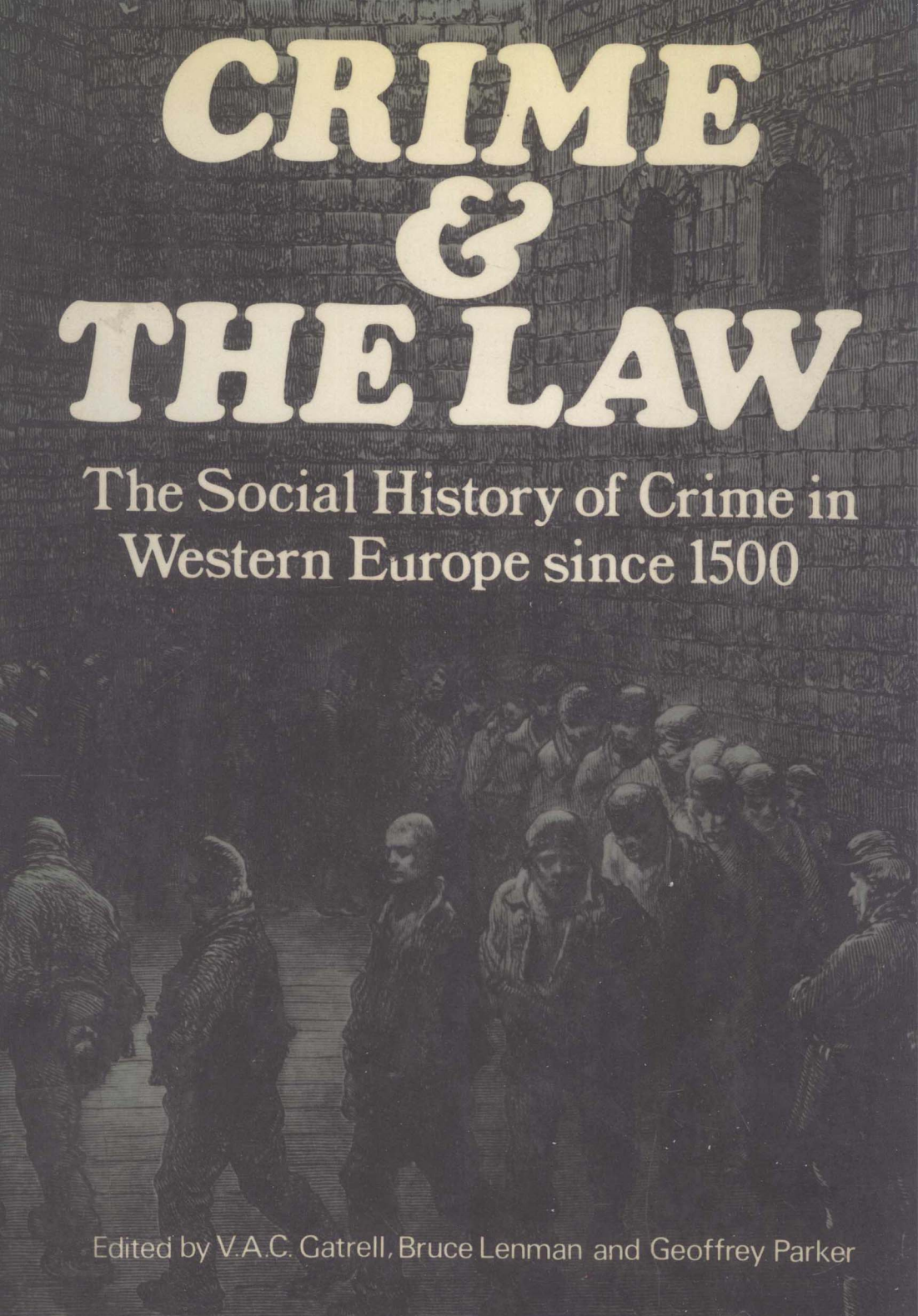
CRIME & THE LAW

The Social History of Crime in Western Europe since 1500



Edited by V.A.C. Gatrell, Bruce Lenman and Geoffrey Parker

THE EUROPA SOCIAL HISTORY OF HUMAN EXPERIENCE

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EUROPA PUBLICATIONS LIMITED 18 BEDFORD SQUARE LONDON WC1B 3JN

Europa Publications Limited
18 Bedford Square, London WC1B 3JN

British Library Cataloguing in Publication Data

Crime and law

1. Crime and criminals – Europe
I. Gatrell, V. A. C. II. Lenman, Bruce
III. Parker, Geoffrey.
364′ . 94 HV 6937

ISBN: 0 905118-54-5

Printed and bound in England by
STAPLES PRINTERS ROCHESTER LIMITED
at The Stanhope Press

Foreword

Neil McKendrick

HISTORY IS A HUMILIATING SUBJECT to try to know and it is both understandable and very forgivable that historians should have limited their tasks to the areas which have yielded the easiest returns—the well-documented constitutional areas, the dramatic and well-recorded zones of military history, the fundamental importance of economic history, the rich arena of political history, the major stepping stones of political thought, or the acceptable boundaries of biographical history. These and many others have yielded handsome returns and have been quarried and requarried over a satisfyingly long period. But social history—the basic history of human experience—has been less well served. There are no satisfactory social histories of birth or childhood, of examinations or literacy, of crime and its punishment, of sex or marriage, of food or drink, of the home, of clothes, of leisure or sport, of wages and work, or of parenthood or health. Until very recently there was nothing adequate even on death.[1]

The emotional peaks of most of our lives—and of the lives of our ancestors—are concentrated on our childhood, our sexual initiation, our marriages, the birth of our children, and the death of our parents, but the study of such critical events has been left at best to the psychologists, the anthropologists and the sociologists. In the same way the human compulsions which drive us all—for food and drink, for sex or mutual comfort, for success or at least security, for shelter and diversion—have largely lacked their historians. The daily human preoccupations—with our work and its reward, with our appetites and their satisfaction, with our clothes and their choice and purchase, with our health and its protection, with our children and their education, our houses, our shopping, with our gardens, with our pets and our sport and our leisure—have not preoccupied the minds of professional historians.

That so many historians have been clerics, and bachelors, and also privileged—that Cambridge dons before 1878, for instance, were of necessity all three—might seem to offer a possible explanation for some of these lacunae: for lacking wives, children, often homes of their own, living often celibate lives, with most of their daily needs provided by institutions or

[1] This is not the place for a comprehensive bibliographical survey of the important pioneer works already published on some of these topics. What follows is merely a sample of some of the more influential publications. Philippe Ariès, *Western Attitudes towards death: from the Middle Ages to the present*, (London, 1976) and *L'Homme devant la mort* (Paris, 1977) is a leading exemplar of the recent interest in the social history of death.

servants, they were insulated from many of the most basic experiences. But it would be at best a partial explanation. Of more significance than say Gibbon's or Macaulay's lack of marital or parental experience was their social class and the traditional historical preoccupations of that class. Since most of the recorded human history has also been the history of élites, the emotional and material dramas which have been chronicled have mainly been those of the rich and the powerful. The houses that we know most about are palaces and country houses; the sex lives which have been most minutely pried into are those of kings and presidents; the possessions that are best recorded are those of the immensely rich; the deathbed scenes which we know of are mainly those of the famous, and the best-known childbirth scenes are characteristically of those who were born to the famous. The menus of the great have been recorded ever since an artist recorded his patron's diet in mosaic at Pompeii, the pets of the great have been recorded for centuries by their chosen artists either as lap dogs, as part of the surrounding scenery, or, as in the apotheosis of the horse in the eighteenth century, as separate objects of beauty. Their clothes, their furniture, and their children are equally well recorded.

But at last historians are changing their angle of vision from the few to the many, switching their preoccupations from the tyranny of the individual to the clamouring demands of the mass. Popular culture is suddenly fashionable, and historians are reacting to the taunts of those like Günter Grass who have proclaimed that the history of food has been ignored by historians (and happily ignoring, in their turn, his view that it is too important a topic to be left to them). They are increasingly heeding the Freudian view that the action (and the emotional vibrations that resound from that action) centres on the bedroom, the bathroom and the kitchen. They are focusing their attention on the home and the rich variety of experience it encapsulates. Young historians are swarming to examine subjects rarely touched upon by earlier generations of historians. As Professor Plumb wrote recently, 'They delve into such arcane matters as homosexuality in Switzerland, breast-feeding in New England, *coitus interruptus* in Old England, swaddling in France, death not only in Venice but anywhere and everywhere.'[2]

There is a long way yet to go, but the research has already started. The pioneers have already published. Some brilliant monographs have already appeared. That there is an eager market for such history is borne out by the enthusiastic—and sometimes uncritical—response to them. A series like the *Europa History of Human Experience* is, to a certain extent, a direct consequence of the academic controversies, the reading public's reaction, and the student response to the excitement, generated by books by Ariès[3] and de

[2] J. H. Plumb, 'The Rise of Love', *New York Review of Books*, 24 November 1977, p. 30.
[3] Philippe Ariès, *L'Enfant et la vie familiale sous l'ancien régime* (Paris, 1960), translated as *Centuries of Childhood* (1962).

Mause[4] on childhood, by Shorter[5] and Stone[6] on sex and marriage, by Laslett[7] on the family and illicit love, by Hufton[8] and Cobb[9] on the poor and the criminal, by Keith Thomas[10] on witchcraft and magic, by E. P. Thompson[11] on the working class, or by J. H. Plumb[12] on leisure, or Foucault[13] on madness.

By mentioning a brief and inevitably somewhat arbitrary sample of the famous, and to some infamous, authors on recent social history one risks confirming and compounding an already over-popular view. For there are still those who, to judge from their reviews, think that the new social history consists only of the wilder slopes of Hill, the seamier undersides of Stone, or the more exotic fruits of Plumb. For all that the eponymous heroes of the description have done for the subject, there is far more to it than what a colleague of mine calls 'the Plumb-Stones of History'. It owes its original inspiration to the *Annales* school, it has won the allegiance of an international academic following, it is discovering a constantly expanding scope, and it has enormous appeal to a growing number of students of history.

Now that for many there seems little new to say in constitutional history; now that for many economic history is becoming increasingly inaccessible as many of its practitioners succumb to jargon or the aphasia of the econometrician; now that ecclesiastical history no longer excites the controversies which once rocked our society; there are, as a result, inviting opportunities in the history syllabus of many universities, and social history seems the most likely contender to fill the gap. The days of mere evocation and description have long since passed, and it seems a safe prediction that social history will continue to expand and flourish as a university subject. It is all the more likely to succeed if, in attempting to create a history of experience, it does not eschew the role of political institutions, the role of the Church, and the impact of the economy.

Self-interest alone suggests that this would be prudent. For many special problems face the historian of human experience. Acute evidential problems abound. To generalize about the sexual attitudes of several centuries when

[4] Lloyd de Mause (ed.), *The History of Childhood* (New York, 1974).
[5] Edward Shorter, *The Making of the Modern Family* (London, 1976).
[6] Lawrence Stone, *The family, sex and marriage in England, 1500–1800* (London, 1977).
[7] Peter Laslett, *Family Life and Illicit Love in earlier generations: essays in historical sociology* (Cambridge, 1977).
[8] Olwen Hufton, *The poor of eighteenth-century France, 1750–1789* (Oxford, 1974).
[9] Richard Cobb, *The police and the people: French popular protest, 1789–1820* (Oxford, 1970).
[10] Keith Thomas, *Religion and the Decline of Magic: Studies in popular belief in sixteenth- and seventeenth-century England* (London, 1971).
[11] E. P. Thompson, *The Making of the English Working Class* (London, 1963).
[12] J. H. Plumb, *The Commercialisation of Leisure in eighteenth-century England* (Reading, 1973).
[13] Michel Foucault, *Folie et déraison: histoire de la folie à l'âge classique* (Paris, 1961), translated as *Madness and Civilization: a history of insanity in the age of reason* (London, 1967).

the evidence which has triumphed over the rigours of time, the silence of the masses and the reticence of all but a handful of well-known diarists, is apparently so small and so subjective, invites and justifies the initial suspicions of the more traditional scholar.

The novelty of the enterprise offers further pitfalls. Sir Walter Raleigh's famous warning on the dangers of writing contemporary history is just as apt for those attempting to open up new frontiers of knowledge in long-concealed areas of history: 'whomsoever in writing modern history shall follow truth near its heels, it may haply strike out his teeth'. The successful attentions of some hostile reviewers suggest that some of the famous have been less than careful about the future of their smiles. The lived experience of man may not yet have been satisfactorily recorded and explained (and will not be so for a very long time to come), but unless it makes use of all the traditional skills and disciplines available to historians it is not likely to gain the respect it deserves.

If in extending its scholarship, refining its definitions, and qualifying some of its grander claims and less likely hypotheses, it loses some of its present heady excitement, that loss will, perhaps, be balanced by the greater authority and satisfactions offered by a greater evidential rigour and a more exacting conceptual approach.

There are, of course, many ways of trying to recapture the experience of our forefathers. The excitement caused by Le Roy Ladurie's[14] recent reconstruction of the day-to-day life and affairs of the two hundred and fifty inhabitants of the village of Montaillou in the fourteenth century, shows that, when the evidence allows it, a great historian can produce a brilliantly topographical approach; the response to the publication of the diaries of Ralph Josselin[15], a seventeenth-century clergyman, shows that in skilful hands the approach can be simply biographical. But such successes require the luck (or at least the archival serendipity) to come across quite exceptional records. Such discoveries are not made to order, and, as a result, the more common approach is the thematic one. Since the study of many aspects of everyday life is still in its infancy, with many different scholars chipping away at new problems from different angles, the prudent approach is also the communal rather than the individual. So although the editors of this series will attempt an individual *tour d'horizon* of the subject, they will call on many other scholars to reveal the results of their separate research. The individual volumes cannot hope to be encyclopaedic. They cannot hope to cover all centuries, all countries, or all classes. But they can illuminate the most fruitful approaches, release the most recently unearthed evidence, and present the most convincing current explanations and conclusions.

[14] Emmanuel Le Roy Ladurie, *Montaillou, village occitan de 1294 à 1324* (Paris, 1976).
[15] Alan Macfarlane, *The Family Life of Ralph Josselin, a seventeenth century clergyman: an essay in historical anthropology* (Cambridge, 1970).

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(1979), and *Europe in Crisis, 1598–1648* (1979). With Bruce Lenman he is currently studying crime in early modern Scotland.

David Philips graduated from the Universities of Witwatersrand and Oxford, where he completed his doctorate, and now lectures in history at the University of Melbourne. He has published *Crime and Authority in Victorian England* (1977) and articles on related subjects.

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Contents

Introduction

If the study of social history in Britain is now a more rigorous discipline than it was thirty years ago, it is in good measure because some of its leading practitioners have sought firmly to relate past social behaviour and experience to the prevailing distribution of economic and social power. Through attention to class and power relationships, many of them have in effect pursued something approaching a totalist view of the past: an enterprise which has been almost wholly productive and invigorating. But it is perhaps inevitable that until recently their scholarly focus has proved narrower than their ambition. The pioneers in this tradition were less concerned with the ways in which power was wielded by those who possessed it, than with the ways in which power was challenged by those denied it. They were mainly interested in the sources of conflict in society: with those social upheavals, protest movements, and newly emerging classes which are tacitly assumed to have been the primary engines of change.

Today, a preoccupation with the relationships between behaviour and the distribution of power remains central to this tradition. But many working within it are beginning to approach the past with different questions in mind. More explicitly than hitherto they are examining the controls and forces which have made not for conflict and change, but for stability and continuity; they are seeking to explain the relative security of western capitalism over the long period of its evolution. The impulse behind this shift has been varied. Some simply realize that political and social systems more often evolve than disintegrate, and that most societies have coped adequately with the forms of disorder which have threatened them. Some feel the need to explain why many of Marx's predictions have failed to come to pass in the West. Others desire to challenge on their own ground those historians who believe that order is the natural and proper condition to which societies tend: they seek to expose the disciplinary powers which even outwardly benevolent states evolve to check those who would otherwise challenge their authority. Whatever the reasons for this shift in interest, it has greatly stimulated the historical study of crime and law with which this book is concerned. It explains why in the past decade or so social historians have captured the subject from legal historians on the one hand and from popularizers on the other. It is one reason why the study of the social meaning of crime and the social context of law has begun to supersede the study of institutions, cases, and precedents, or alternatively the study of the 'great crimes' which used to hold the field.

It is not difficult to understand why the subject should have benefited from recent developments in social history. By its very nature, the history of crime and law offers a focus both for those concerned with conflict and for those concerned with control; it is a subject upon which the divergent directions which social history has taken may again converge. To be sure, some may be inclined still to take their cue from Marx on this matter, and argue that since the criminal is a passive parasite battening on and dependent on the economic system, he is the least considerable of the agents of historical conflict and change. But even they would recognize that in many societies the forms which crime has assumed at critical junctures, or the new ways in which it has been perceived, have often thrown the ruling order on the defensive and exposed the nakedness of its power. At such times, too, social banditry and even ordinary crime may be regarded by historians as indications of tension in the social fabric, and by contemporaries as portents of break-down. On the other hand, it is clear that law and its enforcement systems are explicit instances of the controls which every society employs to protect the established order—controls which have usually sufficed to cope with the threat of disorder. The relationship between those who make and those who break the law, therefore, is justly beginning to claim a central place in social history. It is a subject which directly exposes the morbid pathology of social systems (as rulers perceive it, anyway), as well as the not always kindly medicaments applied as cure.

The essays which follow are each in effect concerned with the interrelated problems of conflict and control considered from the perspective of criminal history, as they examine the meaning of some of the larger changes in the history of crime and legal systems in some European countries in the past four hundred years. Fifteen years ago few books on the history of crime could attempt as much. Most reflected merely the unhealthy and at times obsessive fascination which crimes in general and macabre crimes in particular have always exercised over the minds of the respectable. But the days of the uncritical and anecdotal history of crime are past. The subject is fast generating its own momentum, its own techniques and methods, even (for better or for worse) its own journals and conferences. It is necessary today for the historian to measure the sensationalism of contemporary newspapers and the melodrama of contemporary novels and pamphlets against the actual practice of the courts and the police; and to probe behind the theories of the lawbooks and the records of the courts to see what tensions and relationships underlay the decision to bring a particular action to the trial of law. For all their diversity of scope and subject-matter, the essays in this book have in common an acute consciousness of the difficulties of doing this: for the evidence is peculiarly treacherous. Most of the essays are implicitly engaged in a running debate about the extent to which the surviving legal records reflect or distort the social realities they purport to measure. In this, they reveal another reason why the history of crime has gathered such momentum

in recent years. Historians are realizing that few other forms of historical evidence have been so filtered through the prejudices, assumptions, and administrative capacities of those who hold power in society: of those, in short, who define crime and who bring those whom they identify as criminal to justice. They are coming to terms with the methodological problems ineradicably associated with a subject which has to be studied mainly through the records left by its enemies.

Paradoxically, it is often the very bulk of the surviving evidence which can blind us to the difficulties in the way of interpreting it. When a scholar discovers 80,000 surviving criminal cases for the Parlement of Paris, the supreme appeal court for half of France, covering the years 1564 to 1639, he may understandably be tempted to claim that 'it is now feasible to undertake systematic study of most categories of crime during the period.' But the Parlement was the appeal court for over 500 inferior jurisdictions and perhaps ten million people: what can 1,000 cases a year, and those cases almost all appeals, tell us about how much crime was really committed and in what forms and proportions?[1]

This identifies a problem now familiar to all students of criminal records, and one which has confounded the hopes of those who first proposed that they be systematically compiled. The father of English 'political arithmetic', Sir William Petty, advocated as early as 1670 that the 'annual totals of corporal sufferings and persons imprisoned for crime' should be collected in order 'to know the measure of vice and sin in the nation'. A century later, Jeremy Bentham desired the courts to report on all the cases they tried, to furnish 'data for the legislator to work on':

> They will form altogether a kind of *political barometer*, by which the effect of every legislative operation relative to the subject may be indicated and made palpable. . . . They may be compared with the bills of mortality published annually in London; indicating the *moral* health of the country (but a little more accurately, it is hoped) as these latter do the physical.

Alas, this hope proved vain: it was much easier to conceal a crime than to conceal a death. No sooner did governments make generally available the crime rates so desired by Bentham (Britain from 1805, France from 1825–27, Sweden from 1830–33, and so on) than other scholars showed how misleading they could be. According to the Belgian statistician Adolphe Quetelet,

> Our observations can only refer to a certain number of crimes known and adjudicated, out of a total number of unknown crimes committed. Since this total

[1] A. Soman, 'Press, pulpit and censorship in France before Richelieu', *Proceedings of the American Philosophical Society*, CXX (1976), p. 440 n. 3. So far, only data on witchcraft cases (which made up perhaps 1,100 of the 80,000 cases heard by the *Parlement* during this period) have been published, but they have attracted much adverse comment from those who are familiar with the records of the inferior courts. See the remarks of R. Muchembled in M. S. Dupont-Bouchat, W. Frijhoff and R. Muchembled, *Prophètes et sorciers dans les Pays-Bas, XVIe—XVIIIe siècles* (Paris, 1978), p. 38.

> sum will probably always remain unknown, all conclusions based upon it will be more or less erroneous.[2]

Rather foolishly, some have tried to specify the dimensions of this problem numerically. In 1941, the German criminologist Kurt Meyer suggested that for every reported homicide there were between three and five which went unreported, for every reported theft between 16 and 20 unreported ones, and for every reported abortion or buggery around 100 unreported. Recent estimates by Sir Leon Radzinowicz and his associates suggest that the gap between known and unknown crimes today may be much wider even than that.[3] All we can be sure about is that in the past the short-fall would have been no less great, for reasons which several essays below make clear. Dr. Sharpe, for example, draws attention to the fact that formal judicial procedures in early modern England were the means of last resort in local communities which had to deal with violations of their value-systems. Lenman and Parker argue similarly as one of the themes of their essay that societies of reluctant litigants were normal in medieval and early modern Europe: there were cheaper and less damaging ways of repairing rifts in the social fabric which left no records of criminality at all.

It is not merely the adequacy of the records of crime which the historian has to consider, but also the meaning of the acts which are recorded. Crime is after all a label attached to an act by those who make and enforce law. To examine crime is in effect to examine the way in which certain acts were perceived and labelled by those who sought to control and curtail them. Three of the studies in this volume are centred upon this crucial problem. Dr. Christina Larner deals with the classic early modern example—witchcraft—and sets it firmly within the context of the labelling processes at work in small face-to-face communities. Jennifer Davis's study of the London garotting panic of 1862 shows that the same process was at work long after industrialization broke down that face-to-face society. A panic over a few violent robberies in that year led to a loose use of the emotive term 'garotting' for assaults not normally so described: in effect a new criminal problem was invented by the press, police and courts, which justified a much more severe punishment of criminals than before. Similarly, Dr. Tombs illustrates how a political crisis could lead authorities to prosecute minor infractions which had previously been tolerated: after the defeat of the Paris Commune in 1871 even those who claimed they had done nothing during the insurrection were sentenced to transportation on the grounds that anyone not at work must have been a *Communard,* and men and women were condemned merely because they looked like criminals.

[2] Quotations taken from the useful discussion in T. Sellin and M. E. Wolfgang, *The Measurement of Delinquency* (New York, 1964), pp. 7–38.

[3] K. Meyer, *Die unbestraften Verbrechen. Eine Untersuchung über die sogenannt Dunkelziffer in der deutschen Kriminalstatistik* (Leipzig, 1941); L. Radzinowicz and J. King, *The Growth of Crime: the International Experience* (London, 1977), ch. 2.

In view of the grave distortions of the court records which result from considerations of these kinds, it is no wonder that many historians today follow the 'new' criminologists into wholesale scepticism about the legitimacy of using recorded crime rates as indices of 'real' patterns of criminal behaviour in society. The tendency nowadays is to see even large aggregations of data as reflecting mainly what ruling groups thought was happening in society, and how they reacted to what they thought was happening. Court records may be used to build up a picture of how crimes were dealt with, of which social groups were most vulnerable to the attentions of the law, and of the changing preoccupations of the courts. But beyond that, agreement among scholars ceases. It is not surprising that most of the essays which follow are reluctant to base their arguments on statistical data.

But is scepticism about the relationship between recorded crime rates and actual crime universally valid? In his study of early modern Spain, Dr. Weisser feels justified in inferring real trends in crime from court records; but he may be unwise in this. It is perhaps appropriate that this volume should close with Dr. Gatrell's appeal for chronological and analytical discrimination in this matter. Recognizing that the definition of crime often results from the process whereby dominant groups label as criminal whatever they find unacceptable, and thus tackling frontally the implications of the labelling problem, he concludes nonetheless that the recorded statistics on some serious crimes in Victorian and Edwardian England are comprehensive enough to allow the scholar meaningfully to assess real trends in serious crime, and this, *pace* Dr. Weisser, perhaps for the first time in European history. He is at pains to emphasize the many limiting conditions which have to be considered before this is possible. Even so, the Victorian and Edwardian figures when critically used are shown to point unambiguously to an extraordinary phenomenon—a steady decline in the real incidence of theft and violence in England and Wales from mid-century until the First World War. This has been barely recognized by historians of the period, but it raises issues of fundamental importance. First, it challenges many present-day assumptions about the relationship between crime and the processes of economic, urban, and demographic growth (the criminogenic variables usually associated with 'progress', that is, need not always result in increasing crime rates); secondly, it illustrates the ways in which nineteenth-century states could successfully harness new agencies of control, including the police, to socialize the discordant and discontented groups over which they ruled. Caution with regard even to Victorian statistics is wholly necessary; but this study shows that caution should not be converted into a dogmatic rejection of all statistical evidence at all times, if modern historians (at least) are not unthinkingly to discard what may prove to be one of the most eloquent forms of evidence available to them.

The question how far changes in criminal law and behaviour tend to keep pace with long-term changes in economic and social life, which is raised by

Gatrell's study, is central to Lenman's and Parker's contribution, and brings us to the other main concern of this book. In their survey of the changing patterns of criminal law between 1500 and 1800, they argue that across this period there was a tendency for local communities progressively to lose control of both the content and the administration of criminal law to the agents of the expanding state. This was a process of such importance in European history that it may justly be termed a 'judicial revolution'. Aspects of the process are covered in other studies below. Stephen Davies's exposition of the structure of law and order in early modern Scotland, for example, reveals a society which carried the decentralization of justice to a degree which had few contemporary parallels; while Dr. Sharpe reflects similarly upon the extreme localism of the legal process in early Stuart England. For the more modern period, the encroachment of state control is represented in Dr. Philips's discussion of the steady institutionalization of law enforcement in late eighteenth- and early nineteenth-century England; while Dr. Gatrell ascribes the decline of theft and violence in later Victorian England to the influence which the state and those who controlled it achieved over society through a multitude of agencies of which the disciplinary power of police and courts was only one.

Lenman's and Parker's claim that nearly all countries registered significant transformations in their definition and handling of crime as they experienced the transition from a pre-industrial to an industrial society raises an important question. Can it be argued that societies need to solve a 'law-and-order problem' before they are 'ready' for primary industrialization? Such a simplistic formula has a strong appeal today, since crime, and violent crime in particular, is often seen by those in authority as the embodiment of their worst fears of imminent break-down. In the early nineteenth century, the London and the Parisian middle classes alike would have agreed with this view. Even while they themselves labelled the casual poor as 'dangerous', and extended that label to accommodate the labouring classes indiscriminately, they dreaded the phantom which they had themselves largely constructed. Always assumed to be chronically criminal and awesomely undisciplined, the dangerous classes in rapidly urbanizing conditions now threatened to escalate their criminal activities to the point of anarchy. 'Progress' in such circumstances was unthinkable.

This view of the centrality of law and order to the processes of economic growth is untenable. In the first place, it is based on a serious misrepresentation of the condition of most pre-industrial societies. Petty thievery and violence might have been chronic in most of them, particularly where population was dense. But this is not to say that they were undisciplined or anarchic on the large scale. On the contrary, with the possible exception of urban conglomerations such as London, Paris, Naples, or Seville, they were usually minutely regulated at the local level, so that the population lived under an extremely strict social discipline. Early modern Scotland (to

take a society commonly thought to be lawless in the extreme) boasted some 3,000 lay and ecclesiastical courts by the end of the seventeenth century, dedicated to enforcing on the million or so inhabitants of the kingdom the moral standards of Protestant Christianity. The experience of the discipline enforced by such a battery of courts over two centuries and more could not fail to impress upon the population the need for greater restraint and circumspection in behaviour. There may indeed have been less crime in real terms in a still predominantly rural Scotland on the eve of industrialization than afterwards. Once mass production became common, there were to be many more goods available for theft; and since goods were often identical and thus harder to identify, and since urban growth outstripped the capacity of traditional controls, theft was to be made safer as well as easier.

The argument may be pressed further. Gatrell's contribution shows that in the later nineteenth century, when England was a highly progressive and successful industrial country, English crime rates decreased so far that by 1900 the real incidence of serious crime might have been lower there than it had ever been. But another industrializing state, the United States, was to enjoy a much more impressive record of economic growth despite quite different recorded crime rates. For all our doubts about the 'dark figure' of unrecorded crime, it is clear that, compared with western European societies, the United States has always been a very violent society, with alarmingly high homicide rates, widespread larceny, and a pervasive racketeering deeply entwined with legitimate business. Yet it would be difficult to argue that these circumstances have seriously affected America's economic perfomance relative to that of its rivals. And, returning to England, between 1938 and 1959 when the British economy performed remarkable feats both in war and in peace, indictable offences known to the police went up from 283,200 to 675,600. Absolute growth was most remarkable in crimes against property. Though all this must have had its cost, in macro-economic terms it seems to have mattered very little.[4]

Here is one of the keys to our understanding of the transformation in criminal law and enforcement which accompanied the process of industrial ization: it had little or nothing to do with absolute levels of crime, real or perceived. In England, to be sure, the police were introduced partly to protect property against the depredations of the poor; but when they were introduced initially it was to protect the political order. Elsewhere, pre-industrial criminal law systems and jurisdictions were seldom dismantled on the grounds of inefficiency. The real objection to them was often that they were only too successful in enabling local communities to resist the changes necessary for the further evolution of commercial capitalism. Most of the eighteenth-century French *philosophes* who raged at the inequalities and iniquities of *la féodalité* had only the haziest notion of the nature of the

[4] J. B. Mays, *Crime and the Social Structure* (London, 1963), ch. 2.