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Crime, Prosecution and Social Relations: The Summary Courts of the City of London in the Late Eighteenth Century

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Underpinning a good deal of the scholarship on the history of crime in early modern England is the careful and systematic analysis of the records of the busy criminal courts. The most heavily exploited of these records have been the Assize courts and their metropolitan equivalent, the Old Bailey, for examining the experiences and patterns of crime and the administration of the law. The assizes, which heard the most serious criminal offences, generated a rich vein of official records from which historians have been able to prize a whole range of insights about social life in the past. In some jurisdictions, the survival of the records of the quarter sessions has occurred in sufficient numbers to allow for equally detailed analyses of how the less serious offences were dealt with.

What has long been known is that the trials that took place at the quarter sessions or at the assizes were really the latter stages of a process of going to law which was initiated in the intimate surroundings of the Justice of the Peace (JP)?s parlour room. It was there that men and women first went to law, seeking justice or at least a hearing for their petty and not so petty grievances. Sitting alone, these magistrates made on-the-spot decisions about the nature and merits of a claim that someone had done another a wrong, and exercised his legal authority either to dismiss a case, when he could, or help it to proceed to the next stage of the criminal justice process. Invariably, the former route was preferable, as it saved the aggrieved parties time

and expense, it saved the judges at quarter sessions or assizes another case, and it kept a check on the potential for malicious abuse of the courts by too frequent turning to law for settling every dispute. The JPs were guided in this by practice manuals including among others Richard Burn?s ubiquitous *Justice of the Peace and Parish Officer*.

What criminal justice historians have claimed about the day-to-day operation of such proceedings has, until recently, been based largely on the proscriptive information found in guide books such as Burn?s, or in the legislation that was passed in the 16th century, outlining the formal limits of the magistrate?s powers, and on assuming that the formal rules were followed. Such assumptions were warranted because of the paucity of evidence that remained showing exactly what these legal authorities did, and little evidence of systemic concerns about the work of JPs. Since they were not required to keep formal records of the preliminary hearings that they oversaw, the principal document of record emerging from the magistrate?s work was the formal indictment which was sent to the grand jury. There were plenty of indictments, thus magistrates were doing their jobs. However, the hearings, negotiations and mediation that led up to the creation of the bill of indictment was a process that was, for the most part, lost to the historical record. Or so it was thought.

Interest among historians in England?s criminal past gravitated first to the formal records of trial for various reasons that may be ascertained from reading the now voluminous historiography. But the search for informal, preliminary and summary proceedings (at least before the 19th century) garnered little attention because few thought to look for any available evidence. As it turns out, a small cache of such records have survived from the early modern period, and historians are gradually bringing these sources and their details to light.(1)

One particularly rich and largely untapped vein of such documents is the surviving minute books created by the clerks for the sitting magistrates in the City of London. The Lord Mayor of London had long served a judicial role as part of his administrative duties, and over time, the City Aldermen had taken on these duties as well. One of the courts over which the Lord Mayor presided was the magistrate?s court that sat in the Guildhall. Like other venues for preliminary hearings, the Lord Mayor heard a mixed bag of claims that emerged from time to time. Given London?s busy commercial and residential character, there was enough business to warrant frequent sittings of this court ? many days of the week by the reign of William & Mary and daily by the mid 18th century.

The business of these courts recorded in the Lord Mayor?s waiting books, as they were styled by a one-time City archivist, were later supplanted by the minute books generated by the work of not just one, but two justice rooms by the mid 18th century: the Guildhall Justice Room and the Mansion House Justice Room. These justice rooms were open for business every week day, and from 1752, were presided over by one of the Aldermen in the Guildhall?s Matted Gallery, or else by the Lord Mayor himself in the newly finished Mansion House. It is the surviving records from these two courts that form the principal basis for Drew Gray?s well-researched and cleanly executed study.

Gray?s work adds an important metropolitan dimension to the fragmented work on summary proceedings and the work of rural or at least sub-urban justices that has appeared in recent years.(2) He shows that far from being a brisk and perfunctory hearing in which the necessary legal forms were filled out in preparation for the ?real? trial at quarter sessions or assize, in many hundreds of instances, the preliminary hearing *was* the trial. The London magistrates were often engaged in thorough and detailed examinations into the case, with witnesses called and with constables empowered by search warrants to seek out and obtain evidence. To be sure, as Gray ably shows, these justices were gathering evidence at the preliminary stage in order to prepare cases for more speedy and efficient trial at the higher courts. But Gray is also right to see in these courts an underlying and unwritten code which encouraged the magistrates to proceed in a manner which emphasized what we now call ?restorative justice? (p. 27). Operating in this frame of mind meant that the lines between criminal and civil procedure could be blurred, and the formal restrictions placed on JPs by statute and by customary practice as outlined in practice guides such as Burn?s, were sometimes ignored or deliberately fudged in the name of procedural and likely financial expediency. The London magistrates sent a little more than 15 per cent of cases on to the higher courts according to Gray?s sample, while nearly 85

per cent were settled in one way or the other on the spot. Such settlements could be as simple as a handshake and apology, but the magistrates also fined, imprisoned, or otherwise punished offenders based solely on their own assessment of the case and the evidence (pp. 27?8).

After a chapter that describes the form and function of the justice rooms, Gray moves on to an examination of police and the important links between the business of the magistrates and the nature of policing agents in the 18th-century metropolis. Here Gray builds on the work of Beattie, Harris Reynolds and Paley and offers fresh insight into the ?overlapping combination of public, private and community policing? (p. 53) that was gradually evolving in London. Gray offers a functional explanation to the question of why police reform was not forthcoming in the late 18th century. From the point of view of the City, he suggests, it wasn?t necessary as the City seemed to be well policed for what it cost. This seems fair enough, especially as he shows the degree of policing coverage that City residents experienced, long before a professional police force arrived.

But the other conclusion that he draws in this chapter, that the City constables ?were detecting crime, arresting suspects and prosecuting them? (p. 66) in these City courts is not uniformly supported by his principal sources. It is true that constables are named in nearly every case noted in the minute books, but almost always in conjunction with a named victim/prosecutor. Sometimes it is clear that the constables, watchmen and beadles were actively involved in the matter, even proactive. But in the vast majority of cases reported in these justice room minute books, the degree of proactive involvement by the policing officials is unclear. It is indeed likely that constables and other policing agents played a much more active role in the detection and prosecution of crime, but Gray does not expand on the claims on this front made by Bruce Smith.(3) More information is usually revealed in cases that proceeded to trial at the Old Bailey. But even there, the role of victim prosecutors remains significant. It would have been interesting to know more about the constables who worked the docks or who built up expertise in certain areas and whose knowledge was trusted in the summary proceedings. Some policing figures who appear regularly in the summary court minutes also appear in detailed cases at the Old Bailey.

Chapter four describes property offences as they came to these courts and the following chapter does the same for the many cases of interpersonal violence that were heard and usually mediated or dismissed by the Lord Mayor and Aldermen. Here Gray suggests that London women may have had a little more independence and a little more power in their ability to harness the law and the legal institution of the state when it came to their demands for protection from violence. This is followed by chapters that explore assault prosecutions, the regulation of public and semi-public places, such as the streets, alehouses and bawdy houses, and an entertaining chapter on the practice of bullock-hunting. The final substantive chapter deals more specifically with the regulation of the poor and of tradesmen, including apprentices. Each of these chapters provide further insights into the ways in which social control was deployed by way of the proceedings and negotiations before the City?s aldermen justices.

Overall, Gray?s claim is that the summary courts were really the place where Londoners went to law. That the courts were busier that the Old Bailey is not surprising, given that there were two of them in simultaneous operation from 1752, and that they sat five days per week and for 12 months of the year, compared with the Old Bailey?s eight annual sessions of perhaps a week?s duration. Gray shows how the volume of business at these two courts reflected a willingness of a broad cross-section of metropolitan population to use the courts for the maintenance of social order. Given the geographical jurisdiction of the two courts, with the Mansion House taking in the area of the busy docklands while the Guildhall oversaw the City?s west side, it would be interesting to know if there was a way to differentiate or compare the nature of the business coming before the two courts. Was the lord mayor a different kind of magistrate from his alderman colleagues? Also, were some magistrates more notorious? Did any have reputations for being particularly harsh, or lenient?

The other question I would raise is why Gray was reluctant to explore the class dimensions of certain parts of his argument in greater depth. In his examination of policing and the exercise of summary power, it was clear from his evidence that the magistrates were using the law in arbitrary ways in order to discipline and control the lower orders. The manipulation of the vagrancy acts, as he points out, offer a clear example of

how those in positions of power were able to exploit the laws conceived for a particular set of persons in order to arbitrarily control an even larger set. While the historiographical pendulum has recently swung in favour of examining the ?agency? of those usually found on the wrong side of the power ledger, it s still worth stating when the evidence indicates, how the larger structures of power and authority in the past were very much biased in favour of the wealthy and powerful, and the alderman justices that presided over these summary courts were quintessential such examples. Gray is more inclined to read his sources in this way when he discusses the ways in which prostitutes in the City were handled, or in the disposition of bastardy actions. And in chapter eight, which deals with beggars, vagrants and vagabonds, Gray is able to tease out some of the strategies used by the poor to manipulate the system for their own benefit, while recognizing that it was in the end the elite who were governing the poor. But overall, Gray seems to be reluctant to employ his findings to test a more theoretically robust hypothesis.

The author was no doubt upset to see the map of London printed upside down, and there are some minor typographical errors in the text and inconsistencies in the footnotes that might not have escaped more careful proofreading and may throw off future researchers seeking to expand on the findings of this study. Some references bear the former Corporation of London Record Office shelfmarks while a few sources mentioned in the footnotes do not appear in the bibliography. But these are only minor quibbles with a book that makes a fresh and welcome contribution to our understanding of the role of law and the exercise of discretion in the management of social relations in 18th-century London.

Notes

1. See Peter King, ?The summary courts and social relations in eighteenth-century England?, *Past & Present*, 183 (May 2004), 125?72, for an excellent overview.Back to (1)
2. King lists the recent work in his article, esp. n. 18. The other key source for the eighteenth-century metropolis is *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book*, ed. Ruth Paley (London, 1991).Back to (2)
3. Bruce P. Smith, ?The Myth of Private Prosecution in England, 1750-1850?, in *Modern Histories of Crime and Punishment*, ed. Markus Dirk Dubber and Lindsay Farmer (Palo Alto, CA, 2007), 151?74. Back to (3)

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