

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Crime in the long-term historical trend: quantitative approaches

- 1 Historical crime studies have often relied on quantitative approaches that reconstruct long-term crime rates. A landmark in the 1970s was the creation of the IAHCCJ (International Association for the History of Crime and Criminal Justice), that brought together researchers from several countries whose works have established new approaches for trends on crime over time. The most important finding regarding Europe was the drastic fall in crime rates in the last centuries.¹ Historical crime trends have been empirically observed in different regions and countries, showing a drop in interpersonal violence expressed in homicide rates (Gurr, 1981, 1989). The extensive literature on the subject also detects changes in crime patterns with the decline of violent behaviour in long-term trends. Generally, the changes in criminal patterns tend to supplant predominantly spontaneous violence, closely associated with notions of honour and strong ritual content, by more premeditated aggression, involving calculation and purpose (Spierenburg, 1994). Both phenomena reveal important changes in forms of social interaction and use of violence, which in turn indicates a progressive control and ordering of social space and the pacification of daily life by internal and external mechanisms of self-control of violent impulses.
- 2 The international historiography on criminality has come to rely heavily on quantitative approaches, to a large extent by the archival work of organization and identification of judicial collections. Long-term statistical treatment of the sources allowed crime to become a theme in social history, making it possible to criticize the

limitations of an essentially legal history, and brought to light a series of themes related to popular culture, gender, honour and patterns of social relations.² As James Sharpe points out, “quantification must be limited in its ambitions, extremely cautious in its methods [...] this is not to say that, where appropriate and possible, it is not an essential exercise, and that it cannot yield some important conclusions” (Sharpe, 1999, 28).

- 3 The main debates can be grouped into two. First, the empirical observation of the fall of interpersonal violence over extended periods of time, which roughly encompasses the process of construction of modern states. Second, the explanation of the changing trend in light of the civilizing process theory, as conceived by Norbert Elias, in terms of long-term changes in social configuration that led to profound cultural changes towards self-control of aggressive impulses in daily life (1993).³ Approaches anchored in statistical reconstruction of violent crime over long periods have, therefore, advanced theoretical discussions in a contrastive way through empirical evidence that elucidates long-term processes and can only be observed from a broader time perspective.
- 4 The last two decades have seen a rise in the number of researches on crime and public order institutions in Brazil. There is a consolidation of the theme that was previously absent in our historiography. Several studies, mainly focused on the nineteenth and twentieth centuries, have given us a better understanding of the police and justice actions and practices of crime and punishment in different regions. Nonetheless, larger quantitative works are still not usual, given the scarcity of reliable numbers and the strenuous work to build databases. In Latin America as a whole, interest, research and dialogue between researchers working on the topic is also growing.⁴
- 5 Criminality is evidently a statistical concept, referring to rates constructed from the sum of events over a given period in relation to a given population. Nonetheless, this is not the only possible approach for crime studies. There are other types of historical sources, such as debates in the press or in parliament, or the construct of “criminality” discussed in the juridical field, that can shed light to the theme. Obviously, quantification does not exhaust itself as a data-producing tool but, on the contrary, demands an even more meticulous analysis effort to understand data and trends considering the historical context and its conjuncture.
- 6 Generally, when trying to reconstruct empirical evidence of crime to put it in a long-term perspective, we deal with two issues. The first refers to theme relevance, the second to the feasibility of observing it in this perspective. The theoretical question that permeates this debate is what we investigate when reconstructing crime rates to identify variations over time. The most accepted answers, which may or may not be congruent depending on the approach, are: 1) through quantification of crime, we are elucidating the action of the mechanisms of social control and its effectiveness throughout space-time; 2) the decrease or increase of these rates indicate changes in patterns of social conduct and acceptance of violence. Imbrications between the two phenomena is a problem found in the sources used, the lawsuits filed in court or police records. Hence why many authors emphasize that what we have access to is the action of the justice system, being difficult or even impossible to determine how much the data collected would correspond to the phenomenon of violence as it actually happened. This implies that the contribution of historians to a history of violence using court registers remains problematic.

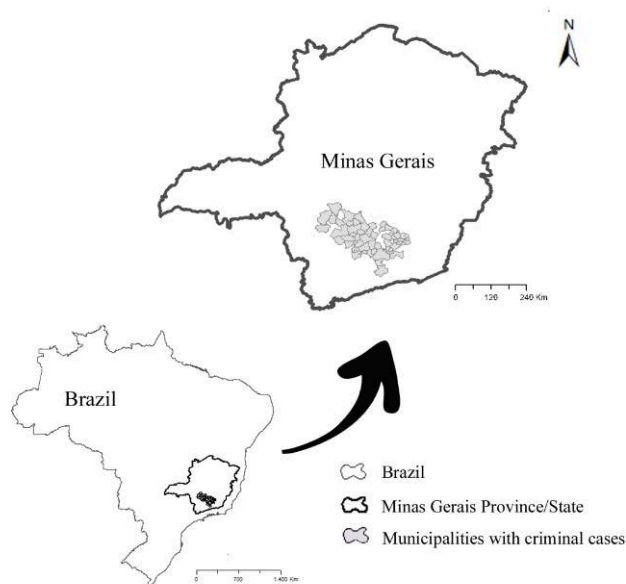
- 7 Criminal justice sources provide us with the data needed to assess state action and its ability for social control through increasing monopolization of the capacity to legislate and to do “justice”, that is, to legitimize its authority over a given territory. Moreover, if we take both processes as complementary and correlated, we may think that lower homicide rates or violent crimes may indicate effective control of social spaces, establishing “peaceful” forms and resources for conflict resolution. When trying to observe drastic changes in crime levels, a significant increase in homicides or crimes against property, for example, it is necessary to control other variables that allow us to distinguish an increase in criminal action from an increase in control and execution of these actions. Legal changes that imply greater criminalization, expansion of courts and police apparatus are indicators that allow us to control results and find out what is really going on.
- 8 When analyzing the data the first questions that come to mind are: can we trust records that may result from intentional changes made by the institutions responsible for carrying them out? Can we rely on files that may represent a random and uncontrolled sample of what has been recorded? As V.A.C. Gatrell and T.B. Hadden (1972) state, we must start from the idea that a fall in homicides, for example, if real, must be supported by other circumstances that would explain it, such as an increase in number of police or surveillance apparatus, the introduction of public lighting, presence of magistrates and courts in the area and so on. Even if we accept that, as postulated by interactionist approaches we cannot speak of increasing or decreasing crime; we may still observe the process of change in the justice system and construct hypotheses about its possible consequences. However, these are exactly the arguments we believe can be challenged by the evidence brought by historical sources.⁵
- 9 To the question of what we are measuring, whether variations in criminal practices or the capacity for control reflected by the increase in judicial production, we are convinced that the answer is both. Simply because it is impossible to separate one phenomenon from the other, crime is something produced by the act of criminalizing. However, having dismissed the more innocent and simplistic conceptions about it, we believe it is possible to control the data in order to isolate the effects of contamination from one to the other. An increase in the rate of violent crime does not necessarily reflect an increase in the ability to punish it. In the period under review in this study, in the absence of effective police forces, most cases were initiated by complaints from the victims and witnesses reporting to diligent inspectors, who were unable to exercise effective preventive control over their areas of action. As we will argue, it is precisely the quantification that allows us to determine what we are measuring.⁶

Judicial sources and the reconstitution of long-term crime trends

- 10 The first half of the nineteenth century represents in Brazil’s political history the period of construction of the nation-state. A long road had to be traversed before the consolidation of the Brazilian imperial state, already established in the second half of the nineteenth century. The crisis of the colonial system combined with the Portuguese court transfer will undergo an accelerated process of political-administrative restructuring. The independence and subsequent periods brought the effort to construct a centralized administrative machine capable of ensuring the monopoly of power and territorial integrity.

- 11 When compared to Europe, the consolidation process of the Brazilian nation-state was fast. In most of Western Europe the construction of national states took centuries, through a slow accumulation of forces, conditioned by internal evolutionary transformations to territorially circumscribed social formations (Elias, 1993, ch.2).
- 12 The predominance of an elite of slave owners whose interests were identified with the interests of the state was decisive for the success of constructing a centralized national power. The central themes that occupied the foreground in the national political arena were questions of national unity and reorganization, expansion and strengthening of the bureaucratic machine, largely inherited from the colonial period and necessary for consolidating the new power arrangement.
- 13 The establishment of a central power, capable of exercising a monopoly of jurisdiction over the national territory, took place through a continual process of struggle and negotiation within certain agencies and social groups of regional bases. The conquest of the “legitimate monopoly of the use of violence and taxation”, the application of justice and social order, develops in a social framework whose dynamics is extremely ambiguous (Elias, 1993).
- 14 In nineteenth century Minas Gerais, the administrative structures were already in place, due to the early establishment of the metropolitan government machine in its territory. The development of trade around the mining economy led to the implementation of the administrative machine, accelerating the territory occupation process. Urbanization, trade and administrative action, as well as sociability patterns and culture, were brought from the metropolis and marked its social configuration (Souza, 1985; Holanda, 1960; Iglésias, 1974). These municipalities were some of the most important in the central mining region and corresponded approximately to the district of Rio das Mortes area, which, at the beginning of the nineteenth century, was the most inhabited region of Minas Gerais. In 1808 it had 154,869 inhabitants out of a total population of 433,000. The number of enslaved workers totalled around 38,000. Throughout the century the region was consolidated as a supplier of food to the coastal market, since its privileged geographical position made the region the route through which all goods circulated. In this way, these villages became centers for the redistribution of imported products brought from Rio de Janeiro. Throughout the 1800s, the region continued to be an important centre of economic, political and administrative activities in the Province. It is important to note that the region presented some dynamic and populated centres in its eastern side as well as less developed areas in the west and is a representative sample of a broader scenario.

Map 1. Brazil, Minas Gerais State/Province and the municipalities with criminal cases, 1830-1929



Documental research and database: Ivan de Andrade Vellasco (UFSJ) e Cristiana Viegas de Andrade (UFSJ). Map Source: IBGE Digital 2010. Cartography and Geoprocessing: Cristiana Viegas de Andrade.

- 15 The serial character of the document allows the analysis of crime trends over time and space. However, two issues require discussion: unrecorded crimes and missing documents. For those investigating crime in history, the problem of the “dark figure of crime” is doubly posed (Biderman, 1967, 16-33). On the one hand, as with any crime statistics, we must assume a number of crimes are not reported or prosecuted by the justice system; on the other, the lack of compiled statistics and the presumption of unpreserved records.

Unreported crimes

- 16 The existence of unreported crimes afflicts both past researchers and those who study current data. What should be made clear is that the database presented here allows for a broader understanding of registered crime, not all criminality. Unreported crimes can be selective, or not, according to the social practices adopted by a specific group. Therefore, in order to study crime using the database presented here one should bear in mind the importance of these practices. In this regard, and for the reasons stated, we are on firm ground, at least in relation to violent crimes. Let us then return to the question of hidden crime, not prosecuted by the legal system.
- 17 We have already discussed the eighteenth-century reality in a less distorted way, since it does not carry biases caused by deliberate security policies or problems derived from statistical manipulations. In addition, because the trends in this research were reconstructed from a massive number of cases reporting very different situations, many of the problems presented can be overcome.⁷

- 18 In the suburbs of Arraial do Brumado, and the parish of Congonhas, surrounding the village of Queluz, João Africano, a free black man who lived in the property of Ensign Felix Pinto Ribeiro, was murdered. His body was found on 18 May 1828, in the garden of his house. It was missing his head and right arm. According to the witnesses, the accused was a black man, a slave owned by Carlos de Tal, a resident of Lagoa Santa, whose name was unknown and who had escaped from Felisbino's troop and came from the region of Sabará. He was on his way to Rio de Janeiro. The accused was found with clothes and other belongings of the murdered man, suggesting that the defendant had killed João Africano in order to rob him.⁸
- 19 In March 1910, the corpse of Antônio Ribeiro was found at Raimundo's Farm, in the district of São Sebastião do Curral. The corpse was already partly decomposed and mutilated by the action of pigs, dogs and vultures. On the side of the body was a deep stab that according to witnesses was made by Miguel José da Silva over a title of a house that Ribeiro demanded from him.⁹
- 20 On 29 August 1879, at the Arraial do Espírito Santo do Itapeçerica, in the city of Tamanduá, Clemente José de Souza was punched and stabbed to death by José Coelho Fernandes. According to witnesses the crime was motivated because the murdered man set fire to the defendant's fence and offended him verbally. Clemente's corpse was found by Francisco Carneiro Xavier in the Itapeçerica River on 22 September of the same year.¹⁰
- 21 In November 1874, the corpse of the slave Manoel was found in the Rio das Mortes, under the Old Bridge of Miranda, near the farm of Celestino José de Almeida. He had been tied up, beaten and pierced on his face and neck. Found eighteen days after the crime, his body was already decomposing. According to witnesses the crime's motive was a bundle of clothes found by the victim, which belonged to a slave of the farm owner.¹¹
- 22 We believe these examples, varying in time and space, show some important aspects for understanding the social configuration and its implications. A great number of cases begin with the location of a corpse, sometimes by animals. It is interesting to note that even if these are the bodies of foreigners, they were often identified by witnesses who had clues and information that allowed justice to suspect and indict those responsible. In the villages, even the most urbanized ones, in the parishes and districts, anonymity is not very well accepted, because daily community dynamics imply the inexistence of strangers. Foreigners, then, are immediately identified and observed through the places. Thus, the possibility of unreported disappearances, the concealment of corpses and actions in secret are greatly reduced. The systematic reading of the documentation, in addition to information gathered from municipal judges, justices of the peace and correspondence of police authorities, reinforces the notion that the detection of murders and violent physical offenses by justice was very close to reality.
- 23 Douglas Hay's argument about the "accidental nature" of criminal records should be considered here (1982). He argues that the indictments that initiated legal proceedings were largely motivated by grievances and that the volume of proceedings is unaffected by a deliberate policy of social control and the type of judicial action we understand today. His conclusion comes from the analysis of source origins. For similar reasons, we argue that the judicial sources of the nineteenth and early twentieth century Brazil, which we have been working on for years, are more reliable than any of the official statistics produced. First, we need to consider that the primary activity of the control

apparatus over the long period analyzed was to contain violence. This information often appears in official correspondence between justices of the peace, magistrates and provincial secretaries and is also predominant in the provincial and ministerial reports. Secondly, the legislative apparatus has had little to no change in the course of the two centuries, leaving out the possibility that changes in the justice system may have influenced variations in its action in relation to different types of crime. We are far from problems related to the debate of the processes of criminalization caused by interests of the bureaucracy itself and control agents. Distortion usually caused by the authorities themselves in order to camouflage or inflate statistics to demonstrate effectiveness is of no concern, simply because there was no understanding the phenomenon was the responsibility of the direct action of the authorities, nor a result of security policies promoted by state organs. The same holds true for fluctuations caused by changes in institutional practices derived from security and control policies in response to demands from public opinion, because they do not occur in almost the entire period. Third, the analysis of a voluminous set of criminal cases in different localities and covering long periods verifies most dealt with registration and the control of violence. Modernization theories, which attempt to explain the reversal observed in judicial records between violent and property crimes in nineteenth-century Europe are not the reality observed.

- 24 From a total of 8,176 cases registered between 1830 and 1930, 4,377 were the result of justice action, the work of its agents, prosecutors, judges and inspectors. The rest were registered by the victims; or, in the case of corpses, reported to the authorities by those who found them. Witnesses are not only those who saw the crime, but also those who heard about them, reported the occurrence and described the physical and psychological characteristics of the defendant. It shows the inexistence of anonymity in social relations. Moreover, outsiders were arrested with the collaboration of inhabitants. This does not mean that the crimes were investigated, but they were reported.

Missing records

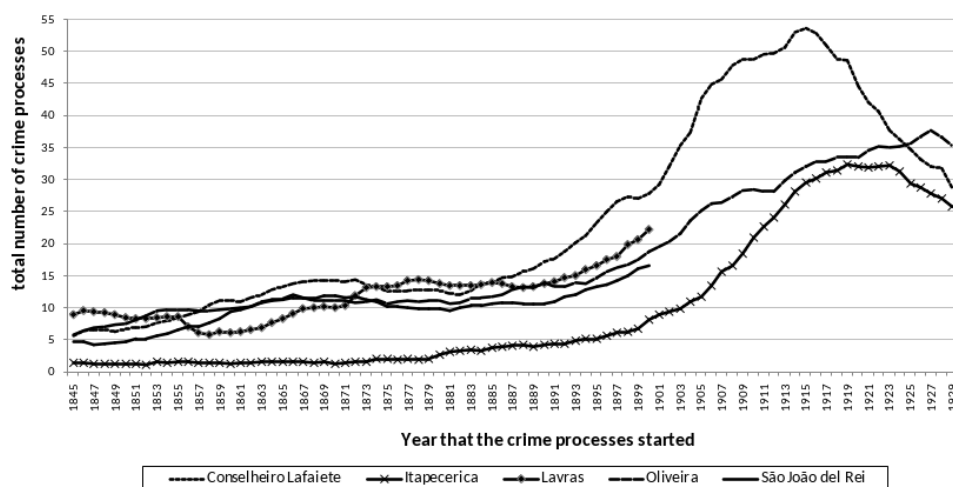
- 25 The second issue to be discussed is the representation of documents in face of losses in the document collection. To verify it we observed trends in the volume of criminal processes over time, for the different forums (Figure 1).
- 26 Most of the curves make a similar upward trajectory, with similar growth patterns. This leads to two conclusions. The first one, of a methodological nature, provides us with a relative certainty about the collections' representativeness; although they might have suffered losses in specific periods, they maintain a quantitative consistency when the volumes are compared over time. The pattern repeated in the different collections reveals a similar long-term trend, suggesting that crime in the populations studied reflected changes in society. The second conclusion to be drawn from Figure 1 is more hypothetical. It is that by presenting similar patterns in the volume of processes these curves' consistency suggests that the different localities, reveal a movement that reflects both the increase in judicial production (consistent with the impact of more general changes in the patterns of social control and law enforcement, such as the expansion of justice administration and action of police officers and their scope) as well as the projections of demographic expansion in the time-period observed.

27 In addition to crime processes, we also have imperial statistics that provide information about crime contained in reports of the Justice of the Empire and reports from the provinces. Unfortunately, until 1843 the reports of the Justice Department of the Empire presented only statistics related to the court. From then on, there are sparse statistics by province, which do not allow direct comparison with our sample. However, a map contained in the folder report of 1849 shows that homicides and physical offenses in Minas Gerais, in the year 1848, summed a total of 85 cases in the whole province, while the number registered in our database is 23, accounting for just over a quarter of the total (27%). Although no definitive conclusions can be drawn from these figures, we can say that the number of criminal records in relation to the respective populations collected in this research is higher than that registered by the Justice of the Empire.¹² If we assume, then, that the data collected by the court was rather flawed, and that much of the information was not passed on to the central administration, the set of crime cases studied here presents a more complete picture of the scope of the judiciary's work than the imperial statistics.

Figure 1. Total number of criminal cases by year of occurrence (15 years moving average). Conselheiro Lafaiete, Itapecerica, Lavras, Oliveira e São João del Rei, 1845-1929

Image

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Source: Database of Crime Processes of Conselheiro Lafaiete, Itapecerica, Lavras, Oliveira e São João del Rei, 1800-1939.

28 Regarding Minas Gerais provincial reports, there are ten statistical maps with the totality of crimes judged by juries for particular years between 1836 and 1855. These present only part of the judgements that occurred, because they exclude those adjudicated by the judges.¹³ Another problem is the presence of only tried cases, excluding registered crimes that were not judged. Even with these restrictions, a comparison is possible with a portion of the documents contained in our database. However, the geographic identification of the events poses a problem. Crimes of different municipalities and districts are grouped according to the term or municipality where the jury met to deliberate the verdict, not the place where the crime was

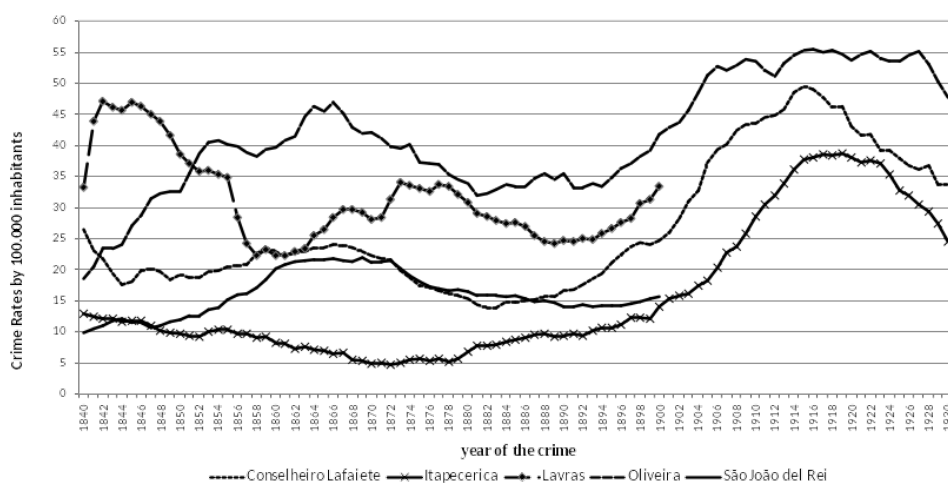
committed. The impossibility of disassociating the totals listed by municipality or district makes it impossible to compare the data referring to the crime cases and those of the provincial reports. The only statistical document with the quantification of crimes called “List of crimes committed in the State and reported by the police authorities during 1911” was found in the Police Chief’s correspondence of the Republican period.¹⁴ In this publication, there was data from Oliveira about two crimes; Itapecerica regarding one crime; and Queluz about 18 crimes committed during 1911. Compared to our records from the same year we have, respectively, 22, 40 and 45, out of a total of 107 only in these three municipalities, with 91 physical injuries. The Police Chief’s Map shows a total of 147 crimes across the state. Again, the study data is more robust than the figures in the official statistics when found.

- 29 The uniformity in the increasing pattern of recorded crime cases together with the greater complexity and detail in the information given by these documents provides firm ground to the use of criminal processes to study long-term criminality. We work, therefore, from five large “skeletons” that, although incomplete, allow us to propose and investigate more comprehensive models that provide a better image of the once-existing “body”.

Figure 2. Crime Rate (15 years moving average). Conselheiro Lafaiete, Itapecerica, Lavras, Oliveira e São João del Rei, 1840-1930

Image

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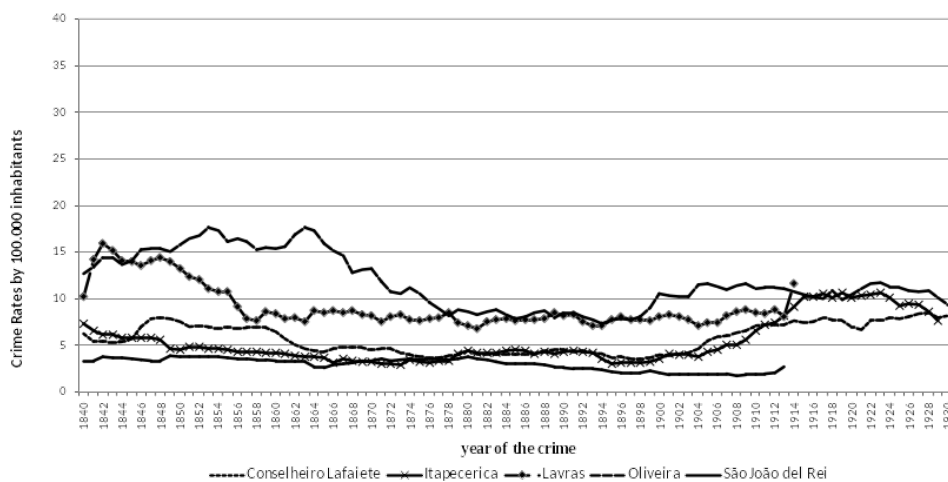


Source: Database of Crime Processes, Cunha Matos (1981), and Censuses of 1872, 1890, 1920 and 1940.

Figure 3. Murder and attempted murder rates (15 years moving average). Conselheiro Lafaiete, Itapecerica, Lavras, Oliveira e São João del Rei, 1840-1930

Image

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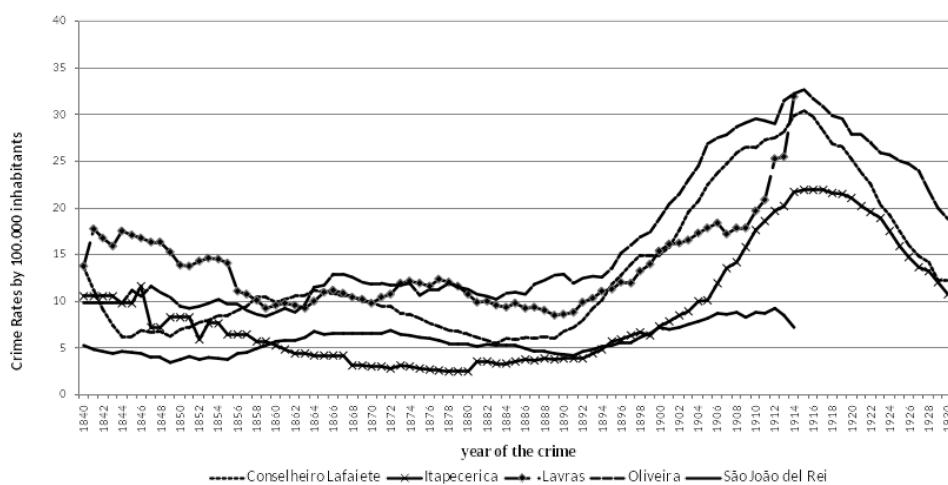


Source: Database of Crime Processes, Cunha Matos (1981), and Censuses of 1872, 1890, 1920 and 1940.

Figure 4. Bodily injury Rate (15 years moving average). Conselheiro Lafaiete, Itapecerica, Lavras, Oliveira e São João del Rei, 1840-1930

Image

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Source: Database of Crime Processes, Cunha Matos (1981), and Censuses of 1872, 1890, 1920 and 1940.

30 Finally, the reconstruction of the demographic data allows us to calculate the annual crime rates for each Forum, within their geographical limits of action, as shown Figures 2, 3 and 4. Interpretation of this data implies the analysis of other sources to understand variables that would explain them. Thus, the extensive correspondence exchanged between judges, delegates and local authorities, and the province's presidency, secretariat of justice and police chief, highlighted evidence of different patterns according to geographic place of the crime, and peaks of violence.¹⁵ Next, we will analyse the figures above using information from the correspondence and focus on the Tamanduá village.

Violence, crime and justice in the village

31 In 1826, the village of Tamanduá (now called Itapecerica), 24 leagues northwest of São João del-Rei, was the centre of a vast area divided into four districts. It included 38 villages with a population of approximately 27,000 inhabitants, a third of which were slaves. At that time, it was a region of agriculture and subsistence, with some surplus being traded in the villages of Sabará, Pitangui and São João del Rei. In this period Tamanduá had a size of 486 square leagues which was divided between the districts of Tamanduá, Campo Belo, Bambuí, Espírito Santo do Itapecerica, Formiga and Piuí. Its territory had paths that connected the province of Goiás, the backlands of Paracatu and the village of Pitangui.

32 The quantitative analysis of the data allowed us to observe long-term aspects and the spatial distribution of crime in different categories. The documents cover the period from 1830 to 1929 and presented different aspects of the crime, such as type of weapon used and its motivation; and show information about the courts, such as conviction fees and jury system, among others. Here, we will look at the crime rate over a century and its spatial distribution. We disregarded records from previous decades for the small numbers which clearly indicated a documentary loss when compared with criminal maps of the provincial reports.¹⁶ To calculate crime rates (Figure 5) it was necessary to reconstruct population data for each region by calculating exponential growth rates (Table I).

Table I. Population and exponential growth rate. Itapecerica 1826-1940

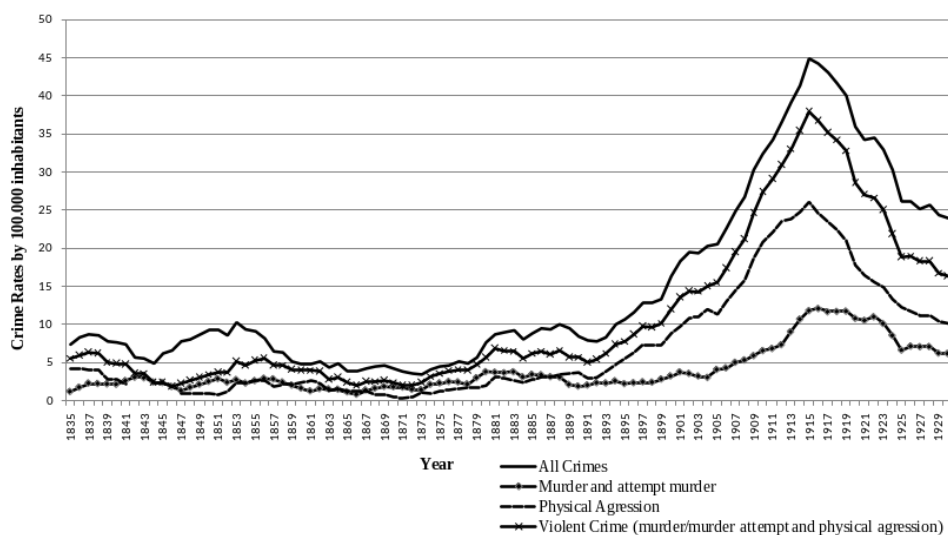
Year	1826*	1872**	1890**	1920**	1940**
Population	14,637	44,019	61,523	99,102	120,246
Exponential Growth Rate a year		2.4%	1.9%	1.6%	1.0%

Source: *Cunha Matos (1981); **Censuses of 1872, 1890 and 1940.

Figure 5. Crime Rate according to type of crime. Ten years moving average. Itapecerica, 1832-1930

Image

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Source: Database of Crime Processes of Itapecerica, 1800-1939.

- 33 The results were surprising in two aspects: first, already expected, the high rates recorded in the first decades, which began to decline in the late fifties and remained more or less stable for two decades (Figure 4); second, the astonishing upward curve starting around 1880 and rising in the following decades, with violent crime reaching rates of 80 per 100,000 inhabitants in the second decade of the twentieth century.

The routine of policing and justice

- 34 To analyse the data some background information is necessary for context. In November 1830, the justice of the peace for the curate of Campo Belo sent a letter to the president of the province.¹⁷

I came here to request your Highness as the justice of the peace of the parish of Bom Jesus de Campo Belo, where unfortunately I work, it has been impossible to ban the scorn that has been made daily against the forum, the citizens and the law. There are daily games, riots, robberies, murderers, and they happen so often [...] that there were three last month [...]. On November 16th at 8am three young friends of Rogério Ferreira de Oliveira enclosed João Soares Roiz outside the churchyard, almost beating him to death [...]. But the criminals were not put in jail as it happens in many other cases here since the officials who were supposed to work for the justice are of the same ilk of the bandits, always finding a way to alert and set the criminals free [...]. I cannot even dare to use prisons and the law to avoid the worse because the delinquents [...] are always armed and prepared, working in groups. For that reason, I would like to make an urgent request of at least two honest soldiers who would move here, and when needed some more. Being that the bandits that do not use prohibited arms are just a few [...]. This is the only way I find to the maintenance of the law, order and peace.¹⁸

- 35 Together with the host district, Tamanduá, Campo Belo, Espírito Santo do Itapecerica and Formiga show the highest crime rates over the century. The situation described by

the letter reproduced above can be seen in other correspondence sent by other authorities from that region. Armed men confronting each other in daylight in the squares and streets of the villages; impunity spread due to complicity with guards and the justice inability to assert its authority. Travellers who crossed the border of the village towards Goiás and Paracatu described their experiences drawing the same picture of disorder and violence.¹⁹

36 The village was the last one on the west side of the Comarca, and provided a gate and passage to the Sertão, an immense territory that lacked state control. The administrative arm did not reach these regions of scarce population, places that attracted armed bands and fugitives who, from there, easily put themselves beyond the reach of the law.

37 In 1838, a petition submitted to the justice of the peace of Santo Antônio do Monte parish and addressed to the president of the province showed the same problem. It requested measures by the authorities to control violence:

Having your lordship passed the rod of this judgment to the substitute judge, and then to another deputy, the murderers José Gonçalves Leonardo, Antônio da Costa Paes, José Manoel da Silveira appeared insulting the public without any respect to the law or the authorities. And so, the officers require your landlord as the current judge to send convenient force in order to punish them because they are afraid to lose their lives in the hands of such bandits that are publicly armed.²⁰

38 Again, a complaint about armed bandits acting freely, out of any control of the law and the inexistence of armed forces able to stop them. The lack of any documentation of justice attesting to the arrest and trial of criminals linked to bands and armed bands indicates that these groups had been out of order and completely unreached by the law in this region for a long time. Of the total number of existing cases, 79% deal with crimes against the person, from which 27% refer to homicide or attempted murder (mostly, practiced between acquaintances, neighbours and equals).

39 The arm of the law did not seem to reach the worst challenge to the order: the armed bands. Among all documents these episodes are rare. Crimes resulting from disputes between acquaintances and family members, involving drink, jealousy and betrayal make up nearly 70% of the entire sample. The data seems to confirm that the primary function of local justice in the period was to control conflicts between those who came under their jurisdiction because they were within reach and had no means of escaping, common men and women. Such is the case of Felicidade Umbelina de Jesus, who, in August 1829, ran from the defendant Manoel Simpliciano, who was making a false statement. She fell, injuring her arm. Following the incident, she filed a lawsuit against the defendant.²¹ Maria Antonia who in 1832, in the Camp of Our Lady of the Candles, appeared before the justice of the peace for a forensic examination, accusing Jose Antonio of causing her injuries.²² Cândido Ferreira Ribeiro, who, in 1849, sought justice and denounced Vicente Ferreira for the abduction of the slave Joaquim Crioulo and who was taken by officers to São Bento do Tamanduá's jail.²³

40 Justice represented an instance of control and mediation of conflicts that constantly arose among ordinary people. Those who, for lack of personal resources to act on their own, shared an agreement about rules, forming a space for “the poor and respectable man to make his conflicts public” (Aufderheide, 1976, 275). This idea is reinforced by the fact that crimes involving property, theft and robbery represent only eight per cent of the total, including gambling disputes, small sums, domestic animals, destruction of

fences and so on. Contrary to the crime pattern that would characterize modernization, where crimes against property would predominate in detriment of interpersonal violence, we see — and this holds for the entire period of about a century — the persistence of violence between equals, strongly marked by notions of honour and affirmation of masculinity (Sharpe, 1996). The authorities' day-to-day effort seems to be to control conflicts between those within their reach — men and women with address and occupation title — and to legitimize themselves by their ability to impose order and punish the most extreme forms of violence. They did so with virtually no significant resources, which were only requested from the central authorities in cases of armed bands or extended conflicts, and rarely for criminal cases (Velasco, 2007).

41 In 1837, in the village of Formiga, the justice of the peace wrote:

I have found many embarrassments [...]. It is almost impossible for me to be able to carry out my duties because of the lack of anyone who helps me in the tasks that are in my charge. I do not have police guards able to catch criminals who infest my district. In order to avoid any disorder or turmoil [...] the police are increasingly diminished for lack of executors [...] and to end similar attacks I request to your Honour 6 soldiers and one commander, only that will allow me to maintain the peace and tranquillity of the inhabitants of this district, and thus will prevent the murders that are perpetrated, if not all at least in part.²⁴

42 The village of Tamanduá shows many different conflicts. Disputes between judges, sometimes involving the National Guard and pedestrians; complaints against justices of the peace and against injustices and arbitrariness; accusations of prosecutors on the “lack of strength of local authorities to restrain the excesses of the criminals”; requests for the suspension of the justice of the peace, all this indicating a bad picture.²⁵ In February 1842, Pantaleão José da Silva Ramos, Judge of Tamanduá, wrote to the president of the Province denying the request for eight soldiers to be sent to São João del Rei:

Secondly, with murders being carried out in all parts of this region, and with this being repeated with audacity and frequency never seen before, justice of the peace demand extra force to be able to comply with the law. Thirdly, the inexistence of a descent jail makes it impossible to apply justice, since prisoners escape very easily, there is only one way to effectively prevent this disorder, it is to keep permanently soldiers here.²⁶

43 There are constant complaints about the absence of the authorities, for lack of appointment or because appointees did not take their posts. In April 1844, Manoel Jacinto, public prosecutor, wrote to the provincial president:

A horrible thing has just happened in this village and it has alarmed everyone. On the 7th of this month at 7 o'clock in the evening, a Portuguese merchant named Manoel Sebastião de Ornelas was murdered, but the murderer was not revealed until now, despite some effort made by the authorities. I think it is my duty to remind your Honour to send the appointed municipal judge, it would be of great advantage to have him here to help get the killer.²⁷

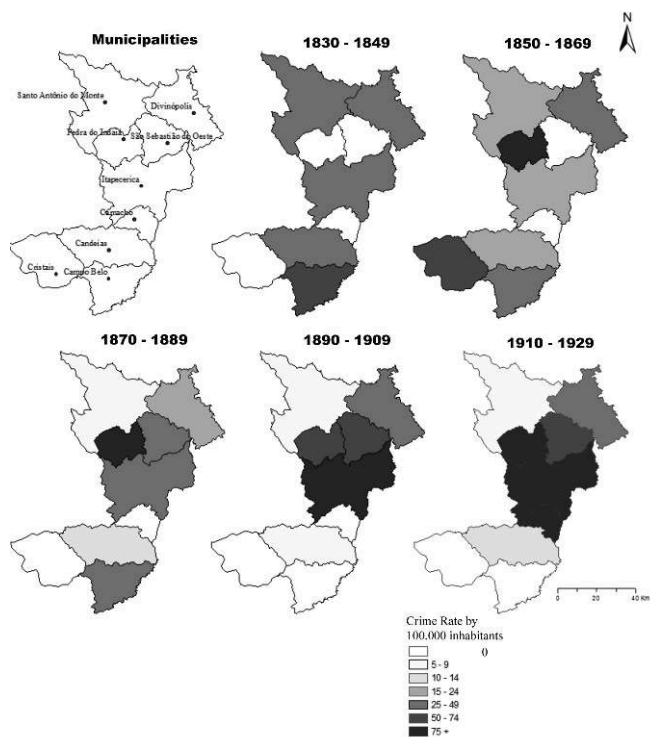
44 However, despite this picture, the police were acting to promote the peace and tranquillity of the inhabitants by controlling the daily murders. The downtrend of crime rates observed from 1852 to 1879 may be indicative of this. Furthermore, the mail between local judicial agencies and provincial authorities between 1850 and 1860 became more regular and secure. Certainly, the Code of Process reform of 1841 produced changes that were reflected in the presented results.²⁸

- 45 Finally, let us analyse the dramatic rise in the final decade of the Empire, and more markedly in the Republican period. Before we tackle this data, we will observe crime and its territorial distribution. Maps 2 and 3 present the crime rates in space and time to observe differences and continuity.

A georeferenced reconstruction

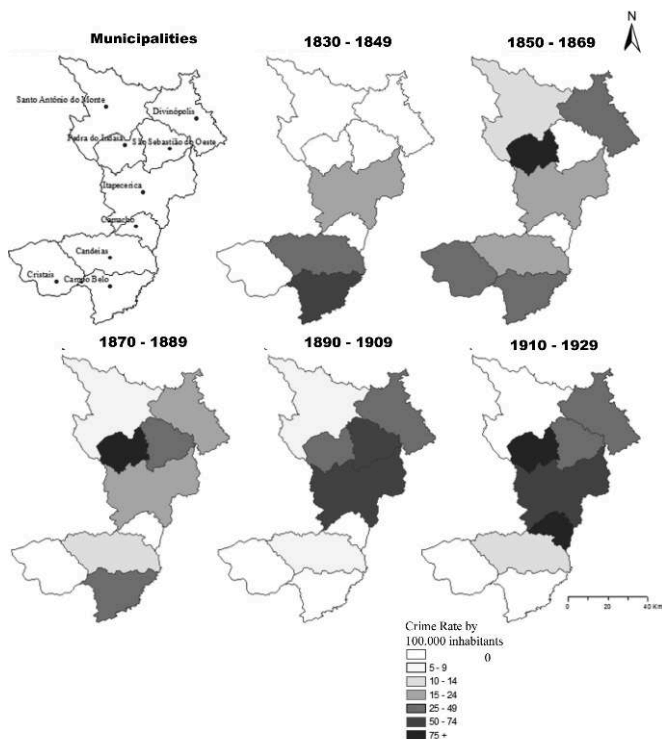
- 46 Georeferencing crime allows a more secure observation of the event. Both maps (2 and 3) show that during the Empire (until 1889) the peripheral areas have higher density, with rates declining throughout the period. Divinópolis, Pedra do Indaiá and Campo Belo show the highest incidence of crime and violence.
- 47 In Campo Belo, crimes were mainly by slaves against masters and slave drivers. Moreover, the documents indicate police investigations to capture convicts and fugitives. In July 1832, the ordinary judge Gregorio Luiz de Cerqueira wrote to the president of the province informing him of his compliance to the ordinance of 11 February, and that he would investigate the denunciation given by Vicente Ferreira de Souza Lobato, commander of the detachment of Indaiá, on murders and robberies the complainant claimed to have been perpetrated by *criollos* in the Prata stream, Bambuí district. Judge Gregorio reported: “I went to the village of Bambuí in a hurry, because it appears to me [...] that in the places indicated by the whistle blower, the messengers who carried the bags from the province of Goiás were attacked”.²⁹ The district of Bambuí bordered Pedra do Indaiá district, entrance to the “sertão,” a territory of robbers and bandits during the first decades. The presence of bandits and the placement of the ordinary judge to the region who took care of an ordinance of the presidency of the province, show the efforts to contain the bandits’ actions in the area and the necessary mobilization of the justice apparatus. Divinópolis, formerly Espírito Santo of Itapecerica district, was a region of permanent conflict. The reduction in violence observed in the last two decades of the Empire was followed by its resurgence at the end of the 1890s, with the establishment of the West Minas Railway.
- 48 News from “Gazeta de Oliveira” on 5 May of the same year stated that “acts of brutality and conflicts are things that we witness daily. The workers of the West Minas Railway are always involved in these matters.”³⁰
- 49 Again, on 10 February 1897, the correspondence of the justice of the peace of Espírito Santo, with news of West Minas, reported that “the overnight trains, which brings an excessive number of employees, in addition to the many that already exist in a factory of that company, created a permanent picture of conflicts and aggressions unable to restrain them for lack of policeman.”³¹
- 50 However, most evident in the maps is that the sharpest growth of violence in the Republic was concentrated mainly in the central municipality area, the county seat, where judges of law and county, public prosecutor and police force were placed. As shown in Figure 5, violent crime rates peaked around 1915 at 80 per 100,000 people.

Map 2. Crime Rates by 100,000 inhabitants, by municipality and 20 year periods. Forum of Itapecerica, 1830 to 1929



Documental research and database: Ivan de Andrade Velasco (UFSJ) e Cristiana Viegas de Andrade (UFSJ). MapSource: IBGE Digital 2010. Cartography and Geoprocessing: Cristiana Viegas de Andrade.

Map 3. Violent Crime Rates by 100,000 inhabitants, by municipality and 20 year periods. Forum of Itapecerica, 1830-1929



Documental research and database: Ivan de Andrade Vellasco (UFSJ) e Cristiana Viegas de Andrade (UFSJ). MapSource: IBGE Digital 2010. Cartography and Geoprocessing: Cristiana Viegas de Andrade.

- 51 At a first glance, the spatial distribution could be interpreted as a consequence of the action and expansion of the judicial administration over time, justifying why the central map area contains the largest number of events and the highest density of crime. However, the picture seen in the correspondence is much more revealing of a state of disorganization in the social control apparatus. Moreover, the hypothesis that the growth of violence in these areas results from an increasing capacity to monitor and punish crime would have to be supported by data indicating a broader range of justice and control capacity, and a significant increase in police forces. But the correspondence indicates exactly the opposite.
- 52 It remains to consider economic fluctuations and their possible impacts on violence. Although we lack economic data on the region at the turn of the century, there is no indication of an economic decline in this period or subsequent decades. Considering news in periodicals and the export data of the time, the arrival of the railroad to Itapecerica in 1891, as part of the advance of the West Minas Railway, seems to mark a period of expansion, even with the public finances crises of the First Republic (Santos, 2009).

Interpretative hypotheses in search of a conclusion: from the expansion of imperial justice to republican disorder

- 53 Results for all regions confirm the hypothesis that the increase in recorded crime presented in Figures 2, 3 and 4 represents a real increase in the violent crime rate in the final years of the Empire and, especially, the following decades. Two immediate aspects are shown. First, the expected high crime levels in the first republican decades; second, the astonishing upward trend beginning at the end of the 1880s that gets higher in the following decades, with violent crime reaching rates of fifty-five per one hundred thousand inhabitants in the second half of the twentieth century. When the types of crime are considered, the explosion of interpersonal violence, represented by physical offenses, is unequivocal, even when not accompanied by its most lethal outcomes. Most physical offenses involved serious assaults, which, for the most part, did not result in homicides by mere chance. Likewise, the judicial criteria that classified certain aggressions as attempted homicide and others as a physical offense are unfathomable. The occurrence of an upward curve in all the surveyed regions eliminates the hypothesis of regional variations given by local variables; even when considering regional differences present at the time, such as population structure, urbanization and economic specificities. The phenomenon is widespread.
- 54 For the rise in the number of crimes registered involving violence in the different regions to be a result of an increase in police action and its ability to monitor and punish, data would have to show an increase in the number or reforms that indicated significant changes to the structure of police forces and functioning of the judiciary. However, the data indicates exactly the opposite. For the years 1881 and 1882, the provincial law established an effective of 1,000 soldiers in the police force for the whole province.³² In 1903, the police had an effective force of 1,600 soldiers and 83 officers, according to a message sent to the assembly by the president of the state, Francisco Antônio de Sales, in which he affirmed that “it reigns in all the state relative tranquillity.”³³ In 1914, the police force comprised of 2,664 men, including officers, that rose to 2,894 in 1920.³⁴ Without entering merits of recruitment, training and armament conditions of the police force, comparing only the rates, the ratio between per capita police remained low, although it increased in time, as shown in Table II.

Table II. Police Rate per 100.000 inhabitants. Minas Gerais State, 1872-1920

Year	1872	1890	1900	1920
Number of police officers	672	1,190	1,567	2,894
Poulation	2,102,689	3,184,099	3,594,471	5,888,174
Police Rate for 100,000 inhabitants	32,0	37,4	43,6	49,1

Source: Population Censuses of 1872, 1890, 1900 and 1920, and “Relatórios Provinciais”(Reports from the Provinces).

- 55 However, this data should be seen with caution, since the official numbers of divisional contingents were rarely complete for long periods. At various times, these numbers were drastically reduced. In 1899, the then president of the province, Francisco Silviano de Almeida Brandão, proposed to the police that “without inconvenience or prejudice to the public service and with great and necessary relief for the treasury, the number of battalions could be considerably reduced, which is manifestly excessive, like the squad population itself. A more modest and less expensive organization imposes itself as a necessity”. He continued to ask the government for authorization “not to fill the posts of judges, substitutes and prosecutors” and to remove them after constitutional time, transferring their functions to officials allocated in neighbouring counties. Furthermore, these forces were often redistributed and deployed to act in emergency situations, in response to frequent requests from municipal authorities. Added to that the routine of exclusion and desertion and the almost inexistence of training. In the 1920s, a police force commander estimated that around 90% of the troops had not had any training.
- 56 The highest increases in violence in the Republic were concentrated in the central area of the municipalities; areas where the judicial apparatus (municipal and civil courts, public prosecutor and headquarters of the detachment of the police force) was located, and from which the power to control justice was radiated. Most likely, data on the most peripheral areas and districts followed the same trend of increasing violence, since, as the authorities’ correspondence shows, the degree of judicial disorganization and lack of police personnel there was more severe. We believe that the legal documentation for these locations will no longer appear in our data due to the breakdown of judicial counties, a consequence of the emancipation of districts and division of municipal areas. Officials were used only in punishment activities, involving search and arrest, in addition to direct confrontations. Their surveillance role was almost nil. For this, there were justices of the peace, quarter inspectors and delegates, unpaid positions, although the justice of the peace could charge fees. Moreover, the changes in the 1890 criminal code do not reflect directly in our data, since the criminalization of beggars, vagrants, “capoeiras” and such contraventions did not appear in our judicial records. The impact of this kind of change would be reflected in police records, as studies focused on police and urban order show.³⁵
- 57 On May 18, 1893, the prosecutor of the Itapecerica district wrote to the state police chief:
- I bring to your knowledge [...] the state of anarchy in this district, the district of Espírito Santo of Itapecerica, which lately has been the place where the most audacious criminals are exhibited [...] a horrible conflict took place a few days ago when several people were injured, without any knowledge of any authority, because there were none there. On the 15th of this year, the soldier José Candido Rodrigues, who serves as an officer was treacherously [...] offended with two shots when passing through the streets, without knowing who did it.³⁶
- 58 In 1894 a telegram addressed to the chief of police from the delegate of Itapecerica stated: “I require force, arms and ammunition, conflicts several places, many wounded.” In an 1898 telegram: “assassin groups invaded city assaulting public forces, judicial authorities; force without ammunition; assassination attempt against sergeant delegate and several soldiers.”³⁷ In police and justice mail, we find abundant evidence of the deterioration of public security, involving the absence of judicial authorities, lack of weapons and police officers, as well as ample evidence of the aggravation of

daily violence and impossibility of control. Regarding local authorities, complaints of abuse of power, especially of delegates, partisanship and persecution of opponents increased, alongside accusations of riots, lynchings and murders committed by the police authorities themselves, with their superiors approval, confirming the picture already known of *coronelismo*, patronage and politicization of justice and security apparatus.³⁸ The federalization of justice implied making it an instrument of state governors' policy, which gained control over nominations of judicial offices, delegates and police chiefs, and tied them to attempts to control local politics. Clientelism was the basis of government relations with municipalities, and the authoritarianism that characterized the period is implied in the instrumentalization and subordination of justice to local interests (Martins, 2012). In Minas Gerais, the Law of September 1903 promoted a reform of the judiciary. It extinguished counties and posts, redesigning the institution and attaching it to the state government.³⁹ Moreover, there were the repeated cuts in the public budget.

- 59 The growing loss of the monopoly of legitimate violence by the state, given the process of privatization of violence by local power groups, resulted in the increasing inability to provide justice and security; and its consequence was an exponential increase in conflict and violence.⁴⁰
- 60 On 23 October 1845, the justice of the peace of Capela Nova das Dores, Antônio Henrique Pereira, wrote to the president of the province denouncing “the scandalous patronage and low procedure of the district police subdelegate [...] Jacob Lopes de Farias and his protégés, especially his son-in-law, Manoel Antônio Coelho, who is threatening everyone, invading farms, attacking slaves. He is known as a criminal in this district for shooting a poor man.” He added that the subdelegate itself “appears in the Arraial das Dores surrounded by armed people, he looks more like a bandit chief than a police authority.” The document also states: “Inform the Chief of Police immediately giving all the necessary action and so answer.” The next document describes the measures taken by the police chief in order to remove the subdelegate.⁴¹
- 61 In November 1919 a letter from members of the public was sent to Artur Bernardes, the state president, requesting that an authority go to Catas Altas da Noruega, to investigate another subdelegate.
- Joaquim Henrique Baptista, for private reasons, sent soldiers to beat Francisco Justino at his own house. But Justino was not there so they destroyed his backyard and stole work tools, with the witnesses of his family [...] in order that the laws of the country may be challenged, otherwise the clumsy and criminal politics of Queluz will do everything so that the light of truth does not appear.⁴²
- 62 On the side of the document was an annotation asking the delegate of Queluz, who was nominated by the government such as the subdelegate denounced, for clarification.
- 63 The two examples above illustrate the differences we want to point out. While in the first case the request was answered promptly and measures taken to restrain the local authorities, in the second the appeal made to the president of the province was passed along to the accused himself and no further action was taken.
- 64 In correspondence of 18 April 1906, the subdelegate of Espírito Santo do Itapacerica district communicated his efforts to carry out his functions and requested the police chief to provide “good books that can serve as a guide for the installation of processes,” in addition of money to rent a house to the local detachment and authorization to request the “transmission of telegrams from authority to authority [...] and train

tickets to the soldiers [...] on the West Minas Railway.” In its margin is the following opinion, probably from the secretary of the police chief:

There are no funds for police stations costs; in the context of the distribution of forces, it seems to me, the districts do not appear; consequently, the detachment there was provisional; the subdelegate does not have the power to transmit telegrams and requests for passes can only be done through the delegate.

- 65 A red ink notation on the lower corner of the paper, signed by the chief of colice, records: “should not be answered, to be archived.”⁴³
- 66 Indifference and disbelief in the institutions, given their association to local authorities with political power and the support of state governments may explain the loss of legitimacy and the ability to engender loyalty on the part of the population. As José Murilo de Carvalho affirms about the Republic, “a vision between cynical and ironic power, the absence of any feeling of loyalty, it is the other side of the coin of the non-existence rights. Loyalty was possible in relation to monarchical paternalism, more in accordance with the values of incorporation, not in relation to republican liberalism” (1987). Moreover perhaps, from then on, population control has progressively been limited only to its punitive side, leaving the laws and courts for those who had the political power to use.

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Archives

APM Arquivo Público Mineiro: PP Fundo Presidente de Província; POL Fundo Chefia de Polícia.
Itapecerica: Processos crime do Fórum de Itapecerica/.

NOTES

1. Johnson, Monkkonen (1996), P.C. Spierenburg, P. Spierenburg (2008), Graham, Gurr (1969).
2. See Sharpe (1999), Godfrey *et al.* (2008).
3. See also, Spierenburg (1994), Velasco (2004).
4. Salvatore *et al.* (2001), Aguirre, Buffington (2000), Johnson *et al.* (2013).
5. Sharpe (1999).
6. Sharpe (1999).
7. In England “the notorious imprecision of population data, deficiencies of sources, shifts in the legal definition of homicide, changes in age structure as well as improved medical possibilities, surely have to be accounted for.” Eisner (2001, 628).
8. Queluz Forum, Conselheiro Lafaiete, Cr 032-20, 1828.
9. Itapecerica, Processos Crime do Fórum de Itapecerica (thereafter Itapecerica), Cr 32-04.
10. Itapecerica, Cr 05-03.
11. Forum of São João del Rei, Arquivo do IPHAN, São João del Rei, PC 26-03.
12. The total of cases analysed in this study may not correspond to 27% of the total number of crimes committed in the Province of Minas Gerais. If we compare the population size, for example, in 1921 the whole Comarca do Rio das Mortes (not only the 5 forums studied here) had a total of 3.240 inhabitants, while the whole Province had 16.728 (according to the nominative lists of inhabitants of Minas Gerais Province), so the Comarca had 19% of the Province’s population.
13. Data from the provincial records were collected from documents with information about jury processes, called “*Mapa geral dos julgamentos proferidos pelo júri em Minas Gerais no ano de... e nos municípios abaixo relacionados*”. Among the mail of judges and magistrates we located maps sent by the judges which were summed to the total. For example, Arquivo Público Mineiro, Belo Horizonte (thereafter A.P.M.), SP PP 1/18 — Box 44 — dates 10/09/1836 to 31/03/1837, doc. 2 and Box 45 — dates 20/04/1837 to 19/02/1838, doc. 13. Maps from the provincial records can be accessed here <http://www-apps.crl.edu/brazil/provincial/minas_gerais>.

14. A.P.M., POL 3, CX 06 1910-1912 PC03, Secretaria de Polícia Gabinete de Identificação e Estatística Criminal — Anexo ao Relatório da Chefia de Polícia do Estado de Minas Gerais 1912, Belo Horizonte Imprensa Oficial Estado de Minas Gerais 1912.
15. For a deeper analysis of the Itapecerica case, see Vellasco, Andrade (2018).
16. Vellasco (2010), <http://www-apps.crl.edu/brazil/provincial/minas_gerais>.
17. According to the Criminal Procedure Code of 1832, the judicial organization in the counties established the positions of judge of law, a maximum of three, to be appointed by the Emperor and chief of police, one of the judges in the big cities. In the villages, a municipal judge, appointed by the court and provincial presidents, and a public prosecutor were also established. In the districts, there was the elected judge of the peace. With reform in 1841, the position of delegate emerged which absorbed most of the powers of the judges of the peace.
18. A.P.M., PP 18, cx 203, doc 03.
19. “seems [...] that a lot of criminals, persecuted by the Justice, come to seek refuge there [...], thus contributing to increase their population.” Saint-Hilaire further noted that the “inhabitants did not enjoy at all a good reputation”. Saint-Hilaire (1975, 91-93).
20. A.P.M., PP 18, cx. 205, doc. 23.
21. Itapecerica, Cr 01-02.
22. Itapecerica, Cr 01-02.
23. Itapecerica, Cr 02-15.
24. A.P.M., PP 18, cx 42, 45, 46.
25. A.P.M., PP 18, cx 42, 45, 46.
26. A.P.M., PP18, cx, 60, doc 05.
27. A.P.M., PP118, cx. 320, doc. 08.
28. See Vellasco (2004).
29. A.P.M., PP 18, 302, doc. 07.
30. <http://acervo.izap.com.br/imagem.php?Imagem=cache_1893_05_07_297_18930507002.JPG> (Accessed 18 June 2017).
31. A.P.M., POL 9, xx 27, Pc.35-38.
32. <<http://brazil.crl.edu/bsd/bsd/488/>> (Accessed 18 June 2017).
33. <<http://brazil.crl.edu/bsd/bsd/u2415/>> (Accessed 18 June 2017).
34. <<http://brazil.crl.edu/bsd/bsd/u298/>> <<http://brazil.crl.edu/bsd/bsd/u304/>> (Accessed 18 June 2017).
35. Bretas (1997) and Huggins (1985). Concerning colour and social condition, only two documents from 1890 mention “forro” (freed slave), and another two mention the colours black (1909) and creole (1915). The absence of this information in the documents studied here makes research in this field impossible. See Ribeiro (1995).
36. A.P.M., POL 8, CX. 35, pc. 03-07.
37. A.P.M., POL 9, CX. 27, pc.35-3.
38. Coronelismo is a concept that characterizes the Brazilian political system in the Old Republic. It was a pact between the municipal power and a colonel, increasing his power resulting in bossism, sponsorship, electoral fraud and the disorganization of public services. Leal (2012), Carvalho (1997). For an analysis that seeks its roots in the political organization of the Empire, see Bieber (1999).
39. <<https://www.lexml.gov.br/urn/urn:lex:br:redes.virtual.bibliotecas:revista:1889;000558432>> Coleção das Leis e Decretos do Estado de Minas Gerais 1903. Imprensa Oficial do Estado de Minas Gerais.
40. The role of police authorities in the Republic is defined with exactness by Victor Nunes Leal: “The figures of the delegate and the deputy police officer are especially prominent. The appointment of these authorities is of high interest to the dominant situation in the city and constitutes one of the most valuable benefits of the state in the political agreement with the local

chiefs. Embarrassing or disturbing business or opposition initiatives, closing eyes on the pursuit of political enemies, denying favours and haggling rights to the opponent — are different modalities of the state government’s contribution to consolidating the prestige of its allies in the municipality. But none of this, as a rule, compares to this decisive triumph: to put the state police under the orders of the local situationist chief.” Leal (2012, 35).

41. A.P.M., SP PP 1/18 CX 167 DOC 06, 07.

42. A.P.M., POL 8, CX 31, PC 12.

43. A.P.M., POL 9 - cx 28, pc.01-04.

ABSTRACTS

This article analyses the methodological problems inherent in reconstructing criminal statistics over time and presents findings in relation to crime trends in Minas Gerais (Brazil) between 1830 and 1929. The first part of the article presents an overview of current work on the reconstruction of crime trends in Brazil and its relevance to the social history of violence and crime. In the following two sections, the problems and methodological solutions that made it possible to analyse a database built from crime registers are discussed. Census data is used to calculate trends over time. Finally, several hypotheses about the analysis of the data are put forward.

Cet article analyse les problèmes méthodologiques inhérents à la reconstitution des statistiques criminelles longitudinales et présente des résultats relatifs à l’évolution de la criminalité dans le Minas Gerais (Brésil) entre 1830 et 1929. La première partie présente un aperçu des travaux actuels sur la constitution de séries statistiques retraçant les évolutions de la criminalité au Brésil. Leur pertinence pour l’histoire sociale de la violence et de la criminalité est interrogée. Dans les deux sections suivantes, les problèmes et les solutions méthodologiques qui ont permis d’analyser une base de données constituée à partir des données pénales sont examinés. Les recensements de population sont utilisés pour calculer des évolutions longitudinales. Enfin, plusieurs hypothèses relatives à l’analyse de données sont avancées.

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Summary Justice in Eighteenth- and Nineteenth-Century Southwark (London)

Kiran Mehta

Introduction

- ¹ Finding yet more linen rags missing from his shop, Thomas Street, a rag-merchant and stationer based at 39 Borough High Street, Southwark, complained to a local officer about his wayward servant, William Dunker, who Street suspected of taking the rags. With master and servant in tow, the constable, Joseph Lovejoy, made his way down the bustling High Street to Southwark Town Hall, where the City's judicial agent in Southwark presided nearly every day. There, Street charged his servant of "robbing him at different times of a great Quantity of Linen Rags" and requested that the justice, James Kettlby, intervene.¹ Though Street was no longer willing to ignore what he saw as the many thefts perpetrated against him, neither was he set on prosecuting Dunker. Instead, Dunker was offered a choice: be committed to prison to await trial at the quarter or Old Bailey sessions or enlist in the armed forces. Opting for the latter, Dunker was "discharged and attested in Lieutenant Colonel Fullerton's now raised Regiment of Foot", which set sail the following year, in 1781, for India, presumably with Dunker on board.²
- ² The vast majority of people who experienced the law in eighteenth- and nineteenth-century England did so, like Dunker, before a justice of the peace sitting outside of formal sessions. At the summary level, the lowest rung of the criminal justice system, justices sat alone or in small groups hearing accusations and deciding whether to dismiss them, to broker an informal resolution, to send the offender to jury trial, or to try the offender immediately under summary jurisdiction, without either indictment or trial by jury. As with Dunker, most disputes were resolved informally, proceeding no further than the summary level. Summary justice was quick, comparatively

inexpensive and local; consequently, it was more accessible than many other legal tribunals, and plebeian use was high.³

- 3 Despite the importance of summary jurisdiction, it initially received little attention from historians, who focused disproportionately on trials at the higher courts of the quarter and assize sessions and on the prosecution of serious offences, typically indictable property crime, that attracted the most punitive sentences. In recent decades, despite the challenges presented by magisterial record-keeping practice and poor archival survival, a considerable body of work has built up on summary proceedings. Research has explored a range of topics including the composition of judicial benches; the people who used the courts, who they prosecuted and for what offences; the nature of justice dispensed; the magistrate's role as a filter for the higher courts; and the relationship between the magistracy and the police.⁴ Much of the work has focused on London, and it has concentrated on either the eighteenth or the late-nineteenth century.
- 4 This article too centres on summary justice in London, but it focuses specifically on an unstudied aspect of the City of London's magistracy — their administration of summary justice in the borough of Southwark. Though it has gone largely unnoticed, the City administered a summary court in Southwark, in addition to the well-known Guildhall and Mansion House, from the sixteenth to the mid-nineteenth century. Despite its longevity, only two court records from Southwark survive, a "record of business" done before the Southwark Justice in 1776-1781 and a court register from 1836.⁵ Analysing these sources quantitatively and qualitatively, this article investigates how summary justice in Southwark operated, first in the late-eighteenth century, and then in the early-nineteenth, and considers how the nature and role of the summary court evolved across the period. In addition to examining the court's organisation, the cases heard, and the manner in which disputes were resolved, this article will explore two aspects of summary justice that have received less detailed attention: the role that gender played in determining outcomes and, relatedly, the use of summary punishment.

Summary justice in southwark (London)

- 5 Across England, justice at the summary level took many guises. Defendants could be examined in private, like in a justice's home, or in public, commonly in an inn or tavern, by either one justice sitting alone or by a handful of justices sitting together at a petty session.⁶ Most summary hearings were informal affairs situated in non-specialised settings, but the eighteenth century saw a growing proportion transformed into "regularly constituted courts with established procedures and premises" (King, 2000, 83). In the development of a regularised magistracy, the City of London, where all aldermen served *ex-officio* as justices, took the lead. From at least the 1690s, the lord mayors sat regularly in Guildhall to transact administrative and judicial business, and in 1737 the aldermen similarly agreed to sit "in rotation" at Guildhall.⁷ A separate court for the lord mayor opened at his residence, Mansion House, in 1753, and from then, complainants in the City had access to two established summary courts that operated every day but Sunday.⁸ This semi-compulsory system was extremely unusual at a time when justices of the peace acted as voluntary, unpaid officials without an obligation to carry out their duties.

- 6 It is not commonly recognised, but decades before the City developed this system of summary justice, City authorities had established a similar arrangement in Southwark. From the sixteenth to the mid-nineteenth century, Southwark Town Hall, together with Guildhall and Mansion House, played an essential role in regulating crime and resolving interpersonal disputes in the City.
- 7 The Royal Charter that made Southwark a borough of the City of London granted the Corporation the right to nominate a magistrate to the Commission of the Peace of Surrey, a right which they began to exercise in 1606 (Johnson, 1969, 229). The Justice of the Bridge Yard, as the position was called, was a salaried agent of the City tasked with administering its jurisdiction in Southwark. The City imposed only two clear requirements upon individuals who took up the post: they had to reside in or move to Southwark, and they had to carry out the functions of a justice of the peace (Johnson, 1969, 232-233). Initially, the justice received an annual stipend of £20 for rent, but almost immediately, the fee became an explicit salary as the City provided the justice with free accommodation (Johnson, 1969, 232-233). In 1550 a Justice House was set up in what was St. Margaret's Church complete with an adjacent lock-up for the execution of justice; by the eighteenth century, this house was known as Town Hall (Johnson, 1969, 232-233). Not only did this position predate the hearings at Guildhall and Mansion House, but the Justice of the Bridge-Yard was also remunerated for his services. This appears to be the earliest instance of a justice receiving payment for his services, coming before the more well-studied experiments at Bow Street in 1740 and the Public Magistrates' Offices in 1792.⁹

James Kettlby and his court book

- 8 In February 1771, the Aldermen selected James Kettlby to serve as Southwark Justice. Probably born in Stoke-by-Nayland, Suffolk in 1708, Kettlby moved to London sometime before 1724 when, at the age of 16, he was listed in the Board of Stamps Apprenticeship Books as completing an apprenticeship with John Partridge, a member of the Apothecary Guild, in the City.¹⁰ After completing his apprenticeship in 1729-1730, Kettlby became a full member of the Apothecaries, taking on apprentices and later opening his own shop, and was admitted into the Freedom of the City.¹¹ He was involved in City governance from at least 1757 when he served as a London Common Councilman sitting on the Sewers Committee. In 1759, he was elected Deputy of Coleman Street Ward, a position to which he was re-elected in 1765.¹² His status rose quickly thereafter. In April 1769, he was elected a Governor of Bridewell and Bethlem Hospitals; in February 1771, he was appointed Justice of the Bridge Yard in Southwark; later that year his nomination to the Commission of the Peace in Surrey was accepted. Within the Apothecary Guild, he likewise rose through the ranks.¹³
- 9 It is likely that Kettlby's relatively low social status and his apparent aspirations for advancement influenced his decision to lobby for the unique post of Justice of the Bridge-Yard and to act diligently in the role.¹⁴ With respect to eighteenth-century Middlesex, Paley has argued that becoming an active justice served as an important and obvious indicator of social status. The lower a justice's social status, the more he sought to present himself as a justice (1991, xiv). Kettlby's social and professional progression suggests that he, like Paley's justice Henry Norris, sought to make the jump from trade

to gentry, and his active service as Justice of the Bridge Yard helped to bolster his claim to gentry status.

- 10 Kettilby's court book dates from the middle of his service as Southwark Justice and covers five and a half years between 20 April 1776 and 23 May 1781.¹⁵ Over this period, Kettilby, sitting at Town Hall every day but Sunday, presided over nearly 2,000 examinations, excluding the mass of administrative business – witnessing affidavits, attesting men to various protections, licensing victuallers and the like – that came before him. This scale of business made him one of the busiest magistrates in England, surpassed in his yearly average only by Richard Brocas who, as City Lord Mayor in 1729-1730, recorded 457 hearings.¹⁶ The exceptional amount of business that these two men handled is perhaps unsurprising given the similarities of their positions. Both had jurisdiction over a portion of the populous and bustling metropolis and held regular, well-publicised hearings in court-like, public buildings.
- 11 Recorded in Kettilby's book are 1,783 examinations in which a hearing (beyond the issuance of a warrant) took place, and the following discussion centres around these cases and their adjudication. Though very little detail as to the substance of the cases is provided, the record is invaluable because in nearly every instance the outcome is recorded. In Table I, I have divided these examinations into four broad categories. "Property" includes various thefts, frauds, extortions and property damage; "violence" embraces assault and threatening speech or behaviour; "regulatory" encompasses vagrancy offences, disputes within the master-servant relationship (like a servant refusing to complete contracted work or an apprentice behaving disorderly), and a variety of offences against the Borough's social and economic regulations. The latter included swearing oaths, escaping from prison, refusing quarter to soldiers, running bulls, obstructing the streets, disturbing religious congregations and tippling.
- 12 Challenging our ability to assess the nature of Kettilby's workload is the fact that the accused's offence is unspecified in nearly half of all examinations. In most of these cases, such individuals were night charges – individuals arrested after Kettilby had finished hearing business for the day and who therefore had spent a night or more in the Borough Compter waiting to be seen by him. Of these, the vast majority, about 98%, had their charges dismissed when brought before Kettilby. Many entries note that the defendants had been brought in by a constable "on his own charge", and many were discharged "on the promise of future good behaviour" or on the request of those, including officers, who brought them. A considerable number were probably brought to the Compter drunk, perhaps unruly, and released in the morning after sobering up. Many, for example, were imprisoned on the complaint of pub keepers, like John Raskarugh and John Jones committed "on a night charge by John Armstrong who keeps the Cock at Bottle Bridge".¹⁷ Certainly, this practice seems to have been common among the Metropolitan Police in their early years. In 1831, for example, the Metropolitan police arrested 31,353 people for drunkenness, but only 7,566 of them were brought before a magistrate, with the remaining 76% simply discharged by the police superintendents when sober.¹⁸

Table I. Offenders at Southwark Town Hall, 1776-1781

	Males	Females	Unknown	Total	% Offences

Property	160	86	1	247	13.9%	
Felony	20	34	1	55	3.1%	
Violence	191	83	4	278	15.6%	
Regulatory	Vagrancy	31	199	2	232	13.0%
	Employment	14	4	1	19	1.1%
	Social and Economic Regulation	53	9	0	62	3.5%
Impressment Examination	76	0	0	76	4.3%	
Not Specified	454	346	14	814	45.7%	
Total	999	761	23	1783	100.0%	
% of Total	56.0%	42.7%	1.3%	100.0%		

Source: L.M.A., CLA/031/001, Record of Business done before the Southwark Justice.

Note: counting by defendant. This count excludes seven children who were passed along with their parents.

- 13 The known hearings at Southwark were closely split between regulatory, property and violent offences, as at Guildhall and Mansion House in 1784-1796, and if we exclude unspecified offences, these accounted for 32.3%, 31.2% and 28.7% of examinations respectively (Gray, 2006, 34, 150). Most regulatory offenders were charged with disorderly behaviour. Property offenders were primarily accused of stealing food (especially butter, salt, cheese and alcohol), clothing or fabric, or lodging furnishings, but some were charged with considerable thefts. Margaret Fletcher, for instance, was accused of privately stealing seven and a half guineas in gold and four pence in silver, a crime that until 1808 carried the death penalty if fully proved.¹⁹ Generally, assaults were not recorded in detail. While most were probably minor, some clearly involved serious bodily harm, as when William Pearson was charged with “stabbing a boy with a bayonett” or when William Fielder was charged with sexually assaulting a nine-year-old girl.²⁰ The remaining known examinations were for impressment into the armed services. As Nicholas Rogers has demonstrated, authorities in the City of London refused to back press warrants during the War for American Independence, so press gangs and others were forced to bring those they wished to impress to a magistrate for examination first (1998, 104-119).²¹ Kettilby seems to have pursued a similar policy in Southwark, and consequently, a large number of men (mainly in 1779) were examined by him or sent by him to be examined elsewhere for impressment. As Kettilby left such a large portion of offences unspecified, it is unwise to draw too many conclusions from the division of known offences, but it is nevertheless clear that Kettilby dealt with a broad range of criminal offences, mostly petty but some serious.
- 14 Significantly, a large number of female offenders, 761 in total, came before the Southwark Justice, and they accounted for a considerable percentage, 42.7%, of all defendants. Of those whose offences are known, most were charged with vagrancy, but considerable numbers were also accused of violence and property or felony offences.

Early histories of crime and criminal justice tended to focus almost exclusively on male criminality, and they neglected to interrogate the relationship between judicial outcomes and gender.²² Research on female criminality and on gender and criminal justice has developed considerably since the 1990s, however, and female crime is no longer viewed as “marginal, exceptional, and unimportant” (Godfrey, 2014, 165).²³ A central and long-standing concern within the field revolves around long-term patterns of female involvement in the criminal process.

- 15 Historians and criminologists alike agree that women typically account for a smaller proportion of recorded offences than men, but there continues to be disagreement over patterns of change across time.²⁴ In particular, did female crime rates decline in the eighteenth and nineteenth century, and if so, at what pace and why? Until the 1990s, most historians and criminologists posited that women’s share of recorded crime had been relatively stable throughout Europe from the Middle Ages onward until the twentieth century when it increased (Heidensohn, 1989, 87; Palk, 2001, 10-11).²⁵ This view was challenged by Malcolm Feeley and Deborah Little, who argued that before 1750 females had accounted for a larger proportion of defendants tried, but that the eighteenth century saw the “vanishing” of women from the criminal justice system (1991). While initially embraced with much enthusiasm, this view has come under sustained criticism. First, there was considerable regional variation in rates of female criminality, belying a universal narrative; second, the numbers and proportion of women tried fluctuated continuously, and in some places grew, after 1750; and third, historians have suggested that rather than “vanishing”, women were increasingly tried at lower courts, which were not sampled by Feeley and Little.²⁶
- 16 European historians have found high numbers and percentages of female defendants before lower criminal courts. In Rotterdam, for example, although women accounted for only a small portion (6%) of violent crime prosecuted at the criminal court in 1700-1750, they made up 36% of defendants listed in the fight books, records of less serious crime dealt with by the correctional courts, in 1700-1795 (van der Heijden, 2013, 77, 83-85; van der Heijden, 2016, 84-86). The evidence from Southwark supports the view that there was no long-term, general decline in rates of female defendants coming before the courts in eighteenth-century London. Further, by comparison with the Old Bailey, Southwark summary court saw a greater percentage of female defendants, the vast majority of whom were never passed on to a higher court for trial.²⁷

Resolution by arbitration and summary justice

- 17 The outcome of examinations before Kettilby are listed on Table II below. With only 2% of outcomes unknown, we can say with certainty that Kettilby’s practice was essentially arbitrational. Taken together, the evidence from Kettilby’s notebook and the City court books point towards a City-wide effort to resolve cases summarily, usually without applying formal sanctions. These findings provide further evidence to substantiate historians’ contention that, at the summary level, informal settlement was the norm (King, 2006, 27, 29) (Table II).
- 18 When an individual came before Kettilby accused of a criminal offence, the most common outcome was a dismissal, usually the result of the parties reaching an informal agreement. This occurred in 65% of property accusations, 82% of violent accusations and 96% of unspecified offences. This rate of discharge for property offenders is

notably high, especially in comparison with that at Guildhall and Mansion House in 1784-1796, where only 36.7% were dismissed after examination (Gray, 2006, 139). Regulatory offences marked an exception in Kettlby's general practice: only 48.7% of offenders accused of a regulatory offence saw their charges dismissed or resolved informally. In general, though, Kettlby was considerably more willing to discharge offenders than his peers at Guildhall and Mansion House, where 59.4% of cases were dismissed compared to 78.5% before Kettlby.²⁸ Finally, while the vast majority of both men and women at Southwark were discharged, a comparison of the rate of discharge by gender, as in Table III, shows, men were dismissed at a higher rate, with 82% discharged compared 73% of women.

- 19 In resolving the vast majority of accusations summarily, Kettlby was acting in accordance with the legal standards of the day and with popular expectations of justice. Contemporary legal commentators and handbooks urged magistrates to work as mediators or peacemakers, reconciling the disputants, healing social ruptures and preventing trivial or vexatious cases from troubling the higher courts (King, 2004, 147-50). Both less expensive and less divisive to community relations, this approach to legal settlement appealed widely (Gray, 2009, 28).

Table II. Outcomes of Examinations at Southwark Town Hall, 1776-1781

		Settled and Discharged or Dismissed	Discharged and Provided Casual Relief	Committed for Trial	Summary Conviction	Other	Unknown	Total
Property Offence		148	0	75	12	0	12	247
Felony		49	0	2	1	0	3	55
Violence Offence		229	0	43	2	1	3	278
Regulatory Offence	Vagrancy	19	67	0	93	52	1	232
	Employment	18	0	0	1	0	0	19
	Social and Economic Regulation	48	0	3	9	0	2	62
Impressment Examination		38	0	0	0	4	34	76
Not Specified		784	0	1	13	1	15	814
Total		1333	67	124	131	58	70	1783

% of Total	74.8%	3.8%	7.0%	7.3%	3.3%	3.9%	100.0%
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Source: L.M.A., CLA/031/001, Record of Business done before the Southwark Justice.

Note: a) Casual relief refers to individual charged under the Vagrancy Act who were discharged by Kettilby and provided with small sums of money. He probably gave out more casual relief than is reflected in the table above. He kept a separate list of these individuals, only one page of which survives and was stuck on the back of the record book. This sheet only lists relief provided in 1780 and 1781. B) "Other": violent other was discharged on recognizance; the vagrancy others were passed to their place of settlement; the impressed others were passed to the military commissioners to be impressed and outcome of those hearings are unknown.

Table III. Rate of Discharge by Gender at Southwark, 1776-1781

	Discharged	Total Charged	% Discharged
Males	816	999	81.7%
Females	555	761	72.9%

Source: L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice.

- 20 In the case of felonies, however, a magistrate's role was considerably more restricted. The Marian statute of 1555, which set out pretrial procedure, required magistrates to examine a defendant, the accuser(s) and any witnesses about the charges, to jail (or less commonly bail) the accused to await trial, and to bind over the prosecutors and witnesses to carry forward the prosecution in court.²⁹ Within this system, as John Langbein has detailed, preliminary hearings served to gather evidence that would prove the accused's guilt at jury trial (2004, 40-45). The Marian statutes did not afford magistrates much discretion in applying these rules, and as John Beattie's analysis of magisterial business conducted by City lords mayor in the 1690s has shown, justices usually adhered closely to statute (2001, 95-96).
- 21 Summary or preliminary hearings were transformed in the early decades of the eighteenth century. Rather than simply recording accusations, assembling evidence and committing the parties to trial, justices in the City of London and Middlesex began inquiring into the nature and strength of the evidence supporting an accusation, allowing defendants to put forth their own accounts, and making determinations on the quality of evidence presented and the guilt or innocence of the accused.³⁰ With these procedural changes, the number and proportion of offenders who were dealt with informally grew considerably.³¹
- 22 These transformations were also in evidence in Southwark where Kettilby brought his judgement to bear on all cases coming before him. Offenders were regularly dismissed by him "for want of evidence", "proof", or "facts not appearing" — like Margaret Logar, Sarah Ingram and Elizabeth Wood who had been accused of stealing a cloak and were discharged for "want of proof" or Daniel Smith, charged with feloniously receiving goods known to be stolen, for "want of evidence".³² Charges brought by officers were also dismissed when the officers failed to present sufficient evidence as when Kettilby dismissed Martha Maloy and Mary Lewis, accused of being "disorderly" women, because the officers "could not prove" the fact.³³ Until 1847, if an assault involved injury, justices were obliged to refer it to jury trial; Kettilby, however, often accepted

that an assault had occurred, but dismissed the case after deciding the level of violence was too trivial for the courts to intervene.³⁴ When Isaac Lawrie accused William Phillips of assault in August 1780, Kettlby dismissed the charge for “the complainant appearing not to be much hurt”.³⁵ Likewise, in instances where Kettlby deemed an assault “frivolous”, the desire of the victim to prosecute was ignored and the evidence presented to substantiate the claim ruled insufficient.³⁶ Felony charges were widely dismissed too. Of the 55 persons accused of a felony, only two were committed for trial as directed by the Marian rules (see Table II). Another, Elizabeth Napper, was summarily convicted and imprisoned in Kingston Bridewell for one month under the Vagrancy Acts.³⁷ All others were discharged, many explicitly for lack of evidence, and others because the prosecutor refused to prosecute.

- 23 Kettlby allowed, or perhaps encouraged, the accused to find and present counterevidence at this pretrial stage, and he regularly reviewed and made decisions based on such evidence. In September 1778, for example, he issued a warrant for the arrest of Jonathan Rumley, accused by Elizabeth Wakes of an assault, but when two witnesses appeared in court and swore that Rumley did not commit the offence, Kettlby dismissed Rumley noting in the record that the charge was “proved a Negative”.³⁸ Similarly, Kettlby discharged Richard Reeves and Francis Yard, apprehended by a constable on suspicion of stealing bacon, when they were “proved Innocent” during an examination.³⁹
- 24 Sometimes Kettlby helped victims investigate crimes. For example, when two puncheons, holding 180 gallons of rum, went missing from the Southwark warehouses of brandy-merchants, William Timson and Robert Jones, Kettlby coordinated with the Union Hall rotation office to seek out the culprits and had all men arrested in connection with the theft brought to him for questioning. Over a series of hearings between 8 and 24 November 1777, he interrogated four different men – one of whom he dismissed for lack of evidence, two he committed for trial, and another he imprisoned to give evidence at trial.⁴⁰
- 25 Though this section has focused on how the justice shaped summary hearings, justices alone did not determine the outcome of examinations. In a system without a public prosecutor, victims were responsible for initiating judicial proceedings.⁴¹ It was they, not magistrates or policing officials, who ultimately decided whether or not a conflict would be brought before a court, and once in court, prosecutors continued to play the driving role. Consequently, the ways in which ordinary people resorted to and made use of the courts – “the uses of justice” – largely determined their role and nature. As Martin Dinges has contended, institutions of justice should be viewed as “instruments of people using the judicial system to help settle a personal conflict” as well as “instruments in the hands of the authorities” (2004, 160).⁴²

The role of victims and prosecutors

- 26 In Southwark, victims resorted to the summary court for a variety of different reasons, but one dominant theme is that they rarely did so in order to initiate formal prosecution hearings. Therefore, a majority of charges were dropped, usually “by consent” of the parties, “at request” of the complainant, at the “prosecutor not appearing”, with the prosecutor “refusing to prosecute” or “refusing to prove the fact”.

- 27 Some applied to a magistrate to pressure someone into doing something, like honoring a contract. When John Frost failed to pay Ann Cullis the ten shillings he owed her, for example, she requested Kettilby summon him before the court. Frost's wife appeared in his place and, faced with the possibility of formal legal action, promptly "paid her the money", after which Cullis dropped her complaint.⁴³ Applying to the summary courts was, therefore, a relatively inexpensive and quick way for an offended party to gain the upper hand in ongoing, out-of-court negotiations. This was presumably why James Steen's landlord charged him with bull running, setting angry bulls loose in the streets for crowds to chase. The landlord was unconcerned with disciplining Steen; rather, he wanted Steen to move the bull away from his rented lodgings. He used the threat of prosecution to secure Steen's promise to "keep the bull at Toolys [sic] gateway" instead and dropped the charge.⁴⁴
- 28 In the case of property offences, many victims sought the return of their goods or compensation for their losses rather than the offender's conviction. If these objectives could be achieved in negotiations before trial, then the charge was usually abandoned. In July 1778, for example, John Purcell charged John Probert under oath with pawning fifteen coats, waistcoats and silver buttons. Probert was initially committed to the Borough Compter to await trial, but when, during a subsequent examination, Probert returned the goods "in the presence of the justice", Purcell "refused to prosecute" and requested that Probert be discharged.⁴⁵ As has been touched on already, some victims of theft also approached the court for assistance in identifying the right culprit.
- 29 Frequently, an apology and a promise to behave better in future was enough to settle a dispute, as in the case of Thomas Ludlow, who was charged by a Mistress Blanchard with stealing port but was discharged after he apologised in court. For others, the incarceration of the accused for a day or so while waiting to be examined or re-examined by the justice may have sufficed as punishment as many prosecutors dropped the charges at this stage. For example, in the evening of 7 July 1778, a constable arrested Elizabeth Parker for insulting him, but when she came before Kettilby the next day, he refused to press charges, and, with his consent, she was released.⁴⁶ This strategic use of pretrial detention may have been a particularly attractive option for officers as well as for poorer prosecutors — two groups who, for different reasons, may not have wished to assume the expense of a full trial.⁴⁷
- 30 Conversely, some victims were set on punishing those who had offended them. Yet, even in these instances, formal prosecution was not inevitable. In wartime, if the accused was male, some victims were happy to see him impressed into the military, as in the case of William Dunker at the start. From 1776 to 1781, Kettilby dismissed accusations against at least 58 men on the condition that they join the armed forces.⁴⁸ Other victims sought to secure a speedy, relatively inexpensive and certain conviction under summary jurisdiction. In October 1778, Edward Hurbert alleged that Garrett Burn had attempted to pick his pocket of a handkerchief; rather than indict Burn, Kettilby convicted him on Hurbert's oath as a disorderly person under the Vagrancy Acts.⁴⁹ In this case and others, Kettilby — with the victim's consent or perhaps urging — used the Vagrancy Acts to shield the conviction of offenders whose offences did not fall under summary jurisdiction. Sometimes Kettilby did not bother to reframe his convictions, like when he summarily imprisoned Thomas Bigg on suspicion of stealing five pounds of butter.⁵⁰ Kettilby also used the Vagrancy Acts as a fallback to convict offenders when more serious charges against them could not be sustained. For

example, in January 1781, Kettilby issued a warrant against Hester Mann for assault at the request of the victim Ann Wilkins. However, after examining Mann, Kettilby committed her to the house of correction as a disorderly person instead of indicting her for assault.⁵¹

- 31 By deciding when to bring their disputes before the court, prosecutors in Southwark helped determine the summary court's role in regulating crime and personal disputes, and by pressing for certain outcomes, they shaped the nature of justice dispensed. For the Borough's inhabitants, the summary court provided a forum for parties to present their grievances and to negotiate a resolution. Application to the court was merely one way to resolve a dispute, but for many, it clearly proved useful.
- 32 When, then, an individual was brought before Kettilby accused of a crime, it was overwhelmingly likely that he or she would be dismissed either because the parties involved came to an informal resolution or because the charge was rejected. This section shifts away from the arbitrational aspects of summary justice to focus instead on those instances in which informal methods of resolution broke down or proved insufficient. In such cases, the offender was either committed for jury trial or convicted summarily. This section specifically considers the extent to which the offender's gender influenced the decision to take formal action.

Gender and sentencing decisions

- 33 Historians generally agree that gender played a powerful role in shaping prosecution and sentencing practices across western Europe. With respect to the higher courts, numerous studies, researching patterns in England, France, Italy and the Netherlands, have found a gender bias towards women with the result that female defendants generally received "noticeably more lenient treatment" than males.⁵² There is less agreement as to how gender impacted outcomes at the lower courts. Some have argued that gender bias was less prevalent in them. Marion Pluskota, for instance, has recently suggested that nineteenth-century correctional courts in Amsterdam, Le Havre and Bologna took a "gender-neutral approach" toward petty criminality for at these courts female defendants were convicted at similar rates to men (2018). Research on the quarter sessions in eighteenth-century Essex and Surrey, the correctional courts in nineteenth-century Dijon, and the prosecution of violence at the correctional courts in nineteenth-century Netherlands have similarly found relatively little difference in the outcome of offenders based on sex.⁵³
- 34 Elsewhere, however, historians have found evidence of gender bias at the lower courts, some of which points to more lenient treatment of females and some to harsher. Peter King has contended that, on the one hand, "women had the advantage at virtually every stage of the pretrial process", but, on the other, he has found that in some parts of England, notably Cornwall, females received harsher treatment at the summary level (2006, 200). Drew Gray's findings on the City summary courts suggest that the extent to which treatment differed depended on the type of offence alleged. He found female property offenders received considerably more lenient treatment than their male counterparts, but that women accused of violence were treated more harshly (Gray, 2009, 142-143, 176-177).⁵⁴ Finally, Deirdre Palk and Barry Godfrey, et.al, have separately found differences in the conviction rates of men and women at the summary level, but contend that these stemmed from gendered contexts of offending rather than a bias

towards one gender or the other (Godfrey *et al.*, 2005, 706). As Palk has concluded, “it does not require a great leap of deduction to understand why women would be more leniently treated in the summary courts. Their offending behaviour was so different from men’s. They had not done the same things” (2001, 62).

- 35 At Southwark Town Hall, the decision to send an offender on to jury trial was not greatly affected by the offender’s gender though the extent of bias varied depending on the type of crime alleged. As Table IV shows, most offenders committed for trial were male, and the most common offences for which defendants (male and female) were indicted were property crime, predominantly theft, followed by assault.⁵⁵

Table IV. Offenders Committed for Trial by Gender, 1776-1781

	Males	% of males	Females	% of females	Total	% Total
Violent	29	36.3%	14	30.4%	43	34.1%
Property	48	60.0%	29	63.0%	77	61.1%
Felony	0	0.0%	2	4.3%	2	1.6%
Nuisance	2	2.5%	0	0.0%	2	1.6%
Prison Escape	1	1.3%	0	0.0%	1	0.8%
Unspecified	0	0.0%	1	2.2%	1	0.8%
	80	100.0%	46	100.0%	126	100.0%

Source: L.M.A., CLA/031/001, Record of Business done before the Southwark Justice.

- 36 Men, however, were only slightly more likely than women to be sent to trial: 80 men or 8% of male offenders and 46 women or 6% of female offenders before Kettilby between 1776 and 1781 were committed for trial. Further, the table relating the rate of commitment for trial to offence and gender suggests that there was little difference in the treatment of men and women accused of assault, though women seem to have been treated somewhat more harshly with a slightly greater percentage (16.9%) committed to trial compared to violent men (15.2%).

Table V. Rate of Commitment for Trial by Offence and Gender, 1776-1781

	Males			Females		
	Sent on to Trial	Total Charged	% to Trial	Sent on to Trial	Total Charged	% to Trial
Property	48	160	30.0%	14	83	16.9%
Felony	0	20	0.0%	29	86	33.7%
Violence	29	191	15.2%	2	34	5.9%

Regulatory	Vagrancy	0	31	0	0	199	0.0%
	Employment	0	14	0	0	4	0.0%
	Social and Economic Regulation	3	53	3	0	9	0.0%
Not Specified		0	454	0	1	346	0.3%
Total		80	923	8.7%	46	761	6.0%

Source: LMA, CLA/031/001, Record of Business done before the Southwark Justice.

- 37 There was a larger difference in the treatment of property offenders – again, to the benefit of men. 30% of male property offenders were committed for trial compared to 33.7% of female property offenders, and moreover, while no men accused of felony were sent on to trial, about 6% of women were.⁵⁶ This practice contrasted sharply with that at Guildhall and Mansion House where, in 1784-1796, female property offenders escaped jury trial almost twice as frequently as their male counterparts (Gray, 2006, 143).
- 38 As so few offenders were sent on to trial at the quarter or assize sessions from Southwark, these findings are necessarily tentative. They do, however, reveal that women were not treated more leniently than men, and more generally, they point towards an absence of gender bias in the decision to pass an offender on for jury trial. Where male and female offenders received clearly different treatment, this appears to have stemmed primarily from differences in offending behaviour by gender, as Palk argued. Commitment for trial for a regulatory offence, for example, was extremely rare, and only those charged with either escaping from prison or a nuisance were sent on. As only men were accused of these crimes, so only men were committed for trial.
- 39 The patterns of summary convictions were more gendered, as Table IV highlights. Many more women were summarily convicted by Kettilby than men: 101 female defendants, or 77.1% of those convicted, compared to 30 males. Overall, female defendants were four times more likely than males to be summarily convicted with 3% of males so sentenced compared to 13.3% of females. This vast difference in the treatment of male and female offenders stemmed primarily from the policing and prosecution of vagrancy in Southwark.
- 40 At Southwark Town Hall, summary conviction was mainly used to deal with vagrancy, which accounted for 71% of the 131 convictions. The Vagrancy Acts criminalised a broad spectrum of behaviours and states including begging, sleeping outdoors, telling fortunes, being “idle”, acting “disorderly”, wearing Egyptian clothes, and in later amendments, persons found with intent to steal, offenders against the lottery laws, exposing the person, and more.⁵⁷ The particular circumstances under which “vagrants” in Southwark were apprehended are unclear as Kettilby based his summary convictions on long-standing, broadly-framed Elizabethan and Jacobean laws with most of those convicted described in vague terms as being “loose, idle and disorderly” or simply “disorderly” persons.⁵⁸ Though historians have highlighted the extension of summary jurisdiction over property offences across eighteenth-century London, at Southwark, a

conviction was rare for both male and female property offenders.⁵⁹ Only 3.9% of males and 5% of females charged with a property or felony offence were summarily convicted – well below the rate of property offenders convicted at the City justice rooms in 1784-1789 as well as those convicted by justices in rural England across the long eighteenth century.⁶⁰ Conviction was even rarer for assault – only one woman and one man accounting for 1.2% of females charged with a violent offence and 0.5% of males.

- 41 Offenders against the Vagrancy Acts, then, were considerably more likely to be summarily convicted than any other kind of offender, and in Southwark, those arrested and charged with vagrancy were disproportionately female. Between 1776 and 1781, 209 women were brought to the summary court for vagrancy compared to only 31 men. This gendered policing of vagrancy was not unique to Southwark: across the eighteenth century, most of those summarily convicted for vagrancy in the City, Middlesex and Westminster were women, who consequently dominated populations at houses of correction and lists of vagrants removed to their place of settlement.⁶¹
- 42 The predominance of women arrested for vagrancy was probably related to Southwark's demographic and economic makeup, but it also suggests that the vagrancy laws were deployed especially to regulate female conduct and migration. As with the rest of the metropolis, many of the women living and working in Southwark were immigrants, and a large proportion worked in domestic service.⁶² The more limited employment opportunities for women, the precarious and insecure nature of domestic service, and the irregular, seasonal and poorly-paid nature of other forms of casual employment in which women were engaged made them particularly vulnerable to destitution, and therefore, to arrest as vagrants.⁶³ However, very few women were charged explicitly with being “vagrants”. The vast majority were arrested as “disorderly” persons, and in Southwark, these women were probably suspected of prostitution. Femininity and female sexuality had long been associated with disorder across London, but Southwark, in particular, had a long-standing reputation for prostitution.⁶⁴ References to its stews, or brothels, date from as early as 1162, and it was in Southwark, on the Bishop of Winchester's land, where England's only officially recognised brothels were located.⁶⁵ Though the stews were suppressed in the sixteenth century, Southwark's reputation for vice and criminality persisted were into the nineteenth century, likely bolstered by the high concentration of pubs and gin-shops, theatres, bear-baiting rings, circuses and fairs. Many women in Southwark may well have relied on prostitution as a source of income, especially given the fluid and insecure nature of much of their employment.⁶⁶ It is also possible that the late-eighteenth-century resurgence of the reformation of manners movement further intensified the policing of single, independent women on Southwark's streets.⁶⁷

Table VI. Summary Convictions, 1776-1781

		Imprisonment		Fine		Total		Total	%
		Male	Female	Male	Female	Male	Female		
Vagrancy	Disorderly or loose, idle and disorderly	11	64	0	0	11	82	75	71.0%

	Disorderly person taken up in a disorderly house	0	7	0	0			7	
	Incorrigible rogues	0	3	0	0			3	
	Vagrant	0	8	0	0			8	
Property	Unlawful receiving	0	1	0	0	7	6	1	9.9%
	Unlawful pawning	0	1	0	0			1	
	Purloining or embezzling	0	2	1	0			3	
	Picking pockets	3	0	0	0			3	
	Suspicion stealing	3	0	0	0			3	
	Suspicion of felony	0	1	0	0			1	
	Disorderly shoplifter	0	1	0	0			1	
Regulatory	Employment	1	0	0	0	10	0	1	7.6%
	Profanely swearing oaths	0	0	4	0			4	
	Insulting officer	0	0	1	0			1	
	False imprisonment	0	0	2	0			2	
	Hackney coach offence	0	0	1	0			1	
	Loaves deficient in weight	0	0	1	0			1	
Violent	Assault	0	0	1	0	1	1	1	1.5%
	Disorderly assault	0	1	0	0			1	
Not Specified		1	12	0	0	1	12	13	9.9%
		19	101	11	0	30	101	131	100.0%

Source: L.M.A., CLA/031/03/001, Record of Business Done before the Southwark Justice.

- 43 Kettlby took an especially hard line against female disorderliness. A greater number and percentage of women charged with vagrancy at Southwark saw formal action taken against them not only in comparison with males accused of vagrancy at Southwark but also with women so charged before other City justices. The outcomes of male and female defendants charged with vagrancy are tabulated below.

- 44 At Southwark, only 36% of women were dismissed, while 41% were summarily imprisoned, and 23% were passed directly back to their place of settlement. By contrast, 48% of men saw the charges against them dismissed, 35% were summarily imprisoned, and 16% were passed. At Guildhall, the justices discharged a majority of women accused of being “disorderly” persons. Tony Henderson found 57.8% of 1076 “disorderly” women dismissed and 25.5% or 274 summarily imprisoned between 1752 and 1796 while Gray found 82.4% of the 57 “disorderly” women in 1762, 1778 and 1780 discharged and 14% imprisoned (Henderson, 1992, 243-244; Gray, 2006, 218).

Table VII. Outcomes of Vagrancy Changes by Gender, 1776-1781

	Males	%	Females	%
Discharged	1	3.2%	14	7.0%
Discharged: Casual Relief	10	32.3%	57	28.6%
Discharged: Impressment	4	12.9%	0	0.0%
Summary Conviction: Imprisonment	11	35.5%	82	41.2%
Passed back to Settlement	5	16.1%	45	22.6%
Unknown	0	0.0%	1	0.5%
	31	100.0%	199	100.0%

Source: L.M.A., CLA/031/03/001, Record of Business Done before the Southwark Justice.

Table VIII. Sentence Length for Convicted Vagrants, 1776-1781

	Males	%	Females	%
14 days	2	18.2%	30	36.6%
21 days	0	0.0%	1	1.2%
1 month	8	72.7%	45	54.9%
1 month and whipped	0	0.0%	4	4.9%
Unknown	1	9.1%	2	2.4%
	11	100.0%	82	100.0%

Source: L.M.A., CLA/031/03/001, Record of Business Done by the Southwark Justice.

- 45 Kettlby also sentenced women to longer sentences in prison than did the justices at Guildhall. The table displaying the time for which men and women convicted of vagrancy at Southwark were imprisoned shows that most women (49 or 59.7%) received

a one month's sentence; by contrast, at Guildhall, over 90% of women were sentenced to a period under a month (Henderson, 1992, 247). Still, compared to male vagrants at Southwark, a greater percentage of females at Southwark received a shorter prison sentence of between 14 and 21 days. Yet, corporal punishment was reserved for female vagrants. While no men were ordered to be whipped, seven women were summarily imprisoned and whipped: four for "disorderly" behaviour, two for embezzling or purloining fur, and one for unlawful pawning.⁶⁸

- 46 Many of those summarily convicted had appeared previously before Kettlby charged with at least one other offence: 10 men, 52.6% of men convicted, and 60 women, 59% of women convicted. The high proportion of "old" offenders in his convictions suggests Kettlby was generally willing, if the prosecutor agreed, to let off first-time, minor offenders. This leniency, however, was limited, and those who repeatedly came before him were eventually punished. Sarah Ingram, for example, saw two unspecified charges (probably related to prostitution) against her dismissed in 1779 after she promised to behave better before she was convicted in January 1780 for an unknown offence and sentenced to one month's hard labour in a bridewell. Two further accusations of disorderliness followed in 1780, and each time, Ingram was convicted and sentenced to one month in a house of correction. Although Kettlby ordered that she be passed from St. Olave to St. Saviour, the adjoining parish, she returned and in January 1781 was convicted yet again as a disorderly woman and sentenced to one month in a house of correction. After her release, she was passed. As Ingram's experience highlights, Kettlby generally refrained from sentencing repeat offenders to longer periods of imprisonment, despite his power to do so under the Vagrancy Acts. He did, however, work with parish officers to remove her from the parish when she continued to offend "respectable" morals.⁶⁹
- 47 If the accused could find someone to vouch for their character, their chances of being discharged increased. In March 1777, Thomas March and William Westcoate were arrested in a disorderly house in the company of disorderly women, but when their master appeared in court to give them "a character reference", the men were dismissed.⁷⁰ While some were released on the "recommendation" of their masters, others were released at their "application", like Edward Catheroll, apprehended on suspicion of stealing coals, whose prosecutor agreed to drop the charge on his master "promising for him".⁷¹ Possibly, women found it harder to secure a character reference, especially if many of those who were convicted were immigrants, out of employment, or working as prostitutes, and therefore, limited in their ability to call on family or employers to support them.
- 48 Finally, the greater number and proportion of women compared to men summarily convicted at Southwark was probably related to the availability of alternative methods of informal punishment for male offenders. As discussed above, a considerable number of male offenders were discharged on condition that they join the armed forces. Relatedly, soldiers and seamen accused of all kinds of offences were readily dismissed with Kettlby prioritising their return to the armed forces over their prosecution. In these ways, male defendants who the prosecutor or Kettlby wished to punish and who might have been indicted or summarily convicted were instead channeled into the armed forces, an option that was not open to female offenders.
- 49 The eighteenth-century saw a great expansion in the number of offences that could be heard summarily. Nevertheless, Kettlby generally refrained from using his powers

under summary jurisdiction to try and convict offenders, unless they were charged under the Vagrancy Acts. Instead, he preferred overwhelmingly to resolve the dispute informally, or less commonly, if mediation proved impossible, to send the offender for jury trial. For the most part, he acted as an arbiter or referee helping to end quarrels. His reticence to convict offenders summarily contrasted sharply with the practice of justices at Guildhall and Mansion House, who, as we have seen, were more willing to summarily convict property and violent offenders.

- 50 While Kettilby's treatment of property and violent offenders suggested a gender-neutral approach to petty criminal, this was contrasted by the policing and prosecution of vagrancy. In the Borough, the Vagrancy Acts were used overwhelmingly to police female rather than male behaviour, and Kettilby too showed a greater willingness to take formal action against females so charged. King has suggested that the comparatively lenient outcomes for women on trial in England may have been due, in part, to the willingness of the jury to consider economic hardship as a mitigating factor (2006, 192). The Southwark justice was not, it seems, similarly inclined, despite the challenges many women in Southwark faced in trying to make a living. Possibly, the absence of judicial leniency was linked to the large numbers of women before the court and to Southwark's reputation for immorality — factors that may have caused authorities to view female offenders as a serious threat. Perhaps, as Palk has argued with respect to the large proportion of women sentenced to death for shoplifting at the Old Bailey in 1780-1820, judicial paternalism operated to a lesser extent when women were no longer a minority in court (2001, 109).

The decline of summary justice?

- 51 It has frequently been hypothesized that, by the close of the eighteenth-century, the "golden age" of discretionary, participatory justice was beginning to come to an end. The period saw growing criticism over the extent of summary jurisdiction and the broad powers that justices had assumed. In London especially, where lawyers and the press were increasingly in attendance, King has posited that the openness of summary hearings may have decreased justices' capacity to act as informal mediators and prompted them to apply the law more carefully (King, 2004, 166-168; King, 2006, 33-34). The justices' room for maneuver may have contracted further between 1825 and 1855 as a number of statutes were enacted that formalised the role of the summary courts in prosecuting assault, property and felony crime and as a standard set of procedures for magistrates operating outside of sessions was established.⁷² The changing character of the magistracy may also have prompted a decline of arbitration at the summary level. In 1792, in response to a perceived increase in crime and a shortage of willing and competent magistrates in London, Parliament passed the Middlesex Justices Act setting up six magistrates' offices, in addition to Bow Street, each run by three stipendiary or salaried magistrates, who sat at set times of the day to transact judicial business. Though the purpose of this Act was to compensate those members of the commission who were willing to act as justices, and not to create a new and separate class of professional magistrates, this is increasingly what happened (Paley, 1983, 262). From 1822, all stipendiary magistrates in London were trained barristers.⁷³
- 52 Historians agree that, together, these various factors had the effect of formalizing and standardizing summary proceedings, which increasingly reduced the scope for

arbitration and informal methods of dispute resolution. However, we know little about the precise details, patterns and timings of these changes as only a handful of detailed examinations into the nineteenth-century summary courts have been conducted, and for London, almost all of this work has focused on the stipendiary offices.⁷⁴ This final section explores the operation of summary proceedings *outside* the stipendiary offices, before magistrates who were not professional barristers, and considers how and to what extent the changes described above affected proceedings. Specifically, it will examine whether prosecutors used the court as they did in the late-eighteenth century and whether justices took formal action more readily. As in the previous section, it will also consider how gender shaped proceedings. While this section is based largely on a quantitative analysis of the court register from 1836, I also draw on newspaper reports of Town Hall proceedings, parliamentary reports, and the Borough Compter’s prison records to form a fuller picture of the court’s operation.

- 53 After James Kettilby died in May 1785, the office of Justice of the Bridge Yard declined precipitously as the Surrey commission reignited their attempts to deny the City many of its chartered rights, including the holding of sessions in the Borough. By 1786 these had already become a “virtual formality”. Further, the commission refused to allow the newly appointed Southwark justice, Robert Peckham, into their commission, and subsequently, Southwark Town Hall fell into disuse (Johnson, 1969, 261-264). Southwark continued without a resident magistrate until 1814 when Peckham died and the City aldermen moved to revive the office. The aldermen decided the Southwark justice would henceforth sit two hours every weekday for an annual salary of £500, and that those appointed would have “passed the chair” — served previously as Lord Mayor (Johnson, 1969, 265-266).⁷⁵ From 1830, to ensure a justice sat daily, the position was split between three men, but the system nevertheless broke down in 1835 when two justices died and another retired of old age. Rather than appointing new permanent magistrates, the Aldermen elected to set up a rotation system, akin to that at Guildhall, where all aldermen past the chair would serve a week’s turn as Southwark justice (Johnson, 1969, 170).
- 54 Although Town Hall was vacant for much of the first decade of the nineteenth century, by 1836, the Aldermen stationed there heard at least 1,697 full hearings — an astounding increase from 1776-1781. The range of offences that came before the court and the gender of the accused are laid out in Table IX below. Clearly, the establishment of Union Hall as a stipendiary magistrate’s office in 1792 did not render Southwark Town Hall redundant. Indeed, it seems the large population of the Borough, around 80,000 by 1811 and growing to 105,000 at its peak in 1851, necessitated an additional court, especially as the magistrates at Union Hall sat for only two full and two half days each week.⁷⁶

Table IX. Examinations before Southwark Town Hall, 1836

	Males	Females	Unknown	Total	%
Felony	185	140	0	325	19.2%
Property	23	6	0	29	1.7%
Assault	185	36	0	221	13.0%

Misd	Unspecified	14	10	0	24	1.4%
	Coin	5	4	0	9	0.5%
Vagrancy Acts	Disorderly	611	374	2	987	58.2%
	Vagrancy	38	25	2	65	3.8%
	Other	14	2	0	16	0.9%
Regulatory	Employment	10	0	0	10	0.6%
	Other	11	0	0	11	0.6%
		1096	597	4	1697	100.0%
		64.6%	35.2%	0.2%		

Source: L.M.A., CLA/031/03/004, Return of prisoners brought to the Justice Room, Southwark, 1 Jan to 31 Dec 1836, their offences and how the cases were disposed of.

Note: a) "Other" regulatory acts are three bastardy charges, one prison escape, one under Baker's Act, one for military desertion, three obstructing police, and two under Bum Boat Act. b) "Other" vagrancy for men are three deserting family, two for hawking without license, one reputed thief, and eight suspected persons. The two 'other' vagrant women were charged with being suspected persons.

- 55 Women continued to make up a considerable portion of those brought before the metropolis' summary courts and public offices, including at Southwark, where 597 female offenders, accounting for 35.2% of all defendants, were examined in 1836. This rate of appearance roughly matched the percentage of female defendants before the twelve public offices in 1831-1832 where, on average, 37.1% of defendants were female.⁷⁷ The proportions of female defendants at the summary level in London was equal to, and often greater than, those found at the lower courts in European cities like Amsterdam, Le Havre and Bologna (Pluskota, 2018, 722-724).
- 56 By the 1830s, vagrancy charges dominated examinations, accounting for 62.9% of the total, at Southwark summary court. As in the 1770s, most of those accused were charged as "disorderly" persons, with no further details provided, but whereas in the earlier period most persons apprehended were female, in 1836 males made up 61.9% of those charged. The proliferation of summary statutes and the greater chance that their practices could be scrutinized by the King's Bench did not, then, prompt justices in Southwark to be more precise in their commitments. Surprisingly, only a handful of individuals were charged with a regulatory offence other than vagrancy, which either suggests that the Borough's inhabitants chose to resolve such disputes without recourse to a magistrate or that these offences were routinely re-characterised as acts of vagrancy by the court. These findings suggest that the justices relied overwhelmingly on the vagrancy laws to discipline the urban population. The second most common offence alleged was felony – mainly property offences –, which made up 19% of examinations, followed by assault at 13%.⁷⁸
- 57 As for the nature of justice at Southwark, discretion continued to infuse the hearings and informal settlement still dominated. Table X presents the outcomes at Southwark by offence. It demonstrates that, regardless of the offence alleged, a majority of

defendants were discharged without further action: 59.6% of those charged with felony or property offence; 52% of assaults; 78.8% of misdemeanors; 67.6% of vagrancy offences; 70% of employment disputes and 54.5% of other social and economic regulatory offences.

- 58 Defendants who apologised or who promised to behave better were dismissed without further action as were those who brought parents, employers or partners to vouch for them. Those who agreed to give back stolen goods or to stop their illegal activities — like William Thomas Payne, caught circulating unstamped papers in 1836 — also saw their cases dismissed, despite the crime being proven by the prosecutors (*The Morning Post*, 11 January 1836). Assaults, misdemeanors and some kinds of disorderly behaviour were all resolved primarily by the accused agreeing to pay damages. When Agnes Sexton accused John Samuels of assaulting her, for example, their dispute was resolved on Samuels paying Sexton 20 shillings in court after which Samuels was discharged.⁷⁹ When David Jones was brought to court for a misdemeanor, he paid 13 shillings in damages and was discharged, and when John Eldridged was charged as a “disorderly” man, he paid 4s.6d. in damages and was dismissed.⁸⁰ Many other cases simply note that the accused “settled with complainant” or that they had made “satisfaction”, like William Jones and Robert Thomas accused of assaulting police officers.⁸¹

Table X. Outcomes at Southwark Town Hall, 1836

		Discharged on recognizance to keep the peace	Imprisoned for want of sureties	Imprisoned or bailed for trial	Summary Imprisonment	Summary Fine	Passed to Settlement	Unknown	Total
Property		18	0	2	9	0	0	0	29
Felony		193	0	46	78	4	0	4	325
Assault		115	1	85	4	11	0	1	217
Misdemeanour		26	0	3	1	1	0	2	33
Vagrancy Acts	Disorderly	667	4	31	88	188	0	2	970
	Vagrant	50	0	0	7	0	8	0	65
	Other	9	0	0	6	1	0	0	16
Regulatory	Employment	7	0	0	2	0	0	1	10
	Other	6	0	3	0	2	0	0	11
		1091	5	11	195	207	8	10	1517
		64.3%	0.3%	0.6%	10.0%	11.5%	0.5%	0.6%	100%

Source: L.M.A., CLA/031/03/004, Return of prisoners brought to Justice Room, Southwark.

- 59 Across the metropolis, there was a reluctance to imprison young offenders for whom imprisonment was viewed as especially corrupting. As Serjeant Pell, a Middlesex magistrate, reflected in 1828, “I cannot but think myself that it is not a likely way to bring a lad of seven, eight, nine or ten years of age, round to a good course of life, to send him to a gaol, where he shall be found in company with the most depraved...”⁸² If the parents of the accused came forward or the justices were able to get a good account of the accused, commented another City magistrate, “we abstain from committing them as much as possible”.⁸³ In Southwark, many young offenders whose guilt may not have been in doubt were nevertheless “delivered” or “sent” to friends or family. Others were probably sent to reformatory-style institutions, though the nature of the surviving record makes this difficult to trace. According to the register, the court dismissed a vagrancy charge against a twelve-year-old boy on 11 March; however, the Borough Compter records show he remained in prison until 27 April when he was “delivered to his friends to be apprenticed by the Marine Society” — indicating his discharge was conditional on admission to a reformatory.⁸⁴
- 60 The court was not only for arbitration or prosecution, however; it was also an important source of advice and assistance. Newspaper accounts of proceedings at Town Hall show that some of the cases brought to the justices were initiated not to resolve a criminal dispute but to request extralegal assistance.
- 61 When in June 1836, for example, a shop owner, Mr. Clark, confirmed that Thomas Briant, a boy of eight, had been obtaining money and food from his shop under false pretenses, he brought the boy to Town Hall. Clark neither wanted to prosecute the boy nor recover his money; rather, he sought to help Briant, who had recently been fired from his position for theft, by “get[ting] the child into some asylum”. Uncertain of how to proceed further on his own, Clark turned to the summary court. Clark evidently expected that the justices would assist him, and indeed, they did. The presiding justice “fully concurred in the necessity of this [action]”, so he imprisoned Briant in the Borough Compter, officially for further examination of the fraud, but really so he could inquire into Briant’s situation and find him an asylum (*The Standard*, 22 June 1836).⁸⁵
- 62 A case from August 1828 similarly underscores the various, non-prosecutorial uses of the court. One night the watch-house keeper of St. Saviour’s discovered a twelve-year old boy sleeping in the churchyard who, when questioned, admitted to having run away from his parents in Belfast “for the purpose of gratifying an irresistible desire to see London” and stealing three bank notes, valued over £3, to cover expenses. When the watch-house keeper brought the boy to Town Hall, the magistrate directed he be accommodated in the governor’s house at the Borough Compter for safe keeping while they contacted his father. A week later, the court received a letter from the boy’s father who admitted the story was true, asked the court to overlook his son’s “childish folly”, and to put his son on board a ship bound for Belfast. As the watch-house keeper, the prosecutor, “desired to see [this request] complied with”, all charges against the boy were dropped (*The Standard*, 8 August 1828, 15 August 1828).
- 63 None of these actions suggest that magistrates felt more constrained, by either the presence of lawyers and reporters in their courtrooms or the formalisation of summary proceedings, to act according to the letter of the law in the early nineteenth century. Rather, magisterial discretion remained broad, as did the discretion of prosecutors, whether private civilians or the police. As Clark’s case illustrates, even with the development of professional police forces, civilians continued to pursue and detain

suspects on their own initiative. Though it has been suggested that discretion was largely confined to the new police in the nineteenth century, the Southwark evidence shows that all types of prosecutor continued to treat their criminal conflicts as private matters rather than public wrongs, and they abandoned charges as they saw fit (Churchill, 2014, 11-12). The continued willingness of justices to act as advisers and mediators, facilitating informal settlements, was probably why so many brought their concerns to the court. As Jennifer Davis has argued for the late-nineteenth century, winning “lower-class acceptance of the law” was a key purpose of the courts (1984, 314-315). To encourage the common people to rely on the law for their protection, the magistrates regularly enforced the law in ways that “accorded with more popular notions of justice” (Davis, 1985, 262).

- 64 Moreover, justices did not only react to accusations, but actively pursued their own understandings of community justice. In March 1837, Charles Read and two other boys were charged with stealing a threepenny loaf from a local baker, who after a first hearing subsequently refused to prosecute. The magistrate, Alderman Farebrother, nevertheless questioned the boys, and after hearing their “tale of misery and great privation”, ordered officers from their respective parishes to appear before him (*The Champion and Weekly Herald*, 5 March 1837). Though the relieving officer of Bermondsey parish insisted that Read had no claim upon the parish, Farebrother castigated him for rejecting Read’s earlier application to the workhouse and blamed him for Read’s theft. Proclaiming it “against the law, moral and divine, to permit a fellow creature to die for want or perish in the streets”, Farebrother ordered the officer to provide for Read (*The Champion and Weekly Herald*, 5 March 1837). The officer continued to protest, but facing a £5 fine otherwise, he admitted Read into the workhouse. In this way, justices could act as advocates for the poor as well as advisors for those who brought suits.
- 65 Though a majority of defendants continued to be dismissed at Southwark, the justices in 1836 were more willing than Kettilby in the 1770s-1780s to take formal action against offenders. The percentage of offenders committed for trial grew only slightly, but the percentage of those summarily convicted tripled. With 403 defendants convicted and either imprisoned or fined, summary conviction became the second most common outcome, at 23.6% of outcomes, after dismissal. The offences for which male and female defendants were convicted and the punishment they received are displayed in Table XI.

Table XI. Summary Convictions at Southwark Town Hall, 1836

		Imprisonment		Fine		Total			
		Male	Female	Male	Female	Male	Female	Total	%
Property		5	4	0	0	5	4	9	2.2%
Felony		49	30	3	0	52	30	82	20.3%
Assault		2	2	9	2	11	4	15	3.7%
Misdemeanour		1	0	1	0	2	0	2	0.5%
Vagrancy Acts	Disorderly	4	85	144	44	148	129	277	68.7%

	Vagrant	7	0	0	0	7	0	7	1.7%
	Suspected Person	5	1	0	0	5	1	6	1.5%
	Hawking	0	0	1	0	1	0	1	0.2%
Regulatory	Master-Servant	2	0	0	0	2	0	2	0.5%
	Bum Boat	0	0	2	0	2	0	2	0.5%
		75	122	160	56	235	168	403	100.0%

Source: L.M.A., CLA/031/03/004, Return of prisoners brought to Justice Room, Southwark.

- 66 As in the late eighteenth century, most, 68.7%, were convicted for “disorderly” behaviour under the Vagrancy Acts. Felony offences accounted for 20.3% of summary convictions and assault for 3.7%. Historians like Rogers have identified a more interventionist attitude towards policing vagrancy in the early nineteenth century as growing numbers were arrested and imprisoned (Rogers, 1991, 146).⁸⁶ When brought to court, certain categories of offenders including vagrants may have faced difficult odds as some historians have argued that they were presumed guilty rather than innocent when charged. To avoid conviction, even when the charges were based on only suspicion or reputation, they were expected to account for themselves and their actions.⁸⁷ Before some magistrates, therefore, suspects were routinely convicted. At the Thames magistrate office in 1836, 78.5% of the 903 persons charged under the Police and Vagrancy Acts were convicted, and across the stipendiary offices in 1831-1832, on average 54% of vagrants taken into custody by the Metropolitan police were convicted.⁸⁸
- 67 At Southwark, however, most accused vagrants were dismissed, 62.6% of the 401 women and 70.1% of the 663 men, a dramatic shift from the late-eighteenth century when vagrants saw the highest rates of conviction. This high dismissal rate, in the face of the increased policing and the evidentiary burdens placed on accused vagrants, indicates that the justices in Southwark rejected imposing tougher sanctions on vagrants and refrained from treating all acts of vagrancy identically. Possibly, the actions of justices at Southwark mirrored those described by G.B. Mainwaring, a Middlesex magistrate, in 1821. Though, Mainwaring explained, “the act of vagrancy is by law a punishable offence”, nevertheless the magistrate, “in the discretionary exercise of his duty” also makes a “moral distinction” between vagrancy arising from destitution and that proceeding from “imposture and intentional delinquency”; while the latter would be punished, the former was generally treated as an “object of charity”.⁸⁹ Despite continued parliamentary criticism of this approach to vagrancy, the practices at Southwark suggests that this moral distinction continued to hold force at certain summary courts.
- 68 By 1836, the summarily convicted were no longer predominantly female as male defendants made up 58.3% of summary convictions. Still, women continued to be convicted at slightly higher rates with 28.1% of female defendants convicted compared to 21.4% of males. If we compare the rate of conviction for male and female offenders

who were charged with the same category of offence, as is done in Table XII, we find that women charged with assault, petty property offences and disorderly behaviour saw greater rates of conviction than their male counterparts, whereas those charged with felony, misdemeanor, as vagrants or as suspected persons saw lower conviction rates compared to men.

- 69 The rates at which male and female offenders were committed for trial were also close with a slightly higher percentage of male offenders — 11% or 124 men — sent to trial compared with women — 7.3% or 43. These patterns indicate that at Southwark, as in parts of continental Europe, the magistrates did not systematically discriminate against offenders on the grounds of sex, and evidence from the stipendiary offices in the 1830s suggests this approach may have been widespread across London.⁹⁰
- 70 By contrast, punishments for the summarily convicted were massively gendered. As Table XI shows, regardless of the offence alleged, male offenders were more likely than their female counterparts to be fined rather than imprisoned with the result that a majority of convicted men escaped imprisonment while a majority of convicted women were locked up. With respect to “disorderly” behaviour, the justices sentenced a majority (65.9%) of the 129 females convicted to imprisonment in Brixton house of correction while they fined the vast majority (92.3%) of the 148 males. Whereas all female offenders convicted for felony were imprisoned, a handful of men were fined instead. Of the 11 men convicted of assault, only two were imprisoned with the rest fined, but of the four women, half were were imprisoned, and half were fined. Women were generally fined the same amounts as men for the same offences, and they received similar, if not longer on average, prison sentences. These sentences prove that female criminality was treated as seriously as male criminality at Southwark Town Hall in the 1830s. Though an offender’s gender did not, it seems, play a crucial role in the justice’s decision to summarily convict, his or her gender was significant in determining the punishment. Since women were more likely than men to be given custodial sentences, the consequences of their offending were more severe.

Table XII. Rate of Conviction by Offence and Gender at Southwark Town Hall, 1836

	Summarily Convicted		Total Charged		% Summarily Convicted		
	Male	Female	Male	Female	Male	Female	
Property	5	4	23	6	21.7%	66.7%	
Felony	52	30	185	140	28.1%	21.4%	
Assault	11	4	185	36	5.9%	11.1%	
Misdemeanour	2	0	14	10	14.3%	0.0%	
Vagrancy Acts	Disorderly	148	129	611	374	24.2%	34.5%
	Vagrant	7	0	38	25	18.4%	0.0%

	Suspected Person	5	1	8	2	62.5%	50.0%
	Hawking	1	0	2	0	50.0%	----
Regulatory	Master-Servant	2	0	10	0	20.0%	----
	Bum Boat	2	0	2	0	100.0%	----

Source: L.M.A., CLA/031/03/004, Return of prisoners brought to Justice Room, Southwark.

Conclusion

- 71 In both the late-eighteenth and early-nineteenth centuries, the justices at Southwark’s summary court acted primarily as arbitrators who resolved the majority of business before them without formal action. The fact that most of those brought before the court in the 1770s-1780s were discharged is perhaps not surprising, as it confirms the findings of earlier work on summary justice. It is, however, significant that the same was true in 1836 as it has important implications for our understanding of summary justices and its evolution in the nineteenth century. The evidence from Southwark suggests that, even as proceedings became more formal and procedure was standardised, the justices nevertheless retained considerable discretion, as did prosecutors. Certainly, the treatment of certain offences changed — accused vagrants, for example, were more likely to be discharged in 1836 than in the earlier period, and a greater percentage of those charged with assault in 1836 were sent to trial than before.⁹¹ Overall, however, the nature of justice dispensed did not alter significantly over the period. The will of the victim continued to shape most outcomes, opportunities for informal justice persisted, and formal action was seldom taken. David Lemmings has argued that the shift towards summary justice in the eighteenth century led to a “marked deterioration in popular engagement with authority”, but in Southwark, summary justice relied on the initiative and active participation of private citizens (Lemmings, 2011, 173). The participatory, personalised nature of justice at Southwark and the growing number who brought their disputes there in the nineteenth century suggests greater engagement with the law, not less.
- 72 When the treatment of allegations at Southwark is compared with the practices at the stipendiary offices in the 1830s, important distinctions appear. Principally, the “mediation-based ethos” of summary proceedings seems to have predominated longer outside the stipendiary system of professional magistrates.⁹² As the justices at Southwark continued to discharge the majority of allegations, magistrates at the stipendiary offices were moving away from policies that favoured diversion — informal sanctions not including indictment, fines or imprisonment — towards policies that prioritised public discipline. Between 1831 and 1837, on average only 50% of defendants taken into custody by the metropolitan police and examined by the stipendiary magistrates were dismissed while, significantly, 43% were summarily convicted.⁹³ As this comparison highlights, the shift away from mediation and informal resolution happened at different paces and times at different summary courts. To establish these

details and understand the specific pressures that caused the shift, closer investigation of the proceedings each court will be needed.

- 73 Finally, though historians have found that English higher courts, the Old Bailey and the assizes, generally treated female defendants with greater leniency than males, most women were tried not at the higher courts but at lower levels of justice, especially in summary proceedings. At this level in Southwark, women by and large were treated the same as men across the period under study. Where there were differences in treatment, like in Kettilby's treatment of vagrancy or the justices' application of summary punishments in 1836, these tended to favour men and disadvantage women. The findings from this study suggest the summary courts may have taken a more gender-neutral approach to petty criminality, a view that mirrors the recent findings of Pluskota on nineteenth-century continental Europe (2018). Yet, research on gender and violence in the late-nineteenth and early-twentieth century has found magistrates at English petty sessions treating female violence dismissively (Godfrey *et al.*, 2005). Clearly, more detailed research needs to be done on summary proceedings to assess the impact of gender on sentencing and how this may have varied across courts and over time.

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NOTES

1. London Metropolitan Archives, London (thereafter L.M.A.), CLA/031/03/001, Record of Business done before the Southwark Justice, 24 August 1780.
2. <https://www.historyofparliamentonline.org/volume/1754-1790/member/fullarton-william-1754-1808#biography>, *ibid*.
3. King (2004, 145-146), Gray (2013b, 11-12).
4. For outside London see, Philips (1975), Oberwittler (1990), Hay (1998, 2004), King (2000, 2004, 2006), Morgan, Rushton (2003), Landau (1984, 2002, 2005), Godfrey *et al.* (2005), Abraham (2011), Darby (2015), August (2015). On London see Shoemaker (1991), Beattie (2001), Gray (2006), Paley (1983, 1991), B. Smith (1996), G. Smith (1999, 2013), Davis (1984, 1985).
5. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, L.M.A., CLA/031/03/004, Return of prisoners brought to Justice Room, 1 January to 31 December 1836.
6. Petty sessions were rare outside of London before the mid-nineteenth century, and many parishes saw their sessions collapse periodically into disuse. Paley (1991, xv), King (2000, 83-85), Bentley (1998, 2-4).
7. Beattie (2001, 91-94, 108-110, 144), G. Smith (2013, xiv). Each alderman was expected to serve for one day at a time — a system quickly adapted as aldermen filled in for one another or chose to sit for days in a row — and was assisted by a clerk and attorney from the mayor's court.
8. Beattie (2001, 110), G. Smith (2013, xv). Lord mayor heard cases coming from east of King Street while the aldermen heard those from the west.
9. On these attempts see, Beattie (2001, 2007, 2012), Paley (1983).
10. Ancestry, Select Births and Christenings, 1538-1975, FLH film number 919631, <https://www.ancestry.co.uk/sharing/17740664?h=13f3ee&utm_campaign=bandido-webparts&utm_source=post-share-modal&utm_medium=copy-url> examined for reference to James Kettlby, last accessed 5 August 2019, The National Archives, London (thereafter T.N.A.), IR 1/10 f.42, *Board of Stamps: Apprenticeship Books, City (Town) Registers*, May 1724-August 1725.
11. T.N.A., IR 1/12 f. 30, *Board of Stamps: Apprenticeship Books, City (Town) Registers*, 16 March 1730-2 November 1731, Anon (1757, 231).

12. *London Evening Post* (21 December 1758), *London Chronicle* (22 December 1764).

13. He was made Renter Warden in 1771, Upper Warden in 1772, and Master of the Guild in 1773 – placing him at the heart of the guild's Ruling body. Details of Kettilby's position provided by Janet Payne, Archive Officer at the Apothecaries' Hall.

14. On competition for the post, Johnson (1969, 231-232).

15. There is one gap, 22 March to 24 May 1780, in the notebook. After his notebook ends, we know Kettilby continued to act as Southwark justice (perhaps with the help of another man) until his death as he continued to commit offenders to the house of correction and for trial. Surrey Historical Centre, Woking (thereafter S.H.C.), QS2/6/1785/Eph/2, Southwark House of Correction prison calendars, S.H.C., QS2/6/1785/Eph/6, Southwark House of Correction prison calendars for the adjournment.

16. Beattie (2001, 104), King (2004, 137), Gray (2013a, 217).

17. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 13 April 1778, 23 May 1776.

18. *Parliamentary Papers* (hereafter *PP*) (1833), Statement of Number of Persons taken into Custody by Metropolitan Police, 1831-3182, Inwood (1990, 135-136).

19. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 26, 31 October 1780.

20. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 16 March 1779, 12 August 1776.

21. See also, King (2006, 41-43).

22. King (2006, 165, fn.1), Walker (2003, 4-5), van der Heijden and Pluskota (2018, 661-662), Godfrey (2014, 159).

23. For England, important work includes Beattie (1975), Zedner (1991), Kermode and Walker (1994), Walker (2003), Hurl-Eamon (2005), King (2006), Palk (2006), D'Cruze and Jackson (2009), Emsley (3rd ed., 2005). For Holland, van der Heijden (2013, 2016), van der Heijden and Koningsberger (2013), van der Heijden and Pluskota (2015, 2018), Pluskota (2018), van der Heijden and Schmidt (2016). For Italy, Dean (2007), Muurling and Pluskota (2017), van der Heijden and Muurling (2018). For Germany, Kamp (2016), Rublack (1999). For France, Ferguson (2010), Pluskota (2016).

24. King (2006, 196), van der Heijden and Koningsberger (2013, 102), G. Smith (2014, 147-150).

25. One of the earliest recognitions that female crime rate in England, 1660-1800, was not stable was Beattie (1975).

26. Their evidence for England challenged most convincingly by King (2006, 150, 196-220).

27. Females made up 30.12% of defendants between 1775-81. *Old Bailey Proceedings Online* (hereafter O.B.P.) (www.oldbaileyonline.org, version 8.0, July 2019), Tabulating year against defendant gender, counting by defendant, <https://www.oldbaileyonline.org/stats.jsp?y=year&x=defendantNamesGender&countBy=_defendantNames&render=&_offences_offenceCategory_offenceSubcategory=&_verdicts_

28. Table I (discharge + discharge with relief), Gray (2006, 45).

29. Burn (1772, 363).

30. Search for evidence expanded even further under John Fielding who pioneered routine re-examinations. Beattie (2001, 83-84, 89, 95-96).

31. On this change see, Beattie (2001, 105-106) and (2007, 66-67), King (2000, 87-94) and (2006, 8).

32. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 4 July 1778, 4 July 1780.

33. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 15 June 1776.

34. G. Smith (2014, 69-70).

35. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 8 August 1780.

36. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, E.g., 25 July, 27, 29 September 1780.
37. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 1 and 5 December 1780.
38. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 30 September 1778.
39. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 25 May 1776.
40. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 8 and 24 November 1777. *O.B.P.*, December 1777, Thomas Leggett and Richard Scoles (t17771203-71).
41. Hay (1983, 167), King (2001, 17). Hay found more than 80% of all criminal cases prosecuted by private individuals in the eighteenth century.
42. For an overview of socio-legal historical research into “the uses of justice” and a sample of scholars who take this approach see, van der Heijden and Vermeesch (2019) and Roodenburg and Spierenburg (2004).
43. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 4 August 1780.
44. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 22 April 1776.
45. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 29 July 1778.
46. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice 8 July 1778, 2 February 1779.
47. Similarly, King has argued that prosecutors may have seen imprisonment on remand waiting for trial as a sufficient punishment, which is why a portion failed to show up to prosecute at the quarter sessions. King (2000, 44-64), Gray (2007, 8-9)
48. For the courts’ use of impressment as an alternative to trial see: Rogers (1994, 102-113), Conway (2006), King (2000, 91-92) and (2002, 97-116).
49. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 13 October 1778. Burn was sentenced to 14 days hard labour in Bridewell.
50. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 27 September 1779.
51. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 31 January and 1 February 1781.
52. King (2006, 165-226, especially 165-186) and (2000, 196-202), Pluskota (2018, 17-19). Pluskota also details the exceptions to this general pattern.
53. Beattie (1986, 437), King (2006, 180), van der Heijden and Pluskota (2015), Pluskota (2018).
54. Gray also found evidence of harsher treatment towards women in nineteenth-century Bedfordshire. Gray (2009, 13).
55. Men and women stole similar things too. Both were accused of stealing clothes (including ribbon and cloth), food, household goods, watches, money and manufactured goods (like fur for hat-making). On the other hand, only males were charged with highway robbery, theft of iron, alcohol and tools, while only females were charged with privately stealing money from the person and stealing from the workhouse.
56. Most felonies tried at the Old Bailey were property offences in this period, so it is likely that these felonies were also property crimes. King (1999, 55).
57. 39 Eliz I, c.4, 13 Anne c.26, 17 Geo II c.5, 32 Geo III c.53, 3 Geo IV c.40.
58. This continued reliance may have been common across England until the later nineteenth century. Innes (1987, 86-87), Shoemaker (1991, 196-171), King (2006, 30). On expansions to Vagrancy Acts see Eccles (2012, 4-21) and Rogers (1991, 128).
59. Beattie (2001, 26-29, 97), B. Smith (1996, 108-109) and (2005), Innes (1987, 75, 88-89).

60. Gray (2006, 47-50), Darby (2015, 3, 314). Darby sampled the notebooks of 13 rural magistrates and found that they heard 461 property offences. Of these, 55% of males were convicted summarily and 42% of women.
61. Rogers (1991, 133), Hitchcock *et al.* (2014, 517, 519-520).
62. Field (2018, 258), King (1996, 70-71, 75-76), Henderson (1992, 43) and (1999, 18), Earle (1989).
63. Rogers (1991, 133-134), Hitchcock, Crymble, Falcini (2014, 517), Field (2018, 258).
64. Gowing (2000), Miller (2019).
65. Henderson (1999, 80-83), Carlin (1996), Karras (1989), Kelly (2000).
66. On the links between domestic service and prostitution, King (1996, 77), Henderson (1999, 14-16).
67. For the movement in the early-eighteenth century, see Shoemaker (2001, 144-166). For the later movement, see Innes (2009, ch.6).
68. For a discussion of gender and whipping, see Smith (1999, 395-414).
69. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 9 January 1779, 9 July 1779, 22 January 1780, 31 October 1780, 30 November 1780, 8 January 1781, 8 February 1781. In 1779, Ingram was imprisoned in the Borough Compter overnight by a local constable or watchman alongside large numbers of women, which is why I assume she was suspected of prostitution. Ingram was arrested and imprisoned almost immediately after her release from prison in November 1780. It is clear this was a new offence, though, as she is charged with a different woman. 17 Geo II c 5.
70. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 28 March 1777.
71. L.M.A., CLA/031/03/001, Record of Business done before the Southwark Justice, 11 and 13 May 1776.
72. B. Smith (1996, ch.8), Emsley (2005, 208).
73. B. Smith (1996, 442), Bentley (1998, 21).
74. The best work on nineteenth-century London public offices/police courts remains Davis (1984, 1985). See also Paley (1983), G. Smith (1999), B. Smith (1996, 2005, 2006). On paucity of research, Gray (2016, ch. 9). Outside London: Godfrey *et al.* (2005), Barrie, Broomhall (2014, 2 vols.), Abraham (2011).
75. This excludes £100/year in lieu of rent. The magistrate was also allowed a clerk, two marshals, and a housekeeper.
76. Field (2018, 245-6), *PP* (1828), Select Committee on the Police of the Metropolis, 145.
77. *PP* (1833), Statement of Number of Persons taken into Custody by Metropolitan Police, 1831-1832.
78. All offenders committed for trial at Southwark, who can be traced in higher court records, were accused of a property offence.
79. L.M.A., CLA/031/01/007, Borough Compter Charge Book, 13-14 July 1836.
80. L.M.A., CLA/031/01/007, Borough Compter Charge Book, 17-18 April, 10 August 1836.
81. L.M.A., CLA/031/01/007, Borough Compter Charge Book, 7 January 1836.
82. *PP* (1828), *Select Committee on the Police of the Metropolis*, 239.
83. *Ibid.*, 64.
84. L.M.A., CLA/031/03/004, Return of prisoners brought to Justice Room, L.M.A., CLA/031/01/007, Borough Compter Charge Book, 11 March and 27 April 1836.
85. The newspaper does not report on how the case ended.
86. See also, Roberts (1984, 1991).
87. B. Smith (2005), Eccles (2012, 31-32), Hitchcock *et al.* (2014, 510).
88. B. Smith (2005, 159), *PP* (1833), Statement of Number of Persons taken into Custody by Metropolitan Police, 1831-1832. This pattern continued later in the nineteenth century, see *PP* (1851), Return of Number of Vagrants taken into Custody by Metropolitan Police, 1840-1850.

89. *PP* (1821), Report from the Select Committee on Existing Laws Relating to Vagrants, 62.
90. *PP* (1833), Statement of Number of Persons taken into Custody by Metropolitan Police, 1831-1832, *PP* (1839), Tables of the Revenue, Population and Commerce, 1837, 157.
91. For criminalisation of assault, Wiener (1998), Wood (2004).
92. Term from King (2000, 84).
93. *PP* (1833), Statement of Number of Persons taken into Custody by Metropolitan Police, 1831-1832, *PP* (1839), Tables of the Revenue, Population and Commerce, 1837, 157.

ABSTRACTS

The vast majority of people who encountered the law in eighteenth-century and nineteenth-century England did so at the summary level, the lowest rung of the criminal justice system. This article is an investigation of the proceedings at one magistrates' court, Southwark Town Hall, in the City of London's borough of Southwark from the 1770s to 1830s. Drawing in particular on the court's two surviving case registers, as well as prison committal books, newspaper accounts of summary proceedings and parliamentary reports, this article considers how the nature and role of summary justice in Southwark evolved over this period. It focuses especially on two aspects of summary justice that have to date received less detailed attention from historians: the role that gender played in determining outcomes and the use of summary punishment.

La grande majorité des personnes qui ont eu affaire à la justice dans l'Angleterre du XVIII^e siècle y ont été confrontées à un niveau local, au plus bas du système de justice pénale. Cet article est une enquête sur les procédures d'un tribunal de première instance, le Southwark Town Hall, dans le quartier de Southwark, à Londres, des années 1770 aux années 1830. En s'appuyant notamment sur les deux registres d'affaires de la cour qui ont été conservés, ainsi que sur les registres d'incarcération, les comptes rendus judiciaires dans la presse et les rapports parlementaires, cet article examine comment la nature et le rôle du tribunal de Southwark ont évolué au cours de cette période. Il se concentre en particulier sur deux aspects d'une justice sommaire qui ont jusqu'à présent reçu une moindre attention de la part des historiens : le rôle que le sexe a joué dans la détermination des résultats ainsi que l'utilisation des punitions expéditives.

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Accommodating “Imbeciles” or the “Weak-Minded”

Justice and Sexual Crime in Nineteenth-Century Scotland

Elizabeth Foyster and Christopher Holligan

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- 1 At first glance, the trial precognition of the sexual crime committed against Ann Innes reads like many other cases of rape or sexual assault that were heard by the criminal courts in the nineteenth century. On Wednesday 27 September 1865, seventeen-year-old Ann was sent by her mother from her home near the burgh of Lossiemouth in north-east Scotland, to fetch milk from a local farm. As the oldest daughter in a family of nine children, the walk along the field-lined track close to the sea, which connected her home to the farm, had become part of her daily routine.
- 2 She carried a basket to collect butter for a neighbour, and a bottle to be filled with cream for another. Having completed her errands, Ann began her journey home, but was met by fifteen-year-old John Murray, a farm servant and apprentice carpenter, who was driving a horse and cart for his Master. John so frightened Ann that she dropped her pail and basket, and ran away into the Links next to the seashore, but he followed her and chased her into a place near “Cooper’s Ditch”. It was alleged that John did then:

Wickedly and feloniously attack and assault Ann Innes... and did seize hold of her by the body and by her clothes and drag her about, and did strike her with his fists several or one or more blows about the head or face and threw her down on the ground and did raise her cloths and lie upon her and attempt to have carnal knowledge of her person forcibly and against her will.
- 3 Ann was left crying by the side of the road, but when another girl passed by, she refused to walk Ann home. Approaching a shepherd in the Links, Ann told him what had happened, and he told her to go home and report John’s behaviour to her father. Ann delivered the butter and milk first, arriving home so late that her mother had sent one of her other children to look for her. Her mother and both her neighbours could

see that she had been crying, one noting that Ann had a “scared” look about her. The next day, Ann told her mother everything John had done, and said that he had “threatened to drown her in the Ditch if she would not lie still and be quiet.” Her mother called a doctor who examined Ann’s body, finding the “external orifice of the vagina matted with hardened blood”, and concluding that all the bodily signs were that Ann had “sustained sexual violence”. “A good deal of blood came from me after I was hurt”, Ann recalled.

- 4 Physically violent, frightening, painful and bloody, the descriptions of this assault were nothing unusual in prosecutions for sexual offences. But Ann Innes’s case was exceptional. For John’s crime had been “aggravated” by the fact that Ann was of “weak or imbecile intellect”. When John Murray was tried for rape at the Northern Circuit court in Inverness the following spring, seventeen witnesses testified against him, including Ann’s mother. Since Ann had suffered a severe attack of measles when she was five-years-old, her mother explained, “she has never been herself... She is quite childish in her manner and simple”. That a sexual crime had been committed against her daughter was shocking: “I could scarcely believe that any person would have attempted to have carnal connection with my daughter considering her weakness”, she told the court.
- 5 Ann’s court case attracted an untypical degree of attention from medical practitioners and lawyers. As well as supplying statements regarding their physical examination of Ann after the attack, two physicians gave assessments of her mental capacity to consent to sex. Lawyers questioned her ability to act as a legal witness because it was decided that she did not understand the nature of an oath. They also debated whether her mother’s account of what Ann had reported to her after the assault could be admitted as evidence. The court’s decision was deemed of sufficient legal importance that it was subsequently recorded in the *Justiciary Reports*. Hence, an unprovoked attack one September afternoon in a remote corner of Aberdeenshire, on a “simple” minded girl, had resulted in scrutiny and discussion far beyond her home and well after legal judgement was passed on John Murray. Yet the jury unanimously found the charge against John Murray “not proven”. Ruling that Ann did not understand the meaning of an oath, she was not allowed to testify. Only the words spoken to her mother on the day of her return, that “Cattell’s man had kept her”, were permitted as evidence, not the wider account of the attack she gave the next day. Thus, Ann Innes’s case exposed the limitations of legal norms to accommodate her mental condition.¹
- 6 This article examines eight cases of sexual assault or rape that involved people of “weak or imbecile intellect” and were heard at the High Court of Justiciary, Edinburgh or at one of its three circuit courts in the nineteenth century. Beginning with an examination of the historical context in which sexual crimes against imbeciles and the weak-minded were committed, this article will then discuss the nature of our legal precognition sources. The immediate responses of those who lived alongside imbeciles are contrasted to the legal challenges these crimes presented. In particular, it will be argued that the rules of evidence governing Scottish criminal law made convictions difficult to achieve and aggravated the sexual vulnerability of this social group who were already on the margins of society.

Retrieving the imbecile and weak-minded

- 7 Historians describe nineteenth-century Scotland as subject to significant economic and social change, notably through industrialisation, which transformed social structures. Iron and coal industries attracted male labour and itinerant labourers pursued employment in agriculture, coal-mining and rural industry in Fife, the Central Belt and the Highlands. The movement of labour encouraged casual encounters between farm servants and labourers, leading to higher rates of illegitimacy, as well as the bolstering of a male drinking and violent culture (Smout, 1986; Devine, 1999; Whatley, 2000). These dislocations of traditional social ties, and the mobility of individuals in search of livelihoods, left imbeciles and the weak-minded exposed. The female imbecile's vulnerability confronted a less safe anonymising world.
- 8 This article's focus consists of individuals who were not medically classified as insane, but whose minds and social behaviours were nevertheless deemed abnormal. For contemporaries, what marked them out publicly was their lack of mental development, and their differences in daily conduct reflected in the expression of a childlike social competence. The terms "weak-minded", "idiot" and "imbecile" were often used interchangeably, and alongside a new classification that was popular by the late nineteenth century, the "feeble-minded". One marker of imbecility was a lack of verbal language skills: those who were born deaf often remained "dumb", and this inability to communicate was assumed to be associated with underlying intellectual deficit. Considered a life-long condition, medical professionals paid far less attention to the imbecile than the insane. Until they were confronted by criminal cases involving imbeciles, lawyers were generally only interested in imbeciles in the rare instances when the property or inheritance rights of the wealthy were at stake.²
- 9 Recognition of the special needs of imbeciles was aided, in part, because of developments in educational provision. While imbecility may have been viewed as incurable, contemporaries acknowledged that there were degrees of mental incapacity, and thus that there were benefits to offering a basic education to some groups of imbeciles (Anon., 1877, 108-110; Anon., 1878, 267). Accommodating imbeciles in lunatic asylums or workhouses was increasingly seen as inappropriate: in Scotland, two institutions opened for children: Baldovan Asylum near Dundee in 1855, and in 1863 the "Scottish National Institution for the Education of Imbecile Children" in Larbert, Stirlingshire. Larbert received support from the Scottish Society for the Education of Imbecile Children (Anderson, Langa, 1997; Hutchison, 2011; Anon., 1862, 53-62).
- 10 In their efforts to retrieve the lives of imbeciles, historians have certainly benefited from the records of these specialist institutions. Yet they have produced a distorted picture. Baldovan and Larbert only offered a home and education to children: most were discharged when they reached their mid-teens; whether their futures were positive is a mystery. Furthermore, pioneering as they were, these two institutions could not hope to support all Scottish children with mental impairments. While a distinctively Scottish system of "boarding out" put an increasing strain on the resources of families and communities, most imbeciles remained living with their struggling families (Anderson, Langa, 1997, 249, 256-257; Harriet, 1996; Sturdy, Parry-Jones, 1999).
- 11 Compared to the lack of historical research on imbeciles as young people and adults, there has been far more attention given to the history of rape. As imbeciles were often

treated developmentally as children in the eyes of the law, the publications of historians such as Shani D’Cruze, Tom Dunning, Sarah Toulalan and especially Louise Jackson on child rape are particularly relevant (D’Cruze, 1998; Dunning, 2007; Toulalan, 2016; L. Jackson, 2000). However, our understanding of sexual crimes committed in Scotland remains more limited than in England, and until now there has been no historical study of sexual crimes targeting Scottish people with mental disabilities and how Scots law responded.

- 12 Instead, historians of crime and criminal justice have hitherto focused their attention upon the nineteenth-century development of the law on lunacy (Walker, 1968; Smith, 1981; Farmer, 1996, 121-122; Kennedy, 2016). The question of criminal liability was one that exercised contemporaries, and led to a new criminal typology, the “criminal lunatic”. At the end of the nineteenth century, the “discovery” by psychiatrists of certain pathologies, such as split personality, added new complexity to discussions concerning the relationship between mental disorder and criminal behaviour.³ Yet the criminal responsibility of imbeciles and the weak-minded was never as fully explored by legal authorities as that of the insane, and they remained marginal in the debates of the period.⁴ Michel Foucault raised the neglected issue of imbecility in his study of Charles Jouy within his *History of Sexuality*, and later collection of lectures, *Abnormal*. Jouy, a man who was “more or less the village idiot”, lived in the Nancy region of France and in the autumn of 1867 was accused of “almost rape” by the parents of a “little girl”, Sophie Adam. Foucault has been rightly criticised for arguing that Jouy was the innocent victim of a “new system of control and power”, in which “the figure of the abnormal individual was psychiatrized.” Following examinations by doctors, criminal proceedings were dropped, and Jouy was confined in an asylum for the rest of his life. Foucault refuses to acknowledge Sophie as a sexually abused victim.⁵ Yet Foucault’s focus on the assailant also distracts from the fact that people who were weak-minded, and female were far more likely to be the victims not the perpetrators of sexual crime. The records of the High Court of Justiciary in Scotland reflect this: during the nineteenth century it heard just one case for rape in which there was consideration of the mental capacity, and thus culpability, of the accused. This was the 1847 case brought against Archibald Burke, known locally as “the dummy”, since he was deaf and dumb.⁶
- 13 This article’s focus is upon eight cases of rape or sexual assault committed between 1815 and 1900 in which the victim was an imbecile or weak-minded girl or woman. In Scottish law, rape was defined as “knowledge of the woman’s person, forcibly and against her will”. Although penetration was necessary to prove rape, emission was not.⁷ The most serious criminal offences in Scotland are dealt with by common law and Scotland relies upon public prosecutors to decide whether the accused should be indicted. As Lindsay Farmer explains, from 1707, the Scottish legal system has maintained its distinctiveness from English practice. Scotland had its “own courts, rules of procedure and evidence”, and it is only by understanding these that we can appreciate the nature of our surviving records (Farmer, 1996, ch. 2, quote at 21).
- 14 When a sexual crime was reported a complaint was submitted locally to the procurator-fiscal. The procurator-fiscal gathered statements from witnesses examined individually, under oath and in private, to produce a precognition. It was then the procurator-fiscal’s decision whether a prosecution could be mounted. They could also determine whether there was a case for prosecution in the lesser county (Sheriff) or

higher national (Justiciary) courts. If the precognition was transmitted to Edinburgh, the Crown Counsel, led by the Lord Advocate, or the advocates-depute for the circuits, again had to decide whether to prosecute. They might dismiss the case and liberate the accused, return the case to the county to be prosecuted in the Sheriff court by magistrates, or proceed to indictment and trial in the High Court (Alison, 1833, xiv-xx, 137-139; Riggs, 1997).

- 15 The individual opinions of Scotland's criminal procurator fiscals and advocates were thus vital in determining whether cases were prosecuted. As Paul Riggs states, "In Scots law, prosecutors were 'masters of the instance' and in individual cases they made critical decisions" (2012, 172). If a case proceeded to trial, their assessments of the gravity of a crime, and decisions about what type of court should hear the case, had consequences for the severity of punishment if the accused was found guilty. If there was deemed to be sufficient evidence, then the procurator fiscal would pass the information he had gathered to the High Court of Justiciary, which tried all cases of rape. For example, having been presented with information relating to the sexual assault upon the "semi-imbecile", Nelly Aitchison, in July 1826, the Sheriff Depute of Roxburgh decided that the case be transferred to the High Court of Justiciary. His covering note was included at the end of the information sent to Edinburgh.⁸ Rape was often indicted together with the cognate charge of "assault with intent to ravish". Two key changes in nineteenth-century statutory law with regards to rape applied to Scotland as well as England. If convicted of rape, until 1841 the sentence was death (Hume, 1797, vol. 2, 10). After 1841, in line with a reduction of capital punishment for other crimes, a guilty verdict could result in transportation or imprisonment including hard labour (Riggs, 2012). The 1885 Criminal Law Amendment Act "to make further provision for the protection of women and girls", included a clause that made it an offence to have sex with "any female idiot or imbecile woman or girl, under circumstances which do not amount to rape, but which prove that the offender knew at the time that the woman or girl was an idiot or imbecile".⁹ Conviction in these circumstances was judged a misdemeanour, and liable to a sentence of imprisonment of two years, with or without hard labour.
- 16 The filtering process operated by Scotland's public prosecutors meant that an unknown number of sexual offences were either heard at the local level by the Sheriff or magistrate, or were dismissed. Archibald Alison, who updated Baron Hume's authoritative statement of Scottish criminal law in two major texts on Scottish legal principles and practice published in 1832 and 1833, and was himself Sheriff of Lanarkshire, estimated that "several hundred" of the 800 to 1,000 cases annually transmitted to the Crown officers were dismissed (1833, xvi-xvii). When sexual assault was deemed to stop short of rape, or it was thought there was insufficient evidence to prosecute for rape, cases might be prosecuted in the Sheriff courts. But it is very difficult to retrieve evidence of these cases. Sheriff court records are not digitised or classified, and although registers may list names of parties, further biographical data, which would allow historians to identify imbeciles, is absent. We can gain occasional glimpses from contemporary newspapers, such as the report in the *Aberdeen Journal* of the case brought against John Macrobbie in November 1893, a labourer charged with "assaulting with intent a young imbecile woman named Fraser". Macrobbie was tried at the Elgin Sheriff Court, found guilty of indecent assault and imprisoned for three months. Yet the report is very brief, and focuses on the non-appearance of a Dr Mackay as a witness. We learn little about the circumstances of the crime, or about Fraser, even

her first name (*Aberdeen Journal*, 6 November 1893). There is no record of this 1893 case in the limited records of the Elgin Sheriff court.

- 17 While in the Macrobbie case, a press report provides the only evidence of a crime, nineteenth-century newspapers can be frustrating as sources for historians of crime. Their potential to reveal evidence of court proceedings is limited by Victorian standards of decency, which resulted in a reluctance to print details of sexual offences in case they offended readers, or corrupted public morals. By convention sexual offence trials were heard behind “closed doors”. When John Skillin Montgomery was tried at the northern justiciary circuit in Aberdeen in 1855, the case “was heard within closed doors”, due to, “its indelicate nature” (*Montrose, Arbroath and Brechin Review*, 28 September 1855).¹⁰
- 18 In contrast to the organisation and survival of Sheriff criminal court records, those of the Justiciary, whether of its central criminal court in Edinburgh, or its three circuit courts in the west, south and north of Scotland during its spring and autumn circuits, are amenable to access. All Justiciary records are now held and indexed by the National Records of Scotland (N.R.S.), Edinburgh. The main records for the Lord Advocates department criminal cases (AD) are the precognitions (AD14 Series), for which sources that have survived begin in 1815. Since the precognitions are described in outline on an electronic database, the N.R.S. online catalogue and the Scottish Criminal Cases Index were searched using key terms to identify the case records relevant to the focus of this study. Trial records (JC26 Series), where available, were also examined to determine the verdicts and sentences of those tried. Precognitions provide much of the rich detail upon which the argument and substance of this article is based. For as Robert Shiels argues, precognitions were the “witting testimony of the crimes being investigated and unwitting testimony of the law and society of the time in which they were taken” (2015, 31). Precognitions illuminate the material living conditions and norms of communities, as well as the forensic nexus about the crime that had been committed (Crowther, 1995; Riggs, 2012).
- 19 Synthesizing evidence from Crown Council Justiciary precognitions, trial records and nineteenth-century law reports produced by the legal profession for its members has resulted in the identification of eight cases involving the weak-minded or imbecile. A descriptive outline of these cases, including their N.R.S. AD14 identifier, is synthesized in Table I.
- 20 Across the period, the numbers of cases of this type heard by the High Court of Justiciary remained comparatively extremely limited. The general search term “ravish” yielded for the period 1815-1900 a total of 1,281 sources in the N.R.S. Scottish Criminal Case Index. The term “rape” for the same period identified 1,228 sources in the N.R.S. database. Sexual assault against “a girl under the age of puberty” has 292 case records in the N.R.S. for 1815-1900. The “dark figure” of unreported crime is likely to have been especially significant for all sexual offences, and arguably more in the cases which this article explores, when feelings of individual or family shame and norms of social conformity would undoubtedly have contributed towards a reluctance to pursue official redress. In addition, one of the most characteristic features of Scottish criminal law is that key facts should be corroborated. Corroboration might have been harder to achieve in cases where victims were weak-minded, and thus were believed to be both unreliable and untrustworthy witnesses.¹¹ Gaining corroboration and the status of the female victim would be likely to intensify the “dark figure”. As this article will now

show, women who were labelled as weak-minded or imbeciles faced further challenges in the pursuit of justice after sexual assault or rape.

Table I. Scottish Criminal cases, 1815-1900

Name, age & status of the accused (where known)	Name & Status of victim	Indictment	Place of offence	Year of offence	Area of offence	Verdict & Sentence
Alexander Martin (28), itinerant labourer, former seaman AD14/23/117	Christian Moir, deaf & dumb	Rape, and, Assault with Intent to Ravish	Woodland	1815	Dyce	Assolzie simpliciter and dismissed
John Wintrup, son of a farmer or carter AD14/26/193	Nelly or Helen Aitchison, "Semi-imbecile"-deaf & dumb	Rape, and, Assault with Intent to Ravish	Broke into her house (via window)	1826	Roxburgh	Assolzied simpliciter and dismissed
Hugh McNamara (44), hawker AD14/48/330	Jean Watt, aged 14, "of weak or imbecile intellect"	Rape, and Assault with intent to ravish	McNamara's house	1848	Glasgow	Guilty - rape. Transportation - Life
John Skillin Montgomery (25), hawker AD14/55/278	Ann Andrew, deaf & dumb	Rape, and, Assault with Intent to Ravish	Broke into the house where she has a room	1855	Peterhead	Guilty - assault. Prison - 2 months
Edward Yates (31) & Henry Parkes (45) AD14/51/519	Elizabeth Smith, "silly & weak in the mind"	Rape, and, Assault with Intent to Ravish	Outdoors (roads & paths - semi-rural)	1857	Airdrie	Guilty - assault with intent to ravish. Imprisonment - 18 months with hard labour
John Murray (15), farm servant and apprentice carpenter AD14/66/224	Ann Innes, "weak or of imbecile intellect"	Rape, and, Assault with Intent to Ravish	Outdoors (field)	1866	Elgin	Not proven, Assolzied simpliciter and dismissed

John McGuire (55), labourer & Francis O'Brien (34), ironmaker AD14/89/100	Martha McDonald, deaf & dumb, "weak intellect"	Rape	At a neighbour's house	1889	Lanarkshire	Guilty, Penal servitude - 7 years
William Paterson (30), carter & William Kean (17), labourer AD14/1900/58	Margaret Bone, "semi-imbecile"	Rape, and, Assault with Intent to Ravish	Outdoors (urban)	1900	Lanarkshire	Guilty, Imprisonment - 8 years Rape of semi-imbecile girl. (Previous convictions: assault with intent to ravish) (Paterson) Imprisonment - 5 years (Kean). Rape of semi-imbecile girl

Sources: N.R.S.: AD14 Series and JC26 Series, Scottish Criminal Case Index.

Assozied means "To acquit of a charge; to declare innocent or free from liability", Robinson (1999, 18).

The imbecile as victim

- 21 The neighbourly support given to female victims of sexual assault or rape demonstrates social and emotional attachments to imbeciles; their abuse was perceived to be unnatural and disturbing. The shepherd approached by Ann Innes after she had been attacked confronted John Murray the next day, asking him why he had "bad used the girl"? One of her mother's neighbours, hearing what had happened, encouraged her to report Murray's offence, saying that he should be punished.¹² In early summer 1855, Mary Milne, a young girl aged fourteen or fifteen, was alerted to the harm that was being committed against the deaf and dumb Ann Andrew, known locally in Peterhead as "the dumbie": the peculiar sound of her screeching drew attention to her plight. Going up to her house window, she could see Ann lying on the floor, with John Montgomery straddling her. She wasted no time: rushing to gather one male neighbour and four married women, including Ann's cousin, Barbara Seller, who lived "seven houses off". The women, running to the scene, surrounded John, "rating" him "for what he had done to 'the dumbie'" and telling him he would be punished for it. One fetched a policeman.¹³ On occasion the intervention of neighbours protected these vulnerable women from more serious injury: when the imbecile Margaret Bone was attacked by William Paterson and William Kean in a close near the green in Lanark in the autumn of 1900, one of them "did not get his lust fulfilled" because he was scared off by the arrival of "some folk".¹⁴ Even when neighbours arrived too late to prevent the sexual assault they set off in immediate pursuit without considering their own safety. While they comforted the deaf and dumb Christian Moir after she had been sexually assaulted by Alexander Martin in some woodland, others set off in pursuit,

following him through difficult terrain until he escaped in a fishing boat he stole to cross the River Don.¹⁵ The pursuit of natural justice by community members suggests that despite their comparatively limited agency imbeciles were respected and protected.

- 22 Confident that justice would be done, witnesses provided accounts that detailed the consequences of sexual assault. Margaret Bone's mother said her daughter was "trembling like a leaf and very white" after she had been attacked by the two men, and that "she has been in an excited state ever since and has refused to take food."¹⁶ Martha McDonald, "a hunchback" of "weak intellect", and "deaf and dumb from her birth", was left in such a "nervous state" after her rape by John McGuire and Francis O'Brien in June 1889, that she was too frightened to leave her home.¹⁷ Her shock was represented as transforming her psychological condition from one of idiocy to insanity: on finding Christian Moir one witness "was afraid she would lose her reason"; Elizabeth Smith, a girl "who had previously been of weak intellect", became "insane" three or four days before the trial of her attackers, and was therefore unfit to give prosecution evidence. After a decade of caring for their imbecile daughter, Jean Watt, following an accidental fall on her head when she was about four-years-old, it was her rape in May 1848 by Hugh McNamara, a widower and hawker, and a migrant from Ireland, which prompted her involuntary admission to the Gartnavel Royal Lunatic Asylum, Glasgow.¹⁸
- 23 Women judged vulnerable were the targets for often solitary male sexual predators in part because of their difficulties verbalising their lack of consent to sexual advance. This could give assailants the opportunity to exploit a line of legal defence: John Montgomery denied assaulting the deaf and dumb Ann Andrew, arguing that although "she made a kind of speaking" noise, "I did not understand her meaning."¹⁹ But even if she could speak, a weak mind could remove a woman's capacity to consent. In civil law, an idiot or imbecile was barred from marriage precisely for this reason. Following rape, supporters of weak-minded or imbecile victims argued that their mental condition meant that evidence of a refusal to give verbal consent was unnecessary. According to Margaret Bone's mother, "she cannot speak very well. Sometimes I think she is mentally deficient and she does not at any time understand things like you and me." Barely able to communicate to her mother, Margaret was incomprehensible to others: one witness said, "she was soft and simple and one you can get no words out of". With a "soft" and pliable mind, her words could carry no weight because she was judged incapable of understanding. "She is so silly that no man should have anything to do with her", explained her sister: "she is quite incapable of giving consent".²⁰ To be an imbecile was besides greater dependency, to be denied sexual agency: as well as providing evidence of his examination of Ann Innes's body following her rape, the physician and surgeon gave his view that "the girl is altogether imbecile and incapable of consent to such intercourse."²¹ Such precognition records suggest that the sexual understanding of these women was either absent or very rudimentary.
- 24 In rape indictments Scottish legal authorities emphasized physical force: "the knowledge of the woman's person must be against her will, and by force", wrote Baron David Hume. Yet it was allowed that this rule should "always be understood in a reasonable and consistent sense", so that if a woman "from natural infirmity" was unable to oppose her assailant, Hume giving the example of "a poor cripple lame lass of sixteen years old", he could still be charged with rape. Evidence of physical force being

met with resistance might also be evaluated according to the age of the victim. A child under the age of puberty:

Because of her simplicity, and defect, as well of intelligence and discretion, as of passion, the female, at those years, is incapable of a due consent to this act, and cannot, in any proper sense, be said to have a will in the matter; so that the deed may justly be said to be without her will, even where she makes no resistance (Hume, 1797, vol. 2, 1-5).²²

25 Without “proper sense”, the imbecile could similarly be considered without a “free will”. Indeed, former Lord Advocate John Macdonald was still citing Hume’s example of the cripple in his authoritative treatise on Scottish criminal law, first published in 1867, and declaring that in terms of physical resistance, “an idiot is in the same position as a child” (1877, 168-169). In mid-Victorian England, Martin Wiener has argued that “the very notion of consent was reconstrued” in rape trials, so that “forms of resistance less than total began to be accepted”. Initially applied to cases in which the prosecutrix had been drunk, “the ruling was quickly extended to weak-minded victims as well” (Wiener, 2004, 76-77, 109-112). In Scotland, change was less decisive. Judges agreed that mental weakness lessened the requirement of physical resistance to prove non-consent. So in 1848 it was ruled following the case of Hugh McNamara for the rape of Jean Watt, a girl aged about fourteen, “of weak or imbecile intellect”, that “any physical resistance to however small an extent”, would prove rape, “in consequence of her inability to give a mental consent”.²³ But uncertainty about how to assess mental weakness, and awareness that the extent of imbecility could vary with the individual, led to judicial hesitancy. In Ann Innes’s case, heard in 1866, although Lord Ardmillan instructed the jury that they might allow for a lesser amount of physical resistance than would be required “in ordinary cases of rape”, because a medical witness stated that Ann was “very imbecile”, yet “not a perfect idiot”, she was deemed to not be “wholly incapable of giving consent”.²⁴

26 Imbeciles and the weak-minded raised difficult questions about their capacity to consent to sexual relations, but if sexual assault took place, there were additional problems determining their capacity to distinguish between truth and falsehood. Without knowing that imbeciles understood the nature of an oath, the legal legitimization of mental capacity, they could be barred from appearing as legal witnesses in court. Hume disqualified “all those persons... in a state of idiocy, or of madness”, on this indicator. Similarly, Hume declared that children under the “years of puberty” were “incompetent witnesses”. This was because children:

May not always be sufficiently attentive, or intelligent, rightly to understand, and judge, of what they have occasion to see or hear: and they may not be so thoroughly confirmed in their attachment to truth, or their sense of obligation to an oath (Hume, 1786-1822, vol. 5, 331).

27 Whilst idiots, like young children, might be permitted to make a declaration, or statement to the procurator fiscal, as Ann Innes found, if the case went to trial, there were inherent limitations attached to that evidence (Alison, 1832, 224; Macdonald, 1877, 473-474). Ann was prohibited from appearing as a witness, and Lord Ardmillan only allowed other witnesses to repeat what Ann had told them “immediately after the alleged outrage”. He told the jury that this evidence should be regarded as “an incidental fact, like the cry of a child, or even the scream of any animal”, but he prevented anything that she said the day after her assault being repeated in court. Compared to children and even animals, the instantaneous or primal response of a

weak-minded woman might be considered, but not her subsequent words, he adumbrated. Concern that the rules of evidence should be strictly upheld, meant that Ann's spontaneous cries could be admitted as "res gestae", but that anything she told witnesses in the days that followed was "hearsay" and therefore inadmissible.²⁵

28 Even in providing initial statements of what had happened to them, these girls and young women faced problems because of their communication difficulties and, no doubt, also normative views about their abilities and limitations. They lacked a proficiency in verbal skills and logical reasoning. Janet Smith, the wife of a grocer, said of Elizabeth Smith, "she wanders in her statements and in telling any story she frequently jumps from one thing to another". Janet's statement was supported by Agnes Tryney, a straw hatmaker, who declared that Elizabeth could not tell a "connected" story.²⁶

29 For the deaf and dumb, these intellectual and social limitations were magnified. Mr Taylor, a teacher at the Deaf and Dumb Institution in Aberdeen, was brought before the High Court of Justiciary in Edinburgh during the trial of Alexander Martin for the sexual assault of Christian Moir. Christian was not allowed to stand as a witness until Taylor had told the court that having been "under his instructions for a short time... He was of the opinion that she was capable of comprehending the distinction between truth and falsehood, and the nature and obligation of an oath." The assault had taken place in 1815, some eight years before Martin's trial. When Martin had initially absconded and fled from justice he was declared an outlaw in April 1816. After he was apprehended and brought before the sheriff of Aberdeen in the autumn of 1822, he managed to break out of the tollbooth by cutting a hole in the roof of his cell. Time may have been on Martin's side in 1823: reliant upon Taylor for her "voice", subsequent reports of the case focused on Christian's inability to speak for herself, and subsequent failure to identify Alexander Martin as her assailant. In contrast, there was fulsome praise for Taylor's intellect and skills:

It is but justice to Mr Taylor to state, that the Court, and the Counsel on both sides, were fully satisfied of the accuracy and fidelity with which he interpreted the witness's meaning and complimented him on the ability and intelligence displayed in conducting her examination.

30 Newspapers paid more attention to the "interesting account" that Taylor gave to the "manner of teaching words and communicating abstract ideas to deaf and dumb persons", than to the crime committed against Christian Moir. The court was indebted to his expertise and bowed to his authority: it was Taylor who administered the oath to her, and "other persons who resided in her neighbourhood" were only permitted to state that they believed Christian Moir was capable of knowing the difference between truth and lies, but only after Taylor had given his expert judgement.²⁷ Moir's courtroom experience bears similarities with that faced by the deaf in the English criminal courts. For rather than relying upon family and friends as interpreters and paying attention to the gestures or "home signs" that the deaf used to communicate, in the nineteenth century these courts became progressively more respectful of "expert" witnesses and/or evidence that was submitted via institutionally formalised systems of sign language (Stone, Woll, 2008; Woll, Stone, 2013). While Scotland had been pioneering in its education for the deaf and dumb, with the opening of Braidwood's school in Edinburgh in 1760, the status and recognition of deaf and dumb people in law remained problematic. In his nineteenth-century legal treatise, Macdonald advised that the deaf and dumb could be admissible as witnesses in the criminal courts "provided they know

right from wrong, and are aware of the existence of a God, and of the evil of telling what is untrue". Yet he followed this with discussion of the difficulties of determining this understanding, and included a case from 1864 in which a deaf and dumb girl had been admitted, but in Macdonald's view, given that the girl had no idea of God, and her mother could not be certain that she understood what was a lie, the case went "rather too far" (Macdonald, 1877, 474).

- 31 The diminished position of the deaf and dumb woman who was additionally a victim of rape was also highlighted in the case of Ann Andrew in 1855. Unlike Christian Moir, Ann Andrew was "uneducated" and did not even know the "dumb language". A Mrs Cordiner offered to be an interpreter for Ann when her attacker was tried for sexual assault at the northern justiciary circuit, Aberdeen. Ann had developed her own private language, communicating through personalised signs that only Cordiner and her family claimed to appreciate. Montgomery's defence counsel objected to Ann's evidence being admitted, arguing that there was no way to validate the accuracy of what she was trying to communicate. Whereas Christian Moir's case had established the legal principle that a deaf and dumb woman could give evidence of rape if a "sworn interpreter" could assure the court that "she was of sufficient capacity to understand an oath", in Ann's case it was deemed not enough to rely upon the women who knew her best to be her interpreters (Alison, 1832, 224-225). Instead, an expert male witness was called. John Weir, another teacher from the Aberdeen Deaf and Dumb Institution, was brought into court. Weir believed, "from the conversation we had", that Ann understood the reason for the court proceedings, the difference between right and wrong, and that "to offend the Supreme Being is a sin". As a result, the judge, Lord Cowan, agreed to proceed, but to "view this person as in the same situation as an infant", who should be examined, but not under oath.²⁸ Tests of legal capacity were psychological, religious and implicitly moral.
- 32 In an analogous developmental position to a child, in the eyes of the law an imbecile could not be trusted to know the difference between truth and lies. A woman like Ann was incapable of intentionally telling a lie, but nor could she reliably recognise the truth. As Agnes Tryney explained of the rape victim Elizabeth Smith, "I would not be inclined to rely implicitly upon any statement made by her — the reason for this is not that I would suspect her of telling a deliberate falsehood, but because she is weak in the mind". Without a developed moral conscience, it could not be assumed that Elizabeth was inclined to be immoral, as a physician from Glasgow Royal Infirmary confirmed after he had examined her. "No doubt she is somewhat silly and evidently very facile", he said, "but her judgement though weak is not clouded."²⁹ There was no wickedness to distort her judgement, but she might still provide inadequate testimony because she could not seemingly discern truth from fiction. The socially normative nature of imbecile appraisal is apparent throughout these legal, moral and educational investigative procedures.
- 33 Seeking justice through the law for weak-minded and imbecile women who had been harmed by sexual violence proved very challenging in nineteenth-century Scotland. Demonstrating that an assault had been "against her will" was legally complex when a refusal to give consent could not be conclusively established on any recognised existing measure of intellectual capacity. Struggles over communicating with these women hindered judicial progress in accommodating their apparent psychological and social distinctiveness from others in their communities. While the sciences of the mind were

in their infancy, and judges' reliance on expert witnesses still limited, especially in the early nineteenth century, court adjudications were often dependent on questionable normative tests of common sense to establish mental capacity (Kennedy, 2016). The weak-minded presented the legal profession with a complex demography who exhibited none of the crippling delusions or putative dangerous psychosis of the insane, yet their mental processing and social understanding was perceived to be under-developed for their chronological age. Significantly, their problems of communication denied weak-minded and imbecile girls and women the "autonomy of speech as witnesses in/of their own interests", which was afforded in English and Scottish courts to women who were subjected to rape and sexual assault in this period (D'Cruze, 1998, quote from 4, see also ch. 7). Unable to tell their stories in court, the accounts of women like Ann Innes were confined to evidential precognitions. Thus, criminal law reinforced their childlike, abject and marginal position, and not only enhanced their sexual victimisation, but stunted any opportunity for consensual sex. Yet, as the next section will argue, even sympathy for these victims of sexual violence was tempered by the troublesome belief that these women may not have been entirely blameless for the crimes they alleged to have been perpetrated against them.

The "innocent" imbecile?

- 34 Historians of English women who made accusations of sexual assault and rape in this period, Anna Clark, Carolyn Conley, D'Cruze and Victoria Bates, have shown that if legal proceedings began, the veracity of their claims was assessed in the light of their personal appearance, employment record, reputation and sexual history (Clark, 1987, esp. 2, 4, 8, 56-58; Conley, 1991, 90-95; D'Cruze, 1998, ch. 6 and 7; Bates, 2016, ch. 3). As Wiener explains, "a virtual prerequisite for a rape conviction was a chaste victim" (2004, 83). A consequence was that it could be the victim rather than the assailant who became the focus of attention in criminal justice. Yet whereas other women could point to evidence of their unblemished character with respect to their previous relationships with men, the imbecile or weak-minded woman who was the victim of rape or sexual assault, depended upon statements of their total innocence of all sexual matters including sexual activity. It rested upon them, or more often those who spoke on their behalf, to prove their innocence about sex and sexual conduct.
- 35 Thus in 1866 the sexual naivety of Ann Innes was deliberately emphasised by her mother. For all that Ann's body had matured (she began to have her "monthly discharge" when she was thirteen-years-old), until she was raped, she was innocent of the facts of life: "I have since explained to my daughter what it is for a man to have a connection with a woman", her mother said. Others described Ann as a "harmless imbecile".³⁰ In 1900, Margaret Bone's mother said that she had "no ground to suspect her of misconduct with men" after she was raped. She may have felt the need to draw attention to Margaret's untarnished reputation, since she admitted that in her large family, of some seventeen children, she had "a good deal of trouble", with "some of them misbehaved", but "this one was not fit for anything". Indeed, a male witness said of the Bone's: "The family all bear a loose character", but that "I could say more about the other females of the family, than about her". Margaret had "not wrought a day for herself in her life": her weak-mindedness had hitherto prevented her from any kind of engagement with the adult world, and this had protected her sexual innocence.³¹ In a

similar way, earlier in the nineteenth century, Christian Moir's mother declared that she had "never heard the least impure" thing said about her twenty-year-old daughter, and a female neighbour of Ann Andrew declared she was "an inoffensive decent person." The deaf and dumb Martha McDonald, despite being in her thirties, described all men as "big fathers", and had "never been used to the company of men", according to her mother.³² Martha's childlike vocabulary resonates with the way in which Ann Innes' described her assault: "He put my legs apart and put a long thing into my private part and hurt me and lay with me a long time and he jumped and moved upon me." Ann had neither the words nor the knowledge to explain the pain she felt.³³

- 36 In a period when forensic medicine was developing as a profession, doctors gave statements that drew attention to these women's sexual innocence and bodily anxieties (Bates, 2016). These were women who were not used to being touched by men, and for whom even a medical examination was an embarrassing intrusion. "It was with some difficulty that we obtained an examination of her person", Dr MacKay remarked of Ann Innes; "she is extremely modest and I had great difficulty in getting her examined", stated the doctor who saw Martha McDonald after she was attacked.³⁴ The doctor who saw Margaret Bone declared, "I have no information as to the girl being of loose and immoral character", although he knew that "the character of the family is low."³⁵
- 37 Yet such "gatekeeper" statements were only necessary in a culture that held doubts about the sexual appetite and morality of the weak-minded or imbecile female. In contrast to the prosecution of child rapists, which according to Dunning, was aided in Scotland by the idea "of the asexual innocence of childhood", there existed a reluctance to accept that adult women might also be sexually innocent (2007, 115). Rather than being regarded as sexual innocents, at the close of the nineteenth century, and in the early twentieth century, the rise of deterministic social Darwinism and associated eugenicist arguments, would have serious consequences for how the sexuality of the weak-minded, idiots, and a more numerous group of the "feeble minded" would be viewed.³⁶ The questioning of these women's sexual morality and knowledge during rape cases in the Victorian period foreshadowed these later fears of the consequences of them procreating (Benyon-Payne, 2015). As Ralph Sandland has argued from his analysis of six cases of rape involving idiots that were recorded in English law reports between 1846 and 1873, it was from these "isolated legal engagements with individual female idiots and their sexuality", that the "systematic engagement with the sexuality of mentally defective women as a class, and as a socio-political problem" emerged (2013, 89-93).
- 38 The case of Elizabeth Smith shows how public willingness to support a weak-minded woman was compromised if she was known to have had sexual relationships prior to her assault. Elizabeth was subjected to multiple sexual assaults over the course of one night in October 1851 by two whisky intoxicated itinerant migrants from England, Edward Yates and Henry Parkes. Tried at the High Court, Glasgow, a map was produced showing the seven different locations in a Lanarkshire coalfield, all within six- to seven-hundred yards of "Pit No.3", in which Elizabeth had been assaulted.³⁷ Elizabeth provided a very lengthy and detailed precognition. She described meeting the two men as she walked from Airdrie past the collieries towards Calderbank where her sister lived. After refusing "to have some connection with them", and "some dirty conversation", Yates damned her and "swore he would have what he wanted". Threatening to stab her with a knife if she was not quiet, he threw her down, hit her on

the face and broke a tooth. Parkes held her legs up as Yates raped her, and for the next eight hours she was repeatedly raped by these two men. Becoming unconscious on several occasions, the men became increasingly drunk, and progressively more ruthless.

- 39 Elizabeth's horrific ordeal could have been curtailed. After she regained consciousness following one assault by Parkes, she saw two other men walking near Bellsdyke Colliery. One was James Allan, who later described seeing Elizabeth "foam at her mouth as if she had been in a fit". Elizabeth cried, "Save me from these two blackguards", and "Don't let these two men touch me." But according to Elizabeth, the two men did not intervene to rescue her, so that Yates and Parkes dragged her away, and began to assault her again. Later that night she also recalled "two Collier Boys" passing, and she "cried to them for help", but they ignored her and continued. Why? Elizabeth was known locally to police as a street-walker. An unmarried woman aged nineteen-years-old, she admitted that before the assault she had "carnal connection several times with different men". The Inspector of the Poor House in Monkland where she had periodically lived for the last two years believed, "she is a girl of loose habits and in the habit of going with men."
- 40 Elizabeth's sexual history was held against her, but she attributed her current mental problems to an earlier more clandestine sexual intrusion in her domestic space which traumatised her. Two years before she was raped by Yates and Parkes she had been working as a household servant for a shopkeeper in Glasgow. "I got a fright by my Master concealing himself under my bed in the night", Elizabeth explained, and "never felt right thereafter." Elizabeth had always been weak-minded; a kindly neighbour who occasionally let Elizabeth stay with her, and who sent her on simple errands, considered her "not daft, but weak flighty and simple". But this "fright", followed by the multiple rape by Yates and Parkes, was enough to remove her sanity.
- 41 Yates and Parkes were both found guilty of assault with intent to ravish and were each sentenced to eighteen months imprisonment with hard labour. The principle "in law that rape might be committed on a prostitute" was upheld in the case's law report. But just as Elizabeth's sexual reputation had been questioned in court, so she found her experience affected her being accommodated socially by her local community. Already living on the margins of a poor community, unable to live with her father because she did not "agree" with her stepmother, and struggling to make a living from odd jobs, sewing and possible prostitution, Elizabeth was further ostracised after her rape. Janet Thomson, the wife of a grocer and spirit dealer, had previously treated Elizabeth with warmth and charity, her daughter had even made her a gown. But she "prohibited her" from coming to her house after hearing that she had been raped.³⁸ Jackson has described "the problematic position of the sexually abused girl in Victorian and Edwardian society", showing how such children were viewed as "a polluting presence" and as "corrupted" (L. Jackson, 2000, 6-7). Yet while a child victim could be "reformed" and to some extent be reintegrated into her community, in Elizabeth's case, the social and emotional pain to the weak-minded and imbecile woman was deeper and enduring.
- 42 All raped women were tainted with stigma, but for weak-minded and imbecile women, there could be no recovery of social position when popular and political discourses were beginning to encourage links between idiocy and sexual promiscuity. A line was crossed when Elizabeth was raped. Tacit acceptance and even tolerance of her sexual conduct, which was founded on an understanding that her mental incapacity left her

economically vulnerable, gave way to social rejection. Her attackers were guilty of a crime, but Elizabeth's occupation as a prostitute allowed these men's legal defence to argue that her "character" was "such as to imply that there had been no forcible connexion."³⁹ Elizabeth freely admitted to having casual sex with several men before her assault. She epitomised a woman who experienced illicit sex without apparent shame. Her rape exposed her as a woman whose lack of mental development was aligned to a seeming absence of personal morality and restraint. Victorian society was fascinated by the figure of the "fallen woman" who might be "rescued" and start life afresh (Ward, 2014, 118-148). But Elizabeth's representation as a woman who had no understanding of social or moral norms meant there was no possibility of her redemption. She did more than offend public decency, she endangered it.

- 43 Whereas many child rapists were also accused of infecting their victims with venereal disease, this was absent in Scottish rape cases involving imbecile women.⁴⁰ This may be a result of the small number of our retrieved cases, but it could also reveal something deeper about developing historical understandings of imbecile sexuality. Adult men tainted innocent children in a way that they could not contaminate the weak-minded adult female. Instead of evidence of venereal disease, the doctor who examined the seventeen-year-old Margaret Bone in 1900 described how "she had almost finished menstruating... as her underclothing was stained with what appeared to be parts of menstrual fluid, and also there were traces of the same within the vagina". As well as a reminder that despite her childlike mind, Margaret's body had the physical maturity of an adult woman, Margaret's blood was also a powerful, and in her case, negative symbol of her body's potency and fertility. She was capable of producing feeble-minded children, it might be her blood, not her attacker's semen that stained and polluted.⁴¹
- 44 The presence of mothers as key witnesses bore an extra symbolic significance. Mothers played a prominent role in cases of child rape, but they also played a function when their daughters were mentally weak (D'Cruze, 1998, 164-167). Ideas about hereditary weakness, which would be developed by British scientist Sir Francis Galton (1822-1911), and medical-psychiatrist Sir Henry Maudsley (1835-1918), placed primary importance on nature over nurture, in explaining intellectual and other individual differences. Explored in literature as well as science, notions of biological inheritance meant that when imbeciles became involved in crime, even as victims, the spotlight was on mothers as well as their daughters (Gillham, 2001; Pick, 1989, ch. 7). The statement given by Elizabeth Smith's father anticipated the eugenic nightmare of the feeble-minded breeding: Elizabeth was illegitimate, he said, and her mother was also "silly in the mind."⁴² Elizabeth's mother had died some years before, but women who were alive when their daughters were raped, could be viewed as failed mothers. Held responsible for bearing weak-minded daughters, they had then been unable to protect them from harm (Carlson, 2001, 132-133).

Accommodating the imbecile

- 45 For all that Scotland could be proud of its pioneering institution for the deaf and dumb in Braidwood, and its provision of special schooling for imbecile children at Baldovan and Larbert, a key similarity between all the female victims of sexual crime examined in this article, was their lack of formal education. Institutional provision simply did not have the reach or capacity in this period to accommodate all people with mental

developmental difficulties. Nor did it cater for adults. For certain, the argument that education of the weak-minded, if possible in specialist institutions, was essential to crime prevention continued to be made throughout the nineteenth century in Scotland.⁴³ But the fear of crime meant that a disproportionate amount of attention was given to the benefits of education for reducing the criminal potential of the weak-minded, when for the imbecile victim of sexual crime the disadvantages of little or no education were painfully apparent. Ann Innes had never been to school; Ann Andrew was “uneducated”; Nelly Aitchison could “neither read nor write”.⁴⁴ This lack of education was problematic in a legal setting as it limited the women’s ability to tell officials about sexual assault, and raised questions about the truthfulness of their claims, undermining their credibility. Yet it also made it more likely for the women to become victims in the first place. The absence of education would inevitably damage their social status. Education helped to protect individuals from harm, and it integrated individuals, socially and occupationally. Schooling taught vital social skills and provided the opportunity for fostering positive social relationships between adults and children (Anderson, 1983; Mair, 2016). Without an education acquired through schooling, the weak-minded struggled to cope with adult relationships, especially sexual ones, and did not know how to interpret or react to threatening or other non-benign situations. Sexual predators took advantage of this, and as the cases of Elizabeth Smith and Margaret Bone show, made these women targets of a particular kind of sexual crime, “gang rape”. Without an education, the weak-minded remained naïve: Jean Watt “could be readily flattered to do anything she was bidden”. Her rapist, Hugh McNamara, was known as “Candy Hughie”, because he lured children to his room with sweets and homemade treacle. Jean did not recognise his criminal intention, until it was too late.⁴⁵

- 46 The families of women like Ann Innes tried to give them a role which would be useful, even if they were incapable of earning a living. So they were given simple tasks, like collecting milk, an unchallenging habitual activity not requiring education. It was customary for children to run errands to support the family economy (Humphries, 2010). But for a sexual predator like Ann’s rapist, this freedom from more formalised supervision provided sexual opportunity for exploitative men. Ann’s routine meant that he knew that on a daily basis, she would be in the same place at the same time.⁴⁶ Thus a perceived vulnerability to sexual attack should be added to the liability to “fraud, imposition, and inability to protect themselves from danger”, which Mark Jackson has identified as defining people with “defective minds” in the nineteenth century (1998).
- 47 Scottish families and communities had a place for the weak-minded and imbecile in the nineteenth century. Their social and sensory differences did not necessarily alienate. Instead human similarities and bonds that the weak-minded shared with others of their class and neighbourhood came to the fore at moments of threat. The weak-minded or imbeciles were familiar individuals in Scottish communities, who lived alongside others, and were most frequently viewed as harmless, even if their labelling such as “dummy” or “silly” categorised them as appearing to be outside the mainstream “fit” demographic. The exception was Elizabeth Smith. Her mother’s death, and the breakdown of her relationship with her father, set her adrift. Forced to try and support herself independently, her acceptance of sex for money then condemned her when that sex became a violent assault.

- 48 In all other cases, weak-minded or imbecile women who were raped or sexually assaulted elicited sympathy. Perpetrators could expect no such understanding: in a letter written to John Skillin Montgomery by his wife, as he waited in gaol for his trial for the rape of Ann Andrew, she told him that although she was prepared to forgive him, her mother was not. His mother-in-law, she explained “is very angry at you”, and had said that “she would have forgiv[ing] you for any thing, but this”, which was “such a disgrace”.⁴⁷ While Ann had been surrounded by a crowd of supportive female relatives and neighbours following the rape, Montgomery’s crime had set him apart, physically and morally.
- 49 This article has shown that following sexual assault weak-minded or imbecile women faced additional legal hurdles to those confronted by other women in nineteenth-century Scotland. An unknown number of offences were never pursued as criminal cases, or were deemed to have insufficient evidence to be heard in the Justiciary courts. Yet of the eight cases in this study that were heard at the High Court of Justiciary, or one of its satellites, five resulted in a guilty verdict. In two of these five cases, charging offenders with the double indictment (of rape, or assault with intent to ravish), offered juries the possibility of a guilty conviction on the lesser indictment if evidence for rape was not “beyond reasonable doubt”. The defendant had to convince the jury that he was innocent of all charges, whereas the prosecution only had to find him guilty on one charge to win a conviction. As one prosecutor commented following an 1813 case for the rape of a Scottish woman who was not an imbecile, the jury “thought him not guilty of rape but that he was so far culpable that he ought to be punished, and thus they found him guilty of the lesser crime charged” (Riggs, 2012, 182). While the law had to be procedurally exact, the double-indictment legal tool allowed juries scope to show sympathy for the victim. The proportion of guilty verdicts suggests that if cases reached the point of sentencing, there could be little leniency for the sexual offender who attacked weak-minded or imbecile girls and women.
- 50 Nevertheless, Scots viewed rape as a crime that was hard to prove in criminal law, which still remains the case today.⁴⁸ In Victorian Scotland, when there was so much uncertainty about how to assess mental capacity legal justice was not always forthcoming for the weak-minded or imbecile victims of sexual crimes. If convictions were particularly difficult to achieve, however, this did not mean that historic offending was forgotten. While Alexander Martin “fled from justice” after he had attacked Christian Moir in woodland, and then was acquitted eight years later, his crime remained in community memory. Hence when Martin committed a violent robbery upon an elderly man and his daughter in their home a year after his trial for rape, newspapers reminded their readers that he was the man who had been previously charged with a “gross assault on a dumb girl in this neighbourhood”. Acquittal from rape charges, as Garthine Walker has convincingly argued from her study of crime reports of earlier English cases, was not necessarily understood as amounting to a presumption of innocence (2013). Newspaper reporting about Martin took the form of “naming and shaming” and “trial by media”, which David Barrie has shown was common in nineteenth-century Scotland (2015). Martin’s attack upon Christian did not result in a judicial guilty verdict, but his subsequent violence against another vulnerable member of the community, and after his conviction his refusal to confess to his earlier crime, condemned him in the eyes of the press. Newspaper coverage of his trial and widespread reporting of his subsequent execution, reflected the popular view

that he had been guilty of her rape. For her community, justice for Christian was finally achieved when Martin mounted the scaffold.⁴⁹

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NOTES

1. National Records of Scotland, Edinburgh (thereafter N.R.S.), AD14/66/224, N.R.S., JC26/1886/49, *H.M. Advocate v. Murray* (1866) 5 Irv 232, Macdonald (1877, 473-474).
2. Jackson (1998), Houston (2000, 164-171), Cockayne (2003), Shuttleworth (2010), Sandland (2013).
3. Hume (1797, vol.1, 22-36), Alison (1832, 644-661), Shuttleworth (1884), Marchetti (2015).
4. Alison (1832, 644-645, 655, 667), Macdonald (1877, 11-12), *H.M. Advocate v. Robertson* (1836) Swinton 15.
5. Foucault (1978, 31), Foucault (2003, ch. 11), Taylor (2017, 30-34), Tremain (2013).
6. N.R.S., AD14/48/473, N.R.S., JC26/1847/688.
7. Hume (1797, vol. 2, 1-5), Alison (1832, 209-211), Macdonald (1877, 167).
8. N.R.S., AD14/26/193/2.
9. Criminal Law Amendment Act 1885, 48 & 49 Vict. c.69, section 5 (2,15).
10. Yet Shani D’Cruze has also shown their potential to reveal attitudes towards sexual violence (1998, ch. 8).
11. Hume (1797, vol. 2, 231-234), Griffiths (1992, 97-98, 112), Nicolson, Blackie (2013).
12. N.R.S., AD14/66/224.
13. N.R.S., AD14/55/278.
14. N.R.S., AD14/1900/58.
15. N.R.S., AD14/23/117, *Aberdeen Press and Journal* (29 November 1815).
16. N.R.S., AD14/1900/58.
17. N.R.S., AD14/1889/100.
18. N.R.S., AD14/48/330, N.R.S., JC26/1848/500.
19. N.R.S., AD14/55/278.
20. N.R.S., AD14/1900/58.
21. N.R.S., AD14/66/224.
22. See also, Alison (1832, 211-214).
23. *H.M. Advocate v. McNamara* (1848) Arkley 521, Macdonald (1877, 169).
24. *H.M. Advocate v. Murray* (1866) 5 Irv 232.
25. *H.M. Advocate v. Murray* (1866) 5 Irv 232.
26. N.R.S., AD14/51/519, N.R.S., AD14/51/519/3.
27. N.R.S., JC4/14, *The Scots Magazine* (1823), vols. 91-92, 118-119, *Caledonian Mercury* (3 July 1823), Alison (1832, 224).
28. *H.M. Advocate v. Montgomery* (1855) 2 Irv 222.
29. N.R.S., AD14/51/519.
30. N.R.S., AD14/66/224.
31. N.R.S., AD14/1900/58.
32. N.R.S., AD14/23/117, N.R.S., AD14/55/278, N.R.S., AD14/1889/100.
33. N.R.S., AD14/66/224.
34. N.R.S., AD14/66/224, N.R.S., AD14/1889/100.
35. N.R.S., AD14/1900/58.
36. Pick (1989, ch. 7), Zedner (1991, ch. 7), Jackson (2000, ch. 5), Wright (2001, ch. 10).
37. N.R.S., AD14/51/519/4.
38. N.R.S., AD14/51/519, N.R.S., JC26/185/372, *H.M. Advocate v. Yates and Parkes* (1851) Shaw 528.
39. N.R.S., AD14/51/519.
40. Dunning (2007, 122), Toulalan (2014, 33, 38-46), Toulalan (2016).
41. N.R.S., AD14/1900/58.
42. N.R.S., AD14/51/519.

43. *The Scottish Review* January 1862, 53-62, *British Journal of Psychiatry* 44, 1898, 557-558, Hutchison (2011).
44. N.R.S., AD14/66/224, N.R.S., AD14/55/278, N.R.S., AD14/26/193.
45. N.R.S., AD14/48/330.
46. N.R.S., AD14/66/224.
47. N.R.S., AD14/55/278/3.
48. "Scots rape laws 'worst in the world'" *The Scotsman* (4 March 2008).
49. *Aberdeen Press and Journal* (29 November 1815), *Caledonian Mercury* (3 July 1823), *Fife Herald* (22 July 1824, 2 September 1824), *Perthshire Courier* (3 September 1824), *The Times* (3 September 1824).
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ABSTRACTS

This article foregrounds the challenges encountered by the criminal justice system in understanding the distinctiveness of individuals in nineteenth-century Scotland classified as "imbecile" or "weak-minded". Examining cases of rape and sexual assault that came before the High Court of Justiciary, it interrogates the difficulties of prosecution. It describes how human difference came under threat from a eugenic bioethical hierarchy when social structures were transforming under industrialization. Each of these factors made Scottish communities less safe for the dependent, especially those classified as "childlike" with sexually mature bodies. Based upon precognition legal sources the article, through the retrieval of the "imbecile", identifies a paradigmatic clash between esteemed legal conceptions of mental capacity and a more complex humanity. It demonstrates how and why public expectations that these new social groups would be accommodated were not always met within the Scottish judicial system.

Cet article met en avant les défis rencontrés par le système de justice pénale écossais, au XIX^e siècle pour rendre compte du caractère distinctif des individus classés comme « imbéciles » ou « faibles d'esprit ». En examinant les cas de viols et d'agressions sexuelles qui ont été portés devant la Haute Cour de justice, il interroge les difficultés des poursuites. Il décrit comment la spécificité humaine a été remise en cause par une hiérarchie eugéniste lorsque les structures sociales se transformaient sous les effets de l'industrialisation. Chacun de ces facteurs a rendu les communautés écossaises moins sûres pour les personnes dépendantes, en particulier celles classées comme « enfantines » bien que corporellement mature sur le plan sexuel. En se basant sur des sources procédurales, l'article, en interrogeant la catégorie d'« imbécile », identifie un conflit paradigmatique entre des conceptions juridiques des capacités mentales estimées et une définition plus complexe de l'humanité. Il est ainsi démontré que le système judiciaire écossais n'a pas toujours répondu aux attentes exprimées par ces nouveaux groupes sociaux.

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Racialism and Eugenics in Greek Criminology

The Case of Konstantinos Gardikas (1896-1984)

Efi Avdela

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- 1 Research on the history of criminology that has proliferated in the last twenty years has highlighted the importance of racial and eugenic ideas in the development of this new field of study. As historian Nicole Rafter has insightfully noted, the establishment of criminology drew from three of the most “disturbing” ideas of the nineteenth century: the idea of evolution, the theory of biological determinism and the theory of heredity of acquired characteristics. On these ideas was based the theory of degeneration, which classified criminals along with the mentally ill, the poor, homosexuals and prostitutes as “degenerates.” Scientific racialism of this kind was common among penal professionals at the time. It constituted the primary aetiology of criminal behaviour, irrespective of the importance accorded to sociological causes (Rafter, 2009, xv-xix).
- 2 National case-studies as well as studies of the transnational movement of criminological ideas and practices have underlined the various factors that determined the crucial role of these ideas in the development of criminology.¹ To quote historian Richard F. Wetzell: “In the last quarter of the nineteenth century the development of criminology into a recognized scientific field was strongly influenced and greatly accelerated by three developments common to most of western Europe: the publication and dissemination of Lombroso’s theory of the ‘born criminal’; the rise of a new penal reform movement that called for criminological research; and increasing interest in criminological questions among psychiatrists” (Wetzell, 2000, 28). Researchers agree that theories attributing criminal behaviour to biology were already broadly widespread, but the impact of the Italian positivist school consolidated the shift from crime to criminals and made criminological discourse more coherent (Wetzell, 2000, 30-35; Rafter, 2009, xv).²

- 3 Criminology was established as the science of the aetiology of crime. The close observation of offenders could indicate the causes of their acts, and accordingly allow for the development of policies for the prevention of crime. Thus, criminological research became the keystone of penal policy. Historians Peter Becker and Richard Wetzell, following Michel Foucault, have argued that criminology should not be considered a discipline but a discursive practice. The close relation between discourse and institutional practice rendered criminological research dynamic and turned it into a “discursive formation.” Through the collaboration of a variety of experts on crime, criminology acquired “common rules, a specific gaze and a consensus about the phenomenon to be studied”. Employing technologies of observation and analysis, criminologists consolidated their authority over widespread lay approaches to crime. “Thus, the common attribute of the criminological ‘scientists’ was their widely accepted role as expert-observers, which entitled them to speak with authority about criminals in general and individual offenders in particular” (Becker, Wetzell, 2006b, 3-5, quotes 4).³
- 4 Disputes over the aetiology of crime were crucial in converting criminology into an authoritative research field. The most intense confrontations concerned the existence of Lombroso’s “born criminal” — or at least the “predisposed criminal” that his students preferred. Conflicts focused on the proportion of biological and sociological factors in the act of crime and the determining place of each in shaping the criminal personality. German criminologists, although deeply influenced by the Italian school, took the lead in opposing Lombroso’s theories, eclipsing French attempts to contest them.⁴ As the new scientific field built networks and acquired visibility through international congresses, journals and associations at the turn of the century, German primacy became irrefutable.⁵ Nevertheless, Lombroso’s ideas, interwoven with already widespread notions about race, heredity and degeneration, left their indelible marks everywhere and determined to a great extent the development of criminology in various European countries.
- 5 The attraction of medical experts — especially psychiatrists — to crime was also crucial for the development of criminology. Crime provided them with the opportunity to claim scientific authority on the issue over penal reformers. By the end of the nineteenth century, in several European countries criminological research attracted more medical doctors and psychiatrists than practitioners — magistrates, jurists, and police experts.⁶ This shift, part of a wider medicalization of the social, contributed to the expanding classification of criminals. During the first half of the twentieth century, under the influence of medical doctors and psychiatrists, biological theories of crime and criminals were shifted from congenital somatic defects to mental abnormalities and their role in shaping criminal behaviour. Wherever medical doctors and psychiatrists acquired public authority on criminal matters, they influenced not only criminological discourse but also criminal justice and criminal policy. It was through them that criminality was linked to eugenics, fully developed on an international scale during the same period (Weindling, 1989).⁷
- 6 It should be noted, however, that research on the impact of racial and eugenic ideas in European criminology is mostly limited to its formative period. Much less studied is the impact of these ideas in criminological thought after WWII in various countries, once they were rejected by the successive UNESCO declarations.⁸ Similarly, the geographical scope of existing research is mostly limited to Western Europe, the USA, and to a lesser

extent South America.⁹ This article is an attempt to include the Greek case in the relevant discussions for the period from the end of the nineteenth century to the end of the 1960s.

- 7 The history of Greek criminology, the institutional and ideological processes that determined its establishment as an academic and scientific field, has only recently started to attract the interest of Greek historians. The role of racial theories in its discourses and practices has been studied even less. However, from the little that we know, what distinguished the Greek case was the persistently peripheral place of medical doctors and psychiatrists in respect to criminal matters in spite of their efforts to gain authority. Throughout the nineteenth and twentieth centuries jurists dominated the field. The first chair of criminology was created in the Law School of the University of Athens in 1930. By then, most jurists treated crime in biological terms. Lombrosian ideas were widespread among crime professionals and penologists from the beginning of the twentieth century; they were soon enriched with eugenic theories.¹⁰ During the interwar period, medical doctors and psychiatrists confronted jurists and penologists in debates concerning the eventual heredity of criminal behaviour and the measures against it (Trubeta, 2013). The idea that the “Greek race” needed to be protected from the criminal disposition of “degenerated” individuals was endemic among both experts and lay opinion.¹¹ However, psychiatrists and medical doctors failed to assert their authority on penal matters and their ideas on the issue remained peripheral. Until late in the twentieth century, the development of Greek criminology was rather slow, while penologists continued to dominate the field.
- 8 What follows is a first attempt to highlight the racial and eugenic influences in the establishment of criminology as an institutionalised field of study in Greece. At first, the article presents succinctly how Greek penologists since the end of the nineteenth century have attempted to explain criminal behaviour. Then it focuses on the work of Konstantinos Gardikas, considered the founder of criminology in Greece and its principal – in fact the sole – representative from the 1930s to the 1970s. After presenting his multifaceted institutional, practical and academic activities, the article examines the place of racial and eugenic ideas in his published work and teaching, and to what extent his interwar positions on issues such as the biological basis of crime, the role of heredity, descent and race, or the “insurance measures” for the prevention of crime – particularly sterilization and castration – changed after the war. Finally, an attempt will be made to formulate a hypothesis on why penologists maintained their predominance in Greek criminological thought throughout the twentieth century.

Greek penologists on the aetiology of crime

- 9 Systematic discourse on crime, criminals and their treatment emerged in Greece by the last quarter of the nineteenth century. A period of relative economic development, acute urbanization, and recurrent attempts for state modernization, it is also marked by the emergence of middle classes in the big cities of the kingdom, as well as by the resurgence of a diffused but fervent nationalism (Gallant, 2016, 117-161, Kostis, 2013, 509-514). Amidst concerns about the spreading of crime in both rural and urban areas, but also urges for more “Europeanised” attitudes toward crime and criminals, critics on penal issues such as the state of prisons or the persistence of public executions became more frequent in the public domain.¹² Often with studies abroad, mainly in Germany,

most Greek jurists were knowledgeable of the work of their counterparts in other countries. At the same time, they adhered to the hegemonic “national science” that emerged in the 1830s as a response to the challenge of racial continuity between Ancient and Modern Greeks formulated by scholars such as Jakob Philipp Fallmerayer (1790-1861). The idea that culture was as important as race in the process of national formation collided with their attempts to synchronise their newborn disciplines with the scientific developments abroad.¹³

- 10 According to one of the rare historical studies on Greek discourse about crime, most nineteenth-century authors — jurists mainly — regarded it as deriving from the constitution of the criminal individual, as a consequence of the abnormalities of his or her character and development (Benveniste, 1994, 16-17). By the end of the century, some jurists started to recognize the significance of social factors in the shaping of criminal behaviour; however, this did not diminish the impact they attributed to physical constitution. Criminals were depicted as the opposite of the “Greek race”: they lacked by definition the positive attributes of “Greekness” that were drawn from religious faith, namely “virtue, honesty, and love of the law” (Frangoudis, 1895, *in* Benveniste, 1994, 18). So before the turn of the century ideas about the biological basis of criminal dispositions and the importance of heredity were already pervasive among experts in Greece. The first criminological study drew from these ideas, as did other studies that associated criminality with heredity and biology.¹⁴
- 11 Organic metaphors fascinated jurists. They allowed them to underline the dangers inherent in criminality, but also poverty, inadequate childcare, and immorality, and consequently, to urge the need for state intervention. For example, G.S. Frangoudis considered criminality as a microbe that could multiply in appropriate conditions (1895). Drawing from contemporary foreign studies, professionals in the field of crime defended the idea of the criminal predisposition, identified as a hereditary disease. The juvenile delinquent in particular was presented as “degenerate, bearing the hereditary defects of alcoholism, epilepsy, and insanity of [the youth’s] ancestors” (Aggelopoulos-Athanatos, 1884, 421, *in* Benveniste, 1994, 28). One can find similar beliefs in the writings of many penal experts throughout the twentieth century.¹⁵ Several even claimed that Greeks did not show the same rate of criminal predisposition as that encountered in other nations (Benveniste, 1994, 18).
- 12 A systematic history of ideas and practices around crime involving law, medicine, psychiatry and technology is lacking for Greece. For example, there is no history of forensics, of how techniques and methods for identifying perpetrators were established in this country, technologies that had a crucial part in constituting criminology as a discursive practice (Becker, Wetzell, 2006b).¹⁶ As it became already apparent, notions about the biological foundations and the hereditary character of criminal disposition had early enthusiastic followers; however, it was the juridical establishment that maintained its indisputable authority in the aetiology of crime. As it will be argued below, penologists refused persistently to accept the claim of medical doctors, even less of psychiatrists, to legitimacy in matters pertaining to criminality, whether in respect to diagnosis and classification or to treatment of offenders and prevention of criminal behaviour.¹⁷ They refuted them systematically for a very long time.
- 13 During the first decades of the twentieth century, as criminological ideas were spreading, organic metaphors became more literal. In fact, the writings of Lombroso, Ferri and Garofalo offered their Greek followers a scientific basis for ideas already

diffused. These were tumultuous years characterised by repeated political upheavals, the ascent to power of the Liberal Eleftherios Venizelos — who would leave his mark in the country's politics for the next twenty five years —, and a decade of war (1912-1922). A period of mass politics, with extended social inequalities and the emergence of the Left as a political player, it was also a period in which theories of degeneration acquired a large popular audience (Gallant, 1997, ch. 6 and 7; Ampatzopoulou, 2017).

- 14 During these years, several Greek psychiatrists, intensively active in the public sphere and interested in the study of criminal behaviour, such as Nikolaos Drakoulidis, Giorgos Vlavianos and Giorgos Sakellariou, attempted to assert their competence on the issue. Followers of eugenics, they considered criminality as one of the “social ailments,” together with sexually transmitted diseases and insanity. In all three they saw the main symbols of social pathology, diseases inherited by descendants and therefore endangering the “Greek race.” They based their systematic campaign for the establishment of the prenuptial health certificate on these ideas, while they participated actively in the debates on castration as a means for preventing “harmful procreation,” a measure imposed by the Nazis (Trubeta, 2008, 2011, 2013, 237 onwards).
- 15 Penologists, for their part, closely followed the developments in European criminology, especially the debates regarding the biological and environmental causes of criminality. While recognizing the contribution of the Italian positivist school, most of them rejected what they labelled Lombroso's “exaggerations.” Instead, they favoured newer approaches that considered crime as a combined “bio-social” phenomenon. Mainly, they were vehemently against the involvement of psychiatrists in criminology, which they noticed was happening abroad. In this spirit, the professor of Criminal Law at the University of Thessaloniki, Charalambos Tzotzopoulos, in 1936 attacked what he called the deterministic approach that identified crime with the “idiosyncratic biology” of the offender. According to Tzotzopoulos, this “annihilation of human will” was unacceptable and marked the failure of criminology as a radical science. “Criminology cannot overthrow Criminal Law;” it had to stay forever its auxiliary and render it its services. He also considered inadmissible the “metamorphoses” of criminal punishment into a “precautionary measure” (1936, quotes on 11 and 14). Although a thorough study on the issue is still lacking, everything indicates that most penologists embraced similar ideas both in the interwar and the post-war years.
- 16 A certain common ground among penologists and psychiatrists was created during the interwar years around the notion that the biological basis of criminal behaviour made urgent the need to protect the “Greek race” from the criminal disposition of “degenerate” individuals. However, it was mostly eugenics that brought them together in debates about the aetiology of criminality and the measures to adopt in order to prevent it. Jurists, medical doctors and psychiatrists attracted by eugenic ideas met at the activities of the Greek Anthropological Society since 1924 and in the pages of its bulletin, as Sevasti Trubeta and others have recently shown.¹⁸

Kostantinos gardikas: a criminologist in his own right

- 17 It was in the Greek Anthropological Society and among the eugenicists that Konstantinos Gardikas (1896-1984) was integrated in the 1930s and established his authority as a criminologist. It was not his first public appearance. He had already a rich and successful experience from serving in important state positions.

- 18 Gardikas' biography is impressive even if our exact knowledge is sketchy. After studying law in Athens, he obtained his doctorate in criminal law at the University of Zurich in 1918, at age 22, and became a don at the University of Geneva. Initially one of the many reformers supporting the Liberal Eleftherios Venizelos' first governments, he returned to Greece in order to undertake government offices. This was an exciting period for young educated reformers: the Balkan Wars (1912-1913) had extended the country's borders, adding Macedonia, the city of Thessaloniki included, and the Aegean islands to the country's territory, while the Asia Minor expedition (1919) — albeit for a short time — seemed to make true the nationalist dream of integrating the multitudinous Greek-orthodox population of the region. With the consent of the Great Powers, Greek troops embarked in Smyrna in 1919 in order to guarantee the safety of the Greek populations of Asia Minor, following Turkey's defeat in WWI. At the same time, in the mainland, numerous reforms about the reorganization of education, labour and the armed forces were voted, intended to boost industrial development, to modernize labour relations and to secure the country's defense.¹⁹
- 19 It was in the “new lands” that K. Gardikas was offered important positions. In 1919 he was appointed General Secretary of the Directorate-General of Macedonia, with the task to administratively incorporate the region and its multi-ethnic population (Greeks, Slavs, Jews and Muslims) into the national body. Just a year later, when Greek sovereignty over Asia Minor was ensured, he was chosen as Director of the Correctional Services of the High Authority of Smyrna. His task was to organise the prison system of Smyrna.
- 20 This intense and ambitious activity was short lived. Greece's defeat in the Greco-Turkish war in 1922 resulted in the influx into the country of one million three hundred thousand refugees and the demise of Greek expansionism (Gallant, 2016, 141-153; Clogg, 2002, 100-109; Kontogiorgi, 2006). Back in Athens, Gardikas continued to serve the Liberals in organising and reforming the Greek criminal system. Little is yet known of his important institutional practice from this period on, especially in respect to the organization and operation of forensic, police and correctional services.²⁰ We know, however, that in 1922 he became Head of Division at the Ministry of the Interior, a member of the Supreme Correctional Council and a member of the Preparatory Committee for the Penal Code. He served as Greece's representative at the International Police Congress in Vienna in 1923 and he was one of the founders of Interpol.
- 21 Throughout the 1920s he collaborated closely with the British delegation assigned to transfer to Greece “the most modern police methods”.²¹ He became the first Director of the newly established Police Directorate at the Ministry of the Interior. While the British delegation was in Greece, Gardikas was instrumental in organizing City Police divisions in many cities of the country and in implementing new police methods. In 1925 he organized the Criminal Marking Service — later Directorate of Criminological Services — and he remained its director for the next forty-one years.²² According to the testimony of his students, Gardikas brought new modern criminological practices in police work. Since 1928 the Directorate of Criminological Services undertook the authentication of criminals, the organisation of criminological investigation and other “tasks for the more appropriate scientific prosecution of crime,” issues analysed in his articles. After 1948 the service was extended to include laboratories of criminological expertise, applying biological, chemical and physistic methods (Spinellis, 2000, 19-23; Gardikas, 1960).

- 22 Gardikas adapted well to the dramatic shifting of Greek politics. He kept his positions through the successive political upheavals of the interwar years and beyond, and followed the gradual establishment of the anticommunist state in the 1930s (Gallant, 2016, 192-217). When he started his university career in 1930, he was already respected for his criminological, forensic and police work. He first occupied the new chair of Criminology and Correctional at the Law School of the University of Athens as adjunct professor. He was appointed full professor in 1939 and served in the same position until his retirement in 1968. Meanwhile, in 1948 he founded the Greek Criminological Society and he was one of the founders of the review *Ποινικά Χρονικά* [Penal Chronicles] in 1951 (Papazachariou, 1968a, 17). For his contribution to the prosecution of crime, in 1955 he was awarded by special legislation the rank of major-general of the Gendarmerie (Spinelli, 2000, 12).
- 23 Neither the Metaxas dictatorship in 1936 nor the war and the Nazi Occupation (1940-1944) perturbed his academic career, and there is no indication that he was ever replaced in any of his non-academic posts.²³ In the postwar period through the Civil War (1946-1949), the post-Civil-War years and the 1967-1974 military junta, characterised by political authoritarianism, anticommunist ideology and moralism, Gardikas became an expert on issues pertaining to the “fight against terrorism,” meaning the pursuit of communists and their “fellow travellers.” He was not alone in this move from reformer to conservative in the course of the above decades, but his positions in criminological, police and forensic services made him instrumental in the application of repressive policies in the context of the Cold War.
- 24 It becomes obvious that Gardikas was first and foremost a man of action, a state official with international contacts. He extended or founded the main criminological and forensic services in the country and contributed to adapting the best practices and methods in the field for local needs. At the same time, he was also a man of knowledge, an academic — a capacity for which he is best known today. The bibliographical references in his books show clearly that he followed closely and incorporated systematically the developments in European criminology and other related issues. Therefore, he combined all the characteristics shared by the great criminologists of the first half of the twentieth century: practical expertise in police and forensic methods, organizational skill in establishing institutions and tracing policies, academic competence in the formation of a new discipline, participation in its international networks and systematic diffusion of its principles and findings. One could hardly question his right to speak as an authority in criminology, in spite of his rather limited contribution to original research.
- 25 This limited contribution consisted of several articles most of which Gardikas later incorporated into his textbooks. Most of them were published early on in his career, first in German and later in Greek. They concerned mainly two themes: on the one hand, the Ancient Greek origin of eugenics, and on the other, techniques of police investigation such as footprints, or the issue of criminological statistics. In respect to the latter, Gardikas studied the correlation of Greek criminality with profession, living space, time of day, season and climate. Concurring with Sevasti Trubeta we can assume that he applied these findings in his forensic and police work and especially in the Directorate of Criminological Services. As she argues, measurements such as these could be used to assess human behaviour and their conclusions could be used for planning or reforming disciplinary measures (2013, 101).²⁴ With his position as a high

state official and a crime policy designer, apart from being a university professor, Gardikas' role must have been crucial in the reorganization of the police and the modernization of the correctional system. According to his students he often criticised the outdated methods applied especially by the Gendarmerie in the provinces and his personal involvement in different criminal cases during preliminary investigation was crucial in avoiding miscarriages of justice (Spinelli, 2000, 20-23).

- 26 As already stated, as a professor at the University of Athens, Gardikas first presented his research on criminological statistics in the four lectures that he gave to the Greek Anthropological Society between 1933 and 1936. Two of his lectures were based on earlier publications in an important German criminological journal. In the 1930s, during the period between his first assignment at the University of Athens in 1930 and his professorship in 1939, Gardikas tried to make his work known abroad, namely in Germany. With this intent, he published a series of articles in the *Monatsschrift für Kriminalpsychologie und Strafrechtsreform* [Monthly Review of Criminal Psychology and Penal Reform].²⁵ He was an admirer of German criminology as exemplified by the work of his mentor, the founder of forensic psychiatry, Gustav Aschaffenburg, to whom he dedicated the first edition of the first volume of his *Criminology*, and whom he invited in his seminar (Gardikas, 1936).²⁶ Thus, he became the main agent of European criminological ideas in Greece, during a period marked by the return of biological aetiologies of criminal behaviour to the forefront; a shift soon to be crystallized into Nazi criminology (Trubeta, 2007; Horn, 2006; Wetzell, 2006).
- 27 More importantly, Konstantinos Gardikas was for many decades the only Greek criminologist, both in the academy and in the institutional posts in which he served. The chair in Criminology and Correctional created for him in 1930 remained for a very long time the only one in a Greek university. His main textbook, the three-volume *Criminology*, was until the late seventies the principal one in the field, with repeated editions.²⁷ Introducing criminology in Greece – one could easily say, embodying it – Gardikas persistently defended two positions, contradictory at first glance: on the one hand, he approached crime as a bio-social phenomenon that demanded preventive measures other than penal legislation; and on the other, he saw criminology as subordinate to criminal law (Spinelli, 2000, 19-23).²⁸ Siding with his fellow penologists – and thus avoiding his isolation – he defended the distinction between criminal law and criminology. Criminal law examined crime “as a legal fact [with] penalty as its legal consequence.” Criminology “studie[d] crime as a real (psychic and physical) fact and [applied] its measures in the battle against it.” In other words, while criminal law dealt with crime after it was committed, criminology studied its causes with the aim of preventing it and relieving the social body of its harmful consequences. Or, in other words: “Criminology studies crime as medicine studies the constitutional diseases” (Gardikas, 1948, quotes 75 and 79).²⁹ The organic metaphor could not be more explicit.
- 28 Apart from the articles mentioned above and those that he published after the war, Gardikas' published work consisted mainly of the various abbreviated or elongated versions of his academic lectures in the form of university textbooks. In their full format, they constituted the successive six editions of the three volumes of his *Criminology* from 1936 to 1966. His numerous publications, twelve books and thirty-two articles, more or less reproduced in different formats the general ideas of these three volumes (Kourakis, 2000, 38). Also, the same texts appeared in successive editions in various forms, extended or abridged. For example, the first volume of *Criminology* (1936)

was divided in later editions into two parts, each with distinctive subtitles. The same with the second volume (1938), although there are editions in which the second part of the first volume is joined to the first part of the second volume in a new handbook (1947). Later again, the first two volumes were reprinted in one abridged manual. There are also several editions of abridged versions of the whole opus. Apart from certain articles, his printed lectures and the first edition of the first two volumes of *Criminology*, published during the interwar period, all his other publications were post-war.³⁰ Most of his articles were incorporated in one or another version of his principal textbook. Therefore, we can follow his thought over time, from the beginning of the thirties to the end of the sixties. A systematic analysis is yet to be made. In what follows, the focus is restricted to his views on the biological aetiology of crime, the heredity of criminal disposition and the precautionary measures against it, namely sterilization and castration, as well as the correlation between race and crime.

K. Gardikas on crime and criminals

- 29 The most impressive characteristic of Gardikas' work is the stability of his positions on crime throughout his long academic life. From one edition of *Criminology* to the other he enriched his references, he made some abbreviations, sometimes he added some new data, but the changes were actually minimal. The main text remained the same as that of his first articles and lectures. In respect to the issues examined here, the often verbatim reproduction of the same pre-war positions in the post-war editions is even puzzling. The author made imperceptible modifications — usually changing some words or adding short paragraphs — that shifted the meaning slightly without really updating his texts. What is most impressive is that one can hardly detect the effects of the considerable displacements in the scientifically accepted views on race as a valid explanation for human behaviour, after UNESCO rejected it in 1949 and again in 1951.³¹ Yet, before we try to understand what made Gardikas' criminological standpoints so stable, let us see at some length what they consisted of.
- 30 Although in his textbooks he presented different criminological schools of thought, as befitted academic standards, Gardikas was an explicit advocate of the Italian positivist school. In the steps of Gustav Aschaffenburg, he recognized Lombroso as the founder of his academic field and described him as “an ingenious and ground breaking scientist” (Gardikas, 1947, 158). While he rejected the idea of the born criminal, like most Greek penologists, he considered the contribution of “criminological anthropology” crucial for the understanding of criminal behaviour.
- 31 Gardikas recognized that Lombroso and the positivist school were wrong to be so categorical in their positions, especially in respect to the criminal as an anthropological type. In his early view: “While there are no born criminals, as Lombroso argued, however, some individuals were born with a propensity to crime” (Gardikas, 1932b, 5). The distinction was subtle and sometimes indiscernible. In later writings he admitted that some individuals were indeed born criminals, but he also accepted the more recent elaborations emphasising the psychic factor. According to these, crime should be studied “not according to the anthropological type enunciated by Lombroso, but as a form of psychic abnormality, of degeneration, activated by the defective development of the spirit or the emotions, from which derive also moral defects that push the individual to commit a crime” (Gardikas, 1948, 60-61). As he argued, Lombroso was a

man of his time and used the philosophical and biological knowledge of his time. However, in the meantime, developments in the study of evolution and heredity had transformed accepted views of crime, while new psychological theories were formed (Gardikas, 1948, 62, 71).³²

- 32 Following European criminology of the 1930s, Gardikas supported throughout his academic life that crime derived from a combination of factors, both biological and environmental, with an emphasis on psychic disorders — psychic in this context being synonymous to biological. Criminality was triggered by poor education and poverty, but could also be hereditary, deriving from an unsuitable marriage or from “predisposition” (Gardikas, 1932b, 5). He accepted that the hereditary predisposition to crime was determined by psychic functions (1932a, part 1, 93). In short, he consorted with the turn of positivist criminology to psychic more than biological causes of criminal behaviour that nevertheless did not eradicate the effects of heredity; a turn led by Lombroso’s student Enrico Ferri, known in Greece since the 1920s.³³
- 33 In all editions, from the 1930s to the 1960s, racialism was constant in Gardikas’ writings. He considered criminals as “abortive elements of their race,” “individuals of lower quality” (1932a, part I, 145 and part II, 3-14). He identified “psychic abnormality” with “degeneration” (1948, 59). Allusions to the defective morality of offenders were also recurrent, following a common theme in European criminological thought that identified crime with moral decay. The following quotation from 1932 illustrates the dominant criminological ideas of the interwar years, assimilating positivism, environmental aetiologies and eugenic argumentation. Gardikas reproduced the same ideas in his later writings:

Criminality usually grows from bodily and psychic degeneration, produced in general terms by predisposition and bad education, by drinking and economic misery, by marriage between individuals mentally diseased or morbid. [...] Generally speaking, many criminals are physical and psychic organisms of inferior value. This inferiority of psyche and body is the result of heredity and evolution. [...] Therefore, predisposition to crime is a bodily and psychic defect, because of which the individual has less strong character, faces difficulties in the tough struggle for existence and, succumbing more easily to the temptations of life, commits crimes. While such predisposition is not an evidence of criminality, it is however a very emphatic risk point (Gardikas, 1932b, 5-6).

- 34 Predisposition and heredity were linked to two issues that Gardikas discussed thoroughly and reproduced verbatim in the various editions of his textbooks: the correlation between race and criminality, and the measures for preventing crime, namely sterilization and castration. Throughout his writings he made abundant use of the term “race,” at times as synonymous to “people.” He even devoted a special section of the first volume of his *Criminology* to examining the effect of race in criminality.³⁴ Gardikas defined race as “the host of humans who have by birth and by heredity some common elements of bodily and psychic constitution that link them together and distinguish them from other races” (1948, 37). Races varied in respect to “mental and other psychic elements, the tone of emotions, moral and sexual life”. For this reason, races contributed unevenly to civilization. For example, “mental and other psychic elements, the tone of emotions, moral and sexual life” were lesser to “Papua and Negros” than to “Arians.” At the same time, even a “superior” race could hide in its midst “degenerated” individuals, standing out by their “great immorality” (Gardikas, 1948, 170-171).

- 35 Gardikas recognized the difficulties inherent in any attempt to determine the effect of race on criminality, how dubious studies about the psychopathology of races were and how controversial the comparisons between the “moral value” of each one. Nevertheless, in all the editions of his work he devoted several pages to the interwar studies about the correlation between race and criminality, either among the “Hebrews and the Gypsies,” the “Negros,” in certain immigrant communities of the USA, or other ethnic and even professional grouping. He concluded consistently by admitting that no correlation could be established, and contended that financial and living conditions, but also customs, affected criminality more than racial differences. However, this did not prevent him from including practically unchanged the relevant chapter in all the post-war editions of his *Criminology*, an indication that racial ideas continued to have a large and stable audience.
- 36 Of particular interest is the way in which Gardikas referred to the Nazi prohibitions of racial intermarriage in the pre- and the post-war versions of his work. In the 1936 edition of his *Criminology* he presented Hitler and his followers as struggling to maintain “the German race pure and untainted.” Therefore, their measures aimed at preventing interbreeding and promoted instead “eugenic breeding that would keep unmixed the hereditary elements of race, emphasizing and reinforcing them” (Gardikas, 1936, 171). Yet he admitted that this policy had been criticised for “having in reality financial purposes, in order to conceal the persecution of the Jews.” In the third post-war edition some imperceptible changes made their appearance in the relevant paragraph. Now the author presented racial ideology and the measures protecting the purity of race as deriving from Hitler’s will alone; and stated categorically: “The real purpose of this policy of the national-socialist party was financial, in order to conceal the persecution of the Jews” (Gardikas, 1948, 181).³⁵ The rearrangement of the words produced a slightly displaced meaning. At the same time, the stability of Gardikas’ positions, on the one hand, and the necessary adaptations of his texts to the spirit of the times, on the other, left their marks on his texts. His critique of writing and re-writing often made his arguments scrambled. Some of his ideas in the form of sentences seemed unchangeable. They were so deeply embedded in his writings that the author did not seem to see that they contradicted some of his revisions.
- 37 Gardikas’ belief in the hereditary predisposition to criminality informed also his approach to eugenic measures for fighting crime, namely the prenuptial health certificate but also sterilization “on unimproved criminals, rapists or idiotic individuals” and castration for crimes against morals. The relevant chapter was reproduced in every new edition of the first part of the second volume of his *Criminology*.³⁶ His positions on the matter were ambiguous. At first, he explained at length how the Ancient Greeks had achieved “good breeding” since “fertility of degenerated individuals [is] extremely dangerous” – ideas largely reproduced from his early articles.³⁷ Then he presented the measures adopted elsewhere that prohibited marriage to “individuals mentally diseased,” only to reject them as ineffective (Gardikas, 1947, 237-44, quotes 237 and 243).³⁸ In order to explain his argument, he set himself the following rhetorical question: “Since the future of the race is in danger, why not practice today eugenics on a broad scale, preventing unsparingly all those who seem to be producers of bad human products, and allowing fertility only to those worthy?” (1947, 245). In his lengthy answer, he repeated all the arguments put forward by those – mostly penologists – who since the interwar years rejected such measures:

that the candidates would be too many, “the infinite variety of nature” would be lost, the necessary infrastructure was lacking, and the Greek criminal law did not include any relevant provision.³⁹ However, at the same time he could not but admit that in a limited scale and in respect to individuals with “weary fertility,” castration was necessary and it had to be applied in the future. And repeated verbatim in all the post-war editions of his work: “Hence compulsory sterilization enacted by the German law and conducted without the consent of the individual with weary heredity is a great progress, which all civilized countries will sooner or later follow in order to impede the reproduction of degenerated individuals” (Gardikas, 1947, 255, the relevant arguments in 245-251).⁴⁰

Greek criminology in context

- 38 Two questions arise from all the above: On the one hand, what made possible in Konstantinos Gardikas’ writings the uncontested reproduction of racialist and eugenic views in the post-war decades? And on the other, why did he reject steadily the implementation of eugenic policies since they were to an extent compatible with his positions? At this stage of research, the answers to these questions can only constitute working hypotheses.
- 39 Let us first consider the first question. As criminologist Sofia Vidali has recently admitted, criminology in Greece never broke away from criminal law. Dominated for many years by a conservative positivist model it was shaped into a “legal-juridical field.” Vidali indicated a variety of factors at play in this development, among which the acute post-war nationalism, the lack of sociological research, and the “legal-doctrinal education of criminologists” (2007, 85). Since Gardikas was the leading representative of criminology – and until the 1970s the only one – himself with legal training, what dominated was his own “mild” positivist model. His textbooks captured the academic spirit of his era: they were analytical and systematic with rich and varied references, presented diverging views for most issues, referred to various countries, and invoked Greek “particularities” as uncontested truths. However, he seldom made use of modern Greek data and research. References to his own research material were limited to his early articles on the Ancient Greek roots of eugenics and on criminological statistics. His important practical work in forensics and policing did not find much place in his published work, apart from some articles late in his career (Gardikas, 1960). In fact, in his writings Gardikas approached criminological theory mostly as a mental exercise. In this respect, he responded to what Tzortzopoulos had advocated years earlier: that criminological discourse would always remain auxiliary to criminal law (Tzortzopoulos, 1936; Vidali, 2007, 86-87).
- 40 Therefore, Gardikas’ criminology had a legal cachet, even when he appropriated the medical and psychiatric developments in the field. Approaching crime as “social pathology” he aligned himself with penologists. Together they became engaged with the post-Civil-War nationalist and authoritarian political power and its fight against communism and “moral decadence” – exemplified by the so-called “child and youth criminality” (Vidali, 2007, 86).⁴¹ See, for example, the distinction made by the prosecutor at the Juvenile Court of Piraeus, Panagiotis Iliadis, in respect to those committing violent crimes, between “the Greek nature and soul” and “the foreign root.” Branding malaria “the source of the chronic poisoning of the Greek race’s

blood,” Iliadis related the prenuptial health certificate to much wider issues: “The white race cannot anymore follow the numeric growth of the coloured [peoples] and therefore the problem is generalized, national or nationalistic aspirations notwithstanding, to a matter of the quality of the human race” (1957, 25). In a similar vein, penologist Ioannis K. Papazachariou, in his university notes described social behaviour that was against Christian rules as criminal (1968b, 134-144).⁴²

- 41 In short, it was the authoritarian context of post-war and post-Civil-War Greece that rendered Gardikas’ views on race, heredity and the measures for repressing criminality acceptable, a period aptly called “scraggy democracy.”⁴³ Anyway, he was not alone in qualifying the Nazi racialist policies as “excesses.” See for example, E. Zannis, deputy of the Dodecanese at the National Political Union of the Centre, who in the parliamentary discussion of 1953 on the establishment of the “Coordinating Committee on the measures for the prevention and repression of underage criminality,” expressed his regret that sterilization, the main measure for fighting the causes of criminality, “fell in disrepute” because it was applied “without enlightenment and in a barbaric way by Nazi Germany.”⁴⁴ Gardikas continued to reproduce the same position in the successive editions of his university textbook until the late 1960s, and most probably to apply it in his criminological practice. But also, on the level of everyday practice, it was the same vocabulary — “racial frame of mind,” hereditary causes, origin — that juvenile probation officers used in their reports when they analysed the deviant behaviour of young offenders coming from Muslim families or with alcoholic parents (Avdela, 2013).⁴⁵ Racial ideas seemed to have deep roots and to be especially stable and widespread in the Greek academy, institutions, politics and everyday discourse. Research on the matter is in its very beginnings.⁴⁶
- 42 Let us now turn to the second question. Since ideas about race and heredity were recurrent in the published work of Konstantinos Gardikas, why did he systematically reject eugenic policies? Why did he align himself on this issue with Greek penologists? And why did they oppose en bloc the implementation of eugenic measures?
- 43 In her research on Greek eugenics, Sevasti Trubeta was first to highlight the repeated failures of the Greek eugenic medical doctors and psychiatrists to impose the prenuptial health certificate, as well as their rather isolated position in the Greek academy and politics. She identified several factors at play in this failure: the contrasting positions expressed in the relevant debates, the unequal power of those involved, the strong front of those opposed to the measure, and so on; yet most importantly, the lack of a well-planned and integrated eugenic intervention. Those against the sterilization or the castration of criminals were mostly but not exclusively jurists. They employed a variety of arguments: the country’s infrastructure was underdeveloped, the prison system had first to be reformed, statistical data was lacking, etc. However, Trubeta did not emphasize enough that those who “expressed opposite views,” those who “imposed their own balance of power in the relevant state institutions” and refused to accept any eugenic planning, were in fact the jurists, dominant as much in the Greek Anthropological Society as in the Parliament, state services and private institutions or elsewhere in the public sphere (Trubeta, 2011, 296-297, 2013, 235-237).
- 44 It is the contention of this article that the determining factor in the repeated failures of Greek eugenics to have their policies accepted was the longstanding power position of the juridical establishment in Greece in the public sphere, the state and politics. Thanks

to this power, jurists monopolized — among other things — both the institutional establishment of criminology and the legal management of crime. Their dominant position in these fields derived from two strategic options. On the one hand, they appropriated the medicalized discourse of criminology: they construed crime as a “bio-social” or “bio-psychic” phenomenon and systematically correlated criminality with psychic “abnormalities.” On the other hand, they were part and parcel of the post-Civil-War central policy that criminalized social and political behaviours, displayed moralism in public discourse and repressed any form of “deviance” (Avdela, 2008, 2017a). Gardikas was an esteemed member of this group and of its social and political networks. Combining a bio-social approach to crime with moralism, Greek criminologists and penologists claimed exclusive expertise and authority in the management of crime; and at the same time, legitimized widespread ideas about race and heredity. By rejecting eugenic measures for the prevention of crime, they refused to attribute authority to any other disciplines, and especially medical doctors and psychiatrists; and also made their own views look “mild.” Thus, not only did they maintain their monopoly in the field of crime management and policy, but also they contributed to the long-term reproduction of racial and eugenic ideas as authorised common understandings.

- 45 Greek jurists were able to defend their primacy in the field of crime drawing from their extended public power as a professional body: they held important positions in state institutions and services, the parliament and political parties. In fact, already in the nineteenth century they were identified with the exercise of political power in Greece.

47

Conclusions

- 46 Greek criminology emerged in the person of Konstantinos Gardikas in the 1930s, at a time when at a European level the field became the battleground of contending positions about criminal predisposition, heredity of criminal behaviour, the relation of race and crime, and the measures against criminality. In Greece up to then crime, criminals and their administration were discussed mainly by jurists and penologists, who shared racial ideas and followed developments in the field, especially the growing visibility of medical doctors and psychiatrists. Gardikas, a university professor with a wide range of activities in crucial state positions, as well as his own studies in criminal law, not only embodied criminology in the academy for many decades, but also founded the main forensic and criminological services in the country. His work was imbued with contradictions. An ardent follower of the Liberals in the interwar years, he became an institutional pillar of the post-war conservative and authoritarian political regime. A man of action in the management of crime, his writings were principally theoretical; an admirer of Lombroso, he criticised his “exaggerations.” He perceived crime as a bio-social phenomenon the fight against which dictated the development of specific techniques and measures, but was against all “insurance measures.” The founder of Greek criminology, he placed it steadily under criminal law. Monopolising expertise in criminological matters, he sided with his fellow penologists and contributed to keeping psychiatrists and medical doctors away from positions of power in criminological matters, while he incorporated their contributions in his writings, and especially in his multi-edited and multi-volume university textbook, *Criminology*. Be that as it may, his

power was considerable. According to a recent formulation, Gardikas “was the person whose teaching and scientific work – which served as the main or auxiliary textbook until recently – laid the groundwork for how crime should be analyzed and explained, how criminologists and individuals working in institutions of formal social control (judges, prosecutors, lawyers, police officers, prison officers, politicians) should be trained” (Georgoulas, 2014, 1).

- 47 By the end of the interwar period Greek criminological discourse – be it by Gardikas or penologists – influenced by developments abroad, maintained its organic and biological references and adopted an explanation of crime as a psychic pathology. While elsewhere this shift has allowed psychiatrists to claim expertise in diagnosing criminal pathology and therefore to get involved in the study of criminality, in Greece this was not the case. Psychiatry was late to acquire disciplinary and institutional autonomy from the European centres where its Greek professionals had studied. So those who defended eugenic ideas and aspired to impose their authority in criminal matters were never able to achieve their goal. Their propositions, such as the prenuptial health certificate, were systematically rejected, in spite of their recurrent complaints.
- 48 So Greek penologists, as state officials, intellectuals or academics, side by side with criminologist Konstantinos Gardikas, preserved their predominance as much in the formation of criminology as an autonomous field of study as in the planning and implementation of policies for the fight against crime. At the same time, they were the privileged interlocutors and assistants of the authoritarian and nationalistic post-civil-war political regime and contributed decisively to its repressive administration of social problems. Their mild positivism had a long-lasting effect on the development of Greek criminology – and penology.⁴⁸ In their writings, tacit assumptions about race, criminal disposition and heredity were as rich as their explicit positions. Many generations of jurists were educated by those of them who were university teachers until the late 1970s. We have to keep in mind this tradition when today we analyse court judgements that seem out of place.⁴⁹

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NOTES

1. For a few indicative references from this rapidly growing field, see articles in the following collected volumes: Wetzell (2014), Becker, Wetzell (2006a), Gilman, Lévy (2005a), Knafla (2003), Mucchielli (1994), also: Godfrey *et al.* (2006), Gibson (2002), Wetzell (2000), Aguirre (1998).
2. “Crime” and “criminals” are of course historical terms and therefore their meaning is not fixed. See Gilman, Lévy (2005b), Scheper-Hughes, Bourgois (2004).
3. Their reference is to Foucault (1972).
4. It is known that Lombroso and his followers have repeatedly changed their views on the issue of the born criminal, responding to the repeated attacks from their colleagues. See Bondio (2006), Mucchielli (2006), Gibson (2002), Knepper, Ystehede (2013).
5. For the importance of networks in the establishment of criminology as a field of study, see Kaluszynski (2006).
6. For the German speaking areas, see Becker (2005, 29).
7. On how the diffusion of eugenics presupposed the key role of medical doctors and psychiatrists in shaping public policy, see Pronitzer *et al.* (2011, 1). For eugenics as an international movement, see, among others, Cassata (2011), Turda, Weindling (2007), Adams (1990).
8. On these developments in general, see among many others, Chin *et al.* (2009), Brattain (2007), Shipman (1994), Barkan (1992), also Cassata (2011, chapter VII).
9. See references, in the notes above.
10. The *Born Criminal* was first translated into Greek in 1910. See Lombroso (1910).
11. On “Greek race” and the historical uses of racial theories in Greece, see Avdela *et al.* (2017).
12. On rural and urban crime during the period in question, Koliopoulos, Veremis (2002, 221-225), Gallant (1997). On critics on penal issues, Benveniste (1994).
13. Scopetea (1999), Papataxiarchis (2017), Koliopoulos, Veremis (2002, 242-248), Avdela (2017b, 19-20).
14. See, for example, Kostis (1862), Frangoudis (1895). Nakos (1893) is considered the first criminological study in Greece, Benveniste (1994, 16-18 and 28-29).
15. In respect to juvenile delinquency, see Avdela (2013, 126-145).
16. For techniques related to the identification of perpetrators in Central Europe at the turn of the nineteenth to twentieth centuries, see Becker (2010).
17. Psychiatry was slow to be established as an autonomous and valid field of study in Greece, and remained for a long time mimetic of the foreign models imported by its practitioners from their place of study. See Ploumbidis (1995). Little is known about how forensic medicine or

psychiatric expertise in criminal cases was established in Greece. The first chair of Forensic Medicine was created at the University of Athens in 1879 and the first Laboratory of Forensic Medicine and Toxicology a few years later. Gavroglou, Karamanolakis and Mpakoula (2014, 326-327). For a case study of forensic medicine, see Kritsotaki (2013). For early writings on forensic psychiatry, see Makris (1916), where references to the new “forensic bureau of the Prosecutor’s Office” opened in 1910 with Makris as its director, Makris (1924), Striggaris (1947). For the difficulties encountered by psychiatric expertise seeking to be recognized in criminal courts even in the post-war decades, see Avdela (2010).

18. For the Greek Anthropological Society (1924-1970) and its founder Ioannis Koumaris, see Trubeta (2007), Trubeta (2013), also Papataxiarchis (2017).

19. Eleftherios Venizelos marked the interwar history of Greece. He formed successive governments from 1910 to 1932. The main periods of his premiership were 1910-1915, 1917-1920, and 1928-1932, with several others short-lived. See Gallant (2016, 116-134), Clogg (2002, 76-111).

20. Gardikas presented his practical work in two articles, published during the last years of his academic career. Gardikas (1960).

21. On the British delegation and its activities in collaboration with Greek authorities, see Fotakis (2015). Many thanks to Achilleas Fotakis for letting me read his unpublished doctoral thesis.

22. Spinelli (2000, 11-13), Daskalopoulos (1986), Fotakis (2015, 5-49).

23. Gardikas’ unperturbed university career is depicted in his personal file at the University of Athens. Historical Archive of the National and Kapodistrian University of Athens: I.A. ΕΚΠΑ, Αρχείο Διεύθυνσης Διοικητικού, Φάκελοι Διδακτικού Προσωπικού, Φ.2 (Α.Μ. 13) Κωνσταντίνος Γαρδίκας [Archives of the Directorate of Personnel, Files of Faculty members, file 2 (register number 13) Konstantinos Gardikas]. Many thanks to Vaggelis Karamanolakis for indicating this document to me. For Gardikas’ collaboration as a university professor with the Metaxas regime see Bali (2013, 42).

24. See also Gardikas (1960).

25. For his articles published in German, see Gardikas (1934a, 1934b, 1934c, 1934d, 1934e, 1935a, 1935b) and Georgoulas (2014), Trubeta (2013, 93-101). For the Greek translation of some of these, see Gardikas (1932a, 1933a, 1933b, 1939a, 1939b).

26. The dedication in Greek and German on the second title page: τῷ διαπρεπεστάτῳ εγκληματολόγῳ κ. Gustav Aschaffenburg τιμῆς ἔνεκεν [to the prominent criminologist M. Gustav Aschaffenburg with compliments]. Trained as a psychiatrist, Aschaffenburg is considered the founder of forensic psychiatry and the leading criminologist of his time, with international reputation. A Jew, he left Nazi Germany for the USA in 1938. See Wetzell (2000, 63-68 and passim), Bondio (2006), also Aschaffenburg’s obituary from the American child psychiatrist Leo Kanner (1944). For Gardikas’ relation to Aschaffenburg and his invitation to come to Greece, see Georgoulas (2014) and Trubeta (2007, 134, note 66).

27. On the editions of Gardikas’ textbook see below. All other authors publishing on the issue during the post-war year were penologists. For example, Karanikas (1954), Iliadis (1957), Papazachariou (1968a, 1968b).

28. In the review *Ποινικά Χρονικά* [Penal Cronicles] that he co-founded, Gardikas published regularly articles from 1951 to 1974, mainly on penal issues. It is impossible to cite them all here.

29. This is identical to the first edition of 1936.

30. For first editions, see Gardikas (1936), Gardikas (1938), Gardikas (1955). For some of his interwar publications, other than those mentioned in note 25, above, see Gardikas (1923), Gardikas (1924), Gardikas (1932b). The full list of Gardikas’ publications is outside the scope of this article. It the efforts to made sense of the labyrinth that they represent the help of the personnel of the National Library of Greece and of the Criminal Study of the Law School of the University of Athens was invaluable.

31. For these displacements, Barkan (1992), Shipman (1994).

32. See, however, the addition in the fourth edition of 1959: “Today we accept that the existence of born criminals is undeniable, that they are the congenital violent, the congenital crooks, those tramps and prostitutes who are the most unstable and lazy. However, they do not constitute an anthropological type. This is a form of psychic anomaly, manifested through the deficient development of the spirit, through abnormalities of the emotions, from which derive also moral defects that bring the individual to commit a crime”, Gardikas (1959, 52). The author often used old formulations in new contexts.

33. Enrico Ferri’s (1856-1929), *Sociologie criminale* [Criminal sociology], was published in Greek in 1925, translated by Vassilis Dourdoumas. See Avdela (2013, 131). In Greek criminological writings, the substitution of biological with psychic factors in explanations of criminal behaviour was debated mainly in respect of the heredity of criminal predisposition, a common view among European criminologists, in spite of the many criticisms. Heredity remained a valid issue in criminological writings even after the war. See for example, Diannelidis (1959). It was only in the 1980s that Greek criminologists started to contest these views: Alexiadis (1986).

34. It is chapter 6 of v. I of *Criminology* (Gardikas, 1936, 159-172, 1948, 169-182). It remained identical in subsequent editions, with only minor changes, mostly abbreviations: 1959, 152-163 (small abbreviations) and 1966 (identical).

35. See also the addition to the 1956 edition: “Out of self-interest, it was repeatedly presented by the then party of Hitler’s national socialists and by German scientists who were subjugated to it that race is the most important factor of crimes”: Gardikas (1959, 154, note 1).

36. The relevant chapter 20 appeared first in Gardikas (1932a, part II, 3-14). Under the title “Sterilization and castration for the battle against crime,” it was integrated into Gardikas (1947, 237-268), as well as into the editions of 1956, 1966 and 1968; also abridged in Gardikas (1957, 412-417).

37. Gardikas had first supported the view that the Ancient Greeks were the first eugenicists in one of his German language publications, Gardikas (1934c). See Trubeta (2013, 205-206) and Georgoulas (2014).

38. For the debates around the prenuptial health certificate, Trubeta (2007), Trubeta (2011, 2013).

39. Most medical doctors and psychiatrists participating in these debates favoured the prenuptial health certificate and occasionally also castration. Trubeta (2011). Post-war penologists argued against castration, as did Gardikas. They invoked insufficient infrastructure, the lack of statistical data, the small scale of the country, etc. Trubeta (2013, 237).

40. See in the compendium edition of 1966 the following additions: “In Greece the Parliament rejected (1958) a bill that imposed the prenuptial health examination of the intending spouses (certificat prematrimonial)” (833) and “The Second International Congress on social defence, convened in Liege in 1949, rejected the penal sterilization and castration as measures for preventing crimes and promoting eugenics”: Gardikas (1966, 843, note 2).

41. For the uses of the Greek term “child and youth *criminality*” instead of *delinquency*, see Avdela (2008, 2013).

42. On I.K. Papazachariou, see Avdela (2013, chapter 2).

43. The 1940s was a decade of war and occupation for Greece: 1940-1941, War in Albania (declared by Italy); 1941, German invasion; 1941-1944, tripartite (Germany, Italy, Bulgaria) occupation; December 1944, the Battle of Athens (Greek communists against Greek anti-communists and British troops); 1946-1949, Civil War (between Communists and the Greek government assisted first by the British and later the the Americans), military junta (1967-1974). Nikolakopoulos (2001); also Gallant (2016, 160-177), Clogg (2002, 120-144).

44. Parliament of the Greeks (1953, 280).

45. See the opinion about the “racial psyche” of individuals of “Greek nationality and descent and ottoman religion, and specifically [...] of Turkish race cognate to the race of Turko-gypsies,” which explained “the deep disposition of their children to vagrancy and a life of wandering,” in

Archive of the Tribunal of First Instance of Thessaloniki, Juvenile Probation Officers' Service, Closed Collections, Library of the University of Crete, Rethymno, file 1046 (1961). For the father's alcoholism and its correlation to the son's disposition to theft, see *ibid*, file 12 (1954) and file 33 (1955).

46. For one of the first collective efforts, see Avdela *et al.* (2017), where similar contemporary phenomena are also analysed.

47. For a recent study of the origins of this power, see Sotiropoulos (2015); also, Bali (2013). This important and still unresearched issue is related to the way academic disciplines and key political ideas and institutional offices were formed in Greece. But its analysis is outside the scope of this article.

48. For critical approach in contemporary Greek criminology, see Greek Society for the Study of Crime and Social Control (2018).

49. On court deliberations regarding issues of Greek nationality, see Baltiotis and Christopoulos (2017).

ABSTRACTS

This article highlights the racial and eugenic influences underpinning the establishment of criminology in Greece. It focuses on Konstantinos Gardikas, the founder of Greek criminology and its principal representative from the 1930s to the 1970s. After studying in Switzerland, he founded the main Greek criminological and forensic services, and maintained close relationships with European and international criminological and police bodies. As a university professor his textbooks influenced many generations of jurists. The article discusses his use of racial and eugenic ideas and asks why his writing and teaching reproduced after the war almost unchanged his interwar views on the biological basis of crime, the role of heredity, descent and race, and the "insurance measures" to prevent crime, particularly sterilization and castration. Gardikas saw criminology as subordinate to criminal law and contributed to the predominance of penologists in criminal matters, excluding psychiatrists and medical doctors.

Cet article met en lumière les influences des théories raciales et eugéniques dans la fondation de la criminologie grecque. Il s'attache à Konstantinos Gardikas, le fondateur de la criminologie grecque et son principal représentant des années 1930 aux années 1970. Après avoir étudié en Suisse, il a fondé les principaux services criminologiques et médico-légaux grecs et a entretenu des relations étroites avec les organismes criminologiques et policiers européens et internationaux. En tant que professeur d'université, ses manuels ont influencé plusieurs générations de juristes. L'article traite de son usage des idées raciales et eugéniques et interroge comment ses écrits et son enseignement ont reproduit après la guerre, presque sans changement, ses vues de l'entre-deux-guerres : fondements biologiques du crime, rôle de l'hérédité, de l'atavisme et de la race, ainsi que les « mesures préventives » pour endiguer le crime, en particulier la stérilisation et la castration. Gardikas considérait la criminologie comme une branche du droit pénal et contribua à la prédominance des pénalistes en matière criminelle, à l'exclusion des psychiatres et des médecins.

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Collectif l'Escapade, Milot l'incorrigible. Parcours carcéral d'un jeune insoumis à la Belle Époque

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RÉFÉRENCE

Collectif l'Escapade, *Milot l'incorrigible. Parcours carcéral d'un jeune insoumis à la Belle Époque*, Toulouse, Niet ! Éditions, 2018, 116 p., ISBN 979-10-96195-03-9.

- 1 Cet ouvrage est le récit de la courte vie d'un jeune délinquant parisien à la fin du XIX^e siècle et au début du XX^e, un apache « réfractaire à l'autorité, animé d'un désir de vivre et d'un refus de se soumettre » (4^e de couverture) qui, après l'enfance dans un quartier populaire de la capitale, a passé plus de temps enfermé qu'en liberté, pour finir assassiné au bagne de Cayenne à l'âge de 26 ans.
- 2 Émile Delagrance est né en 1884 dans le quartier de Charonne, quartier populaire s'il en est, l'arrondissement de Belleville étant connu pour sa réputation frondeuse et révolutionnaire. Avec un père coupeur de cravates et une mère blanchisseuse à domicile, des frères aînés confectionnant des paniers, le ménage, endetté, vivant dans la précarité, est soupçonné de vivre de ressources illégales par la police, lorsque celle-ci, lors d'une des battues (ou rafles) périodiques organisées dans le quartier, arrête Émile et ses comparses en juillet 1897 pour tenue de jeu de dés et d'argent, ce qui lui vaut une contravention. Un an plus tard, le 11 août 1898, il est condamné à huit jours de prison pour vol. Son premier séjour en prison, à la Petite Roquette, est le début d'une longue série d'enfermements, ponctuée de courtes périodes de liberté relative, vécues le plus souvent dans une semi-clandestinité. Arrêté à nouveau pour le même motif, en novembre 1898, il retrouve la Roquette pour sa prévention et est condamné le mois suivant, en vertu de l'article 66 du Code pénal – il a alors 14 ans et demi – comme ayant agi sans discernement, à être détenu en maison de correction jusqu'à ses vingt ans

révolus. Malgré l'appel interjeté par son père, le jugement confirmé, Émile prend le chemin de la colonie industrielle de Bologne en février 1899. Il s'en évade en octobre 1901, pour dix mois. De retour à la colonie – début août 1902 – il multiplie les actes de résistance à la discipline et au travail, tente une évasion collective en janvier 1903, ce qui le conduit, avec ses camarades, à achever sa condamnation à la colonie correctionnelle d'Eysses, à la sinistre réputation. Il en sort, libre, à son 20^e anniversaire, le 24 février 1904. Revenant à Paris, avec un pécule des plus maigres, ses parents décédés, sans travail et domicile, refusant le service militaire que les colons libérés devaient accomplir, on le retrouve une nouvelle fois arrêté, avec deux complices, pour un vol accompagné d'une tentative d'assassinat (en fait une bonne assommée, dans la maison du médecin cambriolée) à Saint-Mandé. Condamné aux travaux forcés à perpétuité, on le suit désormais au dépôt des transportés de Saint-Martin-de-Ré (printemps 1905), puis au bagne de Guyane où il arrive le 21 juillet. Au fil des tentatives d'évasion et refus d'obéissance aux ordres des gardiens, il parcourut les différents établissements du bagne – du camp des Roches à Kourou aux îles Royale et Saint-Joseph (îles du Salut) en passant par Saint-Laurent-du-Maroni – collectionnant les jours de cellule et de cachot, outre deux peines de prison prononcées par le Tribunal maritime spécial. Il est assassiné à Kourou par un codétenu le 19 février 1911, par vengeance, suite à un différend autour d'un jeu de cartes, passe-temps favori et source de nombreuses querelles parmi les bagnards.

- 3 Tel est le parcours de ce jeune insoumis retracé avec une empathie certaine – que le lecteur ne peut que partager – par l'auteur anonyme de cet ouvrage, dont les attaches régionales lui ont fait découvrir la coutellerie de Bologne devenue, sur la proposition de son patron, Simonnet, en 1857, une colonie pour jeunes détenus. Cette courte vie est retracée à partir de deux types de documentation. D'une part, les archives des institutions qu'Émile Delagrangé, alias Milot, a fréquentées, soit les archives départementales de la Haute-Marne, du Lot-et-Garonne et de la Seine pour les prisons et colonies, archives de la Préfecture de police pour les arrestations et archives nationales d'outre-mer pour le dossier du bagne. Cette documentation, portant directement sur le vécu de Milot, étant réduite, est complétée par l'apport des historiens ayant travaillé sur les bagnes d'enfants et ceux d'outre-mer et sur les prisons et colonies de jeunes détenus de la métropole. Si l'auteur exprime bien sa dette à leur égard, il ne donne pas, malheureusement, les références précises aux ouvrages utilisés comme d'ailleurs aux cotes des dossiers d'archives dépouillées. Mais s'il n'entre pas tout à fait dans les normes d'un travail de recherche historique classique, l'ouvrage est un exemple de très bonne vulgarisation historique à destination du grand public. Et l'historien, plus familier avec les travaux utilisés par l'auteur – sauf en partie pour la colonie de Bologne et les révoltes des prisonniers qu'elle connaît pour lesquelles il est apporté une information inédite, notamment dans l'annexe II retraçant les mutineries de 1882 et 1896 – y trouvera un grand intérêt pour la connaissance des résistances des jeunes au traitement qu'ils subissent dans les colonies de métropole et au bagne de Guyane, comme sur le système répressif à l'œuvre dans ces institutions pénitentiaires. Il pourra confronter ce récit aux publications des autobiographies d'autres jeunes voyous comme Émile Nougier¹, autre apache de la même époque, ou pour une période légèrement postérieure, Raoul Léger². Il faut remercier L'Escapade de donner à lire cet essai réussi de reconstitution de la courte vie d'un jeune délinquant parisien dont la vie à la charnière des XIX^e et XX^e siècle a été broyée par un système pénitentiaire redoutablement efficace pour réprimer insoumis et révoltés.

NOTES

1. Émile Nougier, *Drôle d'oiseau. Autobiographie d'un voyou à la Belle Époque*, présenté par Philippe Artières, Paris, Imago, 1998, 160 p.
 2. Raoul Léger, Jacques Bourquin, Éric Pierre, *La colonie agricole et pénitentiaire de Mettray. Souvenirs d'un colon 1922-1927. Punir pour éduquer ?*, Paris, L'Harmattan, coll. « Le travail du social », 1998, 176 p.
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Marin B., Regnard C. (dir.), *POLICE ! Les Marseillais et les forces de l'ordre dans l'histoire*

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René Lévy

RÉFÉRENCE

Marin B., Regnard C. (dir.), *POLICE ! Les Marseillais et les forces de l'ordre dans l'histoire*, Marseille, Éditions Gausсен-Le Cardinal, 2019, 143 p., in-4, ISBN 978-2-356981-78-3.

- 1 Si l'historiographie de la police française a beaucoup progressé dans les dernières décennies, on compte relativement peu d'études sur les polices des grandes villes. C'est particulièrement le cas de Marseille, la deuxième ville française, et c'est pourquoi on peut saluer la parution de cet ouvrage qui constitue une introduction intéressante à cette histoire depuis l'Ancien Régime.
- 2 Sous la direction de Brigitte Marin et Céline Regnard, cet ouvrage a été conçu pour accompagner et prolonger une exposition aux Archives de Marseille, en parallèle de celle que Vincent Denis, Isabelle Foucher et Vincent Milliot ont conçu sur « La police des Lumières » aux Archives nationales à Paris. L'ouvrage vise principalement le grand public, mais les spécialistes y trouveront également quantité d'aperçus et de pistes pour des recherches futures.
- 3 Une petite trentaine de notices, rédigées par une quinzaine de spécialistes, enrichies d'une belle iconographie et complétées de nombreuses cartes inédites, d'une bibliographie et d'un glossaire balayent l'histoire policière de la ville en multipliant les angles d'approche : les grandes étapes de l'histoire institutionnelle (Ancien Régime, étatisation de 1908, Deuxième guerre et Libération, recréation d'une police municipale en 1974) ; l'évolution de l'organisation locale (découpage urbain, implantations

policières, évolution des corps de police, tribunal de police) ; les attentes des autorités et du public envers les policiers ; les cibles du contrôle policier (police des étrangers, des jeux, de la prostitution). Les principales fonctions policières sont évoquées : police sanitaire (la peste de 1720), sécurité (l'éclairage public), maintien de l'ordre, police criminelle. L'ouvrage s'achève sur une évocation du « polar marseillais », qui a connu un essor particulier à partir des années 1990, et dont les thèmes reflètent les évolutions sociales et politiques de la ville.

- 4 Même si l'on peut regretter que l'ordonnancement des chapitres ne fournisse pas un véritable fil conducteur à la lecture, entremêlant sans logique apparente les sujets et les périodes, le lecteur attentif pourra repérer certains grands thèmes parcourant l'ensemble et avant tout les particularités liées au caractère portuaire de la ville, avec ce qu'il implique de circulations humaines et matérielles, de trafics en tous genres et de risque sanitaire. On retiendra également les vicissitudes de la professionnalisation policière, de la conception du bon policier sous l'Ancien Régime aux espérances déçues de l'étatisation ; ou, plus en filigrane, les tensions entre les autorités locales et l'État dans une ville que son ouverture sur le monde rend peut-être plus rétive que d'autres au pouvoir parisien.

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Michel Porret, *L'ombre du Diable.* *Michée Chauderon, dernière sorcière* *exécutée à Genève*

Éditions Georg, 2019, 296 p., ISBN 978-28257-1090-6 [2^{de} édition]

Camille Dagot

RÉFÉRENCE

Michel Porret, *L'ombre du Diable. Michée Chauderon, dernière sorcière exécutée à Genève*, Éditions Georg, 2019, 296 p., ISBN 978-28257-1090-6 [2^{de} édition]

- 1 Le 6 avril 1652, la lavandière catholique Michée Chauderon est exécutée pour crime de sorcellerie dans la République protestante de Genève. Pendue avant d'être brûlée, elle est la soixante-dixième et dernière personne à être condamnée à mort pour maléfice à Genève. Son supplice, qui survient « après vingt-six ans d'accalmie répressive sur le front de la sorcellerie » (p. 19) fait de cette affaire une « cause célèbre » que s'est attaché à étudier le professeur Michel Porret dans le cadre d'un séminaire qui s'est tenu à l'université de Genève en 2008-2009. Si ce travail a déjà fait l'objet d'une première publication en 2010, cette seconde édition apporte des analyses complémentaires substantielles qui mettent en relief le caractère singulier de cette affaire et de sa postérité dans l'histoire de la répression de la sorcellerie à Genève et en Europe.
- 2 Préfacé par Alessandro Pastore, le livre décrypte l'affaire Michée Chauderon en cinq temps. Le premier chapitre, intitulé « L'affaire Chauderon », propose une reconstruction historique de la postérité du procès et de son élévation au rang de « cause célèbre ». Depuis la lettre écrite par le théologien Jean le Clerc au début du XVIII^e siècle jusqu'au réquisitoire de Voltaire qui transforme le patronyme « Michée Chauderon » en « Michelle Chaudron » en 1771, Michel Porret et ses collaborateur·trice·s retracent les mentions de l'affaire dans les écrits des Lumières jusqu'à la première édition du procès réalisée en 1888 par l'aliéniste Paul-Louis Ladame. Ce « cas isolé », qui survient après une période d'accalmie judiciaire, « intrigue » en

effet très vite les historiens, jusqu'à élever Michée Chauderon, dans les années 1970, au rang d'« héroïne » et de « martyr de la cause féministe » (p. 36). Si la sorcière de l'époque moderne « est devenue la figure sociale du combat des femmes » au XX^e siècle (p. 40), Michel Porret rappelle que l'étude du procès donne à voir un monde de femmes, dans lequel les accusations sont produites par des femmes contre une femme. Aussi, la postérité de « la biographie judiciaire [de Michée Chauderon] comme "cause célèbre" montre la banalité d'une existence célèbre » (p. 43).

- 3 Afin d'éviter tout anachronisme dans la réception de cette biographie judiciaire, le deuxième chapitre de l'ouvrage (« L'imaginaire du mal ») se concentre sur l'analyse des catégories pénales de la sorcellerie, façonnées par les écrits juridiques, politiques et théologiques de l'époque. Outre l'analyse du déroulé du sabbat et du « marquage » de la sorcière par le Diable à laquelle se livre Pierre de Lancre dans son tableau de l'Inconstance, on retiendra surtout l'opposition, sur le terrain des idées, entre Jean Bodin, qui assimile la sorcellerie au crime de lèse-majesté, et le médecin Jean Wier qui récuse dès 1563 la démonologie.
- 4 Suite à ces précisions sur l'outillage mental et juridique des populations de l'époque moderne, le troisième chapitre, intitulé « Le miroir des représentations », reprend là où s'était arrêté le premier, à savoir sur l'idée que la postérité de l'affaire a ravalé Michée Chauderon au rang de « victime judiciaire des préjugés de son temps » (p. 79). Dans cette optique, Michel Porret retrace le parcours de Michée Chauderon dans la mémoire collective du XX^e siècle. Avec sa « consécration toponymique » en 1997 et sa réhabilitation judiciaire en 2001, l'affaire bénéficie des commémorations communales auxquelles s'ajoutent des « récupérations patrimoniales » qui mettent en scène sa « pitoyable » histoire sur différents médias (roman, théâtre, radio, cinéma). Or, ce souci de « repentance mémorielle » (p. 80) s'inscrit dans une histoire politique et patriotique plus large des Genevois. Michée ne serait pas seulement la victime d'une erreur judiciaire, elle serait aussi celle des luttes confessionnelles intestines qui opposent la Rome protestante aux « papistes » savoyards. Si les philosophes des Lumières utilisent cette « cause célèbre » pour dénoncer l'archaïsme pénal du siècle précédent, très vite l'affaire est instrumentalisée sur le plan confessionnel : dès le début du XIX^e siècle, elle incarne soit la « "terreur" calviniste » qui a fait de Michée une martyre catholique, soit le premier signe d'une modernité judiciaire en raison de la sentence modérée prononcée par les juges protestants (p. 137). Aujourd'hui encore, l'héritage de ces « polémiques historiographiques » qui ont animé les historiens et les médecins des XVIII^e, XIX^e et XX^e siècles, se perpétuent sur Internet.
- 5 Cependant, malgré la mythification de l'histoire de Michée Chauderon, transformée en « martyre de l'intolérance religieuse, en victime de l'oppression masculine ou en figure anachronique du féminisme précurseur », Michel Porret rappelle que ce cas judiciaire est somme toute « assez banal » (p. 141). Le quatrième chapitre (« Michée Chauderon devant les juges ») est un point de rappel historique. Après avoir apporté des précisions sur la qualification du crime de sortilège, le chapitre retrace pas à pas la biographie de la lavandière, de sa naissance à Boège, dans le Faucigny, vers 1602-1603 à sa condamnation à mort en 1652 à Genève. L'analyse de son parcours permet de montrer la « banalité » du profil de la prévenue : enceinte d'un valet décédé brutalement, elle se fait arrêter une première fois à trente-sept ans pour crime de paillardise. Bannie, elle quitte un temps Genève avant de revenir en tant que lavandière et propose ses services de guérisseuse à son voisinage. Les fléaux s'abattent alors sur Genève : épidémies,

disettes, même un séisme est enregistré en 1651. C'est dans ce contexte heurté que huit femmes décident d'accuser Michée d'avoir « baillé le mal » à deux jeunes filles. L'analyse détaillée du procès permet de dévoiler la construction de l'accusation contre la lavandière. La particularité de l'affaire Chauderon ne réside finalement pas dans le profil de la prévenue, qui finira par avouer avoir croisé « l'ombre du Diable » dans la seconde partie du procès, mais dans la multiplication des expertises médico-légales. À la recherche de la marque du diable, les médecins « visitent » le corps de Michée à quatre reprises mais seule la dernière est concluante. Outre le scepticisme prudent des médecins lors des trois premières expertises, la sentence également marque une rupture : condamnée à mort, Michée Chauderon est la dernière accusée à recevoir la peine capitale à Genève pour sorcellerie alors que la précédente exécution remonte à plus de vingt-six ans. Elle ne sera cependant pas la dernière accusée de sorcellerie : douze femmes seront encore incriminées après elle jusqu'en 1681, mais toutes seront désormais relaxées ou bannies.

- 6 Le cinquième et dernier chapitre (« Bailler le mal, crier merci ») conclut ce long décryptage de l'affaire Michée Chauderon en revenant aux origines des charges portées par les huit accusatrices. L'analyse approfondie du procès fait ressortir une vieille affaire, celle de la fausse accusation pour vol domestique portée par l'une des femmes contre Michée Chauderon, qui est dès lors suspectée d'avoir « baillé le mal » pour prendre sa revanche. L'affaire permet donc d'étudier en détail l'univers mental des populations de l'époque moderne. La peur du maléfice que dévoile l'entreprise des accusatrices à l'encontre de la lavandière montre bien l'ambivalence de l'affaire. Marqué par la continuité, le cas Michée Chauderon témoigne que la cohérence du discours des déposantes vis-à-vis de leur représentation du monde. Mais cette peur du « mal » commence progressivement à s'effriter face au scepticisme médico-légal. La modération de la peine de Michée Chauderon (pendaison avant le bûcher) annonce le « désenchantement du monde [qui] bannit Satan loin des cours de justice » (p. 218). La voie est désormais ouverte à la décriminalisation du sortilège qui surviendra un peu partout en Europe dans les années 1680.
- 7 Le cas Michée Chauderon est donc une affaire « ordinaire » survenue à un moment « extraordinaire ». Pour achever d'en convaincre ses lecteurs et ses lectrices, Michel Porret propose l'édition intégrale non seulement du procès pour sorcellerie de 1652, mais également celui pour paillardise de 1639. Le lecteur curieux pourra ainsi revenir aux sources de cette affaire qu'Internet a rendu mondiale.

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Carolyn Strange, *Discretionary Justice: Pardon and Parole in New York from the Revolution to the Depression*

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- 1 At least since Cesare Beccaria's time, critics have attacked the power of a sovereign or head of state to pardon or reduce the punishment of people convicted of crimes. They charge that clemency diminishes the certainty of punishment and places the ruler outside of the rule of law. Carolyn Strange's general theme is this quest for certainty in criminal justice and retention of discretionary punishment. Certainty of punishment within the rule of law was a major principle of Enlightenment thought about criminal justice, of which Beccaria was a leader. Enlightenment critics focused on the arbitrary powers of monarchs; it was not until the American Revolution that the issue of executive clemency became relevant to criminal justice in a representative democracy.
- 2 Strange researches the history of executive pardoning power in the state of New York from the Revolutionary period through the 1930s, examining the debates over the legitimacy of pardons in a democracy, the criteria governors used to pardon or mitigate sentences, and the twentieth century interaction of the pardoning power with development of parole. While the power of the American president to pardon offenders has been thoroughly studied, criminal justice is primarily a concern of individual states and governors' pardons are a neglected area of research. Despite many criticisms, New York retained executive clemency for many crimes, non-capital as well as capital, long

after most states, adopting a joint Governor — pardon commission scheme only in 1930. Strange asks, how did New Yorkers argue for and against retaining gubernatorial pardons during the democratization of the early XIXth century and development of “scientific” progressive penology in the late XIXth and early XXth centuries? How did the development of reformatories and indeterminate sentencing with parole remain parallel to rather than replacing pardons? How did individual Governors view their power and exercise it? How did prisoners seeking clemency develop strategies for success? What types of prisoners were most likely to succeed?

- 3 To answer her questions Strange fortunately found a collection of Governors’ pardon books, where they recorded their reasons for pardons and the documents of each successful case (unsuccessful ones rarely appear), records of parole boards and many other primary documents as well as published material. These data reveal that individual governors were lenient or strict, but all took their responsibility seriously. Not many wealthy people applied, because so few were in prison, but a poor person was successful if he or she had respectable connections to testify to their character, or even better endorsements from the district attorney or judge of their case. By far most of the people requesting clemency were men but without records of unsuccessful applications Strange could not tell whether women received mercy more often than men. There was always a debate when rarely women applied for pardon for a capital crime and governors were not eager to execute them. In both the early XIXth and early XXth centuries, governors pardoned prison inmates who were the victims of cruel treatment, excessive solitary confinement or harsh punishments.
- 4 New York’s gradual abolition of slavery, culminating in 1827, allowed time for this to sell them south. The governors co-operated with masters when they pardoned convicted slaves and required they be sent out of state. Another group for whom pardons were ambiguous were Native Americans, who claimed sovereignty over their own lands in the early XIXth century as nations defined by treaties. Governors, though, insisted on treating the few Indian offenders as subject to state sovereignty. They asserted New York’s power by granting pardons in the few cases when Indians applied.
- 5 Until 1821, the State Legislature was responsible for pardons in capital cases, the governor for all others. Between the time of the first state Constitution in 1777 and the second in 1821, the number of crimes considered capital declined dramatically as part of the era’s general penal reform. In the 1821 Constitution, the legislature lost its pardoning power while the governor’s increased to include all crimes. There was considerable debate over the place of pardons in a democracy, which would continue through the XIXth century with the thorough research and lobbying of the Prison Association of New York and the scholarship of Francis Lieber mobilizing powerful objections to what they considered arbitrary power.
- 6 New York was a pioneer in progressive penology, beginning with the construction of Newgate Prison in 1797 and Auburn in 1820, both meant to reform as well as punish. Even more significant was Elmira Reformatory of 1876, based on the principle of release as a reward for good conduct in the prison more than convicts’ professions of religious or moral reform. Later development of the indeterminate sentence (minimum and maximum terms in prison) and parole, which created an alternative method of clemency to the governor’s decision, did not replace executive clemency but paralleled it. Parole was originally created in 1901, modified in 1907 to make all first-time offenders eligible for early release, except murderers in the first degree. Governors

began to take the advice of parole boards as recommendations for pardons. Parole advocates hoped that the personal element of gubernatorial clemency would be replaced by objective review by experts, social workers or psychiatrists. Instead they were ordinary citizens who made judgements based on their impressions of the prisoner during interviews. During the 1920s, responding to a partly-manufactured fear of crime during the prohibition era, hard-liners resorted to fixed sentencing and almost abolished parole. However, riots in overcrowded prisons generated a reaction that led in 1930 to a return of indeterminate sentencing and a pardon commission to work with the governor. This scheme had been developed in other states earlier, so in the area of clemency reform New York was a late arrival. Strange has looked to conditions within a specific state to understand that delay, and reminds us that future studies will have to adopt the same pattern, as only a few have so far.

- 7 Thoroughly and thoughtfully researched, Discretionary Justice should be interesting to anybody who seeks to understand the complex and sometimes unpredictable process we call justice.

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Mark Radford, *The Policing of Belfast 1870-1914*

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REFERENCES

Mark Radford, *The Policing of Belfast 1870-1914*, London, Bloomsbury, 2015, 243 p., ISBN 978-1-4725-1316-8.

- 1 The Royal Irish Constabulary (RIC) is widely credited with serving as a “model” for policing across the British empire and playing a prominent role in the historical development of policing internationally. While efforts to assess this claim have generated a considerable and ongoing debate, and led to important qualifications regarding the actual extent of the RIC’s influence and legacy, it remains the case that the policing “model” that prevailed within Ireland during the era of the RIC was not completely standardized: it varied across time and space. In this absorbing study, Radford’s focus is on the policing of Belfast from 1870-1914. This time-period extends from shortly after the disbandment of Belfast Town Police in 1865 and its replacement by the RIC, through to the outbreak of the first world war and all of the political upheaval associated with nationalist efforts to secure greater autonomy for Ireland (“home rule”) and unionist efforts to prevent it.
- 2 While the Belfast Town Police was disbanded essentially because of concerns that it was overly “localised” and largely controlled by Belfast City Council, its replacement by the RIC brought significant tensions to the fore. The RIC (initially the Irish Constabulary) had emerged as an armed and militaristic force, with a broad range of functions including crime prevention and detection, responding to subversion and political violence, and also serving as the public face of the British administration in a wide range of banal settings. While it had played key roles in suppressing various rebellions (for which it was rewarded with the title “Royal”), the bulk of the rank-and-file were Catholics. Moreover, much of the force’s reputation was built on policing rural Ireland

rather than the main cities (Dublin also had its own police force, the Dublin Metropolitan Police, until the 1920s), so the extension of the RIC's role to Belfast proved a key test of the force's ability to police a contested urban setting. Thus Radford states his goal: "to examine in detail all aspects of the RIC in Belfast in order to determine if a semi-military constabulary adapted successfully to the problems that a city posed" (p. 2).

- 3 Belfast, however, was not a "typical" city. It was expanding in terms of population and economic activity. Moreover, it was highly volatile, the "social volcano of the Empire" (p. 2). Belfast witnessed sporadic rioting during the first half of the 1800s, while in the second half of the century there were serious riots in 1857, 1864, 1872, 1876, 1880, 1884, 1886, 1893 and 1898. A majority of the city's population was Protestant, but the proportion of Catholics grew over the years, and their greater visibility and assertiveness in calling for political reforms brought a sharp edge to inter-group relations, particularly between working class communities.
- 4 Radford draws on a wide range of historical sources to present an analysis of the lived experience of RIC officers and the nature of police-public relations amidst the social complexity of sectarian and political divisions in Belfast at this time. He demonstrates how the lives of officers were highly circumscribed, governed by strict regulations, long working hours, sometimes very harsh discipline, and poor pay and conditions. Indeed, one of the persistent themes in the book is the low morale that existed within the RIC, giving rise to significant numbers of resignations, agitation for better conditions, and often reduced efficiency. While this is a valuable addition to our knowledge of the internal world of policing, the book's focus on the external world of policing — relations with the public — is particularly revealing. Here Radford highlights how relations with both Catholic and Protestant communities were uneasy and often difficult. Protestants were resentful at the loss of the Town Police and its replacement by a force of largely Catholic rank-and-file. Catholics were skeptical of a force which played such a prominent role in maintaining the union. Securing the support of these antagonistic groups while maintaining its effectiveness and professionalism was an enduring challenge for the RIC.
- 5 Despite Belfast having a relatively low level of crime, many police prosecutions were seen as unnecessarily intrusive into the social lives of the working class and generated considerable resentment. The number of police prosecutions halved as one attempt by the RIC leadership to address these concerns, and perhaps this might be one part of the explanation for a corresponding reduction in the numbers charged with assaulting a police officer (chapter 3). Yet over the timeframe examined by Radford, probably the most significant event was the 1886 riots during which 32 people were killed, including 24 by police rifle-fire (p. 101). Despite the grave challenges the RIC faced in trying to maintain order when faced with large rioting crowds, the force was severely criticized in terms of leadership, tactics and discipline. Such events would continue to loom over police-public relations, and concerns over morale, effectiveness and public legitimacy were a persistent feature of commentary on the RIC in Belfast as political tensions mounted in the early 1900s.
- 6 Radford's conclusion on the ability of the RIC to provide an appropriate and effective policing service for Belfast is sobering: "The skills required to provide a civil community-based service were entirely different from those needed to suppress a riot, yet the RIC had to provide both of these skills in Belfast simultaneously... Despite

evidence of a grudging use and acceptance of the force, the RIC could not be described as popular and its status within Belfast did not carry with it the same connotations of respectability and affection that were accorded elsewhere. However, given the sectarian divisions in Belfast, it was probably beyond the capacity of any contemporary force to be perceived as both popular and impartial.” (p. 170)

- 7 The political context of policing is a key point of engagement throughout the book. At the very outset, Radford takes issue with the argument promoted by some researchers that the RIC was, in effect, a political police force. “As recently as 2000”, he writes, “the myth that the Royal Irish Constabulary (RIC) was a completely semi-military police force foisted upon the hapless Irish population by the colonizing English was still being advocated” (p. 1). Here, perhaps, “completely” is the operative word. Radford draws on the “domestication” thesis advanced by Elizabeth Malcolm and colleagues in several influential publications, which argues that the RIC became progressively less militarized and more legitimate in the eyes of the general population through the 1800s. At one level, Radford’s argument clearly supports that approach, and one of the real strengths of the book is to highlight the significance of local contexts in shaping the complexion of policing and relations between police and public. At another level though, I felt that Radford rather skirted around direct engagement with the issue of the role of the police in contested settings. Ironically, given the book’s focus on the policing of a deeply divided city structured around competing identities and political allegiances, the focus upon communities unwilling or unable “to work out their differences” (p. 172) seems to omit consideration of the wider political environment in which the police operated. In defense of Radford, his focus is very much on the local political dynamics of policing in the city, rather than a more macro-level analysis of the politics of policing.
- 8 On a minor point, the flow of the argument would be enhanced with chapter titles that were less opaque and with sub-headings to provide greater direction for the reader. Given the heavy emphasis on key personalities through the study, a glossary of the key historical figures and an organizational chart of the RIC would also be useful.
- 9 Overall, this is a very engaging and well-researched study of policing during this era, highlighting the tensions in applying different policing models and structures to different socio-political environments. It is a welcome and valuable addition to the literature on the historical development of policing in Ireland.

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Fleuriaud Geoffrey, *L'éducation par le crime. La presse et les faits divers dans l'entre-deux-guerres*

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- 1 L'ouvrage est issu de la thèse de Geoffrey Fleuriaud, soutenue en 2011 à Poitiers. Le titre dépasse largement l'étude qui porte sur ce que l'auteur appelle « l'article de vol » dans deux quotidiens locaux du département de la Vienne. Si la référence au « crime » est juridiquement discutable car le vol ne l'est qu'en cas de circonstances aggravantes, ces considérations juridiques sont hors champ car cet ouvrage illustre la manière dont le discours médiatique crée un monde parallèle tout autant en décalage avec le réel qu'avec son traitement juridique.
- 2 Cette étude comble un vide historiographique du fait du peu de travaux sur le vol au XX^e siècle, souligné par Frédéric Chauvaud dans sa préface, et du peu de recherches sur le discours médiatique – la bibliographie¹ mentionne les principaux auteurs sur le sujet : Anne-Claude Ambroise-Rendu², Dominique Kalifa³ et Marine M'Sili⁴. Elle contribue également à enrichir les recherches de l'entre-deux guerres qui reste une période assez délaissée par les historien·ne·s, à cause de la prééminence historique prise par les conflits mondiaux. L'auteur fait surgir une fresque de cette période dans une province rurale traditionnelle et nous éclaire sur la pensée dominante. Cet ouvrage constitue donc également un apport certain à l'étude de l'histoire des mentalités, et plus particulièrement de l'histoire des représentations, tant par le choix du sujet – le

vol – que par son prisme – le traitement médiatique – et son époque – l’entre-deux guerres.

- 3 L’ouvrage de 345 pages est découpé en trois parties. La première partie porte sur la manière dont les journaux éduquent le citoyen à se protéger du vol (une culture du crime : l’article de vol, un vecteur d’enseignement sécuritaire : p. 23-104). La deuxième s’intéresse à la présentation des institutions comme la meilleure protection possible du citoyen, donc, si l’on suit la thèse de l’auteur, le fait que la presse éduque le citoyen à admirer l’État et à s’y soumettre (un cours sur l’État : un rempart inamovible contre un dangereux délinquant : p. 105-216). Enfin la dernière partie concerne le contrôle moral qu’exerce le journaliste sur l’ensemble des comportements et des pensées du citoyen en lui enjoignant de les corriger (une leçon de vie : l’article de vol, une pédagogie intégrale : p. 217-341). Si le plan des parties semble clair et corrobore parfaitement l’idée directrice de l’auteur, il apparaît que le fil conducteur écarte d’importants apports de l’étude, comme le fait que la presse se fasse le vecteur des représentations dominantes de la société de l’entre-deux guerres.
- 4 D’un point de vue épistémologique, le corpus est constitué d’une palette de comportements déviants allant de faits non pénalement répréhensibles (vol non constitué) au meurtre aggravé sous la dénomination d’« article de vol ». Les journaux locaux dont il est question sont identifiés comme conservateurs : de centre-droit et, pour l’un d’eux, catholique. L’auteur souligne la dimension apartisane de l’article de vol, du fait de l’absence du thème sécuritaire dans les programmes politiques de l’époque (p. 28-30), mais ce constat est à nuancer. Le journaliste auteur de l’article n’est pas identifié, il est presque toujours présenté de manière abstraite et univoque (p. 33), à de rares exceptions près, particulièrement intéressantes : ainsi à côté des journalistes professionnels appartenant à l’élite urbaine, existent des journalistes non-professionnels, sortes de correspondants locaux (p. 31). Or, ponctuellement, sur certains sujets, en fonction de l’un ou l’autre des profils, le discours sera différent : le correspondant aura tendance à valoriser les anciennes pratiques rurales de solidarité, tandis que le citadin ne se réfèrera qu’aux institutions (p. 70-71). Les articles de vol écrits par le journaliste professionnel citadin suintent de mépris pour les populations rurales (p. 94-95). Cette divergence fait apparaître une brèche dans la pensée dominante de l’article de vol.
- 5 Pour obtenir l’adhésion du lecteur, l’article de vol s’appuie sur les émotions primaires communes que sont la peur et la haine. Peur de perdre ses biens. Haine du voleur. En outre l’article de vol dans la presse locale inscrit les événements dans la sphère familière du lecteur (lieux et habitudes). Cet ancrage émotionnel ouvre la voie à un message politique – pourtant non reconnu comme tel par l’auteur – de défense de l’ordre établi (institutionnel, social et économique) sous une apparente neutralité affirmée (p. 37). La peur est suscitée par de nombreux procédés rhétoriques et stylistiques renforçant un sentiment d’insécurité chez le lecteur (p. 42). Dans la construction médiatique du vol, il n’y pas de hasard mais du mystère. L’aléa n’existe pas, le journaliste omniscient présente une vision téléologique du monde et des événements (p. 323). Il crée un climat anxigène en banalisant le vol et en utilisant des effets stylistiques, par exemple des métaphores fantastiques (p. 123) ou des métonymies (p. 120), de manière à renforcer l’impression de dangerosité, laissant entendre que la communauté est en danger permanent (p. 47-58). La haine est renforcée par le registre du discours journalistique. L’auteur nous montre que « le

voleur » est vilipendé par un champ lexical empreint de connotations négatives. « Le voleur » est appelé par son nom de famille directement, à l'inverse des autres protagonistes de l'article de vol (p. 110). Il est régulièrement mentionné par un surnom parfois créé par le journaliste lui-même (p. 111-112). Des métaphores animalières, faisant référence à des animaux nuisibles et donc à exterminer (p. 121), ou des métaphores déshumanisantes (p. 120-123) sont utilisées. Le caractère de l'individu désigné comme voleur par l'article, son passé et ses comportements sont disséqués, afin de mettre « ses vices » en évidence (p. 141-147). Si, lors de l'enquête de personnalité journalistique, une qualité est évoquée, elle est automatiquement analysée à charge (manipulation, anomalie, paravent d'autres tares, etc.) (p. 147-153). Le voleur est aussi présenté comme un jouisseur, un profiteur qui se repaît de ses richesses mal acquises étalées devant les souffrances du peuple (p. 274-279). L'esprit du lecteur, ainsi préparé, est dans l'attente d'un discours répressif face au danger que représente le voleur. Il espère son châtiment et le retour de l'ordre.

- 6 La défense de l'ordre politique passe par la légitimation et la valorisation des institutions. Toutes les institutions, qu'elles soient administratives ou judiciaires, sont systématiquement présentées comme pertinentes et admirables. Ainsi le policier, le gendarme, le juge, le procureur et même, dans une certaine mesure, l'avocat sont-ils survalorisés dans l'article de vol ; Geoffrey Fleuriaud les réunit alors sous l'appellation d'« hommes de l'ordre ». À la lecture de l'ouvrage, cette appellation pour l'avocat est initialement choquante, mais ce choix de l'auteur est parfaitement justifié par le fait qu'effectivement l'article de vol compresse le rôle de l'avocat au point d'en faire un agent fidèle de la machine judiciaire, agissant à contre-cœur pour défendre son client, donc nécessaire et utile au service de la répression (p. 205-213). Concernant les policiers et les magistrats, leur dureté (p. 170) et leur intransigeance sont valorisées dans les figures de l'enquêteur (p. 162-182) et des magistrats (p. 194-205). Les individus sont magnifiés par leurs actes professionnels et en même temps complètement désincarnés, pour mieux les rendre transparents au profit de la valorisation, à travers eux, de la machine institutionnelle. L'article de vol essaie de montrer le bon fonctionnement des institutions en soulignant les collaborations entre elles (police locale et nationale) (p. 172). À l'inverse, les fautes de l'institution sont couvertes par l'article de vol. Ainsi en est-il de l'invisibilisation et/ou de la légitimation des violences policières (p. 185). Non seulement l'institution est légitime et admirable, mais elle est en plus efficace, elle sécurise la société. Le voleur terrifiant jusqu'à l'intervention des agents de l'État et donc son arrestation, est ensuite systématiquement présenté comme terrassé par l'institution, il est rendu inoffensif et pénitent, ce qui révèle la puissance de l'État (p. 128-135). C'est en tout cas l'attitude logique que devrait avoir le voleur, qui est attendue par la société, ce que révèle l'article de vol quand il s'indigne de la posture désinvolte et badine du voleur lors du procès. Les propos du journaliste se font alors particulièrement sévères à son encontre, il s'agit d'une déviance dans la délinquance car, sur les délinquants, pèsent également des règles sociales et des injonctions que la société, dont le journaliste se fait ici le vecteur, entend voir respecter. Les injonctions sociales ne pèsent pas seulement sur le voleur dans son rapport aux institutions. Si les victimes d'escroquerie ont voulu faire preuve de générosité en donnant de l'argent pour une cause, encore faut-il que celle-ci soit considérée comme légitime par rapport aux institutions. Ainsi la religion, la paix et la commémoration des morts sont-elles des causes légitimes de générosité car elles ne relèvent pas des missions de l'État. Par contre le chômage et la misère ne le sont pas (p. 245-251) car ce serait laisser entendre

que les institutions ne remplissent pas leurs obligations. Et sans doute également l'engagement politique. L'auteur ne commente pas la quête faussement réalisée par la CGT (p. 245), mais il est évident qu'au-delà de la cause – la misère – le fait que celle-ci émane d'un syndicat puissant a contribué à la dureté de ton du journaliste envers la victime de vol. En outre si se faire manipuler par un faux agent de l'État confère le statut de victime légitime, car le comportement normal attendu d'un individu est de se soumettre aux ordres des agents de l'État (p. 253-254), se faire manipuler par un sorcier est dénoncé comme un archaïsme ridicule dans l'article de vol (p. 254-257). Derrière les croyances populaires dénoncées, le journaliste entend contribuer à la disparition des anciennes pratiques rurales et rapprocher les individus de leur seul interlocuteur légitime : les agents de l'institution (p. 91). En outre, les causes de la délinquance sont personnelles, relatives au comportement des individus, elles sont le produit du vice et en aucun cas le résultat de dysfonctionnements institutionnels.

- 7 La défense de l'ordre économique passe par l'invisibilisation du chômage, de la crise économique et de la misère (p. 303-305). Si l'auteur montre que l'article de vol déresponsabilise totalement l'État, il apparaît également que les logiques économiques, de marché, le capitalisme, la spéculation financière ne sont également jamais mentionnés en tant que causes de la misère dans l'article de vol. Au contraire, l'article de vol ne cesse d'inciter ses lecteurs à déposer leur argent à la banque, rempart sécuritaire face au vol. La seule cause extérieure prise en compte comme facteur de la criminalité est la guerre. La guerre a tué et blessé les corps mais pas seulement, elle a aussi touché les âmes. La guerre a causé une crise morale qui a engendré une perte de repères (p. 291-296), d'où l'apologie des valeurs traditionnelles (p. 305-318) et la revalorisation des institutions.
- 8 La défense de l'ordre social entend replier les individus sur eux-mêmes (p. 63-66) et les ramener vers leur foyer et les valeurs traditionnelles. Ainsi l'article de vol dépeint-il les espaces de sociabilité où se pressent les gens, comme les magasins et surtout les foires, comme des lieux de dangerosité par excellence (p. 77). Cette défiance tend à rejeter l'autre qui forcément est suspect, ainsi le racisme et la xénophobie sont-ils monnaie courante dans l'article de vol (p. 92-93, 234-245). Dans une analyse particulièrement intéressante, Geoffrey Fleuriaud dresse les contours de la victime légitime, de celle dont le comportement a concouru à la criminalité. Au-delà de la délinquance, l'article de vol trace les frontières de la déviance (p. 87-104). L'article de vol dénonce deux facteurs de criminalité : l'ostentation et l'ambition. Ainsi tout étalage de richesse est suspect car soit il suscite la convoitise d'autrui (p. 88), soit il est un risque de duperie par de fausses apparences (p. 80-81), soit il est la preuve de l'acquisition malhonnête des biens. Ainsi l'ostentation cause ou révèle la délinquance (p. 90). La critique de l'ostentation n'est pas une dénonciation de la fortune personnelle de la bourgeoisie, loin de là, il s'agit surtout d'inciter chacun à adapter son apparence à sa condition sociale (note 196, p. 99). L'autre facteur de criminalité est la quête d'ascension sociale. Celle-ci pousse l'individu soit à rêver d'une condition qui n'est pas la sienne et donc à prêter l'oreille à des fausses promesses et se faire escroquer (p. 100) ; soit à devenir malhonnête pour y parvenir, l'absence de résignation pousse à la faute. L'injonction du journaliste est claire : l'individu doit se résigner à sa condition sociale, et ne pas chercher à en sortir car toute transgression représente un danger pour l'ordre établi et les structures traditionnelles de la société. Ainsi en est-il également des femmes, qui doivent se soumettre aux injonctions de genre : ni trop sexuelle, ni masculine, la femme doit avoir une attitude conforme à ce qui est attendu d'elle, toute quête d'émancipation sera

perçue comme un danger pour autrui (risque d'escroquerie : p. 81) ou pour elle-même. La frontière ici est ténue entre victime et délinquant et dans l'article de vol, le journaliste se fait sévère pour la victime qui est avant tout coupable de ses mauvais comportements. Ainsi, par exemple, l'article de vol conspue-t-il victimes (p. 101, p. 259) et coupables sur leur sexualité « déviante ». L'article de vol fait émerger des figures de la délinquance assez classiques et stéréotypées : le jeune des milieux populaires, la femme libre, l'étranger et en particulier les gens du voyage (p. 222-245). Sur le « jeune », l'analyse est particulièrement intéressante et montre une logique de classe écrasante. Peu important les faits, l'étudiant, issu des élites sociales, bénéficiera dans l'article de vol d'une véritable indulgence. Une bienveillance rare, vu le ton répressif général, lui sera offerte : il faut que jeunesse se passe, il s'amuse... Le jeune des milieux populaires, dont certains profils stéréotypés sont mis en avant par les journaux : l'apache (jeune qui œuvre en bande qui a fait couler beaucoup d'encre) ou le colon (placé en institution soit pour des faits de délinquance soit dans un but de protection – statut d'ailleurs indifférencié dans l'article de vol), fera l'objet d'une sévérité accablante dans l'article de vol, peu important les faits et les motifs du vol (p. 222-228). Cette différence de traitement montre des logiques de domination caricaturale. Une analyse en termes de rapports sociaux de sexe aurait été particulièrement intéressante sur le sujet. L'ouvrage traite cette question de manière indirecte. En particulier, dans le chapitre concernant « la diablesse », transparait l'idée que la sexualité est au cœur des représentations de la transgression des femmes. La question de leur virilisation entre en scène quand il est question de violence, mais sans que ce propos ne soit étayé ou développé, ni confronté avec le rapport étroit entretenu entre virilité et violence ou transgression. L'étude met néanmoins en exergue la figure de l'« aventurière » comme incarnation de la délinquance féminine (p. 229-234). L'auteur a par ailleurs déjà écrit sur la représentation médiatique de la délinquance féminine, dans un ouvrage collectif de référence sur le sujet des femmes devant la justice⁵, mais, dans cet ouvrage, la grille de lecture du genre aurait été utile à mobiliser concernant les injonctions qui pèsent sur le lecteur, et sur la lectrice. Pour ne prendre qu'un exemple, derrière la mise en garde concernant les sacs à la main à la mode, qui pouvaient facilement être l'objet d'un vol (p. 62), l'article laisse poindre une critique relative à la femme moderne. Derrière le danger évoqué, apparaît une tentative de contrôle, par la peur, de la femme libre et indépendante.

- 9 Au-delà, de la dimension « pédagogique » de l'article de vol, l'auteur nous invite à nous interroger sur les conséquences de ces manipulations. En effet, les principes directeurs du procès pénal sont mis à mal. L'article de vol affirme des faits, propage des rumeurs et porte atteinte gravement au secret de l'instruction sans assumer les erreurs commises. Ce que l'auteur appelle « opération de simplification » (p. 36-47) va toujours dans le sens de la répression, en mettant à mal systématiquement la présomption d'innocence et en bafouant les droits de la défense. En effet dans l'article de vol, qu'un individu soit suspect, accusé ou condamné, il fait l'objet du même traitement stylistique, parfaitement analysé par Geoffrey Fleuriaud. Ainsi alors que l'article de vol ne cesse d'enjoindre au lecteur de se soumettre à la loi et aux institutions, il les transgresse en permanence et va jusqu'à valoriser la violence, voire le meurtre, s'il s'agit de celui du voleur, ce qui constitue une légitimation de la violence privée (p. 69). Geoffrey Fleuriaud développe une intéressante réflexion sur l'articulation entre média et justice. La vérité médiatique s'imprime durablement dans l'esprit du lecteur à force d'être répétée (une même affaire peut ainsi faire l'objet de plusieurs articles), tandis

que la vérité judiciaire, aussi auréolée d'autorité soit-elle, n'est que fugace. D'autant qu'en cas de crime, le juré d'assise est potentiellement un lecteur des deux quotidiens locaux, dont l'opinion peut avoir été considérablement influencée par ces derniers (p. 57-58).

- 10 En filigrane, l'ouvrage peint une fresque de la société de la Vienne d'entre-deux guerres, une scission entre la population urbaine et la population rurale. Si la première semble gagnée par le progrès, avec notamment la mise en œuvre de moyens modernes comme des alarmes pour protéger ses biens, la société rurale conserve ses traditions (p. 69-71) : argent et biens de valeur enterrés dans le jardin (p. 73-74), croyance populaire et recours à des sorcières et des guérisseurs (p. 254-257). Les objets volés sont aussi l'occasion d'apercevoir les nouveaux biens de consommation comme l'appareil photo, les nouveaux loisirs comme le cinéma, le déploiement progressif de la présence des automobiles. Au détour de l'apologie des agents de l'institution policière, apparaissent la modernisation de la police et les conflits ponctuels entre cette dernière et la mairie et entre polices locale et nationale et le manque de moyens matériels de la gendarmerie (p. 170-178). Il souligne les critiques et les défiances de la population envers sa police (p. 188-193). Alors même que l'article de vol tente d'invisibiliser toute contestation vis-à-vis des institutions, la caricature de certaines de ses apologies laisse entendre le fossé qui règne parfois entre le discours dominant et le ressenti populaire. Ainsi en est-il de la valorisation du système bancaire et des placements dans le contexte de crise des années 1930 et de faillite bancaire. L'augmentation des escroqueries au cautionnement et à l'emploi illustre involontairement les problèmes sociaux de l'époque (p. 262). En outre, l'étude de l'escroquerie montre les sensibilités de la société de l'entre-deux guerres car en exposant la vulnérabilité des individus sur certains sujets, l'auteur nous livre les principales préoccupations de cette société : la religion, le traumatisme de la guerre (aspirations à la paix et souvenir des morts), le chômage, la pauvreté (p. 250). La tension entre les Nations est également palpable lorsque l'article de vol fait référence à la fuite des capitaux (p. 97). La guerre surtout est omniprésente, la population semble en permanente réminiscence de celle-ci. Elle est un point commun entre voleur, victime, journaliste, témoin... Le fait d'avoir fait la guerre, et même d'être un héros de guerre, ne constitue en rien un blanc-seing pour le voleur car c'est le lot commun des hommes de l'entre-deux guerres. La guerre est partout, ne serait-ce que visuellement sur les corps des poilus, victimes et voleurs, blessés, défigurés, handicapés par la guerre (p. 284-302). Les rumeurs de la guerre sont également encore présentes, relayées parfois avec aplomb dans l'article de vol par le journaliste urbain : tel est le cas de la légende noire des campagnes, à savoir celle du paysan profiteur qui s'est enrichi pendant le conflit en vendant à prix d'or ses récoltes (p. 99). Ressort ainsi de l'article de vol, la peinture d'une société sombre, meurtrie, nostalgique de l'avant-guerre et sans espoir pour l'avenir. L'auteur conclut, à juste titre, que ces éléments apportent une clef de compréhension au fatalisme, à la résignation, à l'acceptation par les Français des événements de la Seconde Guerre mondiale (p. 339-341).

NOTES

1.

La bibliographie est sommaire, mais comme le souligne l'auteur elle est sélective, épurée par rapport à celle de la thèse. Néanmoins, une thèse en science du langage soutenue au même moment que la recherche dont est issu le présent ouvrage qui ouvrirait une belle mise en perspective, aurait pu être mentionnée : celle de Laëtitia Gonon sur le fait criminel dans la presse quotidienne française au XIX^e siècle.

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4.

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5.

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