



A HISTORY OF
ENGLISH CRIMINAL LAW
and its Administration
from 1750

BY

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VOLUME 2

THE CLASH BETWEEN PRIVATE INITIATIVE
AND PUBLIC INTEREST
IN THE ENFORCEMENT OF THE LAW

LONDON
STEVENS & SONS LIMITED

1956

*First edition 1956
Second impression 1974
Third impression 1981*

*Published by Stevens & Sons
Limited of 11 New Fetter Lane
London - Law Publishers and Printed
in Great Britain by Ashford Press
Limited Shedfield, Hampshire*

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This and the succeeding volume of the
History of English Criminal Law
are dedicated to the memory of
LORD MACMILLAN
Chairman of the Pilgrim Trust,
in lasting gratitude for his constant encouragement
and support in the early stages of this enterprise.

PREFACE

THE theme of this volume is the enforcement of the criminal law, as distinct from the reform of its substance, during the eighteenth and early nineteenth centuries. From a study of documents—proclamations, advertisements, offers of reward, Home Office correspondence—there emerges a system by which men hoped that the public peace might be preserved and offenders brought to justice, a system which was as ingenious as it was perplexing. It was largely inspired by the creed of *laissez-faire* and to an appreciable extent was worked by private initiative, principles which were so natural to the Englishman's way of life and thought. It was devised to appeal to the common motives 'that govern the actions of mankind', whether honest citizen or rogue.

The organisation of the civil power was such as to be particularly responsive to the various stimuli chosen to enlist self-interest in support of justice, while the public and the authorities agreed in exploiting them to the full. However, this practice produced many peculiar makeshifts, with paradoxical results; for, although the superficial efficacy of the incentives and their easy expansion strengthened the conviction that there was no need for preventive police, and in this sense they served the cause of liberty, yet the system engendered connivance, corruption and still more crime. Even when the realisation that the prevention of crime should be a public rather than a private responsibility began to dawn, several decades were still to pass before a radical change in the enforcement of the law took place.

I wish to repeat my deep appreciation of the encouragement and aid given to me when I began my work on this history by

the Pilgrim Trust and by the late Lord Macmillan, to whose memory, with the kind permission of Lady Macmillan and the Trustees, I have dedicated the second and third volumes.

It is also my privilege to record the generosity of the Rockefeller Foundation who, after the appearance of the first volume, decided to associate themselves with the furtherance of this research; without their help I could not have completed this stage in the work.

L. R.

September, 1956.

ACKNOWLEDGMENTS

I WISH to record my indebtedness for their unfailing courtesy and great helpfulness to the Keepers, Librarians and their Staffs of the many institutions whose collections I consulted; in particular my thanks are due to those of the Reading Room and Manuscript Room of the British Museum; the Libraries of the House of Lords and the House of Commons; the Public Record Office; the Library of the Home Office; the Goldsmiths' Library of Economic Literature (and the Photostatic Service), University of London; University College Library, University of London; the British Library of Political and Economic Science, London School of Economics; the Corporation of London Record Office; the Corporation of London Guildhall Library; the Library of the Port of London Authority; the Library of the Customs and Excise Department; the Library of New Scotland Yard (and especially Mr. J. Heron); the Squire Law Library, and the University Library, Cambridge.

L. R.

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CHAPTER 1

THE CLIMATE OF OPINION AT THE TURN OF THE SEVENTEENTH CENTURY

THE weakness of the existing machinery for keeping the peace had been a cause of widespread anxiety for many years before the two Westminster magistrates—Henry Fielding and his half-brother John—began to agitate for the improvement of the police in the Metropolis. The trend of opinion was towards an increasing severity of punishment and an ever wider circle of the law. Capital punishment was extending, until hundreds of offences, both serious and slight, had been drawn within its scope. The threat of death was not meant to be merely psychological. Severe laws were strictly enforced. In the period 1688–1718 every second offender who had been sentenced to death was executed, the others being almost invariably transported, if not for life, at least for fourteen years. In the latter part of the eighteenth century more than three quarters of all executions were for offences against property.¹

It would seem, however, that though the law and its administration were undoubtedly severe, they proved to be inadequate for the protection of society. The wave of lawlessness was mounting. ‘*O London!*’ exclaimed a contemporary writer, ‘*London!* so much fam’d for thy good Order, by what means is it now come to pass, that thou art become a Receptacle for a Den of Thieves and Robbers, and all sorts of villainous Persons and Practices.’² Voices were raised which called for an even greater severity: for breaking offenders on the wheel, or suspending them on gibbets while still alive, so that they would die a slow and painful death.³ Some offenders

¹ See on this Vol. 1 of this *History*, note 26 at p. 146; also pp. 141 and 147–48.

² Charles Hitchin, *A true Discovery of the Conduct of Receivers and Thief-Takers in and about the City of London; To the Multiplication, and Encouragement of thieves, House-Breakers, and other loose and Disorderly Persons*, etc. (1718), p. 7.

³ See an anonymous tract *Hanging not Punishment enough, For Murderers, High-way Men, and House-Breakers. Offered to the Consideration of the Two Houses of Parliament* (1701); and George Ollyffe, M.A., *An Essay Humbly Offer’d for an Act of Parliament to prevent Capital Crimes, and the Loss of*

should be branded on the cheek and castrated, and all women should be transported for the 'very first offence, be it greater or less'.⁴ To prevent the escape of transports from plantations it was suggested that they should be used for redeeming slaves in Morocco, Tunis, Algiers and other places on the 'coast of Barbary'. Many innocent men groaned there under the yoke of slavery and, since there were not sufficient funds to redeem them with money, they should be redeemed at the 'expense of Miscreants, whom it is Injustice not to punish, and who, out of Chains, cannot be otherwise than noxious to the Publick . . . This effectual Manner of Transportation . . . would be more dreadful than hanging'.⁵ To one writer at least even death and transportation were 'too transitory to leave any long impression on the mind'. What was needed, he thought, was 'a living visible law', consisting of a long-term penal slavery at home, the convicts working first in chains and without any pay and later—still as slaves—without chains.⁶ Such calls for torture and chains may have been exceptional, but they were symptomatic of a very real dissatisfaction with the working of the machinery for keeping the peace, and of a feeling of insecurity which led to a feverish search for new remedies and sharper weapons.

§ 1. A MOVEMENT TO STRENGTHEN THE MORAL FIBRE OF THE NATION

The recurrence of criminal behaviour in a comparatively narrow section of society, its concentration within certain definable areas of the Metropolis, its prevalence among the very young, were all perceived with a new intensity. They helped to focus public attention on the manners and habits of the poor. A preoccupation with the immoral, loose or improvident behaviour

many Lives; and to Promote a desirable Improvement and Blessing in the Nation (1731). On both these tracts and on the aggravated forms of the death penalty see Vol. 1 of this *History*, p. 234 *et seq.*

⁴ 'Castration proposed for Capital Offenders', in the *Gentleman's Magazine* (December, 1750), Vol. 20, pp. 532-533.

⁵ B. Mandeville, *An Enquiry into the Causes of the Frequent Executions at Tyburn*, etc. (1725), pp. 50-51.

⁶ *Proposals to the Legislature, for preventing the present Executions and Exportations of Convicts, in a Letter to the Right Hon. Henry Pelham, by a Student in Politics* (1754), pp. 26-27.