

THE OLD BAILEY: THE COURT OF LONDONERS
IN AN ERA OF REVOLUTION

by

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Presented to the Faculty of the Graduate School of
The University of Texas at Arlington in Partial Fulfillment
of the Requirements
for the Degree of

MASTER OF ARTS IN HISTORY

THE UNIVERSITY OF TEXAS AT ARLINGTON

MAY 2012

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ACKNOWLEDGEMENTS

This is the culmination of a long road. I am thankful for the input that all of my instructors and classmates have provided throughout my years working to this end. Most especially I am thankful for the help of my thesis chair, Dr. Elizabeth Cawthon, without whose help, patience and tireless efforts I would have never succeeded in accomplishing what I have.

To my mother and father I owe a great debt, both of whom have always believed in me and pushed me to learn. I lost my father while working on this project, but I know that he would be proud and pleased with the final result. His love of learning and questioning started my journey in education.

April 12, 2012

ABSTRACT

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The history of the laws and courts of England is a rich subject, but little work has been done on the history of common law prior to the eighteenth century. With fewer sources than later periods and a confusing system of overlapping jurisdictions the late seventeenth century has largely been ignored by legal history scholars. Furthermore, the history of this period is often dominated by grand events like the Glorious Revolution. This thesis attempts to chronicle the activities of the Old Bailey – London's central criminal court during the era of the Glorious Revolution.

Analysis of the Old Bailey Sessions Papers records provides a unique way to recreate the relationship between the court and the people of London that yields both statistical data and

ample case studies. With these sources it possible to both reconstruct the everyday workings of the Old Bailey as well as contextualize the crimes tried and punishments handed down by the court. By utilizing these abundant records of the Old Bailey this study offers a new view into the workings of law and justice in seventeenth century London.

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CHAPTER 1

INTRODUCTION

1.1 Law and the Commoner

Located in the city of London off of Newgate Street close to both St. Paul's Cathedral and the former location of Newgate prison, stands the Old Bailey Courthouse. From 1674 to 1913 the Old Bailey operated as London's central criminal court, and it still hears trials to this day¹. This court was the epicenter of common law and justice in London. For most of the early period of the Old Bailey's existence the court competed against the Justice of the Peace as well as the court of the King's Bench for jurisdiction. In this era the lines of demarcation that determined what court could hear what crimes were fluid; this gave London's citizens a number of options through which to pursue justice. Though there were many factors a citizen might consider when choosing which court to take grievances, the financial burden of prosecution was the individual's to bear. This fact meant that many cases were not heard in court at all, but for those who wanted to ensure justice was done and hoped to see the criminal suffer a stringent punishment the Old Bailey offered them an ideal choice. Furthermore, until 1737 the courthouse was an open air building that left the judicial process exposed to spectators in London. With a cost to prosecute crimes that was lower than the court of the King's Bench, a central location in London and a very public theater for justice the Old Bailey was in many respects the court of the common person in London.

¹ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Historical Background – History of the Old Bailey Courthouse", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 01 March 2012)

The study that follows is an examination of the Old Bailey from 1674 to 1714. This is an era that is often ignored in legal history partly because of the smaller number of records and partly because it is often overshadowed by histories of the Glorious Revolution. In this research and writing the Glorious Revolution serves as a backdrop to the comparatively ordinary workings of the Old Bailey. Instead of a work focused on the actions of monarchs or the elites in Parliament, this thesis presents an alternative view to those top heavy histories. This is the story of the Old Bailey in an era of revolution, but the Glorious Revolution is just the setting in this history; the stage is the court itself and the players are the people of London, a diverse group with diverse interests.

The Old Bailey was in many respects the court of the individual Londoner due to its nature as the central court. The Old Bailey also influenced Londoners as the source for reading materials that fascinated city dwellers. The Old Bailey inspired publications like the court's official "session papers". It also spawned the memoirs of the authorities at prisons such as London's Newgate, and even fly-by-night single sheets, or "broad-sides" that told individual criminals' stories usually on the occasions of their executions. Such sources help scholars shed light on the relationship between the common person and the law. The spotlight of the historical stage is often focused on the great actors in the visage of kings or queens, but all the players deserve attention and this work attempts to illuminate a broader group. Furthermore, by expanding the study to include the forms of punishments delivered by the court it is possible to see how the authorities negotiated the application of justice for those who trespassed against the nation's laws.

1.1.1 The Old Bailey Sessions Papers as primary sources

On April of 1674 the first known Old Bailey session papers were published; this was the start of a formal record of the court that would last through 1913. While the session papers did have interruptions, these records are one of the best sources for understanding how the

common person interacted with the law in seventeenth and eighteenth century London. It is out of these session papers that this study originated. Thanks to the detailed research and insightful commentary of authors Clive Emsley, Tim Hitchcock, and Robert Shoemaker not only are these trial accounts available online, but they have also been entered digitally to make them easier to search and collate data. Because of their efforts the study that follows can utilize the session records for both statistical data and case studies. The goal of this study is to explore the relationship between ordinary folk and the justice system. The thesis does not consider discreet stories in order to focus on individual persons of any rank or status. Rather the study analyzes the statistics of crime and punishment with the goal of reassessing the functioning of the Old Bailey during an era of political upheaval.

The Old Bailey session papers grew out of other publications related to crime and punishment such as broadsides and ballads. As the Old Bailey website authors argue, the 1670's saw an increase in literature related to crimes like criminal biographies; the Ordinary of Newgate's Accounts and dying speeches were also a part of this genre.² The new demand for writings about criminals likely led to the publication of the first Old Bailey papers in 1674. Though the earliest incarnations of the sessions had multiple publishers and did not include all the trials from a given session, by 1678 the session papers included accounts of all the trials that took place at the Old Bailey even if the accounts only provided basic details about a trial.³ In January of 1679 the London Court of Aldermen helped to standardize and regulate the provisions of printed information about the Old Bailey by requiring that all Old Bailey proceedings could only be published only with the approval of the Mayor and the other justices of London.⁴ Not only did this result in standardizing the Old Bailey's official reports, but the new

² Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - Publishing History of the Proceedings", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 01 March 2012)

³ Ibid.

⁴ Ibid.

rules also set the Old Bailey's sessions papers apart from less formal publications on crime, making the sessions papers a unique and an authorized resource.

1.1.2 The Ordinary of Newgate's Accounts as primary sources

While the statistical data and the trial accounts that follow are all taken from the Old Bailey proceedings as published in the session papers, this study occasionally utilizes the Ordinary of Newgate's Accounts. These accounts were a mixture of dying speeches and accounts of the criminals' lives. The Ordinary was the chaplain at Newgate prison. One of the benefits of his position was the right to publish these accounts, so it is not surprising that many of the accounts have a moral lesson to them and that the Ordinary often attempts to get the condemned criminals to repent.⁵ While not as regulated as the Old Bailey proceedings, the Ordinary of Newgate's Accounts usually follow the facts laid out in the trial proceedings when summarizing the case information. Still, the Ordinary's accounts are likely embellished to help strengthen the moral guidance provided by the Ordinary. Therefore, these accounts provide insights into both the playing out of the death penalty as well as into the moral discourse between the people of London and the authorities. This publication was a source of additional income for the Ordinary, so his cautionary tales needed to not only instruct the people of London, but also needed to tantalize the masses enough to make them profitable.⁶ With the prints sold numbering into the thousands it appears that Newgate's chaplains usually navigated successfully between these two needs.⁷

These sources make possible an attempt to reconstruct the everyday interactions between the people of London and the Old Bailey from 1674 until 1714. This period encompasses the reigns of Charles II, James II, William and Mary and Anne. By looking at this

⁵ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - Ordinary of Newgate's Accounts", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 01 March 2012)

⁶ Ibid.

⁷ Ibid.

forty-year period one can see certain changes over time in the court's responses to types of crimes and classes of criminals. In particular when crimes were defined as connected to the power of the monarch, this study demonstrates what influence – if any – different regimes had upon the Old Bailey.

1.2 Secondary literature

This study draws upon many areas of historical scholarship utilizing secondary works on the Glorious Revolution and legal history as well as on authority and punishments. As legal historians such as J.S. Cockburn have argued, the origins and nature of English law during this period were somewhat nebulous. Such scholars ask, for example, whether English law was more defined from London-based institutions such as the royal courts and the Old Bailey, or rather if the law was shaped more by its application in the assizes. For this reason it is necessary to describe not only the workings of the Old Bailey, but also the operations of courts like the assizes and the Court of the King's Bench in order to understand the competition for legal authority. This institutional infighting over which courts could hold trials also raises questions of where legal institutions derive their authority and to whom these institutions ultimately answer. Finally, the present study also considers the relationship between crime and punishment and conceptions of the state in a crucial era of English national development.

1.2.1 Literature on English law and the courts

In addition to the online database that Emsley, Hitchcock, and Shoemaker compiled, they have also authored two works that are invaluable resources to the history of the Old Bailey. The first, *The Proceedings of the Old Bailey*, is the historical background section of the Old Bailey website. It covers topics ranging from the history of the building that housed the Old Bailey to the role of gender in the proceedings and serves as a primer for any understanding the Old Bailey as an institution. The second work authored by Hitchcock and Shoemaker, *Tales from the Hanging Court*, has also provided a great deal of insight into the proceedings and how

to utilize them to recreate London and the lives of its citizens from the seventeenth century onward.

In order to round out the picture of how the English legal system worked throughout the country and not just in London it has been necessary to look at literature on the courts with which the Old Bailey competed. Here the work of J.S. Cockburn's *A History of English Assizes 1558-1717* has been vital in understanding not just the nature of the assizes, but also where various courts like the Old Bailey and the Court of the King's Bench played a political role during the years surrounding the Glorious Revolution. An understanding of the assizes as well as the Court of the King's Bench is particularly useful to the discussion of the relationship between law and the crown during the reign of James II.

The work that follows does not break ground in legal history, but rather tries to build on the works of these legal historians and utilize their knowledge to underline an area of legal history that has been overshadowed by the events of the Glorious Revolution. Legal history provides just one more lens to view the events surrounding the change in authority from the reign of James II to that of William and Mary. The records from the Old Bailey help aim this lens more on the people of London than studies of the Glorious Revolution have in the past.

1.2.2 Literature of the Glorious Revolution

Though the Glorious Revolution only serves as the chronological setting for this work, it is important to have an understanding of the historiography of the subject, because it offers contextual clues to how these events influenced justice at the Old Bailey. The literature of the Glorious Revolution has a long pedigree. Historians since 1688 have argued the meaning, causes and importance of the Glorious Revolution. The historiography of this topic is diverse, but two camps are clearly established. The first faction believes the Glorious Revolution to be the culmination of struggle between absolutism and constitutional government; it was a struggle that gloriously and bloodlessly transferred power from James II to William III. The opposing

belief is that the events of 1688 were not at all glorious nor were they revolutionary in nature. This paradigm views the Glorious Revolution as more of a coup d'état with James II playing the role of the well-meaning, but misunderstood king. By understanding these arguments, one has a better sense of how scholars have chosen to portray this pivotal moment.

G.M. Trevelyan⁸ epitomizes the work of what is often termed the “Whig” approach to 1688. Trevelyan argues that not only did the Glorious Revolution mark the ascent of constitutionalism, but that this new governmental structure resulted in the rise of British power both economically and militarily. While Trevelyan suggests that the revolution was not a Whig victory over the Tories, his depiction of James II as a scheming Catholic bent on converting England and handing England over to the French makes his loyalties clear. Trevelyan also makes passing mention of the reality that the Revolution was not bloodless for Scotland and Ireland. In the end though, the revolution for Trevelyan was the choice between absolutism and constitutional freedom; this should not be terribly surprising as he was writing in 1939 with the tides of fascism seeping across Europe. The invocation of the memory of the Glorious Revolution was as much a historical endeavor as it was a political one, as he celebrated the steadfast moderation of the English people in the face of a world that had too often seen war, chaos and bloodshed since 1688.

Maurice Ashley⁹ is a clear example of the other side of the historical debate on the Glorious Revolution. In his narrative of the events of 1688, Ashley depicts James II as well intentioned, but bumbling and unskilled in politics. Furthermore, it is not the fear of lost constitutional rights that Ashley argues is at the heart of the revolution, but rather an acute hatred of Catholicism. Ashley was writing in the 1960s in a world where former imperial colonies of Britain and other European nations were trying to find their own independence, which often led to violent military *coups*. It is not surprising then that Ashley found the events of 1688 to be

⁸ George Macaulay Trevelyan, *The English Revolution, 1688-1689* (New York: Oxford University Press, 1939).

⁹ Maurice Ashley, *The Glorious Revolution of 1688* (New York: Scribner, 1967).

more nuanced and pragmatic than the “glorious” account of the Whig interpretation. What Ashley added to the debate was the previously unheralded idea that perhaps James II was not as monstrous as others had suggested, indeed that James was even more enlightened than he previously had been credited for being.

What both of these paradigms have in common is the idea that it was great men, great powers, and great causes that shaped the Glorious Revolution. For both of these authors and those who have relied upon them as inspiration, the nature of politics in England, Scotland and Ireland was forever changed by 1688, if not through revolution than through the conservative avoidance of the rise of tyranny.

And yet these are by no means the only interpretations of the Glorious Revolution. This is a topic so integral to the history of Britain that histories even more tangential to the events of 1688 have to be addressed. For a historian like Brian P. Levack¹⁰, the Glorious Revolution is more fully understood as a British occurrence. Levack specifically views English events through the broader scope of Scottish history and over a longer duration of time. For Mark A. Kishlansky¹¹, the Glorious Revolution is but one occurrence in a long line of events that reshape the British monarchy. Despite the efforts of these more expansive histories, little has been done to study the revolution from the bottom up. This is not to suggest that the Glorious Revolution was the result of a groundswell in popular opinion. In fact, the evidence contained in this thesis seems to suggest that the public in London and more specifically the legal institutions with which they interacted showed little acknowledgement of the changes in power taking place. Here the Old Bailey can yield a great degree of understanding about how non-elites experienced the Glorious Revolution.

¹⁰ Brian P. Levack, *The Formation of the British State: England, Scotland, and the Union, 1603-1707* (New York: Oxford University Press, 1987).

¹¹ Mark A. Kishlansky, *A Monarchy Transformed: Britain 1603-1714* (London: Penguin, 1996).

A discussion of the Glorious Revolution would be incomplete without a look at *1688: the First Modern Revolution*¹² by Steven Pincus (2009). In this, one of the more recent works on the Glorious Revolution, Pincus argues that the Glorious Revolution was the result of competing ideas about what kind of polity would control the fledgling British Empire. Pincus describes a situation in which James II looked toward France as a model of what a modern Catholic state could be and tried to emulate it in England, by enacting a powerful central government that held sway over both the law and the economy. In opposition to this were a number of the English elite and a portion of the populace. These actors opposed James' government for a variety of reasons, including a desire to see England become a capitalist empire.

This study offers an opportunity to view Londoners' experience with the legal system in an era of instability in government. This thesis suggests that for the commoner in London the period was marked by consistency and stability in everyday legal interactions. What the average Londoner felt about 1688 as a political watershed is difficult to know, but analyzing how his or her concerns were expressed through use of the Old Bailey and the punishments that the court delivered can provide insight into Londoners' faith in legal institutions as arbiters of justice.

1.2.3 Literature on punishments and transportation

An understanding of the punishments that were employed by the Old Bailey is essential to getting a fuller picture of the legal system that Londoners experienced; toward this end the works of the Old Bailey website authors were extremely useful especially in understanding the less common forms of punishment. V.A.C. Gatrell's work *The Hanging Tree: Execution and the English People 1770-1868* is without a doubt an essential read for anyone looking to understand the death penalty and how it related to the community in the eighteenth and nineteenth centuries.

¹² Steven Pincus, *1688: the First Modern Revolution* (New Haven: Yale University Press, 2009).

While all forms of punishment are important to the discussion that follows, transportation is one that holds a unique place during this period. Transportation was the removal of prisoners from England to the North American colonies as unpaid workers. The transatlantic nature of the British Empire gave the Old Bailey a form of punishment that could be seen as an alternative to death sentences or harsher corporal punishments. With the passing of the Transportation Act in 1718 the range of punishments available at the Old Bailey was fundamentally altered. For this reason this thesis has utilized works on transportation in order to place the arguments that follow in the context of greater historical trends.

On the subject of transportation the work of A. Roger Ekirch in *Bound for America: The Transportation of British convicts to the colonies, 1718-1775* offers a persuasive contention in favor of the economic impetus for transportation. In *Eighteenth-century Criminal Transportation: The Formation of the Criminal Atlantic*, Gwenda Morgan and Peter Rushton make a similar argument suggesting that demand for cheap labor in the colonies and a surplus of convicts at home resulted in the transportation boom after 1718. These works inform this thesis and allow one to consider not only what happened from 1674 to 1714, but also how the English penal system evolved after this period.

1.2.4 Other sources

There are a number of other works worth noting that informed the thesis that follows. Michele Foucault's *Discipline and Punish: The Birth of the prison*, Julius R. Ruff's *Violence in Early Modern Europe 1500-1800: New Approaches to European History*, and Max Weber's *The Vocation Lectures: "Politics as a Vocation"* are all works that rounded out the argument contained in the study.

1.3 Inspiration and organization

One way in which this work was shaped by other scholarship is in its organization. The inspiration for how the chapters were organized below came from the compelling work of Robert Lacey and Danny Danziger in *The Year 1000: What Life was Like at the Turn of the First Millennium*. Lacey and Danziger utilize their primary source, the Julius Work Calendar to provide the structure for their book. Dedicating a chapter to every month and the works of labor seen in the calendar's art their work seems to effortlessly compliment the source material.

Following the example set forth by *The Year 1000*, this thesis attempts to let the source material inspire the structure and flow of the chapters. Chapter Two, "English Courts of Law and Policing London" provides an introduction to the history of the Old Bailey and the competition for jurisdiction over cases. The chapter goes on to discuss, in brief, the methods employed to police the city of London. Chapters Three through Six make use of both statistics and case studies to shed light on their topics. Chapter Three, "Punishments", presents the punishments utilized by the Old Bailey and looks at the statistical distribution of punishments from 1674 to 1714. Chapter Four, "Crimes Common to the Old Bailey" discusses the crimes most commonly prosecuted at the Old Bailey over this forty-year period. In "Crimes Against the Crown", the fifth chapter, royal crimes are considered. Chapter Six, "Other Crimes at the Old Bailey" details the less common crimes that were prosecuted at the court. "The Influence of the Monarchy", which is the seventh chapter, is dedicated to putting the earlier information about crimes and punishments into the context of individual reigns. The chapter is divided by monarchs in order to clearly identify events or actions by the crown that may have influenced justice at the Old Bailey. The work closes with Chapter Eight, "Understanding the Old Bailey and Looking Forward".

The Old Bailey was the institution of justice with which the average Londoner was most familiar. It offered citizens with the means to pay for a trial the opportunity to seek restitution

against those they believed had wronged them. In the era surrounding the Glorious Revolution the Old Bailey was forced to find ways to balance the pressures of external political pressures with the demand of London's citizens for a judicial system they represented them. The work that follows is an attempt to chronicle the court's negotiation between these two pressures. Through the use of statistical data as well as case studies, this thesis reconstructs the interaction between the Old Bailey and the citizens of London from 1674 to 1714. Though this was a time of political turmoil, the chapters that follow show how the average Londoner's experience with the institution of law was largely unaffected by larger political forces.

CHAPTER 2

ENGLISH COURTS OF LAW AND POLICING LONDON

2.1 Jurisdiction and the Old Bailey

2.1.1 Competing for justice

The first topic that one must understand when investigating crime and punishment in the late seventeenth and early eighteenth centuries is the division of legal jurisdictions. For this reason this study will begin with a primer on the growth and development of the various courts in England. Furthermore, the Old Bailey was not the only source of justice at the time of the Glorious Revolution, the monarch specifically and the elites had other courts they could turn to. For the common person, though the Old Bailey represented justice in London.

Scholars who see the Glorious Revolution as a fight against tyranny tend to claim that the king abused the legal system. In order to understand this potential for such abuses, as well as the historical roots of royal oversight of judicial matters in England, one must look at the courts that offered kings direct access to trial or that may have impeded their desires to influence legal proceedings. The courts that existed in seventeenth and eighteenth century England had their origins in the *curia regis* practices of kings in the twelfth and thirteenth centuries¹³.

The three courts that were linked to royal power and rivaled the Old Bailey for cases were the Court of Common Pleas, the court of the King's Bench and the assizes. All three of these courts started as part of the authority that Norman kings exerted, but as more of the

¹³ Ralph V. Turner, "The Origins of the Common Pleas and Kings Bench," *The American Journal of Legal History* Vol. 21 No 3. (July 1977), pg. 239.

monarchs became concerned with foreign campaigns, permanent solutions to problems of justice came to fill the void they left.¹⁴ The Court of Common Pleas, also known as the Bench at Westminster, is one of the institutions that came to fill the role of judicial authority in the absence of royal authority. Ralph V. Turner argues that the Court of Common Pleas came out of the Exchequer as the specialization and professionalism of individuals in that office grew over the twelfth and thirteenth century.¹⁵ The Court of Common Pleas came to be the court in England concerned with legal matters between subjects, while the King's Bench focused on matters in which the monarch had an interest.

Turner also finds the origins of the court of the King's Bench in the twelfth and thirteenth centuries, more specifically in the creation of the *coram rege* by King John and its revival by his son Henry III. The court of the King's Bench by and large appears to have handled cases that involved the monarch more directly, but it could and did try cases that could potentially be tried by the Court of Common Pleas.¹⁶ This meant that by the seventeenth century these two courts had long been competing for jurisdiction over common law trials and the court of the King's Bench offered the ruling monarch a court to exert greater authority over trials. Furthermore, the court of the King's Bench had since its revival been a place for the king to hold trials against members of the king's court that had lost favor, or as Turner calls them "state-trials"¹⁷

Into this already complex situation of overlapping jurisdictions and competition for authority must be added the assizes. In the words of J.S. Cockburn, "Assizes in particular deserve more serious consideration. For more than six centuries the system by which judges from Westminster visit some fifty provincial towns to deliver gaols and try civil cases by writ of *nisi prius* has continued virtually unchanged."¹⁸ The assizes hold a special importance during

¹⁴ Ibid., 238-254.

¹⁵ Ibid., 243-245.

¹⁶ Ibid., 253.

¹⁷ Ibid.

¹⁸ J.S. Cockburn, *A History of English Assizes 1558-1714* (Cambridge: Cambridge University Press, 1972), pg. ix.

the Glorious Revolution as will become clear later, but also deserve mention as one of the courts that competed with the Old Bailey during this period. Like the court of common pleas and the court of the King's Bench the Assizes have their origins in the practices of the Norman kings. Cockburn suggests that on at least some level one can see the origins of the Assizes in the Eyre of Henry II's reign¹⁹. Generally speaking the assizes were the extension of the legal system headquartered at Westminster they brought justice to the hinterlands of England at semi-regular intervals. While the Assizes usually did not compete with the Old Bailey for jurisdiction of a case, because London and Middlesex were excluded from the territories covered by the assizes, they offered another option for royal authority to be exerted over trials.

Within the city of London there were other sources of legal authority besides the Old Bailey. The Old Bailey tried felony cases, in other words generally more serious crimes, but Justices of the Peace had the power to try misdemeanors and some felonies were considered by the peace sessions. There was potential for conflict between the sessions and the Old Bailey because both could try similar crimes like assault or theft, furthermore it was often the question of severity that landed the criminal in one court or the other. The sessions served a dual purpose. While primarily a judicial forum, the court of the Justice of the Peace could also administer such business as poor relief, apprenticeships, and public works like road repairs²⁰. Because of this it would not be surprising if the Old Bailey held a higher place in public perception as an authority for the dispensing of justice than did the Justice of the Peace – for the Old Bailey's only function was legal.

The court of the King's Bench was also a Middlesex-based institution of justice. It could not hear cases from within the city of London, but it could hear misdemeanors from Middlesex or cases that might interest the king like highway offenses²¹. The fees involved in bringing a

¹⁹ Ibid., 16.

²⁰ Tim Hitchcock, Sharon Howard and Robert Shoemaker, "The Courts", *London Lives, 1690-1800* (www.londonlives.org, 17 June 2011).

²¹ Ibid.

case to the King's Bench were higher than other courts; the punishments for those convicted were more stringent and the cases received more publicity than they would have at the sessions of the peace²². The higher cost though meant that the majority of cases were still seen in the lower courts. The fact that the King's Bench was denied access to cases in London meant that competition for cases between Middlesex courts such as the King's Bench, and the Old Bailey, would likely be rare.

The Old Bailey competed for judicial authority with ecclesiastical authorities. Religious matters and offenses dealing with moral questions were often heard in church courts prior to 1688-89. By the end of the Glorious Revolution (the Act of Toleration in 1689 specifically) the role of church courts was diminished substantially and they mostly handled cases of defamation and matrimony²³. While there were a number of even smaller courts that presented commoners options for justice, few if any records from these courts remain. This is unfortunate because they likely did play a part in the everyday lives of the common people of London. Still it is doubtful that they held a place of authority comparable to the Old Bailey or the other courts mentioned above.

2.1.2 The Old Bailey

Exactly how does the Old Bailey fit into the story of the Glorious Revolution? The Old Bailey was the Central Criminal Court in London; it was established in 1673 (or rather reestablished after the fire of 1666). This court also served as the seat for the county of Middlesex, which had been removed from the Assize circuit in the sixteenth century²⁴. The structure and nature of the court are both worth mention. As stated on the Old Bailey website, the courtrooms "were arranged so as to emphasize the contest between the accused and the

²² Ibid.

²³ Ibid.

²⁴ Cockburn, *A History of English Assizes 1558-1714*, pg. 23.

rest of the court.”²⁵ This is important because in the physical setup of the court one can already see the relationship between the law as an institution and the people who participate in the court. This contest and this court did not pit the common man against the crown, but against judge and jury. It is important to note here that the court, embodied by the judges and jurors, of all whom were male. While symbolically justice might have been a woman, in late seventeenth century London it was carried out by men²⁶. Old Bailey judges came from the landed class and jurors had own a certain level of property²⁷, so clearly the concept of a jury of one’s peers was not literally applied at the Old Bailey.

A further physical manifestation of the court’s relationship to the people was architectural: “A surprising feature was that the ground floor of the building, where the courtroom was located, was open on one side to the weather... A wall had been left out in order to increase the supply of fresh air to reduce the risk that prisoners suffering from gaol fever (typhus) would infect others in court.”²⁸ The effect (intentional or unintentional) of this open exposure of the court was that the people of London were drawn into the trials of the court. The Old Bailey was the court of the people in more than one way. This addition of London crowds meant that the people could not only witness the punishments, most of which were public, but also the legal proceedings. Unlike in other parts of Europe, London’s central criminal court exposed the people of the city to the discourse of justice from start to finish.

The connection between the common person and the Old Bailey did not stop at the court’s jurisdiction and physical closeness to the community. From 1674 to 1913, the sessions of the court were published for public consumption. These publications were fulfilling a need in an already established market for entertainment related to crime; from dying speeches to the Ordinary of Newgate’s Accounts, crime and punishment was a titillating topic in seventeenth

²⁵ Ibid.

²⁶ Ibid.

²⁷ Ibid.

²⁸ Ibid.

century England.²⁹ James Van Horn Melton has shown in his work *The Rise of the Public in Enlightenment Europe* that literacy was on the increase in seventeenth and eighteenth century Europe.³⁰ Furthermore, there appears to be a correlation between urban areas and an increase in literacy. This rise in literacy helps explain the public demand and consumption of these kinds of documents. Yet court publications served as more than just an outlet for crime related fiction. The accounts published in the Old Bailey Sessions Papers were, and still are, considered reliable and not highly fictionalized. In fact, these publications held an official status because they required the approved of the Lord Mayor of London before publication.³¹

The relationship between the state officials and the Old Bailey publications are what make these documents so relevant to the investigation of the growth of authority in London. The place the Old Bailey trial records held in society cannot be known for certain, but the role of the court and the popularity of the publications certainly point to a discourse between the people of London and this institution of justice. In fact as one explores the records one finds that the popular appetite was not just for stories of violent and lurid behavior. While there are certainly plenty of examples of sensationalism in the Old Bailey Papers, the everyday nature of many of the trials is far more telling. This routine aspect of the trial records is important to consider when evaluating the Old Bailey records as a historical source. The first known publication of the Old Bailey Sessions Papers (April 29, 1674) publicizes the trial of Thomas Mullinex, who was accused of burglary. Though the details are written in such a way as to satisfy the potential illicit desires of the publication's audience, it is clear that these are moralistic tales with lessons to educate the populace:

Wherein canst thou more experience they self for the ordering of a good Conversation, than by seeing the follies of those, who either by their own idle or extravagant living are forced to seek out those ways and means, which either

²⁹ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Publishing History of the Proceedings", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012).

³⁰ James Van Horn Melton, *The Rise of the Public in Enlightenment Europe* (Cambridge: Cambridge University Press, 2001), pg. 81-86.

³¹ Emsley, Hitchcock and Shoemaker, "Publishing History of the Proceedings".

are destructive in themselves, or purchase shame and destruction in their end?³²

The language contained in the above excerpt from the second page of the first Old Bailey Papers' publication hints at the role these sources played in English society. These are clearly publications with a morally instructive goal in mind. The budding English bureaucracy assumes the role here of teacher and these publications are lessons in moral and civic virtues. When speaking of the authority of the assizes, Cockburn makes a parallel argument:

The educational value of the system has also been consistently misrepresented. Regular exposure to judicial visitations undoubtedly familiarized provincial society with certain aspects of Westminster practice. The experience, however, was for the common folk traditionally exposed to it 'educational' only in the narrowest sense.³³

In contrast to these provincial folk, the commoners of London were both exposed to the legal system directly in its very public nature, as well as exposed to the retelling of the morality play through the session publications and the Ordinary's accounts.

Without a doubt, the Old Bailey was a highly visible place for the dispensing of justice and the demonstration of legal authority in London. This study suggests that by the period being investigated, the Old Bailey had achieved a sense of authority independent of the crown's power. In trying to define the State, Emile Durkheim suggested, "the State is properly the sum total of social entities that alone are qualified to speak and act in the name of society"³⁴. Therefore, with the key Old Bailey publications of trial sessions in mind, it is not beyond reason to suggest that the Old Bailey was an entity that was qualified to speak in the name of society. The Old Bailey derived its authority from the king's law, but the community participated in Old Bailey trials and the executions and other punishments that the court handed down. The consumption of the session publications reinforced the acceptance of the court's authority by

³² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 02 March 2012), April 1674 (16740429).

³³ Cockburn, *A History of English Assizes 1558-1714*, pg. 3.

³⁴ Emile Durkheim, "The Concept of the State" *Durkheim on Politics and the State* ed. Anthony Giddens, (Stanford: Stanford University Press, 1986), pg. 45

London society and yet the public's tastes also likewise fed a trade in stories from the Old Bailey.

2.2 Policing London

The court and session papers were not the only areas where the relationship between justice and the public existed. During most of the forty-year period with which this study is concerned, the method of policing crime in London was very informal and involved the public in a number of ways. Londoners were expected to help in the detaining of criminals, as well as in notifying officials that crimes had taken place.³⁵ In fact, if a justice of the peace or constable requested it, citizens were expected to join in the chase and apprehending of a criminal.³⁶

Furthermore, during the seventeenth century London homeowners were routinely required to participate in service as constables and night watchmen.³⁷ Over the course of the seventeenth and eighteenth centuries this changed and many homeowners hired out people to take their place as constables or on the night watch.³⁸ In both cases the members of the London community not only had a legal responsibility to combat crime, but the system promoted community responsibility for policing. In the absence of a professional police force, late seventeenth and early eighteenth century London impressed upon its citizens the need for their vigilance.

Londoners also might help with the policing of their city by acting as thief-takers. Essentially, thief-takers were members of the community who made careers out of collecting rewards for the return of goods or apprehending of criminals.³⁹ While this was initially promoted by the state by offering the rewards, eventually it backfired; by the mid-eighteenth century

³⁵ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Policing in London", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012)

³⁶ Ibid.

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

several notorious thief-takers like Jonathan Wild had been charged with involvement in the crimes they were rewarded for solving.⁴⁰ This phenomenon was further perpetuated the growing ubiquity of daily newspapers that allowed people to advertise their own rewards for returned goods or information related to a crime.⁴¹

Policing during this time was in its infancy, though one can see the beginnings of the transition from community driven policing to a more professional form. This was a period where citizens of London participated in the process of investigating crimes and arresting criminals in a variety of ways. It is no wonder then that Londoners craved more information about the crimes at the Old Bailey. This was a system of justice where Londoners played both active and passive roles from the beginning with an arrest to the end with the sentencing and punishment of criminals. There is no way to view the Old Bailey from 1674 to 1714 and the subsequent trial publications without also looking into the community of London.

2.3 The Old Bailey and the Glorious Revolution

Returning to the question posed at the start of this section: How does the Old Bailey fit into this story of the Glorious Revolution? By looking at the court's records over time, one can see the beginnings of a legal authority that was not just the king's law. The Glorious Revolution may have been a relatively peaceful change of hands from one monarch to another, but the stability of that transition required a society that was tied to the authority of institutions rather than the authority of an individual.

In order to utilize the court records most effectively, then, one must broaden the scope of the Glorious Revolution to extend beyond the immediate events of 1688 and include the reigns of Charles II (1660-1685), James II (1685-1688) William and Mary (1689-1702) and Anne (1702-1714). Unfortunately, the Old Bailey Sessions Papers only go back as far as 1674, so the

⁴⁰ Ibid.

⁴¹ Ibid.

statistics from Charles' reign are not as inclusive as is desired. Furthermore, the earlier issues of the Old Bailey publications are not exhaustive accounts of all trials. While this changes over time the period that is the focus of this study, the records still have gaps in the data.⁴² Regardless of these missing details, the five thousand eight hundred eighty-four⁴³ guilty verdicts over this forty-year period will serve as the foundation for the arguments that follow.

⁴² Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Value of the Proceedings as a Historical Source", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012).

⁴³ A search of the Old Bailey from April 1674 to August 1714 for guilty verdicts turned up 5884 unique cases.

CHAPTER 3

PUNISHMENTS

3.1. An introduction to punishments and crimes

The current study opens with a consideration of the punishments handed down at the Old Bailey because a focus here is on the punitive lessons that the court imparted as a means of social control. Though starting the discussion with the penal system might seem chronologically incorrect, it is necessary to discuss the various punishments prescribed by the Old Bailey as they will inform later discussions. Furthermore, most Londoners may well have had their first interaction with the criminal justice system through viewing one of the often public punishments.

The Old Bailey sentenced offenders to a wide variety of punishments for the various crimes tried in the court. Unfortunately, the statistics on punishments are a little murkier than those for crimes, this is for several reasons. Many of the punishments issued from the court were not the same punishments the defendants would later receive; in many cases the punishments were later commuted or respited, furthermore, the recording of pardons and respiting of punishments was spotty at best⁴⁴. Finally, a number of trials resulted in multiple punishments and while statistics exist for how often multiple punishments were imposed, there are too many different combinations to effectively make use of cross-referenced statistics. For these reasons a good number of the punishments for this period are unaccounted for in the statistical discussion.

⁴⁴ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Punishments at the Old Bailey", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 20 January 2012)

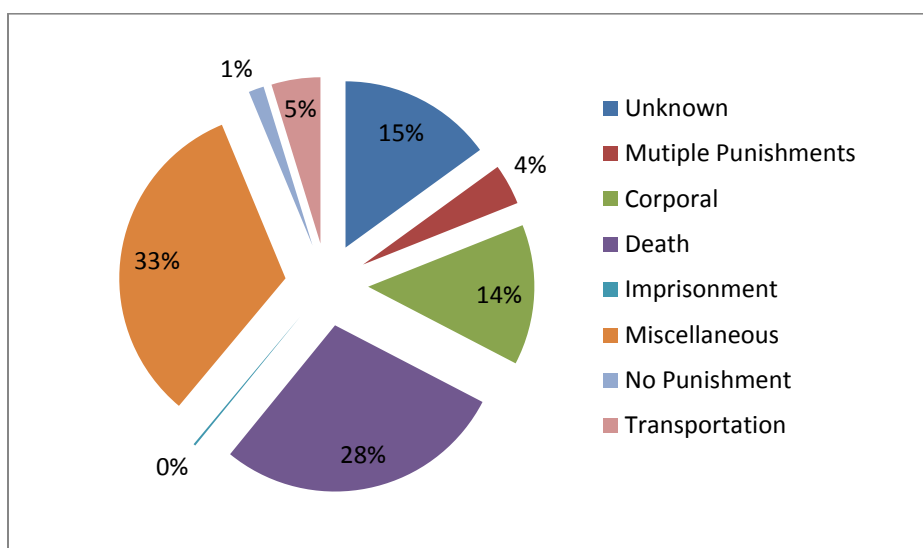


Figure 3.1 Punishment Categories

3.2 Unknown and Multiple Punishments

The discussion of “unknown and multiple punishments” is combined here for a few reasons. As mentioned above, the statistics for these categories are very basic – just recording the number of “unknown or multiple punishments” that account for the total. In addition, these categories reveal little about the view Londoners had of justice, other than understanding that in some cases they felt more than one punishment was necessary. However, they can reveal a few things and are worth discussing even if only briefly.

Roughly fifteen percent of the total sentences are unaccounted for in the Old Bailey Sessions Papers – in other words the details of that percentage of punishments are unknowable to modern readers. As mentioned above, some of the sentences that were made at the Old Bailey were different from those that were carried out at a later date, in cases like this these records have been set in the “unknown” category. Unfortunately, it is unclear how many of these “unknown punishments” are due to such differences. What can be inferred though is that the courts authority over punishment was not absolute and required the acquiescence of bodies carrying out the sentence. In some cases the differences of punishment are minute; perhaps a different fine was paid or instead of multiple sessions in the pillory only one is recorded. In other

cases no punishment is recorded at all despite the court having sentenced the defendant to one. It is unclear why these differences exist. Was it poor communication between the court and the officials dedicated to punishing the criminals? Or perhaps the officials charged with carrying out sentences disagreed with the court's sentencing and decided to act on their own to lessen a punishment's severity. Still, the fact that only fifteen percent of the total punishments were "unknown" means that the court and the officials that carried out the punishments were working more or less as unified entities for the majority of cases.

Multiple punishments tell relate another story. Multiple punishments accounted for four percent of the total or two hundred thirty-three out of the five thousand eight hundred eighty-five sentences issued from the Old Bailey over this period. As the authors of the Old Bailey website state, "Many defendants were given more than one punishment. This is particularly common for those sentenced to the pillory, imprisonment, whipping, fines and providing sureties for good behaviour."⁴⁵ This is worth noting simply because it shows a tendency in the court to combine punishments rather than impose sentences that were more severe or permanent punishments like branding or death. Regrettably, no one has compiled a statistical break down of how often certain punishment combinations occurred, and the number of possible permutations is large enough to make such a study beyond the scope of the current work. The fact that the Old Bailey website authors note that the most common punishment combinations are corporal and "miscellaneous" is enough to reinforce the conclusion reached by the Old Bailey authors, that over time there was a greater reluctance to use the death penalty and even corporal punishment became more sparingly utilized⁴⁶. Towards the end of this period for a variety of reasons transportation became the punishment of choice in many cases that did not require the death penalty. The information that follows will reveal much about how interaction between the Old Bailey and London's citizens shaped the courts approach to punishments, but the statistics

⁴⁵ Ibid.

⁴⁶ Ibid.

on “unknown punishments” and multiple punishments should serve as a reminder that this is not a complete picture of punishments during this period.

3.3 Corporal punishments

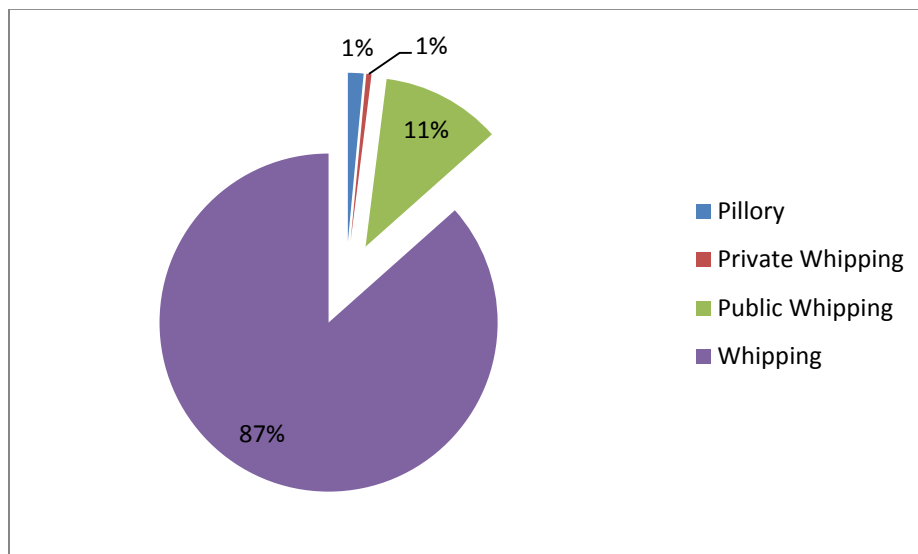


Figure 3.2 Corporal Punishment Sub-categories

Corporal punishments accounted for nearly fourteen percent of the total punishments issued by the Old Bailey from 1674 to 1714, that is eight hundred four instances of corporal punishments recorded. The vast majority of corporal punishments were whipping of various kinds; these made up almost ninety-nine percent of the corporal punishments for this period with the pillory being a little over one percent. Aside from private whippings, which usually took place in or around a correctional institution like Newgate prison, all of these punishments were public. The public spectacle aspect of the punishment was a large part of the perceived deterrence of the punishment⁴⁷.

⁴⁷ Ibid.

3.3.1 *The Pillory*

The punishment of the pillory involved placing the criminal in a restraining apparatus and leaving them there for a set duration of time. The Old Bailey authors describe the events as such,

The pillory turned so that crowds on all sides could get a good view, and could express their disapproval of the offence by pelting the offender with rotten eggs and vegetables, blood and guts from slaughterhouses, dead cats, mud and excrement, and even bricks and stones. Some died from the abuse, despite increasing efforts by constables to protect the convict, by forming a ring around the pillory.⁴⁸

In some cases the defendants were required to stand the pillory on multiple days. Many of those convicted and sentenced to the pillory were given another punishment along with it, thus skewing the statistics. Seventy-five percent of the twelve instances of pillory resulted from crimes of deception, a little over sixteen and a half percent were royal offenses and the remaining eight percent were “miscellaneous offenses”. Since there were so few instances of the pillory being used as a punishment, it is possible to present a sub-category break down. Forgery accounted for the largest portion at forty-one percent. Fraud was the next highest crime punished with the pillory, followed by coining offenses, perjury, perverting justice, and seditious libel with all accounted for a little over eight percent (or one instance each).

Whippings occurred both publicly and privately. While only eleven percent were recorded specifically as public, the larger eighty-seven percent listed as whippings were likely public also as it was the traditional method of whipping and only four instances of private whippings were recorded for this period and these seem to be more of a reflection of the later trend to move away from public punishments⁴⁹. Ninety-nine percent of the whippings and public whippings were from theft convictions with less than one percent being divided by violent theft,

⁴⁸ Ibid.

⁴⁹ Ibid.

royal offenses and breaking the peace. Obviously, theft was the cause of nearly every whipping sentence. It is worth noting here that corporal punishment, and most specifically whippings were the third most common punishments assigned to cases of theft over this forty-year period, with only “miscellaneous” and “death” outranking whippings as categories.

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As stated above, whippings were most often public events since publicity both served to shame the offender as well as deter other criminals⁵¹. The criminals were stripped of clothing from their upper body and whipped, usually close to the locations where the crime took place, along a nearby street or path. Punishment was not something removed from the populace, but rather something in which Londoners could participate as spectators or participants.

There were four cases recorded of private whippings, three in 1686 and one in 1689. In all three of the cases in 1686 the defendants did not deny their guilt, so it is possible that the court decided to forgo the traditional shaming process. The case in 1689 was against a woman,

⁵⁰ Ibid.

⁵¹ Ibid.

“known to be an idle Housewife”⁵² and perhaps concerns over modesty led the court to hold her whipping in private. Regardless, private whippings were uncommon during this period and accounted for less than one percent. The preference for whipping was clearly to provide a public display in order to make the punishment the most effective deterrent.

3.4 Death Penalties

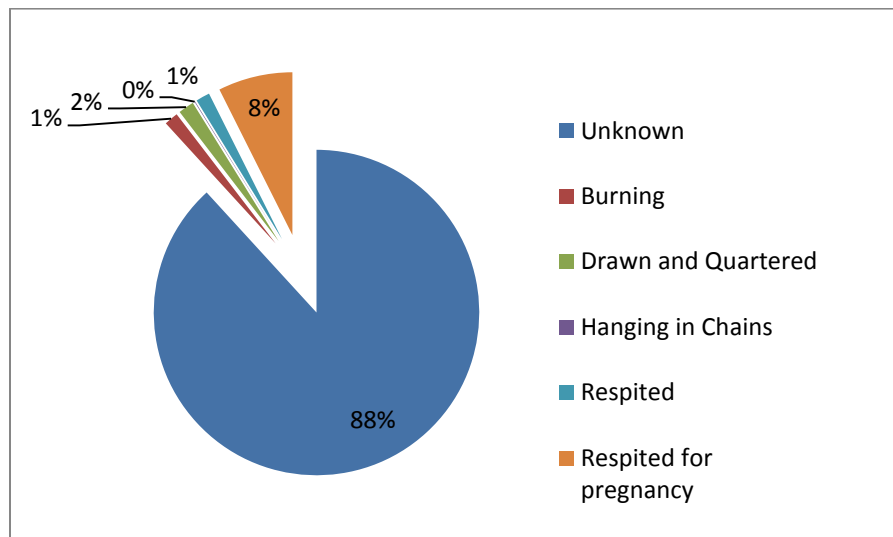


Figure 3.3 Death Penalty Sub-categories

Death sentences accounted for twenty-eight percent of the total punishments issued from 1674 to 1714. The category of death penalty for eighty-eight percent of these death sentences is “unknown”. Given the obvious severity of such sentences, it is unfortunate that the records are not more informative. To further cloud the issue it is unclear if these punishments were carried out or if the defendants were allowed to live through pardons or respited sentences⁵³. The Old Bailey website authors state that, “Many, in fact most, death sentences

⁵² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1689, trial of Thomasin Burton (t16890828-9).

⁵³ V.A.C Gattrell, *Execution and The English People 1770-1868* (Oxford: Oxford University Press, 1994), 7. Gattrell suggests that for the period of 1770 to 1830 the majority of those condemned to death were either imprisoned or transported. It is unknown if this disconnected between sentencing and carrying out the punishment existed for the earlier period too.

were not carried out.”⁵⁴ It is possible that eighty-eight percent of the death sentences are unknown because it cannot be confirmed that they were carried out. This is one reason why it is worth looking deeper into the statistics of the death penalty, to help illuminate what these “unknown sentences” could mean.

Crimes of theft and violent theft accounted for roughly seventy percent of the total crimes sentenced to death. Furthermore, seventy-one percent of the “unknown” death penalties were sentenced to crimes of theft. Almost fourteen percent of all death penalties were for royal offenses and this accounts for ten percent of the “unknown” sentences. Another eleven and a half percent of the total goes to killings with twelve and a half percent being of “unknown” nature. This means that death sentences were consistently unreported across the major crimes. This consistency probably eliminates the possibility, that a single crime was more prone to having a death sentence not carried out or reported. This leaves the two most likely possibilities to account for the high percentage of “unknown” death sentences; poor reporting or a frequent inclination to commute the death sentences. If it was the latter option it is unclear why these changes were not recorded as there are records of pardons and respited sentences. Whatever the reasons for the high number of “unknown” death sentences for this period, they leave a hole in the knowledge about punishment that can only be filled with speculation. It is therefore necessary to turn to what is known about the various forms of the death penalty sentenced at the time to get a better idea of how the court and the community might have viewed death sentences.

3.4.1 Hangings

Though none of the records for this period specifically denote hangings as the method of execution, this form of punishment should still be discussed as it was the most common form of execution. It also further complicates the statistics of “unknown” death sentences because

⁵⁴ Emsley, Hitchcock and Shoemaker, "Crime and Justice - Punishments at the Old Bailey"

many of these may in fact be hangings that were not recorded as such due to the ubiquitous nature of this death penalty. Death by hanging was, like most other capital punishments, a public event. With the convict being carted through the streets and given a chance to repent their sins before their execution⁵⁵. The public nature of these punishments was further enhanced during this period by the fact that the use of “sharp drop” hangings did not become standard at Newgate until 1783⁵⁶. Hangings prior to the sharp drop method were more of a slow strangulation, with friends or family of the convicts often trying to help expedite the process by pulling downward on their legs, in hopes of giving them some mercy⁵⁷.

3.4.2 Respited for pregnancy and respited

After “unknown”, “respited for pregnancy” was the next most common category recorded under the death penalty. A woman could claim to be pregnant at the time she was sentenced to death, she would then be examined by a “jury of matrons” to determine if she was with child⁵⁸. If she was found to be pregnant her sentence was postponed to be carried out after the child was born. The authors of the Old Bailey website suggest that this was true in theory, but in practice most of the women were not put to death due to sympathy for the newborn⁵⁹. While this is likely true, it is important to keep in mind that from all of the Old Bailey records from 1674 to 1913 there are only one thousand one hundred reports of women who appealed for pregnancy and just over half were granted the respite⁶⁰. While the statistics for just this period do not exist, it is known that only one hundred twenty-three women were granted a respite for pregnancy from 1674 to 1714, one can assume that if roughly half of those who applied for respite were granted it, that would mean that around two hundred fifty woman claimed to be with child in an attempt to avoid their death sentence. This does not mean that “pleading one’s

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Ibid.

⁶⁰ Ibid.

belly” was not a guaranteed way for a woman to delay or commute a death sentence. The novel, *The Fortunes and Misfortunes of the Famous Moll Flanders* by Daniel Defoe, is perhaps the most famous depiction of a woman “pleading her belly” and the life of the child. It is also a great example of the kind of literature that grew up around crime and punishment in London. In fact, the full title of the work mentioned Moll’s birth in Newgate prison.

Twenty-three cases during this period record that their sentences were respited with little information provided for the reasoning for the respite. Of these twenty of them are women who received respites and three were men. While it is impossible to know, it is within reason to guess that some of the women were respited for pregnancy. In the three cases of the men who received respited sentences two occur in 1700 and one occurs in 1703. Because this is towards the end of this period it is possible that this is a reflection of trends moving away from the severe punishment of death towards other options. It is also possible that more men (and women) were respited during this period, but that these respites were not recorded because they occurred at subsequent sessions.

3.4.3 Burned at the stake, drawn and quartered and executed

During this forty-year period there were twenty-three cases recorded of burning at the stake. Twenty reports (or eighty-seven percent) were for coining offenses, two were for petty treason and one was for treason. The case of Ann Merryweather will be discussed in greater detail below, but she held the distinction to be the sole woman convicted of treason at the Old Bailey for this period. She was sentenced to death, but the Ordinary’s account records, “Repriev’d by the Clemency of Their Sacred Majesties”⁶¹ Again, the public nature of the punishment is an important aspect to its function and burning must have been a horrendous spectacle, though it is said that the executioners usually strangled the woman before lighting the

⁶¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate’s Account, January 1693 (OA16930127).

fire. Still the smell and the blaze certainly would have provided the crowd with a morbid demonstration of the ultimate enforcement of the law.

More men were condemned for treason than women, with a total of nine convictions producing death sentences from 1674 to 1714. The remaining two cases were reported as executions. The case is worth discussing in short here. In 1679 John Grove and William Ireland were convicted of a “Hellish Plot” to kill king Charles II⁶². On the same day as their conviction they were executed in the following manner, “were hang'd up by the Neck, and cut down whilst some life remaind in them, afterwards their breasts were ript open, their hearts taken out, their bodies quartered”⁶³. There are two specifics mentioned here that deviate slightly from the normal drawing and quartering which might account for why these cases were reported differently. First, it is specified that the defendants were cut down while they were still alive, this is because it has been rumored that more merciful executioners would allow the condemned to die of the hanging before proceeding to the quartering⁶⁴. Second, it is specified that the hearts of the defendants were removed, this may have been a normal part of the disemboweling process, but in other records the fate of the convict’s hearts do not appear to be reported.⁶⁵ Regardless of the possible differences, this account provides a good understanding of the grisly fate that awaited those condemned to drawing and quartering, as well the public display that this scene must have conjured.

Treason was not the only crime that resulted in the sentence of hanging, drawing and quartering; in fact during this period there were twenty-six reported instances of drawing and

⁶² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1679, trial of William Ireland John Grove (t16790131-1).

⁶³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1679, trial of William Ireland John Grove (t16790131-1).

⁶⁴ Emsley, Hitchcock and Shoemaker, “Crime and Justice - Punishments at the Old Bailey”

⁶⁵ Christine J. Kelly, ‘Gennings, Edmund [St Edmund Gennings] (1566–1591)’, *Oxford Dictionary of National Biography*, Oxford University Press, 2004 [http://libproxy.uta.edu:2422/view/article/10516, accessed 12 March 2012]. *The Oxford Dictionary of National Biography* makes reference to at least one other instance of the heart being removed in the execution of Edmond Gennings in 1591.

quartering, the nine mentioned for treason account for roughly thirty-four percent. Another nine convicts were sentenced to death by drawing and quartering for coining offenses and eight were sentenced for religious offenses. All three of these crimes are royal offenses, and while these statistics show a fairly equal distribution of the death sentence across these crimes, Chapter Five on royal offense will show that this equality is not an indication of how common the death penalty was for royal offenses.

3.4.4 Hanging in Chains

The category of hanging in chains is in some ways misleading, as this was a punishment inflicted on the corpse after execution by hanging in order to further disgrace particularly terrible criminals⁶⁶. For the period of 1674 to 1714 only one man was condemned to hanging in chains – Edmond Tooll. He was charged with three counts of highway robbery and one count of murder. For one of the counts of highway robbery he was charged along with a man named Brian Sullivan; both were found guilty of this crime and Tooll was found guilty on all other charges as well. Sullivan was sentenced to death, the method unknown, but likely hanging. Tooll was sentenced to death and hanging in chains, this is most likely due to his status as both a murder and a repeat offender.

The death penalty was the third most common punishment issued by the Old Bailey. While it is unclear exactly how often these sentences were carried out two things are clear. First, the court was not afraid to use the death penalty and in some cases some rather gruesome methods to enforce the law. Secondly, the public nature of all of these punishments was vital to the process. Death as a penalty is final, but it can also send a message to the community a role that both the Old Bailey sessions as well as the Ordinary's accounts helped to reinforce. While it is still very possible that most sentences of death were never carried out, it seems unlikely that the court and the powers that executed their decisions would trivialize the

⁶⁶ Emsley, Hitchcock and Shoemaker, "Crime and Justice - Punishments at the Old Bailey"

death penalty by letting nearly ninety percent of those condemned live. Only further study of punishment in London during the late seventeenth and early eighteenth centuries would resolve this question completely, but for the purposes of this work, the assumption seems safe that the court relied heavily on the death penalty. Such reliance implied that the court conceived of the death penalty as an effective deterrent.

3.5 Miscellaneous

The most common category of punishment assigned by the Old Bailey was “miscellaneous”. From 1674 to 1714 there were nearly two thousand reports of “miscellaneous sentences” recorded

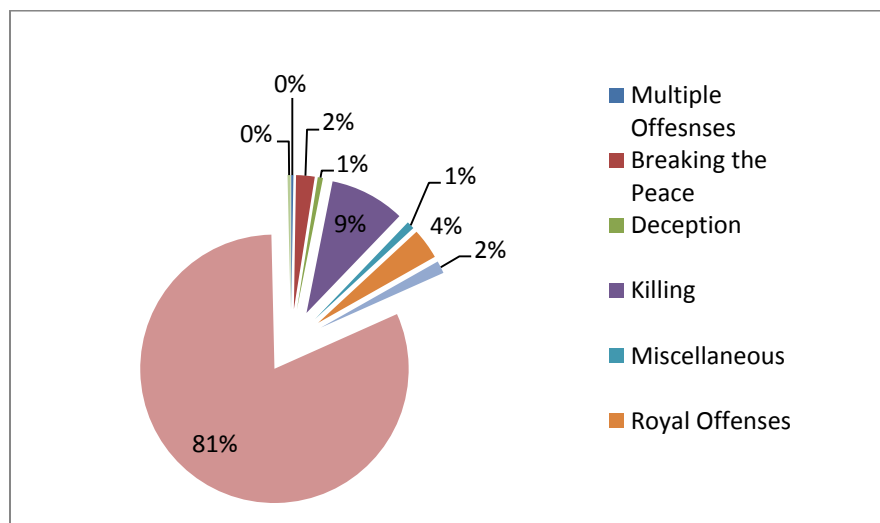


Figure 3.4 Crimes Punished Under Miscellaneous

Theft and violent theft clearly accounted for the majority of crimes punished through “miscellaneous” means. This is no surprise since theft was the most common crime tried at the Old Bailey, as will be discussed to a greater degree in chapter Four. Furthermore, after “unknown punishments”, “miscellaneous punishments” accounted for the second most punishments thieves received. This also means though that other penalties that might be seen as more severe were not the methods of choice for punishing thieves. Sixty-seven percent of these thieves were convicted of either grand larceny or burglary, crimes (great detail for these

crimes is discussed in chapter Four). After theft, killings and royal offenses accounted for another thirteen percent together with the sub-categories of murder and coining offenses comprising the largest percentage of the crimes miscellaneously punished, respectively. One last note about the composite crime statistics: the “miscellaneous” category is the one form of punishments that most closely mirrors the overall statistics of crime during this period. This might suggest that “miscellaneous punishments” were not just the most numerous, but also the ones most often utilized by the court regardless of the crime being addressed.

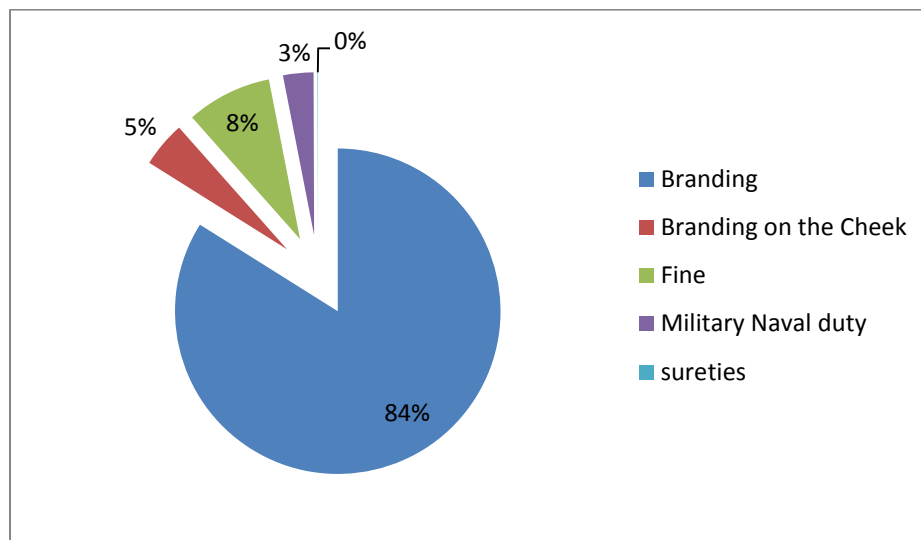


Figure 3.5 Miscellaneous Sub-categories

3.5.1 Benefit of clergy and brandings

Before discussing the various sub-categories of punishments that comprised the “miscellaneous” category one must first discuss benefit of clergy. Benefit of clergy in the medieval era was the process that allowed members of the clergy who had been found guilty of felonies to avoid the death penalty in exchange for a lesser punishment⁶⁷. The test for this was a literacy test and as time went on all literate men were allowed to apply for benefit of clergy. In 1623 this was extended to women found guilty of theft under ten shillings; in 1691 all women

⁶⁷ Ibid.

could apply for the benefit of clergy for all crimes that were “clergyable”⁶⁸. For the period this study is concerned with “murder, rape, highway robbery, burglary, horse-stealing, pickpocketing, and theft from churches, were deemed non-clergyable.”⁶⁹

Benefit of clergy is important to this discussion because those who were granted the benefit were branded so that they could not apply for the benefit more than once; those convicted of manslaughter and theft were also branded if not sentenced to death⁷⁰. Brandings and banding on the cheek were the most common forms of “miscellaneous punishments” that the Old Bailey sentenced. Those convicted and sentenced to brandings, “were branded on the thumb with a “T” for theft, “F” for felon, or “M” for murder”⁷¹ From 1699 to 1707 the court ordered thieves to be branded on the cheek in hopes that this would make it a better deterrent⁷². Nearly eighty-seven percent of the brandings sentenced for this period were for theft, with killings accounting for ten percent. Though on the surface brandings appear to be a less public form of punishment than most of the others already discussed, yet the public too could see the brand it being on the convicts thumb or cheek. Branding was obviously a punishment associated with murderers and thieves and thus the mark they wore served also as a warning to the public of what kind of person they might be. In fact, branding on the cheek was stopped because it made gainful employment difficult for convicts to find⁷³.

3.5.2 *Fines*

Fines accounted for eight percent of the total “miscellaneous” penalties levied making them the second most common for category, but only number one hundred sixty-three reported cases in total. Fines were often one of the punishments levied when the court issued multiple

⁶⁸ Ibid.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² Ibid.

⁷³ Ibid.

punishments, young offenders in particular were fined along with a short stay in prison or a juvenile refuge⁷⁴. The statistics on fines may reflect a certain level of underreporting due to the fact that it usually accompanied other forms of punishments when sentenced. Regardless when sentenced by themselves, it is known that forty-two percent of fines were sentenced for royal offenses and twenty-five percent were for breaking the peace. For the royal offenses fifty-three percent of all fines issued were accounted for by coining offenses and riot accounted for sixty percent of the breaking the peace sentences. While most punishments are roughly evenly distributed during this period, thirty-three percent of fines can be accounted for in three years 1693, 1695, and 1697. As will be discussed later in chapter 7, this is likely due to political influences, but it could also be a statistical anomaly caused by differences in reporting.

3.5.3 Military or naval duty

Military or naval duty was another form of punishment that was likely under-reported for this period. From 1674 to 1714 there were fifty-eight cases, roughly three percent of the total, recorded of a convict being sentenced to serve in the army or navy. One reason this figure is potentially lower than the reality is because many of those sentenced to more severe penalties were offered the chance at pardon if they served in the military instead; such cases were not always recorded because the pardon was granted sometime after the original session⁷⁵. Like with fines, military and navel duty sentences do not follow the general statistical distribution over time; as noted by the authors of the Old Bailey website the use of this punishment increased during times of war⁷⁶. In fact the statistics show that thirty-nine of the fifty-eight record of military or naval duty being sentenced occurred in 1693 right in the middle of the War of the Grand Alliance. We see another slight increase in instance of this punishment in 1703 and 1707 during the War of Spanish Succession. Coupling this with the increase in fines sentenced during the

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

War of the Grand Alliance it is very likely that these outside events were influencing the court's decisions. Most of the instances of military and naval duty were for crimes of theft, with no accounts existing for cases of killings or royal offenses. This might suggest that in addition to the external pressure on the court to help fill the ranks during wartime, they were also looking for alternatives to the more severe punishments of death and brandings that accompanied theft conviction. Still, forced military service during wartime was likely close to a death sentence in the convict's eyes.

3.5.4 Sureties

The final sub-category of "miscellaneous punishments" is sureties. During the forty-year period in question there was only one instance of a surety being levied against a convict. In 1690 Joseph Jones "was ordered to remain till he find Sureties for his quiet behaviour for the future"⁷⁷ after being convicted of the coining offense of possessing and concealing clippings. Sureties were often combined with other punishments, so it is not surprising that there is only one case where it was the sole punishment recorded⁷⁸. Like all the forms of "miscellaneous punishments" outside of brandings, sureties on their own were rare as a punishment. While sureties, fines and military duty punished the individual convict they did little to involve the community in the process of criminal atonement, something that appears to have been important to the cases heard in London's central criminal court.

⁷⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1690 (s16901015-1).

⁷⁸ Emsley, Hitchcock and Shoemaker, "Crime and Justice - Punishments at the Old Bailey"

3.6 Transportation, imprisonment, and no punishment

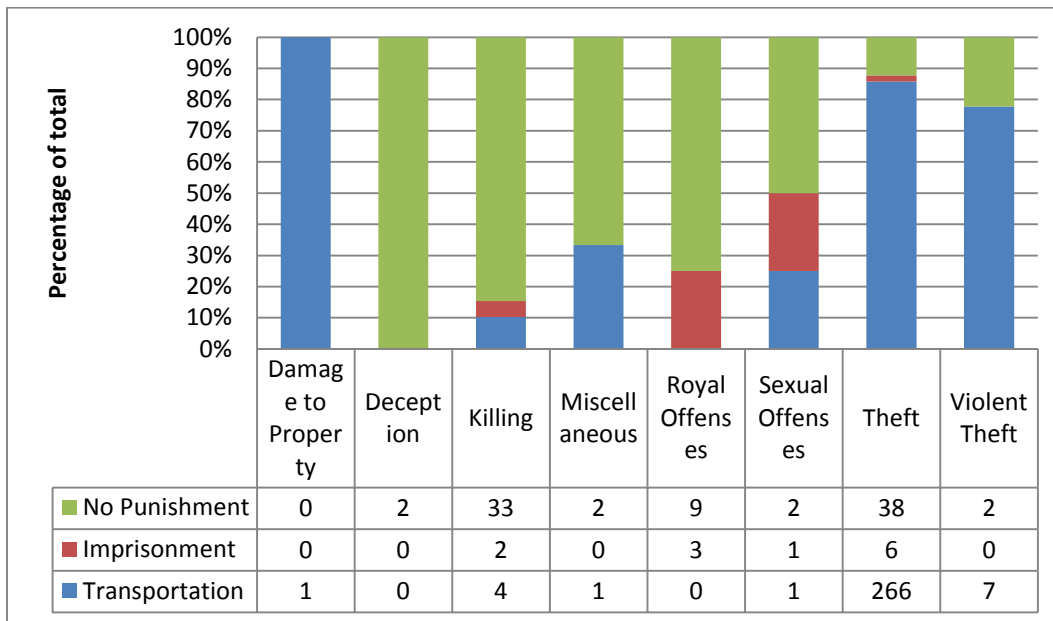


Figure 3.6 Break Down by Crime for Transportation, Imprisonment and “No Punishment”

Roughly six and a half percent of all “miscellaneous punishments” can be described as transportation (four and a half percent), imprisonment (less than one percent), or “no punishment” (one and a half percent). For the purposes of this study these punishments have been grouped into one section since most of them were not very common for this period, but are rather a reflection of later trends to find alternative punishments to the traditional sentences of death, brandings, or corporal punishments. This is discussed in a little more detail at the end of this work, but is mostly beyond the scope of this study.

3.6.1 Transportation

As the chart above shows, transportation accounted for most of these punishments with two hundred eighty unique cases of convicts being transported. Transportation alone has been the topic of several well written books, and is a fascinating subject in its own right. As England and later Britain expanded across the seas, empire opened up new potential for forms of punishment as well as profits from them. Though there is no detailed information from the Old

Bailey about where the convicts for this period were transported it is likely that they were being sent to the colonies in America and in many cases – probably to the Chesapeake area of Virginia. This study concludes just before transportation becomes the punishment of choice for the Old Bailey after the Transportation Act of 1718. From 1714 to 1776 transportation accounted for sixty-two percent of the punishments issued by the court and it replaced “miscellaneous punishments” as the most common punishment. The epilogue, contained in chapter Eight of this work will discuss the moral and economic factors that helped make transportation a more appealing choice over the years, but for now it is worth noting that the years 1687 and 1693 saw slight increases in the use of transportation as a punishment. It is unclear what role domestic or foreign factors may have played in these increases, but given that these increases were temporary they likely do not indicate long term changes in the court’s practices.

3.6.2 Imprisonment

Imprisonment accounted for the least number of sentences, with only twelve convictions assigning various forms imprisonment. Half of these cases were accounted for by “unknown” forms of imprisonment, two were sent to hard labor, three to houses of corrections and one was imprisoned at Newgate. Hard labor included imprisonment for the duration of the convict’s servitude. The Old Bailey authors describe the purpose and methods of hard labor here,

“Hard labour was meant to contribute to the reformation of offenders by teaching them to be industrious, but the punishment was also meant to deter others from committing crime. Those imprisoned sometimes worked a water pump (see image), while men incarcerated in the hulks worked on dredging the Thames or in the naval dockyards.”⁷⁹

In later periods this trend to reform convicts increases. Some scholars tie that new approach to the rise of capitalism and Protestantism; this is a concept that would fit closely with the work of

⁷⁹ Ibid.

other scholars like Max Weber⁸⁰. During the later seventeenth and early eighteenth century imprisonment was an uncommon method of punishment, likely due to the associated costs and lack of facilities. It also did not provide the public aspect or rituals of punishment that the court found so appealing during this period.

3.6.3 No punishment

The category of “no punishments accounted for one and a half percent of the total punishments issued by the Old Bailey; of these forty-two percent were for “unknown” reasons, eleven percent of them were pardons, and nearly forty-seven percent were sentences respited. For many of these cases very little information is known, and in some cases all that is recorded is a punishment summary. It appears that most of these sentences respited were for murder cases where the court found the defendant guilty of the lesser crime of manslaughter. In the cases of “no punishment” sentences in these statistics, it is known that guilty verdicts⁸¹ were returned, so it is unlikely that any of these can be accounted for by not guilty verdicts where the defendant would have gone free. Most likely many of these cases ended with the original charge being commuted and the defendant found guilty of misdemeanors. The impact of these cases on the court was minor as the statistics show, but it is important to know that not all criminals were punished. For whatever reason a small percentage of them were freed and allowed to return to their lives unchanged by the court.

3.7 Gender in crime and punishment

Any work on crime and punishment, at the Old Bailey or otherwise, would be incomplete without a discussion of gender. This is a topic that could encompass an entire study alone, and for that reason the discourse that follows is limited in scope, mostly consisting of

⁸⁰ Max Weber's work *The Protestant Ethic and the Spirit of Capitalism* attempts to show a connection between the rise of capitalism and the moral tenants of Protestantism. That these two ideas played a role in the concept of reforming criminals through labor is a logical extension of Weber's argument.

⁸¹ All the statistics generated for this thesis were sorted for trials that returned a verdict of guilty.

statistical information to help understand how gender and played a role in both crime and punishment for this period.⁸²

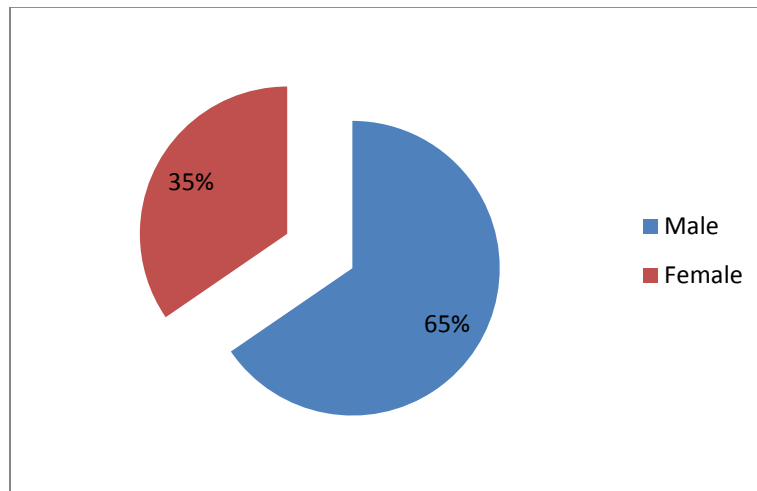


Figure 3.7 Break Down of Gender Distribution

From 1674 to 1714 men were convicted of three thousand eight hundred thirty-one crimes – that is, roughly eighteen hundred more crimes than women⁸³. As the graph above shows, men were thirty percent more likely to be convicted of a crime at the Old Bailey. This statistic agrees with much of the numbers provided by the authors of the Old Bailey website, and according to them is also reflected in the secondary literature on gender and crime⁸⁴. From 1674 to 1913 the Old Bailey authors cite women as accounting for twenty-one percent of the total defendants, so the above statistics are within the same spectrum as trends seen over longer periods at the Old Bailey⁸⁵.

⁸² For a more detailed study of gender and the Old Bailey please see the work done by Clive Emsley, Tim Hitchcock and Robert Shoemaker "Gender and the Proceedings" *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 29 January 2012)

⁸³ The Old Bailey also includes the gender category of "Indeterminate" to account for the cases where gender is not specified or unclear. This category has been omitted here as it accounted for less than half of a percent of the totals during this period, so for simplicity sake only the categories of male and female are discussed.

⁸⁴ Emsley, Hitchcock and Shoemaker, "Historical Background - Gender in the Proceedings"

⁸⁵ Emsley, Hitchcock and Shoemaker, "Historical Background - Gender in the Proceedings"

3.7.1 Gender and crime

What is perhaps a more interesting statistic is how much men and women contributed in relative terms to the convictions of the more common crimes at the Old Bailey.

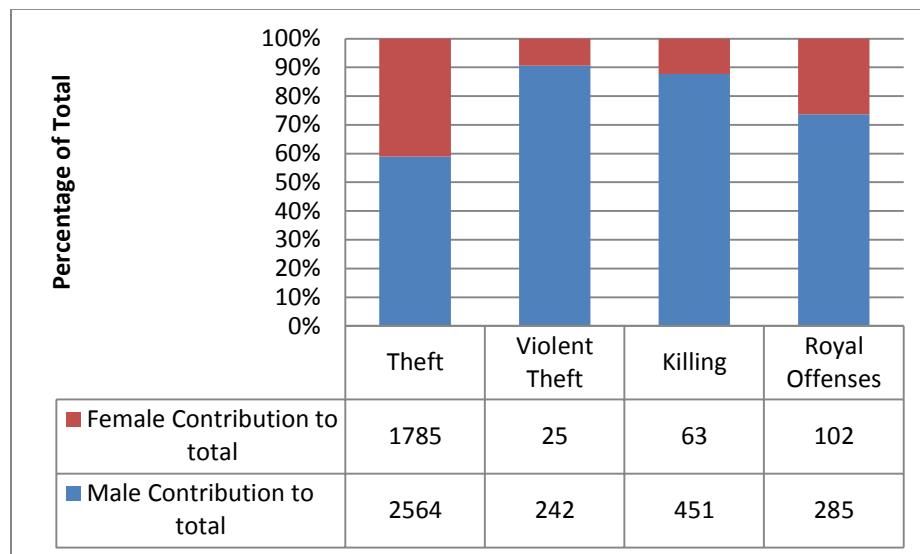


Figure 3.8 Distribution of Top Crimes by Gender

Women's largest statistical input was to theft, while the statistics for men were close to the same percent to violent theft and killings. Of the sixty three cases of women convicted of killing, nearly sixty-seven percent of these were to infanticide (a crime almost exclusively reserved for women), but surprisingly petty treason (another crime limited to women) only accounted for five percent. Seventy-one percent of men tried and convicted for killing were for murder. For theft the sub-category of grand-larceny was the most common crime for both men (thirty-six percent) and women (fifty-five percent), but men had a much higher conviction rate of burglary (twenty-two percent) where women's second most common theft crime was shoplifting (thirteen percent). There are a number of potential reasons for these disparities including, but not limited to gender roles.

3.7.2 Gender and punishment

These differences however, are not limited to simply the commission of crimes and the charges that were brought against women; as the chart below shows there were a few key differences in the way women were punished compared to men.

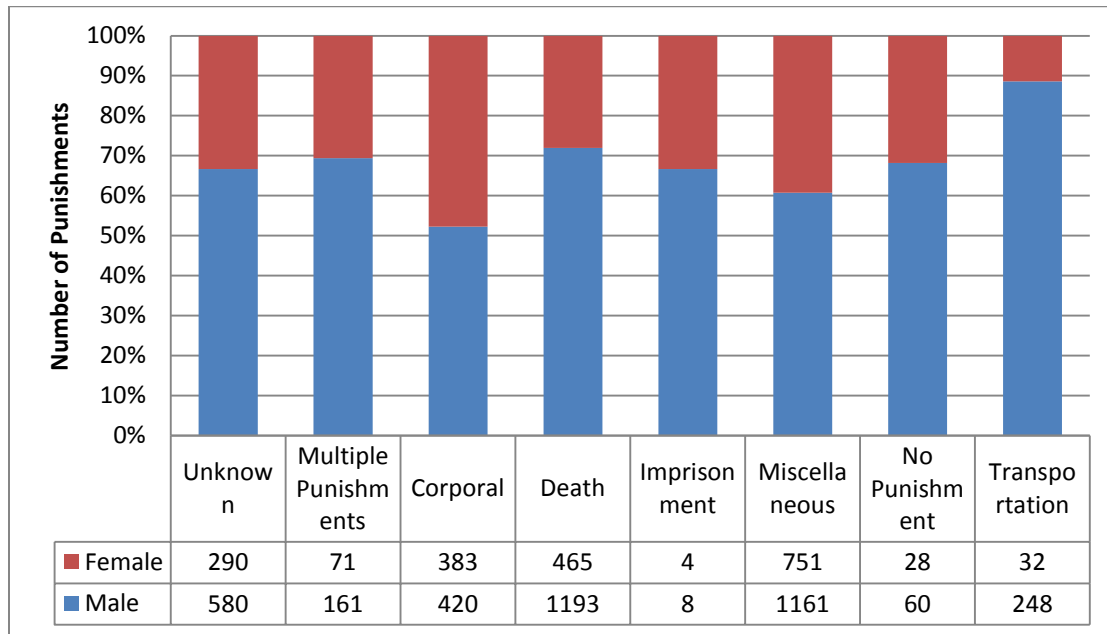


Figure 3.9 Gender and Punishment

While punishments were more evenly distributed across gender than crimes during this period, it is clear that men were much more likely to be transported. Furthermore, women and men were almost as likely to be sentenced to a corporal punishment. This equality carries over when looking at the sub-categories of corporal punishments with men and women most likely to be sentenced to whippings. This even distribution of punishment sub-categories does not translate when looking at the statistics for the death penalty though.

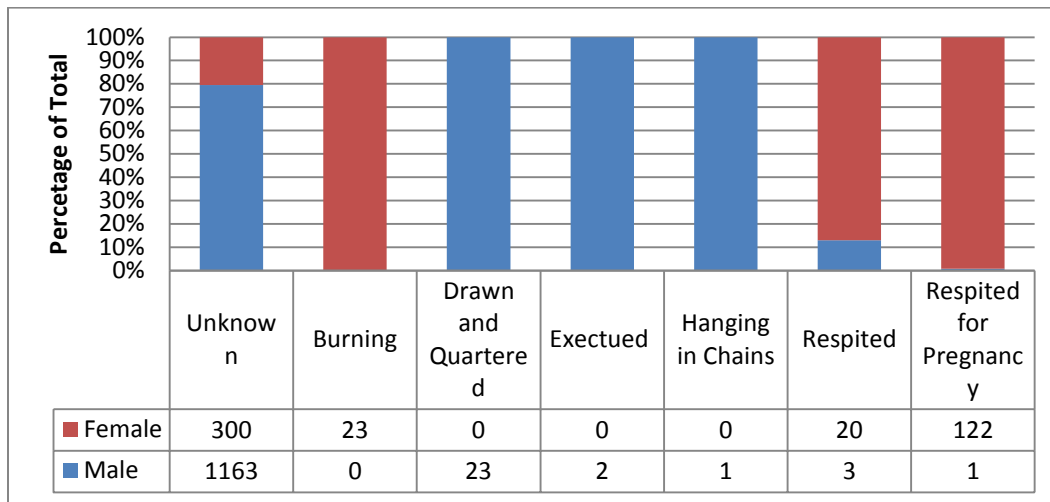


Figure 3.10 Gender and Death Penalties

Burning and respite for pregnancy⁸⁶ were sub-categories that were solely the domain of women. Men only were drawn and quartered, executed and hung in chains. This also means that the macabre theater that accompanied the death penalty was divided on gender lines. While burning no doubt was a ghastly event it was likely not as visceral as drawing and quartering.

⁸⁶ Again, the one case of a man being respited for pregnancy is likely a reporting error, in the trial records they are referred to as male, though a full name is not provided, but in the punishment summary the defendant is clearly considered a female.

CHAPTER 4

CRIMES COMMON TO THE OLD BAILEY

The crime categories of theft, violent theft and killing accounted for nearly eighty-seven percent of the total convictions from the Old Bailey during this period. These are clearly the crimes the court was most concerned with on a day to day basis. Since most cases that were not royal offenses were brought to the Old Bailey by the plaintiff, this statistic also suggests that these were the issues that most concerned the citizens of London. This is not unlike the criminal justice system in the twenty-first century United States where the protection of private property and one's safety are still high priority concerns. Despite these similarities it is clear that London culture viewed the nature and severity of some of these crimes differently than one might today.

4.1 Theft

By far the greatest portion of all crimes tried at the Old Bailey were heard under the category of theft. The court differentiated between theft and violent theft and so for the purposes of consistency this differentiation will carry over into the present work. While the definition of theft is fairly self-explanatory one thing to note is that the monetary value of the stolen goods in question played a role in determining how the crime was tried and what punishments could be rendered.⁸⁷

⁸⁷ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crimes Tried at the Old Bailey", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012).

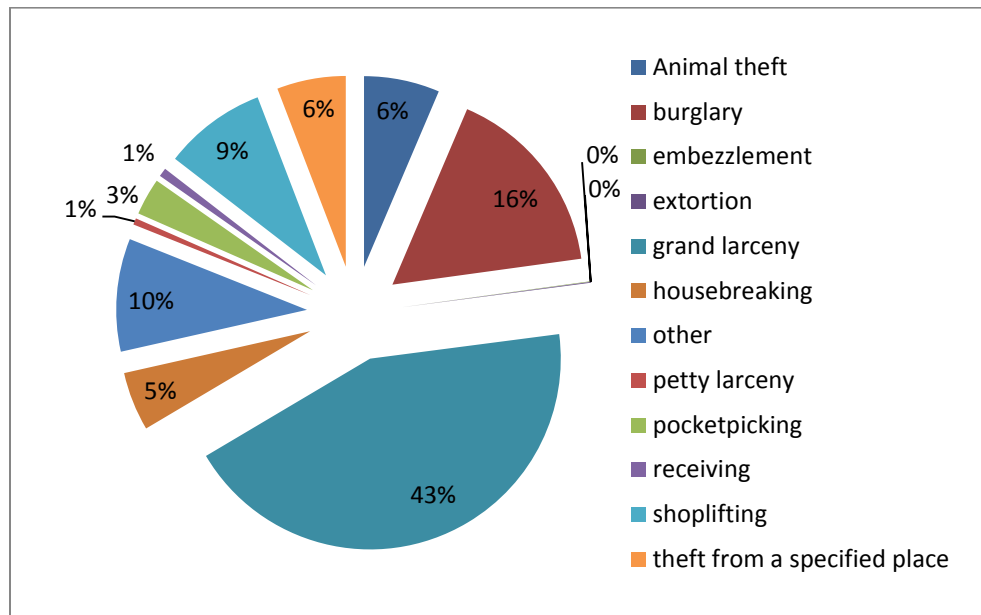


Figure 4.1 Theft Sub-categories

4.1.1 Animal theft

The two hundred eighty cases of animal theft accounted for roughly six percent of the convictions. This crime was limited to domestic animals like cattle, swine and horses. Because of the of draft animals, horse theft was considered a crime punishable by death.⁸⁸ Despite this fact, there are no records of anyone being put to death for animal theft in this period. Unfortunately there are no punishment records for sixty percent (or one hundred, sixty-nine of the two hundred, eighty) of these cases, so it is possible that some of these were sentenced to death, but that is not certain.

In some cases like that of Richard James who was accused and convicted of the theft of ten sheep in 1685⁸⁹, the convict's fate can be deduced because of subsequent records. Richard James appears again on the punishments summary from April 1685 listed among those

⁸⁸ Ibid.

⁸⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1685, trial of Richard James (t16850429-18).

transported out of the country.⁹⁰ For the cases in which punishment is recorded, branding accounted for twenty five percent and whipping for another ten percent. The case of William Shakesby in 1678 is an example of one of those sentenced to branding, for stealing thirty pounds worth of bullocks (castrated bulls) from one William Lord Petre.⁹¹ Whipping appears to have been reserved for cases with a lower monetary value like that of John Philips in 1712 that was accused and convicted of stealing five ewes worth three pounds five shillings.⁹²

Animal theft appears to have been a widespread crime. While not the most numerous crime of theft seen by the Old Bailey, it clearly was one the common person encountered in their lifetime and this makes sense because many people still raised and sold livestock for their survival, even in a society where manufacturing and labor were emerging life styles, food production was vital and thus vulnerable to thieves.

4.1.2 Burglary

Burglary accounted for a little over sixteen percent of the convictions of theft at the Old Bailey or seven hundred seventeen guilty verdicts. Unfortunately sixty-three percent of these trials did not record the punishments that were handed out with the convictions. An examination of some of these trials and the related court documents reveals that many convicted burglars were sentenced to death, but the exact number is hard to know for sure. The trial of Edward Lancet, Bartholomew Jennings and Elijah Arnold is a good example of this. They were accused of burglarizing the home of a merchant from whom they stole two hundred pounds worth of

⁹⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1685 (s16850429-1).

⁹¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1678, trial of William Shakesby (t16781211e-6).

⁹² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1712, trial of John Philips (t17121210-16).

money and goods.⁹³ They were convicted in December of 1674 and sentenced to death by hanging. No doubt the value of the goods stolen had a role in the returning of a death sentence.

Of the trials with a punishment record, the majority of those convicted of burglary were sentenced to brandings. The trial of Ann Dakers is an example of the kinds of crimes that received a lessor punishment.

Ann Dakers was Tried, for that she, with Mary Westcomb , not taken, did break the House of William Glover , and did steal a parcel of Child-bed Linen, with other Goods of value . She confest when taken, but denied the Fact upon the Trial. It being proved she broke the House, she was found guilty of Felony, but not of Burglary.⁹⁴

Dakers was sentenced to branding likely because of the lower value⁹⁵ of the goods she stole. Though the trial record is not clear it is also possible that in her original confession she implicated Mary Westcomb as having a great role in the theft, though this is unlikely considering Westcomb was not tried. Dakers was not sent to the gallows.

One of the interesting things to note about burglary is that it was defined specifically as breaking into a home at night rather than during the day which was considered a lesser crime.⁹⁶ The corresponding crime for daytime break-ins, housebreaking, only accounted for roughly five percent of the convictions, so clearly the preferred time to break into a home was after sunset.

4.1.3 Embezzlement and extortion

The crimes of embezzlement and extortion combined, accounted for less than a percent of total convictions for theft during this period. Together there were only a total of five convictions for these crimes at the Old Bailey. Embezzlement was defined as "Thefts committed

⁹³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1674, trial of Edward Lancet Elijah Arnold Bartholomew Jennings (t16741212-3).

⁹⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1694, trial of Ann Dakers (t16940524-37).

⁹⁵ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey" – As the authors state, juries could under-value the goods stolen in order to avoid having to sentence harsher punishments like death.

⁹⁶ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

by clerks, servants, or other employees of goods belonging to, or in the security of, their employers.”⁹⁷ In December of 1684 James Stockdale was tried and convicted of embezzling over thirty pounds in coin from his master James Hern.⁹⁸ He pleaded guilty and was sentenced to branding.

A great example of extortion and how it related to the process of crime and punishment in London during this period was the case against James Pullen in 1696. Pullen was indicted and convicted of extorting fees from a prisoner at the gatehouse where he was a keeper.⁹⁹ The fact that his extortion was against potential criminals no doubted played a part in his sentencing of fines. While there are too few cases of extortion during this period for a full investigation it would be interesting to look at the changing relationship between the rise of public bureaucracy like the Old Bailey and the jails which were often privately run.

As the Old Bailey authors state, these kinds of crimes became a bigger concern in the mid-eighteen century and it appears that the prosecution of both of these crimes really expanded after the prescription of transportation as a punishment in the nineteenth century. It may be the case that these crimes were rarely prosecuted before transportation became a viable option for punishment because there was a gap between what was seen as lesser punishments like fines and branding and capital punishments. As will be seen in chapter Eight transportation comes to fill this gap after 1718.

4.1.4 *Grand larceny*

Grand larceny was by far the most numerous single crime leading to convictions at the old Bailey with forty-three percent of the convictions for crimes for theft. Grand larceny was defined as, “the theft of goods of the value of 1 shilling or more, but without any aggravating

⁹⁷ Ibid.

⁹⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012) December 1684, trial of James Stockdale (t16841210-49).

⁹⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1696, trial of James Pullen (t16960227-50).

circumstances”¹⁰⁰ The range of punishment for grand larceny is also worth discussion. Forty-five percent of those convicted of grand larceny were sentenced to “miscellaneous punishments” the category including fines and sureties. The next most common punishment at twenty percent was corporal punishments, roughly thirteen percent of the punishments are listed as “unknown” and almost nine percent of those convicted were sentenced to death.

One case that encompasses both corporal punishments as well as a death sentence was that case of Burnet and Welsh in 1692,

John Burnet and Abraham Welsh, alias Captain Welsh , were Arraigned for Robbing William Child of a Silver Tankard, value 4 l. 10 s. a Silver Cup, value 5 l. a Salt, 3 l. 10 s. a Porringer, 50 s. two Silver Cups, 20 s. two Silver Spoons 20 s. two Gold Rings, 15 s. two French Pistols, 35 s. four Guinea's and 30 l. in Money . Burnet confest the Indictment presently; and Mrs. Child swore, that Welsh and Burnet came to her House in Radcliff High-way and called for Wine, and when they were gone, the Plate and Money was missed. This was plainly proved upon the Prisoner, who had nothing material to offer for himself so he was found guilty of Felony.¹⁰¹

Burnet was sentenced to a branding, while Welsh was received a death sentence. It is possible that Burnet helped in the conviction of Welsh or that his confession helped reduce his sentence, but the court records are not clear on why they were given different sentences. It is even possible that Welsh was a repeat offender

A few cases raise more questions than they answer when it comes to investigating the relationship between the crime and the sentence. Take for instance the case of Samuel Gibbons in 1689. He was tried and pleaded for stealing a tankard valued at four pounds and he was sentenced to naval duty.¹⁰² It is unclear as to why he was given this punishment or even if this was a punishment that the court considered a remission of a branding or death sentence. The Old Bailey authors suggest that this was a common occurrence during times of war such as

¹⁰⁰ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹⁰¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1692, trial of John Burnet Abraham Welsh, alias Captain Welsh (t16921012-44).

¹⁰² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1689, trial of Samuel Gibbons (t16890516-6).

the Nine Years' War (or the War of the Grand Alliance) which was from 1688 to 1697.¹⁰³ It would certainly seem that during a time of war, being sentenced to military service might seem like a death sentence. It would be interesting to know if the criminal had any choice in the matter. For instance, did the convicted man get a chance to ask for mercy from the sentencing judge or did the judge inquire as to whether military service might be acceptable to the condemned man?

Some cases of grand larceny resulted in reduced verdicts for a variety of reasons, the most common being the value of the items stolen. The case of Margaret Smith in 1678 is an example of an indictment of grand larceny that was reduced, as they could not prove her guilt in the theft of anything over the value of a shilling and therefore could not convict her of grand larceny.¹⁰⁴ This repeats the themes seen in other theft cases, where the jury may be undervaluing goods in order to grant lesser sentences. She was sentenced to public whipping for her crime.

It is no surprise that the scope of the crime itself and range of punishments employed for convictions of grand larceny was varied. Given that grand larceny was the most common crime that led to convictions during this period it makes sense that the court would have to be more flexible in the face of such numbers. It speaks to the concern that the court, and likely the people of London, had for justice to be equitable that they were willing to reduce charges upon the reaching of a verdict as well as exercise both common and unusual sentences in the fight against this the most habitual form of theft.

4.1.5 Petty larceny

Related to grand larceny was the crime of petty larceny. This was the theft of items with a value under one shilling. There were only twenty-four convictions of petty larceny, accounting

¹⁰³ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹⁰⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1678, trial of Margaret Smith (t16781211e-14).

for less than a percent of the total convictions for theft, but this number does not include the cases of grand larceny that were reduced in severity. Eighty-three percent of the cases of petty larceny were punished with corporal punishments, only eight percent were punished with “miscellaneous punishments” the remainder were unknown. The cases of Jane Boner in 1686¹⁰⁵ as well as that of George Mackfenne in 1687¹⁰⁶ are very similar, with value of the goods stolen just under a shilling; both were sentenced to public whippings. While the specific goods in the case of George Mackfenne are not listed in Boner’s case she stole a pair of leather shoes. Not only were the items stolen in petty larceny cases of low value, but often they were items essential to survival like clothing or shoes. It is interesting to note that aside from animal theft there do not appear to be any cases of food being stolen brought to the Old Bailey, these crimes were probably not considered a felony and so would have been tried in lower courts. If such cases made it to the Old Bailey it is possible that they usually resulted in not guilty verdicts due to jury sympathy. Still, it would be worth investigating crimes of stolen food to shed light on Londoners’ feelings about crimes of necessity.

4.1.6 Housebreaking

There were a total of two hundred and eighteen convictions for the crime of housebreaking, which accounted for roughly five percent of total convictions for theft. Housebreaking was the same crime as burglary, but committed during the hours of the day. Interestingly, nearly forty-eight percent of those convicted of housebreaking were sentenced to death. “Miscellaneous punishments” accounted for twenty-two percent and corporal another ten percent. These numbers are similar to those seen for burglary. Given the fact that many a home in London may not have been likely to be completely empty during the day due to differences in

¹⁰⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1686, trial of Jane Bonner (t16860224-39).

¹⁰⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1687, trial of George Mackfenne (t16870223-47).

employment (location, hours worked, or even employment of women in a household) these numbers are not that surprising.

What is an interesting question, one not easily answered by the Old Bailey records, is how common was house breaking on Sabbath days? Certainly this would seem an opportune time to burglarize a home and the time most likely for the residents to be absent from the scene. This was certainly the situation in the case of Thomas Sutton and Elizabeth Browne, who were tried for housebreaking in 1680. On a Sabbath day in August the two gained entrance to the home of a Mr. King by claiming to be friends of his visiting from the country. His maid allowed them into the home; they proceeded to attack and bind her and then ransacked the home for valuables.¹⁰⁷ The maid eventually broke free from her bonds and cried out for help; the neighbors responded and helped apprehend the criminals.¹⁰⁸ Sutton and Brown were convicted and both sentenced to death.

Though this story is rather dramatic, an examination of some of the cases for housebreaking suggested that not all convictions that resulted in a death sentence were accompanied by assault. For instance, Richard Moor was convicted of housebreaking and sentenced to death, despite the only eye witness to the crime having gone to sea and not being present at the trial, as another claimed to have witnessed his confession upon his apprehension.¹⁰⁹ According the Ordinary's account of his death, Moor was repentant while standing the gallows, but little is said of his crimes or even his admittance of guilt.¹¹⁰

While the differences between housebreaking and burglary were mainly limited to the hours they took place, it is interesting that the court considered them two different crimes. The

¹⁰⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1680, trial of Thomas Sutton Elizabeth Browne (t16800910-1).

¹⁰⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1680, trial of Thomas Sutton Elizabeth Browne (t16800910-1).

¹⁰⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1691, trial of Richard Moor (t16910218-15).

¹¹⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate's Account, February 1691 (OA16910226).

punishment statistics do not seem to suggest that the crime was seen as worse during the day or night time hours, but perhaps the difference in when the crime was committed had less to do with how jurors viewed the severity and more to do with who was at risk in the home. Housebreaking would seem to put female residents and household servants at risk while not always the home owner. Burglary was more likely to put the home owner at risk as well.

4.1.7 Pocketpicking

Pocketpicking. in modern terminology “pickpocketing”, accounted for roughly three percent of the total theft convictions for this period. Part of the reason for this low number was due to the rigid definition of the crime, in order to convict a person of pocketpicking the court had to prove the theft was done without the victim’s knowledge.¹¹¹ The definition was later expanded in the nineteenth century, but at the same time the death penalty was removed as a punishment option for the crime.¹¹² This is important to note because during the period in question the majority of those convicted of pocketpicking were sentenced to death (roughly fifty-five percent). Corporal punishments accounted for a little over eighteen percent, “miscellaneous” was at six percent, transportation was a little over three and a half percent and the remainder was recorded as unknown.

In October of 1686 Joseph Hensly was tried and found guilty of picking the pocket of Elizabeth Newhall for roughly the value of nine shillings, and was sentenced to death.¹¹³ In addition to his court records the words of the Ordinary’s account exist as well:

he made Glass-Bottles , and wrought a while for himself, but being given to ill Company, he became extravagant in his Conversation, he says, that he little

¹¹¹ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹¹² Ibid.

¹¹³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1686, trial of Joseph Hensly (t16861013-28).

minded the Service of God, and for not keeping to an honest Calling, he is now justly brought to Punishment.¹¹⁴

This account of the Ordinary of Newgate seems to suggest that Hensly took responsibility for his actions and felt that his punishment was justified. It is hard to know how true this record is, but it does suggest that the publication took the opportunity of the severity of the punishment to impart a moral lesson. Similar tones are seen in the record of Dorothy Hall, who was convicted of pocketpicking and sentenced to death in 1687.¹¹⁵

she is Aged sixteen Years, and was Born in the Strand, Her, Father (she says) is dead; and she being not subject to the Government of her Mother, was, drawn away from the Family, by the instigations of Evil persons, and that for a supply of her extravagant Expences, she had learn'd that deceitful Art aforesaid: She confess'd that tho' she be young in Years, yet. that; the Devil had frequently tempted her to evil ways, and that she had not guarded her heart by Prayer, to resist those Temptations.¹¹⁶

Despite her young age Hall is facing the death penalty and the Ordinary's words make it seem that she both deserves and accepts this punishment. Again it is hard to separate the truth from the moral lesson, but it certainly suggests that even if those convicted did not accept the harshness of their sentences, the people of London must have to some degree.

In some cases, though, youth did save the convicted from worse fates, as in the case of John Bennet in 1683, who had his crime reduced from pocketpicking to petty larceny on account of his age.¹¹⁷ Unfortunately, the court records do not reveal how old he was, but one cannot but wonder if these inequalities in verdicts such as that between Bennet and Hall helped play a role in the removal of the death penalty as an option for pocketpicking in the nineteenth century.

¹¹⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate's Account, October 1686 (OA16861025).

¹¹⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1687, trial of Dorothy Hall (t16870512-12).

¹¹⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate's Account, May 1687 (OA16870525).

¹¹⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1683, trial of John Bennet (t16830223-5).

4.1.8 Receiving

The crime of knowingly accepting stolen goods was called receiving. The authors of the Old Bailey website note that it was not considered a felony until 1691 and required a companion conviction of theft in order to prosecute,¹¹⁸ but there were still a number of criminals tried for this crime prior to that statute. The total number of convictions during this period reported by the Old Bailey was less than one percent of the total convictions for theft, but after 1687 the number convicted ranged from three to five criminals for most years. This suggests a steady interest in the community to punish at least the most flagrant offenders. In the case of Jane Bosse, this certainly was the case ~~as~~; the Old Bailey records her as “an old notorious offender”.¹¹⁹ Most criminals convicted of receiving were given “miscellaneous sentences”, including fines and sureties (roughly fifty percent), but a few were punished more severely like in the case of Margret Smith in 1687. She faced the death sentence for receiving mostly because of the value of the items stolen. John Grevil who was the thief in this instance was also put to death, Smith’s sentence was commuted due to pregnancy, but Grevil’s was carried out.¹²⁰ While not the most frequently-prosecuted offense with fewer cases resulting in convictions,¹²¹ receiving was clearly a crime that held importance to the community. The fact that notorious or flagrant receivers of stolen goods were punished appears to suggest that the community of London only had so much tolerance for such criminals.

¹¹⁸ Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

¹¹⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), March 1677, trial of Jane Bosse other (t16770307-9).

¹²⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1687, trial of John Grevil Margaret Smith (t16871207-42).

¹²¹ Only ninety two instances of receiving were prosecuted during this period with nearly sixty-seven percent being acquitted. Part of this acquittal percentage might have been related to the need for a conviction of theft to accompany the receiving prosecution.

4.1.9 Shoplifting

The crime of shoplifting, privately stealing five shillings or more from a shop, did not have a definition until the year 1699, but the authors of the Old Bailey website have decided to include crimes of this nature in the records under this category from 1674 forward.¹²² From 1674 to 1714 there were three hundred eighty recorded convictions of shoplifting, this accounted for nearly nine percent of the total convictions for theft. Thirty-seven percent of these were punished with “miscellaneous punishments” like fines, twenty-two percent were given corporal punishments and nearly seventeen percent were given the death penalty.

The reason for this percentage of death sentences is not clear, with pocketpicking having such a high percentage of death sentences; one might want to know why shoplifting, a similar crime committed against merchants, was punished at a much lower rate. There appears to be no chronological trend in the number of death sentences handed out per year for shoplifting. Both 1681 and 1708 saw a record high of eight death sentences for shoplifters, but the years between these two years record anywhere from one to five sentences of death. The only consistency seems to be from 1711 to 1713 where each year five shoplifters were sentenced to death.

One thing that seems to be common among those convicted of shoplifting and sentenced to death, is that many of them appear to be repeat offenders. This was the case for this unnamed offender in 1677,

An old Offender having lately, with two of his Female Confederates, stolen a piece of Stuff from a Gentleman in Ludgate-street , had the impudence, within two days, to take their progress again by the same shop , and being known, he was apprehended, and now Convicted ; and having formerly received the civility of the Warm Iron, was Condemned to die.¹²³

¹²² Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹²³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1677, trial of old Offender (t16770425-4).

This was the case of many other offenders who were sentenced to death at least in the early part of this period, such as Catherine Green in 1680¹²⁴, Sarah Burrows (alias Sarah Hill) and Ann Dye together in 1689¹²⁵. Many of the later trial records do not indicate if the accused had previous convictions or not, so they must be view as first time offenders. Due to this lack of clarity in the records it is hard to be sure if this is an indication of a crackdown on shoplifting as a means to protecting growing economic interests in the community, or a continuation of a policy to weed out notorious offenders. It is hard to know why pocketpicking had such a higher percentage of death penalties than shoplifthing, or at least why it was considered for a capital punishment. One would conjecture that if protection of the growing merchant interests in London was so important than more death sentences for shoplifters would have been seen, or at least they should have been given corporal punishment.

Another statistic worth noting is that of the total sixty-four shoplifters sentenced to death, twelve of them received respite for one reason or another. Three were respited with no specific reason given and nine were respited for pregnancy. One example is the case of Margaret Beard:

Margaret Beard , a Girle , about 12 Years of Age, was Indicted for stealing a piece of Silk, value 6 l. from Mr. Coldicot , near Ludgate. She came to the Prosecutors Shop to buy some Silk, and stole away the piece afore said ; and when she was pursued, she dropt it out of her Pettycoat. She was very impudent in her Behaviour when taken, and had been an Old Offender, though Young; she said that she was drawn away by wicked Company: In the end she was Found Guilty.¹²⁶

In this case the defendant is considered both an “impudent” criminal as well as an “old offender”, yet her death sentence was respited. The reason for the respite is not given, but perhaps her young age was a factor despite her being a repeat offender.

¹²⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1680, trial of Catherine Green, alias Johnson, alias Dodson (t16801013-1).

¹²⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012)), October 1689, trial of Ann Dye Sarah Hill (t16891009-6). And *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012)), October 1689, trial of Sarah Burrows, alias Hill Ann Dye alias Thomas, alias Whiterod (t16891009-32).

¹²⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1691, trial of Margaret Beard (t16910527-14).

Almost six percent of the total convictions for theft were under the category of theft from a specified place. This crime is distinguished from that of house breaking or burglary in a few ways. For instance theft from a specified place includes locations that are not considered traditional residences like ships, warehouses, and factories, it also included the theft of materials off of a home like lead shingles¹²⁷.

4.1.10 Theft from a specified place

Theft from a specified place was the crime of stealing items from buildings that were not residences like Churches, warehouses or even ships¹²⁸. Theft from a residence could be tried under this category if the home was not broken into¹²⁹. There are no records of any criminal sentenced to death for theft from a specified place during this period. Of the records that list a known punishment, branding was the most common, accounting for almost twenty-five percent of the total two hundred fifty-five guilty verdicts rendered for theft from a specified place, over this period. The trial of an unnamed youth in June of 1679 serves as a good example of the kind of crimes that resulted in brandings. This "mischievous youth" was seen lurking outside of a barber shop shortly before it had been robbed, when the eye witness identified him, he was found guilty and branded a thief in the hand.¹³⁰

Whipping was the next most common punishment for this theft, accounting for fourteen percent. In June of 1714 Mary Jones was indicted for stealing a piece of "Fustian", a heavy woven fabric, from the warehouse of one Edward Byram, the goods were found on her person when she was caught.¹³¹ She was found guilty and sentenced to whipping. The values of these goods and those mentioned being stolen in the trial from 1689 appear to be roughly equal, so

¹²⁷ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹²⁸ Ibid.

¹²⁹ Ibid.

¹³⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), June 1679, trial of Youth (t16790605-6).

¹³¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), June 1714, trial of Mary Jones (t17140630-2).

the difference in punishment may have simply been the whimsy of the court at the time, or it might have been part of a movement away from the permanent punishment of branding.

In both cases though the crimes were met with similar corporal punishments, and nothing in the trial records seem to indicate a particular moral distaste for this crime. This form of theft was probably included in the Old Bailey's jurisdiction to provide another layer of protection to the growing merchant class in London. By creating a new category of theft that was separate from the more domestic crimes, the court could provide protection and recourse to the interests of all of London's citizens.

4.1.11 Other thefts

The final category of theft that the Old Bailey website recorded is, "other". In most of these cases too little information is provided in the trial records to determine much else about these cases. The "other" category accounts for roughly nine and a half percent of all theft convictions or four hundred and eighteen trials. Worth noting about these cases is that twenty of them produced death penalty convictions. Henry Robertson's case from December of 1674 is likely a good indicator of why so many were sentenced to death with little information about the cases recorded.

Henry Robertson a person often free of this Corporation was condemned for Jilting or stealing several pieces of Plate , he had both been burnt in the hand, and transported (as it is said) before, but now it is thought must receive a Passport into another world, being with the rest condemned to dye.¹³²

Though of these twenty death sentences there are other cases where no prior criminal record is recorded. It is unclear what the motivations were for sentencing of the death penalty. One thing that becomes clear from these trials is that the life of a thief was full of risks. Even if the crime committed was not considered serious, among the public at large, the judges at the

¹³² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1674, trial of Henry Robertson (t16741212-7).

Old Bailey still might react harshly, a convicted criminal still might find himself or herself facing the gallows.

4.2 Violent theft

Four percent of the total guilty verdicts returned at the Old Bailey from 1674 to 1714 were for “violent theft”, making it one of the top three crime categories that the Old Bailey tried. This category of crime contained only two sub-categories, highway robbery and robbery. Violent theft as defined by the Old Bailey website was the “combination of violence and theft”¹³³. As shown in the graph below, highway robbery accounted for the majority of convictions of violent theft at the Old Bailey, with robbery accounting for nearly a third of the total.

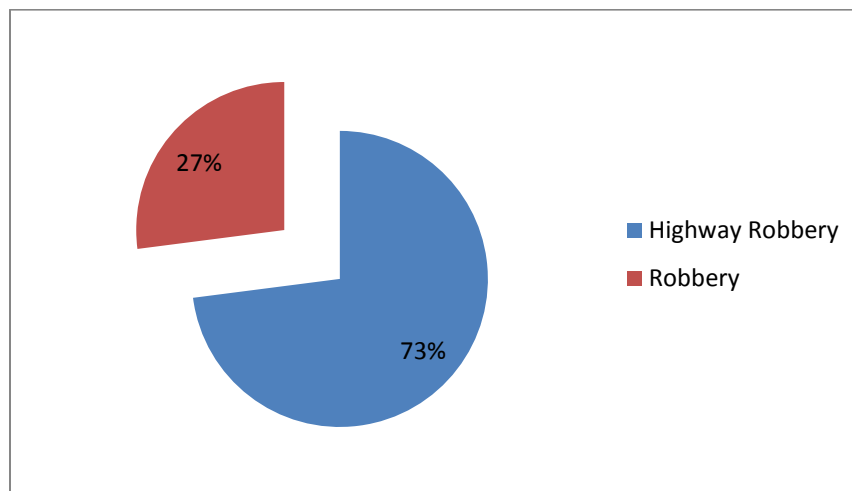


Figure 4.2 Violent Theft Sub-categories

4.2.1 Highway robbery

Highway robbery took place ‘on or near the King’s highway’ and many of London’s streets were included as highways under legislative definition of streets as locations where transportation took place¹³⁴. This is a crime that still today captures the public imagination, as shall be seen what is imagined was often far from the reality of this crime. Unfortunately the vast

¹³³ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹³⁴ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

majority of the punishments for highway robbery are unknown; only twelve of the one hundred ninety-seven convictions have a punishment recorded. Though like all of the crimes seen to this point, there were a variety of punishments employed in curtailing the activities of highway robbers. Since ninety-three percent of highway robbery cases were listed as having “unknown punishments” it is hard to know what portion any of these forms of punishment represented, but brandings, whippings and naval duty all appear in the records as well as the death penalty. Despite this low number of recorded punishments certain observations jump out..

For instance, it is known that the death penalty was handed down in at least one case. In 1692 Elinor Jones was tried and convicted of highway robbery and sentenced to death, but the sentence was respited for pregnancy.¹³⁵ It is unlikely this was the only time the death penalty was levied for highway robbery, especially given that the items stolen in this case do not appear to have a high value. There is another instance from 1675, that appears to have resulted in a death sentence. That trial, of a man only identified by the initials G.F., indicates that he may have been put to death for his career as a criminal, “He was a stout Robber, and as he had committed many Crimes, which deserv'd the utmost severity of the Law, he shewed no great Remorse, neither at his Tryal nor at his death.”¹³⁶ Again in 1676 the death sentenced is hinted at for highway robbery in a summary of the June 6, 1676 sessions, “Three men and Two women received sentence of Death , but onely Four suffered, viz. Alexander After and Thomas Fowler , for Robbery on the Highway, being Rogues of the Foot-pad that used to pillage Market-women, &c.”¹³⁷ Thus it appears that highway robbery was taken as seriously as many other crimes of theft and punished accordingly. What is interesting to note is that in these cases, no mention of the king or the King’s authority over the roadways is mentioned, not enough

¹³⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1692, trial of Elinor Jones (t16921207-42).

¹³⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1675, trial of G. F. (t16751013-5).

¹³⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1677, trial of Alexander After Thomas Fowler (t16770711a-5).

information exists account for this absence of royal invocation, but it might suggest an implicit recognition by the judges of the Old Bailey that highway robbery could be defined as a common law crime.

4.2.2 Robbery

The other category of crime that was tried under the violent theft umbrella was robbery. This was the robbing of valuables from a person, this robbery did not take place in or around the King's highway, it could also include the forceful robbing of the mail¹³⁸. While this crime was less common than highway robbery, it still accounted for seventy three convictions and twenty-seven percent of the total violent crimes convicted. Unfortunately, as with highway robbery, the records for the punishments assigned to these convictions of robbery are mostly "unknown", but also like the case of highway robbery similar trends stand out. For instance, there were seven cases of death sentences being respited for pregnancy and one case where the sentence was respited for unknown reasons. A search of the death summaries confirms that the death sentence was given and enacted in cases of robbery, as in the case of Thomas Gibson and Robert Hawkson who were indicted for the robbery of Edward Bets and their sentence was recorded in the summaries of the July 6 1681 sessions.¹³⁹ Like highway robbery, the punishments assigned to robbery appear to be mostly corporal or capital in nature, with fines also accounting for some of the punishments, but without a larger percentage of recorded punishments it is unclear how common any of these methods were.

The case of two boys, William Green and Richard Henfrey, from 1695 might provide a good understanding of how the crime of robbery was viewed. They were charged with robbing Daniel Winchester, "an infant of the age of eight", by luring him into an alley to show him

¹³⁸ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹³⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1681, trial of Thomas Gibson Robert Hawkson (t16810706a-5).

pictures and then restraining him while they removed a gold diamond earring.¹⁴⁰ They were found guilty and sentenced to whippings. There are a few items within this cases that can help scholars understand the way London society viewed robbery. This is an interesting case because it speaks to the conceptions of age of criminal responsibility as well as victimization. While the exact age of the defendants is not given, they are identified as “boys” as opposed to the victim who is eight and identified as an infant. This is important because of the fact that the case was even tried at the Old Bailey, this suggests that robbery was important enough to try and punish children or teenagers for. While the case is important enough to warrant a trial, and elicit a guilty verdict, the boys are sentenced to whippings. These elements of the trial and the punishment choice suggest that robbery was something London society worried about enough that they wanted to make an example of these two boys, but they did not feel it necessary to take their lives which might indicate that the crime was not seen as threatening to societal order as some other crimes.

In any case the lack of good statistical data on both robbery and highway robbery leave modern scholars with limited information. One thing is clear though: the category of violent theft accounted for the fourth most common guilty verdicts of the trials at the Old Bailey, and so it must have been important to Londoners. This alone suggests that the protection of private property was one of the roles that the Old Bailey fulfilled in London society; this is further reinforced by the fact that theft was by far the crime with the highest percentage of convictions at the Old Bailey.

4.3 Killings

Killings account for nearly nine percent of the total crimes resulting in convictions at the Old Bailey. These cases were often the sensationalized cases in the media of the time proving

¹⁴⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1695, trial of William Green Richard Henfrey (t16950703-17).

that infanticide, murder and other violent acts have always held a morbid position of importance in the popular psyche.

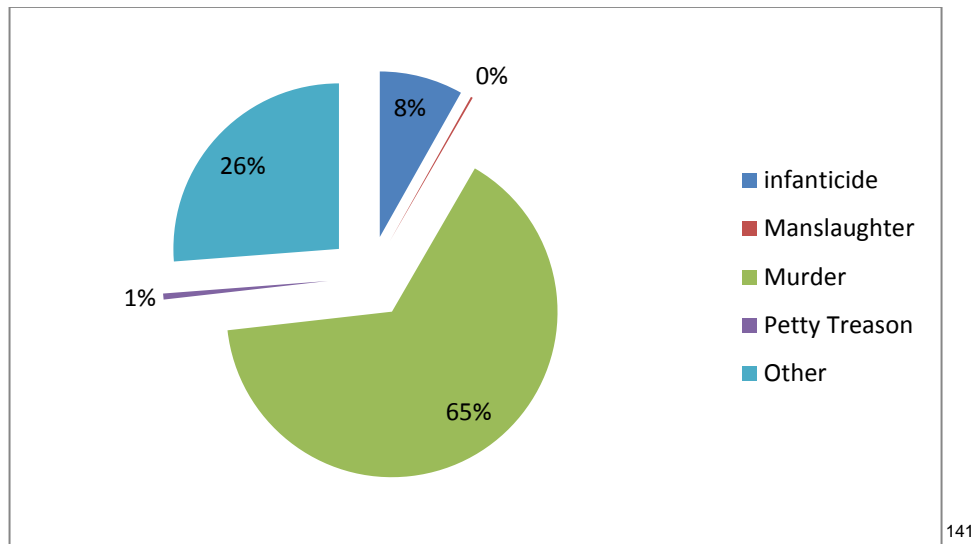


Figure 4.3 Killings

4.3.1 Infanticide

Infanticide was defined as the killing of a recently born or newborn child. The infanticide statute of 1624 (repealed in 1803), held a unique place in the crimes tried at the Old Bailey because it placed the burden of proof on the defendant to prove her (usually) innocence not the court to prove her guilt.¹⁴² It was also exclusively a crime women were tried for during the 1674 to 1714, with the exception of one man who with his wife were tried and acquitted of infanticide. There were a total of eighty five cases of infanticide tried of which forty-two resulted in convictions. These forty-two guilty verdicts accounts for eight percent of the total convictions for the crime of killing. Because of the nature of these crimes the Old Bailey records contain much more moralistic language in these cases, language that is more commonly seen in the Ordinary's Accounts. For example the April, 1677 case of an unnamed woman makes certain assumptions about her moral standing,

¹⁴¹ This table displays a percentage break-down of the sub-categories of crimes under killings from 1674 to 1714.

¹⁴² Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

A woman, whose age might have promised more Chastity and prudence, being privately delivered of a Bastard-childe, made shift, by her wickedness, to deprive the poor Infant of that life she had contributed to by her wantonness . She pretended it came by its untimely end, by falling from her body on the floor whilst she unhumanely went from the bed towards the door; but she concealing it above a week under her Pillow, the Law justly Condemn'd her as a wilful Murtheress¹⁴³

The Ordinary's Account for May, 1677 continues the moral implications with, "One of the other Four was Condemned for murdering her Bastard-Childe, which she most unnaturally kill'd and hid in her bed for some days, till the same was discovered by one that came to visit her"¹⁴⁴ The time between the trial and her execution were very short which was somewhat unusual. The nature of her crime may have played a role in the expedience of her execution. Concealing the death and the inability to prove that a child was still-born were effectively death sentences for a woman accused of infanticide. Mary Baker, who was accused of infanticide in 1693, claimed a still-birth and there was no evidence of foul play, but she was still sentenced to death.¹⁴⁵

4.3.2 *Manslaughter*

Unlike murder, the crime of manslaughter was a killing without premeditation, often occurring in the heat of the moment, for example during a fight.¹⁴⁶ During the period of 1674 to 1714 there were two cases of manslaughter reported; one resulted in a not guilty verdict and the other in a conviction. While this one case accounted for less than one percent of the guilty verdicts rendered in the category of killings, the case demonstrates the fine line between murder and manslaughter. In December of 1687 George Ward was brought to trial for stabbing an Isaac Orbell with his rapier which resulted in Orbell's death.¹⁴⁷ The stab was a result of a

¹⁴³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1677, trial of woman (t16770425-3).

¹⁴⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate's Account, May 1677 (OA16770504).

¹⁴⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1693, trial of Mary Baker (t16931012-32).

¹⁴⁶ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹⁴⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1687, trial of George Ward (t16871207-20).

fight in a coffee-house that got out of hand. While Ward was found guilty of manslaughter it is not clear what his punishment was. The trial record does make mention of an appeal from Orbell's widow, which suggests that she did not find the verdict or the punishment fitting.¹⁴⁸

4.3.3 Murder

By far the largest sub-category of crimes tried under killings was murder. It accounted for roughly sixty-five percent of the convictions of defendants accused of killing. As stated above the main difference between murder and manslaughter is the element of premeditation. Take for example the case of Charles Pamplin, accused of murdering Lt. Charles Dalison.¹⁴⁹ The evidence against Pamplin was thin with no one having witnessed the actual act, but it was proved that, "the Prisoner had declared, Mr. Dalison had affronted him, and that he would be reveng'd; and that very morning he told one, he resolv'd to cudgel one that had abused him"¹⁵⁰ With little to say in his defense Pamplin was found guilty and sentenced to death. Likewise with the case of George Casewell who confessed to murdering Andrew Hickson because of an "old grudge betwixt them"¹⁵¹ though it is not clear what punishment Casewell received, it is clear that murder was a crime that usually required a prior knowledge of the victim. As is the case today, it appears that most people killed in this period were familiar with their murderers.

4.3.4 Petty treason

Petty treason was a very specific offense reserved for wives who killed their husbands or servants who killed their masters. It was a stern condemnation for those, who in the words of the Old Bailey website authors, "subverted normal hierarchies".¹⁵² Given the generally subservient role that women had according to law in 17th century England, it is surprising that out of the 10,753 trial records from 1674 to 1714 there are only five instances of cases for petty

¹⁴⁸ Ibid.

¹⁴⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1678, trial of Charles Pamplin (t16780516-8).

¹⁵⁰ Ibid.

¹⁵¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1691, trial of George Casewell (t16911209-22).

¹⁵² Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

treason. Of these five cases only three resulted in convictions. The three convictions resulted in two sentences of death and one sentence of branding. The tale of Mary Aubry from 1688 is perhaps the most sensational of the three. Having murdered her husband by strangling him, she then employed the help of her son to dismember and conceal the body.¹⁵³ Upon investigation Aubry confessed her crime and was convicted and sentenced to death by burning. What is striking about this crime and the trial records associated with it is the lack of moral language contained in the trial. Sadly there is not an Ordinary's Account for Aubry's execution, but perhaps even the silence here speaks volumes. There are several possibilities for why there is a low number of cases of petty treason, perhaps the severity of the punishment did in fact deter others. It is also possible that the prescribed punishment of burnings was a hindrance to convictions and so cases of petty treason were tried as murder cases instead. With so few cases and no real literature associated with petty treason it clearly did not hold the same place in the public imagination that infanticide and murder did.

4.3.5 Other murders

For the most part the sub-categories of killings are self-explanatory, like infanticide, manslaughter, and murder, but two hundred thirty-nine cases were tried under the sub-category of "other", one hundred thirty-five of these cases resulted in convictions. For a variety of reasons these crimes did not get put into one of the above categories or as the authors of the Old Bailey website suggest, these records simply did not specify a sub-category.¹⁵⁴ Upon further inspection one finds that many of them were cases of manslaughter, like the case of Stephen Cornwall in 1681, who struck a man and killed him in a quarrel over a bundle of wood.¹⁵⁵ In other cases like that of John Bowman who ran over a child with his cart in 1683, the deaths

¹⁵³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1688, trial of MARY AUBRY Dennis Fanet John Fanet John Desermo (t16880222-24).
¹⁵⁴ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹⁵⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1681, trial of Stephen Cornwall (t16810520-1).

were clearly more accidental in nature.¹⁵⁶ Whatever the criteria for inclusion in this category, it was a significant number of the convictions for killings at twenty-six percent of the total.

¹⁵⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1683, trial of John Bowman (t16830829-10).

CHAPTER 5

CRIMES AGAINST THE CROWN

Royal Offenses is the category where a historian might expect to find the most evidence for royal authority over the English legal system. While crimes like treason and religious offenses were tried at the Old Bailey, the vast majority of crimes tried under this category concerned the crown in the most general sense. As the Old Bailey website says, "This is a broad category of offences where the victim was not a private citizen, but was either the King (Queen) himself or his subjects in general."¹⁵⁷ This is an important distinction, as all other crimes tried at the Old Bailey were brought before the court by private parties. With this in mind it is not hard to see how crimes like coining offenses and tax offenses fit into this category, and as will become clear the kinds of royal offenses the Old Bailey is concerned with are far more about the proper maintenance of society than they are about protection of the crown, regardless of who is the monarch.

¹⁵⁷ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

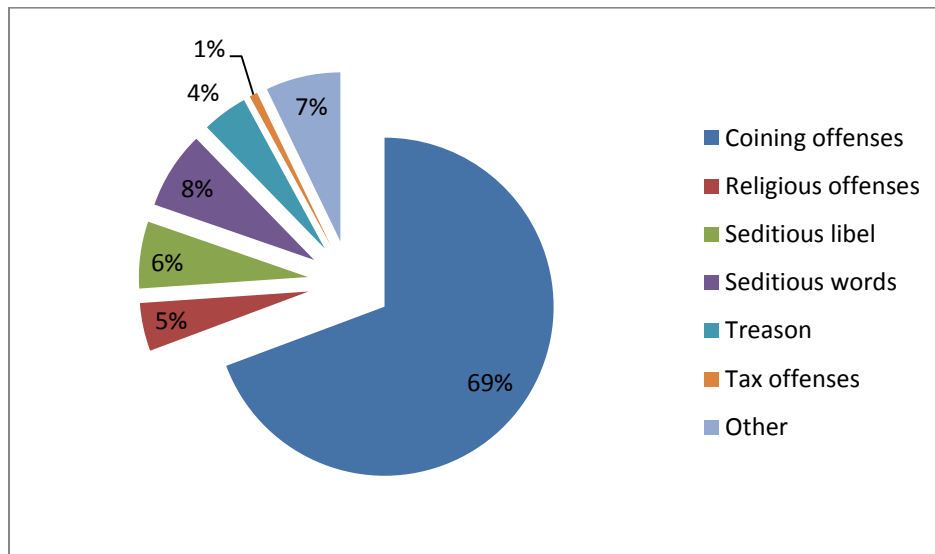


Figure 5.1 Royal Offenses Sub-categories

5.1 Coining offenses

There were a total of eight hundred ninety-two trials held under the category of royal offenses, of which three hundred ninety-one resulted in convictions. Coining offenses were by far the greatest number of convictions for royal offenses, with two hundred seventy-one convictions, that is sixty-nine percent of the total. Coining offenses encompassed a number of counterfeiting crimes that involved the currency. One reason this is included in royal offenses is because the counterfeiting of gold or silver coins was a form of treasons.¹⁵⁸ Though the death penalty was discussed in the chapter on punishments, it warrants another discussion since the death was by far the most common punishment for coining offenses. With one hundred ninety-four sentences of the death penalty issued for coining offenses, one hundred thirty-three of those are “unknown”, and it is possible that some of these were respited or not carried out and thus did not get recorded. This leaves sixty-one sentences for which records are extant, of those thirty-three were respited for pregnancy, so over fifty percent of the death sentences recorded for coining offenses were never carried out. The most common method of capital punishment for this offense was burning, with twenty sentences of burning carried out over this

¹⁵⁸ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

forty-year period. The other method of capital punishment carried out for coining was drawing and quartering. One thing worth noting is that both burning and drawing and quartering are methods of capital punishment that are very public and gruesome methods of punishment. It is unclear if the fact that these were royal offenses played any role in the sentencing, but drawing and quartering was a common punishment for royal offenses and never sentenced in a non-royal offense case during this period.

The first trial record for which there is documentation of a guilty verdict for a coining offense was the trial of Ann Petty a widow over the age of sixty¹⁵⁹. In 1674, she was found guilty of clipping and sentenced to burning. Her son was also indicted for coining, but the government was unable to prove that he was involved in his mother's crime. In 1690 Thomas Castle was indicted for counterfeiting fifty shillings worth of coins, specifically coins issued under King James I's reign (1603-1625). He was found guilty and sentenced to being drawn and quartered¹⁶⁰. Later he confessed his sins to the Newgate ordinary and while he did not admit to his crime, he did not offer any help in identify the counterfeiters. In response, the ordinary told him, "That his Repentance cannot be counted sincere, because he refuses that by Justice such Crimes may be prevented, whereby the Community is so much dammfied"¹⁶¹ This lends further credence to the idea that drawing and quartering may have been used as a punishment to make examples of criminals. Certainly both the punishment and the discourse of the ordinary's account make it clear that even if Castle was not guilty of the counterfeiting himself, his compliance and unwillingness to help apprehend those guilty was just as dangerous.

While death was the most common sentence for coining offenses it is important to note that there were a total of six hundred eighty-eight coining offense trials held with a forty percent

¹⁵⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1674, trial of Ann Petty her Son (t16741212-2).

¹⁶⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), October 1690, trial of Thomas Castle alias Cassey (t16901015-4).

¹⁶¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), Ordinary of Newgate's Account, October 1690 (OA16901024).

conviction rate, and of those one hundred ninety-four resulted in executions, that is thirty percent of the total. That also means that more than half of those charged with coining offenses were acquitted with no punishment. Considering this is the most common form of treason the Old Bailey considered, it is safe to say that in regard to coining, at least the Old Bailey found a balance between protecting the crown and respecting the rights of the common person.

5.2 Religious offenses

Religious offenses were mainly crimes committed against the Church of England, such as acting as a Catholic priest, but some were also accusations against witches or other alternative religious practices.¹⁶² The trend in much of the historiography for the Glorious Revolution is to view the Stuart kings as favoring Catholicism at the very least, if not trying to impose it on the nation. Given this it is interesting that the cases of religious offenses seen at the Old Bailey show a court this rather anti-Catholic. This suggests that the Old Bailey was more than just an extension of royal will. There were thirty-one trials for those accused of religious offense in this period of time, eighteen of which resulted in guilty verdicts; that is almost a sixty percent conviction rate. Of these eighteen convictions five sentences are unknown, three were issued multiple punishments, one was given a fine, one imprisonment and eight were drawn and quartered. Again it is likely that drawing and quartering was reserved for those of whom the court wanted to make particular examples. All of the cases that produced a sentence of drawing and quartering were related to accusations of Catholic activity. For instance, in 1680 seven defendants were indicted for being Catholic priests. Six of them were convicted with Alexander Lunsden, "being a Scotchman-born, was not thought to come within the Verge of the said Act of Parliament, and therefore reserved for a special Verdict in that

¹⁶² Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

Case.”¹⁶³ It is unfortunate there is not more information about what happened to Lunsden, as his case could provide an interesting counter point depending on where he eventually was tried and what verdict was rendered. The fact that his Scottish origins got him out of sharing the fate of his fellow defendants, at least under auspices of the Old Bailey, further suggests the role of the Old Bailey was London’s criminal court.

Worth noting is that religious offenses were not limited to trials against Catholics. In 1677 tailors Lodowick Muggleton and Reeves claimed:

themselves, The two last Witnesses of God that ever should be upon the Earth; and that they had absolute and irrevocable power to save and damn whom they pleas’d; to which end one call’d himself the Blessing, the other the Cursing Prophet. And the said Reeves dying some years since, Muggleton pretends his Spirit was left with him, and the whole power of Witnessing, Blessing, and Cursing, devolved into his hands¹⁶⁴

He was sentenced to stand in the pillory.¹⁶⁵ Still, Muggleton’s crime was not seen as heinous as that of those above accused of being Catholic priests. The last case of a guilty verdict for religious offense recorded during this period was in 1700 against Matthew Attkinson, who was accused of acting as a Catholic priest; he was found guilty and sentenced to imprisonment.¹⁶⁶

Considering that religious offenses only accounted for eighteen of the total five thousand eight hundred eight-four convictions, it is clear that the Old Bailey was not overly concerned with policing the religious practices of London’s citizens. Add to this the fact that all of the eight death penalties that the Old Bailey handed down for religious offenses were issued against Catholics, clearly the Old Bailey had no interest in promoting a Catholic agenda,

¹⁶³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1680, trial of Lionel Anderson James Corker William Marshal William Russel alias Napper Henry Starky Charles Parry Alexander Lunsden (t16800117-1).

¹⁶⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1677, trial of Lodowick Muggleton (t16770117-1).

¹⁶⁵ *Ibid.*

¹⁶⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1700, trial of Mathew Attkinson (t17000828-23).

regardless of what the crown may or may not have been encouraging. The Old Bailey was the court of the people and though it did prosecute some royal offenses religious matters were not as important to the court as were economic matters like coining offenses.

5.3 Seditious Libel

In seventeenth century English common law, libel was the publishing of defaming materials; seditious libel was the publication of materials that defamed the monarch.¹⁶⁷ There were twenty-five convictions of seditious libel from 1675 to 1714, roughly six percent of the total. Of these convictions, thirteen were sentenced fines, nine were issued multiple punishments, one was sentenced to the pillory, one whipping and one punishment is “unknown”. With fines accounting for the majority of the punishments delivered by the Old Bailey and no death penalties recorded for seditious libel it is reasonable to argue that it was not a crime the court viewed as particularly dangerous. Given that seditious libel convictions accounted for just a little more than the convictions issued for religious offenses it is fairly clear that the threat of Catholic activity in London was seen as more dangerous to society than the publication of libelous materials about the monarch.

In 1680 Elizabeth Cellier was tried for handing out pamphlets that claimed among other things, that Catholics were being tortured to confess to plotting against the government.¹⁶⁸ Strikingly, the records describe her crime as “publishing a scandalous Libel, entitled, Malice defeated, in which was not onely several private men scandalized, but also the whole Government and Laws of the Nation.”¹⁶⁹ Only twice does the language in the trial record mention the king and in both cases it is in reference to the claims Cellier made in her publication. Cellier was sentenced to time in the pillory a large fine and sureties. Later in the 1697 one Edward Morgan was found guilty of possession of pamphlets entitled “The

¹⁶⁷ Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

¹⁶⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1680, trial of Elizabeth Cellier (t16800910-12).

¹⁶⁹ *Ibid.*

Depredations of the Dutch” and “King James’s Declarations”, the contents of which are not clear, but likely were found offensive by William III.¹⁷⁰ Morgan was fined and required to pay sureties, so the material could not have been that dangerous to the government.

These two cases are good examples of the kinds of seditious libel trials found at the Old Bailey and in fact, both of these cases were chosen because the publications mentioned had potential to be threatening to both the government and the monarchy. The sample data here is too small to make grand claims about the state of dissenting voices, especially to any one monarch, in London, but it does appear from this information that publishing seditious material did not cause as much concern in the Old Bailey as other crimes such as theft.

5.4 Seditious words

Eight percent of the total convictions for royal offenses can be attributed to acts tried as seditious words. Seditious words, like seditious libel, involved words that were aimed at the monarch, but seditious words were spoken, rather than the written insults to authority that constituted seditious libel.¹⁷¹ There were a total of forty-eight trials held for seditious words, but only twenty-nine of these resulted in guilty verdicts, like seditious libel none of these were punished by death. Of the twenty-nine guilty verdicts thirteen of them were given multiple sentences (mostly fines and corporal punishments), twelve were fined, two were whipped, one was whipped in public and one sentence was respited. The respited sentence is unclear if he had been sentenced to death or not. The trial for James Naylour does not mention his punishment and the only other record that mentions Naylour is a summary of death penalties that says, “The Judgment of James Naylour, was Deferred till the next Sessions”¹⁷². He disappears from the records from there. Given that he claimed to have been drunk when he

¹⁷⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1697, trial of Edward Morgan (t16970519-41).

¹⁷¹ Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

¹⁷² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1686 (s16860901-1).

spoke his seditious words it is very possible that he was let off with little to no punishment like many others.

In July of 1685, Samuel Warder was found guilty of speaking against the king in support of the Earl of Argyll who had recently led a rebellion in Scotland.¹⁷³ Warder was issued fines and sureties and was sentenced to a public whipping for his crime. It appears that similar talk was suffered during the reign of William III as well, as Anthony Alden was accused and found guilty in 1692 of declaring, "That there was no King but King James only, and he would lay a Wager that King James would be in White-hall in less than three Months time"¹⁷⁴. In his defense Alden claimed to be drunk and unaware of his words, he was sentenced to the pillory and required to make sureties. The ability to speak out against ones' government is often taken for granted in modern, clearly speech was not as protected during this period. It also appears that this was not a crime that was heavily enforced by the Old Bailey, for it is unlikely that only forty-eight people spoke out against the government during this forty-year period.

5.5 Tax offenses

Convictions for tax offenses accounted for less than one percent of the total royal offenses category. Offenses in this subcategory generally had to do with evading the paying of customs duties or preventing customs officers from performing their jobs.¹⁷⁵ There were only a total of five trials recorded for tax offenses during this period and of those three resulted in guilty verdicts all of these verdicts were rendered in 1703 or 1704. Two were issued multiple punishments (both fined and imprisoned) and one was issued a fine only. Unfortunately, of the three recorded cases of tax offenses, only one provides a reasonable amount of information.

¹⁷³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1685, trial of Samuel Wardner (t16850716-31).

¹⁷⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), June 1692, trial of Anthony Alden (t16920629-29).

¹⁷⁵ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

The case against Thomas Warren in 1703 is representative of the other two cases as well.¹⁷⁶ Warren, a Gauger or one responsible for collecting duties on goods, was charged with taking payment for failure to fully tax barrels of beer. This does not appear to be the only instance of his deception, "It further appeared, that he had made it a common Practice for many Years to do it, and that he also confest the whole matter when brought before the Recorder"¹⁷⁷. Upon the court's finding Warren guilty, he was issued fines and sureties. It is interesting how few cases of tax offenses were recorded in the Old Bailey for this period. Given how strident the government's efforts appear to have been to curb coining offenses one might think a similar effort would be made to ensure the protection of economic interests in the form of taxes and duties.

5.6 Other royal offenses

Comprising a little over seven percent of the total convictions for royal offenses, the "other" category was a collection of various crimes seen as acts against the crown. According to the authors of the Old Bailey website, "This category includes soldiers deserting military service; refusing to take the Oaths of Allegiance communicating with or assisting the enemies of the crown; revolt on the high seas; and attempting to shoot the monarch".¹⁷⁸ There were a total of forty-seven trials that took place under this category with twenty-eight of these returning guilty verdicts. The majority of trials during this period appear to be for deserting soldiers or for those refusing to take the Oaths of Allegiance. Of the twenty-eight guilty verdicts, five received fines, one was imprisoned, one was respited and eleven were "unknown". There were ten trials that resulted in the death penalty, all ten of these trials were against soldiers who deserted their post. The trial of William Grant is a good example of the trials of these soldiers.

¹⁷⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1703, trial of Thomas Warren (t17030115-21).

¹⁷⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1703, trial of Thomas Warren (t17030115-21).

¹⁷⁸ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

William Grant , of the Parish of St. Ann Westminster , was Tryed for Deserting his Colours, in the Company of Capt. Parsons, and in the Regiment of his Grace the Duke of Grafton; on the 20th. of September last , and upon Tryal it appeared he had not only Received his Shilling Enterance or Retaining Mony, but had further Received the Kings Pay; and in March last was Mustered, which he not being able to deny was found Guilty of the Fellony.¹⁷⁹

What seems to be important in these cases is that it can be proved that the defendants received their pay before they deserted from their posts. This seems to imply that desertion was seen as a crime only when the defendant might not have had a legitimate reason to desert. Given the lack of a professional standing army for most of this period as well as the penalty awaiting those found guilty of desertion it is not surprising that the court might have extended some level of lenience.

5.7 Treason

Treason is the quintessential crime against the crown. The crime of treason was defined as the betrayal of the king in one form or another or the abetting of a known traitor.¹⁸⁰ Convictions of this crime accounted for only four percent of the total convictions in the royal offenses category. There were a total of thirty-four treason trials between the years 1674 and 1714, of these seventeen (or half) resulted in convictions. The seventeen guilty verdicts all resulted in death sentences; seven of these were “unknown” forms of capital punishment, one was burnt to death, seven were drawn and quartered and two were executed. It is worth noting though, that of the seventeen cases that did not produce a guilty verdict, twelve trials resulted in not guilty verdicts, three trials with “unknown” verdicts and no Ordinary’s Accounts to suggest that they were put to death. Two further trials produced results of a special verdicts. In both of the special verdict cases it appears that points of the law were at question and so verdicts were put off until these questions could be answered. What happened to the defendants in these cases is unclear. Given the very nature of the crime of treason and the suggestion that this

¹⁷⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 13 March 2012), April 1687, trial of William Grant (t16870406-26).

¹⁸⁰ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

period was one of tyrannical authority, it is surprising to see that even half of those accused of treason were not found guilty and punished to the full extent of the law.

In light of this, the case of Anne Merryweather in January of 1693 is perhaps the most interesting of the seventeen trials committed to record.¹⁸¹ Not only does Anne Merryweather hold the distinction of being the only woman accused of treason during this period, but the evidence against her appears far more befitting for a trial on seditious libel. Having found reason to suspect Merryweather of wrongdoing a warrant was issued for the authorities to search her house for evidence of money clipping. Upon inspection they found several documents, pamphlets and declarations, amongst them “the late King James’ Declaration”. She was then tried for composing, printing and publishing these documents. Though evidence of her collecting, and disseminating these writings was presented, there appears to be no evidence that she in fact composed or published them. This is unlike the trial of William Anderton in June of 1693 who clearly had been the author of several of the documents found in his possession. For her part Merryweather was sentenced to death by burning. All seventeen of those convicted of treason were sentenced to death, but only Merryweather was to be burnt at the stake – a punishment generally reserved for women. In most cases the executioner strangled them first before lighting the fire.¹⁸² As mentioned in chapter Three. Merryweather was reprieved and did not suffer the death penalty.

Treason is clearly another royal crime that the Old Bailey took seriously and the only one where every recorded conviction resulted in a death sentence, even if not all of these sentences were carried out. With treason accounting for less than one percent of the total convictions from the Old Bailey it is hardly a crime that took up much of the court’s time though. Even in the category of royal offenses it only accounted for seven percent, with coining offenses

¹⁸¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1693, trial of ANN MERRYWEATHER (t16930116-57).

¹⁸² Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Punishments at the Old Bailey", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012).

eclipsing all other crimes significantly. In a period that has historically been known for the authoritarian principles of its kings, these verdicts from Old Bailey stand as examples of how the common people of London were relatively untouched by this tyranny. This is especially true when considering the lack of repression for non-Catholics or those outspoken against the monarch. Overall royal offenses account for roughly six and a half percent of the total convictions, but if coining offenses were treated as their own category separate from royal offenses, royal offenses would only account for two percent of the total. The protection of economic interests, both of the king and of the community appears to play a very big role in the daily workings of the court. While this period may have seen some extraordinary show trials of figures who threatened the monarchy's power, these were not the kinds of questions of justice that the leading court of London pursued.

CHAPTER 6

OTHER CRIMES AT THE OLD BAILEY

Not all the crimes tried at the Old Bailey were royal offenses or the commonly prosecuted crimes of theft, violent theft and killings. Still, many of these lesser known crimes reveal insights into the greater London community and it is important to discuss them. Only by including these crimes in this study can a full picture of the role crime and punishment played in London society be formed.

6.1 Breaking the peace

Breaking of the peace is a category of crime that included: assault, riot, vagabonding, wounding and other assorted crimes. Many of these crimes would have been tried by the Sessions of the Peace mentioned in the chapter Two, but occasionally these cases came before the Old Bailey. The Sessions of the Peace lacked the authority to hand down harsh penalties, so if a case of breaking the peace made it to the Old Bailey it was often because the judges and juries had more options in sentencing. Therefore, any case of this crime that was tried at the Old Bailey was seen as a high priority by the prosecutor.¹⁸³

¹⁸³ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

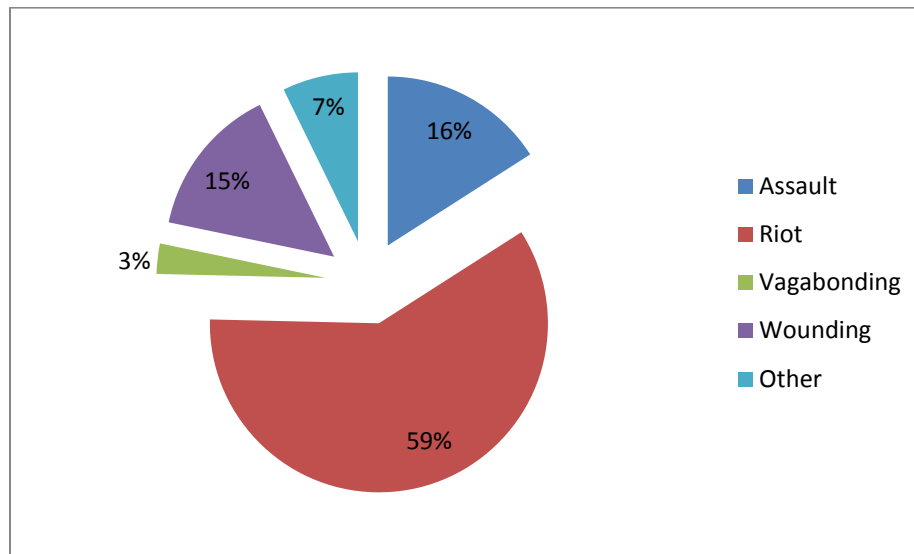


Figure 6.1 Breaking the Peace Sub-Categories

6.1.1 Assault

There were a total of sixty-nine cases tried for breaking the peace during this period. Of these, assault charges accounted for fifteen percent of the trials for this crime. As stated above in the chapter Two, assault was often tried in the Sessions of the Peace, but some cases depending on their severity or importance found their way to the Old Bailey. For instance the case of William Scot in 1708, was heard in the Old Bailey because he was accused of assaulting the Lord Chancellor's porter¹⁸⁴. What is also of interest to note is that a minister spoke on the defendant's behalf, suggesting that Scot might be mentally ill. Unfortunately it is not known if this played any role in the court's verdict or sentencing. William was sentenced fines and sureties, so he likely had access to some wealth and was not destitute.

¹⁸⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1708, trial of William Scot (t17081208-27).

6.1.2 Riot

Trials for rioting that ended in guilty verdicts accounted for fifty-nine percent of the guilty returns from breaking the peace trials during the period of 1674 to 1714. The case of Simon Williams and William Wild is a good example of what was deemed riotous behavior.

Simon Williams and William Wild , were Tryed upon a like Indictment, for that they being Riotously and Tumultuoutly Assembled, together with 500 other persons, on the 31st of July last, forcibly entered and pulled down the Shead or Musique Booth of Charles Eaton, breaking and destroying all his Goods, &c. and it appearing upon Tryal, that they were actually instrumental therein the Jury round them Guilty of the Ryot.¹⁸⁵

Of interest is that these two were found to be “instrumental” in the destruction caused by the riot; that is what brought about their prosecution and punishment. For their crimes the two were sentenced public whippings, fines, hard labor and sureties. It is important to note the two key elements to the punishments in this apparently important case; there is both a public element to the punishment as well as a separation of the defendant and his money or property. The fact that Simon and William were punished with hard labor as well as fines and sureties might suggest that they did not have the means to pay these garnishments.

6.1.3 Vagabonding

The crime of vagabonding accounted for roughly three percent of the cases successfully tried at the Old Bailey. In fact, only two trials of vagabonding were brought before the court, both in August of 1695 and both returned guilty verdicts. Peter Lawman¹⁸⁶ and Francis Buckley¹⁸⁷ were both found guilty and sentenced to death for vagabonding, their exact crimes (“being Egyptians”, and serving as “the King of Egypt”) sound strange to modern ears

¹⁸⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1687, trial of Simon Williams William Wild (t16870831-4).

¹⁸⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1695, trial of Peter Lawman (t16950828-53).

¹⁸⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1695, trial of Francis Buckley (t16950828-54).

until it is understood that these were terms for the modern category of “Gypsies”¹⁸⁸. Both denied these actions at their trials and Lawman even testified to be German. Why this kind of case only appears once in 1695 is harder to explain, but something in the public psyche must have been sparked.

6.1.4 Wounding

The crime of wounding accounted for fifteen percent of the total crimes of those found guilty of breaking the peace. While there seems to be some overlap between assault charges; wounding charges, as the name suggests, always resulted in the victim being injured. In 1675 the trial of an unnamed boy of “fourteen or fifteen years of age”¹⁸⁹ was printed in the Old Bailey. His story is one of misadventure that no doubt resonates today with those concerned for crimes committed by juveniles. The young man misspent money and attempted to regain that money through highway robbery; in his first attempt he was only successful at wounding his prey. The wounded man made his way to the next town, raised the alarm and the boy was apprehended. His punishment is not listed, but the wording of the trial account is heavy with moral overtones about a child who turned to a life of crime. His story was no doubt included as a cautionary tale.

6.1.5 Other crimes of breaking the peace

Within the category of breaking the peace there is a sub-category denoted as “other”. There were five defendants found guilty (accounting for seven percent of the total) of “other” forms of breaking the peace, all in 1697¹⁹⁰. These defendants were all found guilty for throwing squibs out of their homes; a squib is small explosive device that can be likened to a firecracker and often used in various forms of military applications like igniting cannons. All five were issued fines.

¹⁸⁸ Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

¹⁸⁹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1675, trial of Boy (t16751208-2).

¹⁹⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1697, trial of Benjamin Hardin Henry Emet Samuel Sanders Buckley (t16971208-11).

6.2. Damage to property: Arson

The crime of damage to property is unlike many of the others found in this chapter, in that there is only one sub-category – arson. There were a total of sixteen defendants tried for arson only six of those defendants saw guilty verdicts returned against them. The Old Bailey website uses William Blackstone's definition of arson, "the malicious and wilful burning of a house or outhouse of another man", and the authors argue that it was essentially a charge to protect the private individuals' property.¹⁹¹

Of the six defendants who got guilty verdicts for arson from 1674 to 1714, one was sentenced to a fine and the pillory, four were sentenced to death and another was sentenced to transportation. The four sentenced to death were all women in the same trial for arson. This might suggest an inequality in the justice system, but a further examination of these cases demonstrates a few interesting trends.

The first case found in the Old Bailey records was that of Daniel Clerk in 1679. He was "positively proved"¹⁹² guilty of attempting to set fire to the house of his mistress, but his efforts were unsuccessful and no damage appears to be reported in the trial papers. He was sentenced a fine and to stand the pillory on three separate days at different locations throughout London with "a Paper on his Forehead, with his fault writ in it"¹⁹³.

The second case was against a boy of sixteen years or less, Daniel Groves¹⁹⁴ in December of 1689. He was an apprentice to a Mr. Foster and Groves was found guilty of setting fire to his master's home. The trial reports of some damage to Mr. Foster's home, but a confession from Groves blaming the crime on "the Temptations of the Devil, and one Baker"

¹⁹¹ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

¹⁹² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1679, trial of Daniel Clerk (t16790716-20).

¹⁹³ *Ibid.*

¹⁹⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1689, trial of Daniel Groves (t16891211-1).

earned him only the sentence of transportation. It is possible that his age was also a consideration when punishment was handed down.

The trial of Constance Wainwright, Mary Jones, Anne Yates, and Anne Hereford in 1690 is an interesting case¹⁹⁵. The four women were already prisoners when charged with the additional crime of arson. In the trial they were accused of setting fire to the Newgate jail in order to escape. While Yates tried to convince the court of her innocence, she was still found guilty and sentenced to death with the other three defendants.

It is clear that arson was a dangerous crime in a society without efficient firefighting mechanisms, especially in the crowded Metropolis. Furthermore, the aforementioned cases of arson were acts of rebellion against authority, be it discontented employees or prisoners seeking escape. Thus, it might seem surprising that of those found guilty of the crime only four defendants were given the death sentence and all four were women. Still, gender does not seem to have been a part of the sentencing. Both the defendants' status as prisoners and the target of their arson seem to be a priority in the 1690 case. In fact, in 1676, an unnamed woman confessed to setting fire to her master's barn; the fire consumed both his property and that of an adjacent barn, but she was found not guilty.¹⁹⁶ The Justice who had committed her to trial testified that she did not have a grasp of right or wrong and the jury found her *non compos mentis*, or not of sound mind. This case in itself is interesting as it helps establish that courts of this time had qualms about convicting people with questionable mental capacity. It is also shows that sometimes not guilty verdicts can be as enlightening as guilty verdicts.

¹⁹⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1690, trial of Constance Wainright Mary Jones Anne Yates Anne Hereford (t16901210-34).

¹⁹⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1676, trial of woman (t16761213-4).

6.3 Deception

The crimes of bankruptcy, forgery, fraud, perjury and a few others were all considered part of the category of crime known as deception. There were one hundred and forty-two total trials for deception from 1674 to 1714 with ninety-six of these returning guilty verdicts. Fraud and forgery accounted for nearly ninety percent of these convictions, but the other crimes offer unexpected insights to this period as well.

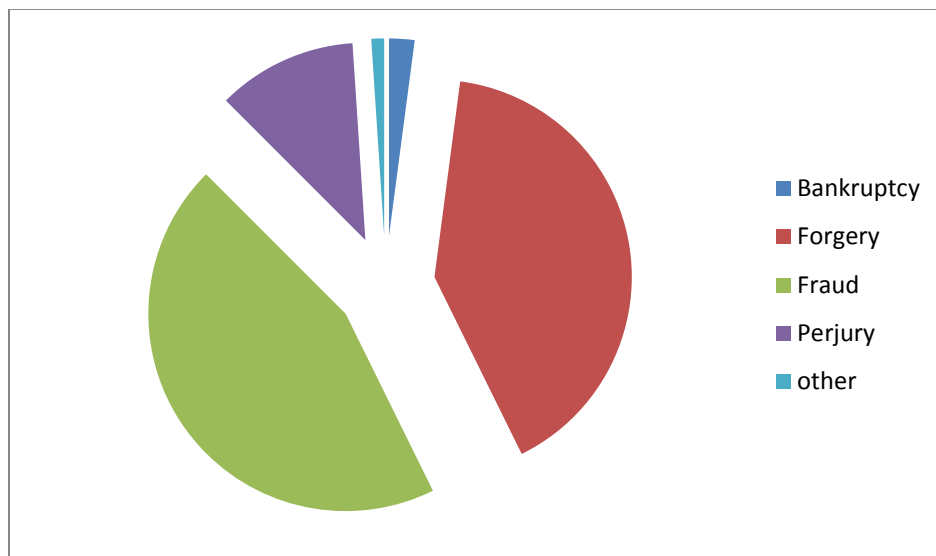


Figure 6.2 Deception Sub-Categories

6.3.1 Bankruptcy

Bankruptcy accounted for only two percent of the total convictions under the category of deception. In fact, only three cases were brought to trial at the Old Bailey and only two resulted in convictions. The crime of bankruptcy did not lay in the act of going bankrupt, but in the hiding of assets from creditors, hence its classification as a crime of deception. The first trial mentioned in the Old Bailey for bankruptcy was in 1708 and the defendant was found not guilty. The next two trials, that of John Restow in 1711¹⁹⁷ and Richard Towne in 1712¹⁹⁸ recorded

¹⁹⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1711, trial of John Restow (t17110516-38).

guilty verdicts and both were sentenced to death. In the case of Richard Towne, the trial was reported as “long and patient”¹⁹⁹, which suggested that in view of the severity of Towne’s crime, which had a potential death sentence, the court wanted to give the case careful consideration. When looking back at the past and it is often assumed that life held less value because it was easier to take, but that appears to be an oversimplification of the matter.

6.3.2 Forgery

Forgery was defined much as it is in modern United States law, as the manipulation of documents in a fraudulent manner; this might include copying or falsifying documents²⁰⁰. Forgery accounted for forty-one percent of the convictions of the crimes of deception at the Old Bailey. There were sixty-one cases of forgery tried, of these thirty-nine returned a guilty verdict. One of the more common methods of forgery that was employed was to forge documents to collect the pay of sailors at sea on ships of the Royal Navy. In 1696 Richard Eltham, Susan Smith and Alice Body were convicted of defrauding the paymaster of the Navy and sentenced to time in the pillory as well as fines and sureties.²⁰¹ A similar case was brought forth in 1704. Mary Vasse was found guilty of collecting the war pay of one Richard Ellis through the deception of forgery; in the same court session Vasse was tried for another case of forgery along with Elizabeth Melton, and both were acquitted.²⁰² This is an example of how powerful the role of evidence was, because though Vasse had been found guilty in one case, the court did not assume guilt in the second case and she was acquitted due to lack of evidence. Interestingly enough in all of these cases the crime is one committed against the government,

¹⁹⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1712, trial of Richard Towne (t17121210-19).

¹⁹⁹ *Ibid.*

²⁰⁰ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²⁰¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1696, trial of Richard Eltham Susan Smith Alice Body (t16960708-22).

²⁰² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1704, trial of Mary Vasse Elizabeth Melton (t17040426-41).

and yet the punishments issued are not as severe as those imposed for crimes like bankruptcy or arson.

6.3.3 *Fraud*

Fraud, like forgery, was a crime of deception, where forgery was concerned with the manipulation of documents, fraud was about how the accused had representing themselves or their actions.²⁰³ Fraud accounted for forty-five percent of the convictions of crimes of deception, with fifty-seven cases being tried and forty-three resulting in guilty verdicts. The trial of an “Irishmen” in 1676 demonstrates eloquently just how simple the definition of fraud could be:

There was an Irishman tried for a Cheat , which was as follows, He with a Footman came to a Watchmaker s Shop, and desired to see some Watches for his Master; after he had seen several, he pitch'd upon two, and desired that he would carry them or send them to his Master, he therefore sent his man with them, the one being a gold the other a silver Watch, and when they came to the Temple he desired to carry them up to his Master, whom he pretended was in bed, but as soon as he had got them he run away with them; the other persued him, and afterwards brought him to a Justice of Peace, and he committed him to Prison, and upon his Tryal was found guilty of the Cheat.²⁰⁴

In modern Anglo-American courts this crime would more likely be tried as theft, but because the Irishman misrepresented himself as working on behalf of a master, he was tried for fraud. This example shows how crimes could overlap in the Old Bailey. Why the defendant was tried for fraud and not theft is unclear; perhaps the nature of his crimes did not seem deserving of the harsher punishments that might accompany theft. Whatever the reasons for the trial classified as fraud the defendant was sentenced to time in the pillory. Also noteworthy is that in the summary of punishment records for this session, there is this passage “and the said Cheat design'd for the Pillory”²⁰⁵ alongside six punished to death, four to transportation, sixteen to be

²⁰³ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²⁰⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1676, trial of Irishman (t16760114-14).

²⁰⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1676 (s16760114-1).

branded in the hand, and five whipped. It seems as though the judges were in a severe frame of mind, and yet the Irishman was only sentenced to the pillory.

6.3.4 Other crimes of Deception

In 1691 James Verbeck was found guilty of being a cheat too, but for some reason this case was not tried under the sub-category of fraud.²⁰⁶ He was sentenced to time in the pillory much like the Irishman above, but his crime was tried under the “other” category of deception. His crime was that of obtaining a pass for Holland under false pretense with the intent to sell the pass. Some cases of obtaining documents illegally were tried in this sub-category, but how or why a distinction was made is not clear. Verbeck’s is the only conviction of a crime of deception under this sub-category that took place during this period. Perhaps there is some significance to the reign under which the trial occurred. Verbeck’s conviction was during reign of the former Dutch leader William of Orange, so it may have been that there were overtones of espionage in Verbeck’s actions.

6.3.5 Perjury

The final category under the crimes of deception is perjury. Perjury is another crime for which the meaning has not changed drastically over time; in this period it included both the act of perjuring oneself or attempting to get someone else to perjure his or her testimony.²⁰⁷ Of the nineteen cases brought to trial between 1674 and 1714, eleven defendants were found guilty. This accounted for roughly eleven percent of the convictions for crimes of deception. The case of Susanna Broadhurst is a good example of a defendant attempting to get another to perjure for her. She tried to convince William Orrel to accuse James Lee and John Hibbs of

²⁰⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1691, trial of James Verbeck Peter Prince (t16910909-28).

²⁰⁷ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

counterfeiting “the Coyne of this Kingdom”.²⁰⁸ Her reasons for wanting Orrel to make this accusation are unclear, but the crime of counterfeiting was often punished by death, as seen in chapter Three. Had the accusation been taken seriously could have been life threatening to these men. Broadhurst was sentenced to the pillory and fined.

6.4 Sexual offenses

While not at all the most numerous, only comprising roughly one percent of the total convictions from the Old Bailey from 1674 to 1714, sexual offenses were crimes that often evoke the passions of modern readers. The Old Bailey authors suggest that these crimes were seen as improper sexual acts, but were not viewed with the same condemnation as in more modern societies²⁰⁹ Given modern sensibilities many of these crimes might even be seen as shocking or horrifying, especially when they involved younger offenders or victims, but the Old Bailey records suggest that 17th and 18th century Londoners treated the crimes them as somewhat mundane. In many of these cases the punishments handed down by the Old Bailey might even seem trivia in comparison to 21st century penalties.

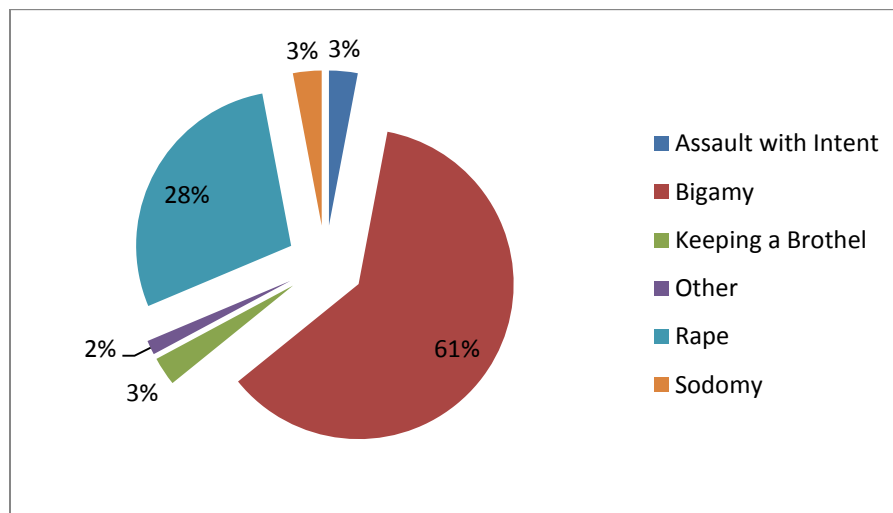


Figure 6.3 Sexual Offenses Sub-categories

²⁰⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1699, trial of Susanna Broadhurst (t16990524-34).

²⁰⁹ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

6.4.1 Assault with intent

"Assault with intent" could mean both the intent to rape as well as the intent to sodomize.²¹⁰ During this period there were only two cases of "assault with intent" one in 1699 and another in 1711. This number accounts for only three percent of the total convictions for sexual offenses. What is both surprising and disturbing to the modern reader is that these were crimes against children of ten years of age or less. In the 1699 case, John West was accused of assaulting a girl under the age of ten with the intent to "ravish her and carnally know her".²¹¹ The case of Ignatius Decasta in 1711 is even more troubling as he was accused of attempting to ravish a girl of six years of age.²¹² Both men were merely issued fines and or sureties for their behavior. Unfortunately, the Old Bailey records leave few clues as to why these men were not punished more severely. This question becomes more interesting when one considers the crimes of bigamy and rape were treated.

6.4.2 Bigamy

Bigamy was defined as "marrying a second spouse while the first spouse was still living."²¹³ It was by far the most common sexual offense tried at the Old Bailey, accounting for sixty-one percent of the total convictions in this category. The majority of these convictions resulted in "miscellaneous punishments" like fines or sureties, but fourteen percent, or six defendants of those convicted of bigamy, were sentenced to death. In 1676 an unnamed man was tried for having married four different wives, though it was claimed that he had seventeen in

²¹⁰ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²¹¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1699, trial of John West (t16991213-40).

²¹² *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1711, trial of Ignatius Decasta (t17110112-27).

²¹³ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

all; he was convicted of the crime and sentenced to death.²¹⁴ Though this man had married a number of women, this does not appear to be the main impetus for his death sentence as others in 1676 and 1677 were sentenced to death for only having two wives. In 1693 Mary Stokes, also known as Mary Edwards, was sentenced to death for bigamy; the records indicate that she had married four different men in a five year period and, “that she was an idle kind of a Slut, for she would get what money she could of them, and then run away from them”²¹⁵ She was the only woman put to death for bigamy, but her trial records carry a greater moral condemnation than those of the men sentenced to death. Unfortunately, there appears to be no extant record of her execution in the Ordinary’s accounts. One wonders, also, the method of Edward’s/Stokes’ execution, it would be interesting to compare to how women sentenced to death for petty treason were executed.

6.4.3 *Keeping a brothel*

As described by the Old Bailey website, the crime of keeping a brothel was, as one might expect, a charge brought against those who kept homes where acts of prostitution or sodomy were sanctioned, though these crimes were usually tried by the Sessions of the Peace or the Court of the King’s Bench.²¹⁶ Despite not being in the jurisdiction of the Old Bailey, there were two cases of keeping a brothel that were brought to the court in May of 1693. Alice Randall²¹⁷ and Elizabeth Elye²¹⁸ were both charged with keeping a brothel on May 31, 1693. While it is unclear if these cases were related or even if they were charged with keeping the same brothel, it would seem likely given the rare nature of the crime’s appearance at the Old

²¹⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1676, trial of person (t16760510-1).

²¹⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1693, trial of Mary Stokes, alias Edwards (t16931206-14).

²¹⁶ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²¹⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1693, trial of Alice Randall (t16930531-44).

²¹⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1693, trial of Elizabeth Elye (t16930531-45).

Bailey that these two had some connection. Both women were found guilty and sentenced fines and sureties. It would be interesting to see how many of these cases were seen at the other courts during this period.

6.4.4 Other sexual offenses

The category of “other” under sexual offenses is actually a broad spectrum of crimes, that often do not get mentioned by name out of concerns for decency.²¹⁹ For the period of 1674 to 1714 there was only one criminal tried under this category. Katherine Nash was “Indicted for a Common Harlot” on Sept. 3, 1684, but other than being found in bed with Francis Harris on the night he died it is unclear what her crime was exactly.²²⁰ If she was charged with prostitution, the records do not make this clear. That her crime was considered more dangerous than that of keeping a brothel is evident in her sentence of imprisonment and the threat that she was being held pending a more serious charge. “Katherine Nash to be sent to Bridewel, and there remain till next Sessions; which will begin Wednesday the 8th. of October next.”²²¹

6.4.5 Rape

Rape was the crime of forced sexual intercourse. Despite the fact that during this period it was a capital offense, the standard for conviction was high. Proof of penetration was required to convict a man of rape.²²² Rape was the second most prevalent crime tried under the sexual offense category, accounting for roughly twenty-eight percent of the convictions. Furthermore, nearly ninety percent of all those convicted of rape were sentenced to death during this period.

²¹⁹ Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

²²⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1684, trial of Katherine Nash (t16840903-49).

²²¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), September 1684 (s16840903-1).

²²² Emsley, Hitchcock and Shoemaker, “Crimes Tried at the Old Bailey”

The Old Bailey website authors suggest that the capital nature of the crime is why there are more convictions of the crime of assault with intent to rape than for rape itself. That is, the Old Bailey authors are commenting on general trends in the court over the period from 1674-1913 rather than the late 17th and early 18th century eras, which are the focus of this study. It is also worth noting that two of those put to death for rape charges were women. Abigail Bargeer was found guilty of being an accessory to the rape of Elizabeth Deer by her husband John Bargeer in 1689.²²³ Likewise, in 1707 Alice Gray was found guilty and sentenced to death for her assisting of Thomas Smith in raping one Catherine Masters.²²⁴ Of the two cases during this period that did not receive a death sentence, one convicted person's sentence was not recorded and is "unknown". The other prosecution, against William Shepard is an instance where penetration was not proved; although Shepard was convicted, yet he was also sentenced to only fines and sureties.²²⁵ It is hard to say why rape is considered a capital crime during this period and the cases of assault with intent to rape, especially those cases where the victim was a child, were not. Clearly, forced sexual intercourse was not something that Londoners took lightly, both in regard to conviction and with respect to punishment. The difference may be the stringent need for proof of penetration; as seen in the case of assault with intent, cases involving very young victims were bedeviled by the difficulty of obtaining testimony from those who had been harmed.

6.4.6 Sodomy offenses

By far the most sensational of the charges tried under the sexual offense category were sodomy cases. The Old Bailey website defines the crime of sodomy as, "Anal or oral intercourse between a man and another man, woman, or beast"; the authors go on to say that in

²²³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1689, trial of John Bargeer Abigail Bargeer (t16890516-79).

²²⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), April 1707, trial of Alice Gray (t17070423-26).

²²⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1689, trial of William Shepherd (t16890516-78).

order to convict a person of this crime it was necessary to have two witnesses and be able to prove both penetration and ejaculation.²²⁶ There were only two guilty verdicts rendered for sodomy from 1674 to 1714 and both resulted in death sentences. The first case was against an unnamed woman accused of unnatural acts with a dog.²²⁷ Two witnesses were found to swear to seeing her commit these acts, and in a very odd turn of events the dog too was brought in to court, it appears for the purpose of corroborating the story by way of showing affection to the woman. Both the woman and her husband suggested that the witnesses were in some way motivated by malice, but the records leave no indication that the witnesses knew the accused well enough to warrant this. This woman is last heard of in the death summary from July 11, 1677, "Two Men and five Women received sentence of Death, amongst whom that Monster who prostituted her self to a Dog was one; the rest Incorrigible Thieves". That there was not an accompanying story in the Ordinary's accounts is surprising as even the opening line of the trial records admitted to the sensationalism and gossip surrounding this trial,

One of the first and most talkt of Tryals at this Sessions, was for such an abominable Crime, attended with such odious Circumstances, as 'tis thought scarce any Story can parallel it, especially in this our more modest and chaster Climate, hitherto a stranger to such unnatural wickedness; and we hope the Justice executed on this wretched Criminal will deter all others from any the like detestible inclinations for the future.

The second trial was in 1694 against a 'Turk' named Mustapha Pochowachett, who was accused of sodomizing a Dutch boy named Anthony Bassa.²²⁸ In this case it is unclear if the requirement for two witnesses was waved, as Bassa was the only eyewitness to the crime interviewed, or if the testimony of the surgeon who attended to Bassa in this case was seen as the testimony of a medical witness of sorts. In either case it is hard not to read the trial records without wondering if Pochowachett's status as a 'Turk' hindered his defense; the records make several references to how offensive his crime was to Christian sensibilities. Like the case

²²⁶ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²²⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1677, trial of married woman (t16770711-1).

²²⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), May 1694, trial of Mustapha Pochowachett (t16940524-20).

previously referenced Pochowachett was sentenced to death, but there is no Ordinary's account for him. While it is impossible to know from the records, perhaps these crimes were considered so heinous that no there was no redemptive value to their retelling.

Despite the fact that fourteen percent of bigamy cases did result in death sentences, it would appear that most of the sexual offenses punished as capital crimes were judged harshly in the Old Bailey due to moral beliefs that were not that distant from contemporary western societies. While expressing a sense of the sanctity for the individual's body, Londoners of the period appeared believe that rape and other forced sexual acts were wrong. The biggest surprise is in the seemingly more lenient approach towards what would later be considered child molestation.

6.5 Miscellaneous offense

The category of "miscellaneous crimes" accounted for less than one percent of the total of convictions at the Old Bailey, but this category contains a number of offenses that are intriguing to modern researchers. Sometimes the crimes had to be placed in the "miscellaneous" category simply due to lack of information in the Old Bailey records. In other instances, though the term "miscellaneous" reflects an inability or unwillingness on the part of the court to classify the offense definitively. For instance, sometimes the category of "conspiracy" was used when there was a lack of evidence to place the crime under one of the categories listed above.²²⁹

²²⁹ Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

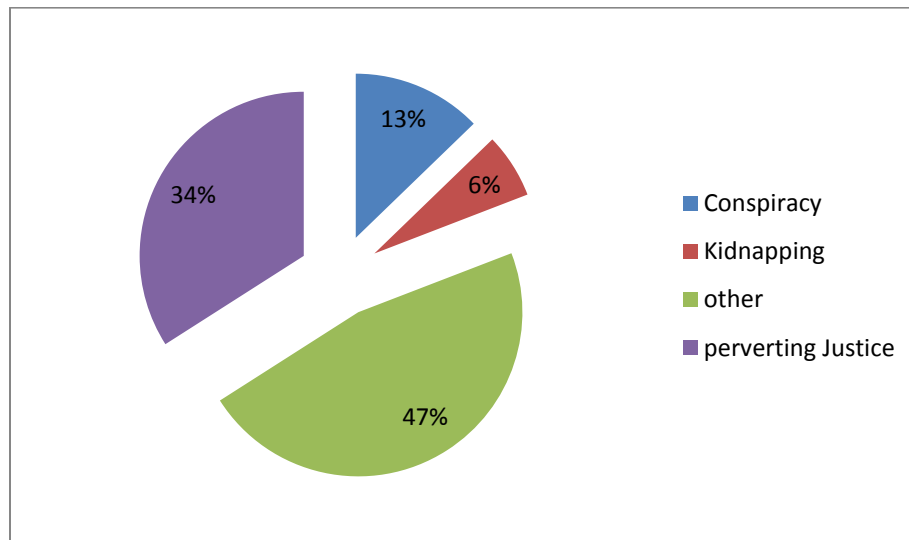


Figure 6.4 Miscellaneous Sub-categories

6.5.1 Conspiracy

Conspiracy accounted for roughly thirteen percent of all the convictions issued in the “miscellaneous” category. When people were convicted of conspiracy their fates ranged widely, they might earn the pillory, a fine, or sureties or they might incur no punishment. One episode worth inspection is the case of Thomas Lane from 1695. Lane along with a man named William Tuttle, who was not apprehended, was accused of conspiring to charge a merchant, Mr. Hall, with the crime of buggery. Essentially, Lane and Tuttle conspired to blackmail Mr. Hall into paying them not to bring charges against him. It appears that the trial came down to a question of who had the better character, Hall or Lane; in the end Lane was found guilty and sentenced to a variety of punishments:

Thomas Lane was fined 40 Mark, and ordered to stand Three times in the Pillory, once near the Mitre Tavern in Fenchurchstreet- a second Time at the Royal Exchange, and a Third Time in Cheapside, on the usual days; and to find good Sureties for his Quiet Behaviour for a Twelvemonth.²³⁰

This case is interesting in contrast to the case of John Collins, also from 1695. Whereas Lane above was found guilty of conspiring to falsely accuse, Collins was accused of conspiring to

²³⁰ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1695, trial of Thomas Lane (t16950220-30).

poison.²³¹ While the information contained in the records of the Collins case is far less detailed, the potential severity of the crime compared to the punishments handed down seems to suggest that conspiracy was not punished as severely as other crimes. This might be due to the fact that the crimes did not result in harm to the intended victims, as in the case of Collins, or that the evidence was too thin, as in the case of Lane, to warrant a more severe punishment. It appears that perhaps conspiracy was a way to punish those suspected of crimes, in instances lacking the proper evidence to get a full conviction under the proper category.

6.5.2 Kidnapping

Kidnapping accounted for only six percent of the crimes tried under the "miscellaneous" category. The crime of kidnapping included the traditional crime of abducting a man, woman or child by force, but also encompassed the crime of special importance to status-conscious elites: the abduction of an heiress in order to force marriage upon her.²³² There was only one case of such an heiress abduction during this period. In 1690 John Johnson was found guilty of kidnapping Mary Wharton, the sole heiress to Phillip Wharton, and marrying her to James Cambel.²³³ Johnson was found guilty and sentenced to death, despite his claims that Mr. Cambel assured him that he had Wharton's consent. Of the three cases of kidnapping recorded for this period, this was the only one to result in the death penalty sentenced.

The kidnapping of heiresses was not the only crime of kidnapping with sensational value during this period. In 1700 John Smith was tried and convicted of kidnapping and trepanning (boring a hole into someone's skull) and then selling the victims into slavery. While there was only evidence for Smith kidnapping and selling two of people into slavery, the trial

²³¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), August 1695, trial of John Collins (t16950828-100).

²³² Emsley, Hitchcock and Shoemaker, "Crimes Tried at the Old Bailey"

²³³ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1690, trial of John Johnson Esq ; alias Captain Johnson William Clewer S - C - Grace Wiggan (t16901210-56).

hints that he may have abducted hundreds of others and sold them into slavery. The prisoner was also quoted in the trial records as saying,

he said he vallued not what they could do to him, for 'twas but to look through a pair of Nutcracks. He was so enraged against one Mr. Jacob Kysor who had caused him to be Apprehended and Prosecuted, that he wisht he had his Heart Broyled on Coals, for he would Eat it, and Drink his Blood after it²³⁴

Despite the evidence against Smith as well as the severity of the charges he was found guilty of, he was only sentenced to fines and the pillory. It is unclear why this is, while the evidence against Smith was not clear cut, there the records seem to suggest that that in one of the cases brought against him of abduction the crime was clearly his doing. Why Johnson received the death penalty and Smith did not is a question that cannot be answered, but it does make one wonder how Londoners viewed kidnapping and if doing so for a clear profit was worse than doing so out of some sort of possible derangement.

6.5.3 Perverting justice

The crime of “Perverting justice” accounted for the second-largest number of crimes tried under the “miscellaneous” category at roughly thirty-four percent, though this only totals sixteen cases. Five of these persons convicted for “perverting justice” were given the death penalty, five were given a fine, one was given the pillory, one was given both a fine and the pillory and the remainder of punishments are “unknown”. One of the more interesting trials for perverting justice was that of Robert Beames from 1693. Beames was a prisoner of the Newgate jail who escaped. He was subsequently captured and tried for his escaped and sentenced to death. It is unclear what his original crime was, but the fact that it was left unmentioned might suggest that it had no bearing on the case at hand or his punishment. This does beg the question of why Beames’ punishment was so harsh since there is in contrast one other similar case during this period. In 1712 ~~one~~ Daniel Wells was tried and convicted of

²³⁴ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), January 1700, trial of John Smith (t17000115-26).

“abetting and assisting several Prisoners to break her Majesty's Goal of Newgate, and make their Escape.”²³⁵ In addition to the fact that Wells aided prisoners’ in escaping from Newgate, one of the prisoners Wells aided eventually killed three people. Despite all of this, Wells was only sentenced to the pillory. Why Wells got off so easily and Beams was sentenced to death is unclear; perhaps Wells’ role as merely assisting in the escape was not seen as dangerous as escaping oneself.

6.5.4 Other offenses of miscellaneous crimes

The final category and the one that accounted for the largest percentage (forty-seven percent) of crimes tried under “miscellaneous crimes” was “other”. This is clearly a catch all; many of the crimes here were reduced from felony charges to misdemeanors. In some cases all that remains in the historical record is the barest of information, as in the case of Elizabeth Draper, “Indicted for Felony, was found Guilty.”²³⁶ In other cases much more information appears in the Old Bailey materials, but the exact crime the prisoners were tried for is unclear. This was the case, for example, in the case of Edward Haines, Benjamin Watkins, and Henry Tuller. The men were found in a haycock with rope; they were apparently planning to break into a nearby house.²³⁷ This crime could have been tried as either housebreaking or even potentially conspiracy. One cannot be sure what specifically the charges were, other than they were at the level of misdemeanor. The accused were found guilty and sentenced to naval duty. Worth noting is that of the twenty-two cases that fell under this sub-category, only one produced a

²³⁵ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), December 1712, trial of Daniel Wells (t17121210-22).

²³⁶ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1685, trial of Elizabeth Draper (t16850225-31).

²³⁷ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), February 1694, trial of Edward Haines Benjamin Watkins Henry Tuller (t16940221-29).

death sentence. At the trial of John Moor and Thomas Sides the convicted men appear to have been given a capital sentence as a result of Moor's previous conviction for a coining offense.²³⁸

In the end the "miscellaneous" category is intriguing for scholars with its instances of abductions and prison breaks, but it is also something of a mishmash. With only forty-seven cases in this category and most of those lacking detailed records, it is hard to make conclusions about London society based on such varied examples. That being said certain types of "miscellaneous" crimes are well worth further study. For example the offense of kidnapping almost certainly underwent changes over time that could be followed in a study that takes account of longer periods than this thesis considers. Scholars of 21st century crime in the United States realize that many kidnappings are not perpetrated by strangers but rather by family members in divorce or custody cases. In contrast, the Old Bailey records hint that kidnapping in the 17th and early 18th century were related to marriage – either forced marriages or elopements that were termed kidnappings by angry family members. Thus the Old Bailey records, even while at times frustratingly brief, do provide a jumping off point for further inquiries.

²³⁸ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 09 February 2012), July 1680, trial of John Moor Thomas Sides Grains (t16800707-2).

CHAPTER 7

THE INFLUENCE OF THE MONARCHY

7.1 Placing the Old Bailey in a historical context

The present study has to this point been concerned with broad spectrum trends in crime through statistical analysis as well as case study and micro analysis. Now it is necessary to put these cases and statistics into the greater historical context. In this case the best way to contextualize the information that has been presented is to break down the reigns of the monarchs from 1674 to 1714. In part this periodization will include a reevaluation of what role, if any, the monarch or the events taking place during their reign may have played in shaping the Old Bailey. The Glorious Revolution took place in 1688 with the new monarchs William and Mary being crowned in April of 1689, but the events leading up to and surrounding this change in regime go beyond this short window. For this reason the following sections will include the reigns of Charles II, James II, William and Mary and Anne, essentially spanning from the Restoration to the Act of Union.

From the time James I took the English throne in 1603 until the death of Queen Anne in 1714, Stuart monarchs faced a number of tumultuous changes in the English political system. The English Civil War marked the end of Charles I, the Glorious Revolution ended James II's reign and began the reign of William and Mary, and finally the act of Union occurred during Queen Anne's reign.

Unfortunately, records for the Old Bailey only extend back to 1674, so the first fourteen years of Charles II's reign are unknown with regard to criminal statistics in London's chief court. Still, this division has one benefit for this study: the statistical information on the Old Bailey

Charles II's reign spans roughly the same number of years as that for William III and Anne. James II's reign was of course abbreviated due to the Glorious Revolution, but there are records for all three years of his reign. With respect to the reigns of Charles II and James II, one must keep in mind that the court reporting during these earlier periods was less consistent than later, so all conclusions that are drawn based on this information carry the caveat that the records are limited.

7.2 Crime and punishment in the reign of Charles II

Charles II's reign on the English throne spanned from 1660 to 1685. The Restoration brought Charles II to the throne in 1660 eleven years after his father, Charles I, had been beheaded. Those eleven years saw an England political landscape defined by its lack of monarch. The reign of Charles II was marked by a number of domestic issues such as the controversy with parliament over the Royal Declarations of Indulgences, the Test Act, and the rumored Popish Plot. In foreign affairs Charles II entangled England in a number of conflicts like the Second Dutch War, and the War of Devolution. Perhaps of most interest to the Old Bailey was the Great Fire of London in 1666 that burned down the medieval court where the Old Bailey stood; it was not rebuilt until 1673. Tory and Whig historians disagree about how to assess Charles' rule – they baldly tend to take sides for or against a Stuart King. The question concerning Charles II's reign that is most relevant to this study, however, is how the reign of Charles II may reflect on the Old Bailey and likewise how the Old Bailey may reflect on his reign.

7.2.1 Crimes in the reign of Charles II

From January 1674 to February of 1685, there were a total of one thousand two hundred twenty-seven guilty verdicts issued by the Old Bailey. This means that there were an average of one hundred twelve guilty verdicts a year for the eleven years of Charles' reign for which there are records. This is misleading, since for the first year the Old Bailey Sessions

Papers were published there were only thirty-five guilty verdicts recorded, but by 1684 there were two hundred thirty-six. These differences in numbers are likely due to the changing status of the Old Bailey publications and the selectiveness of the early Session Papers.

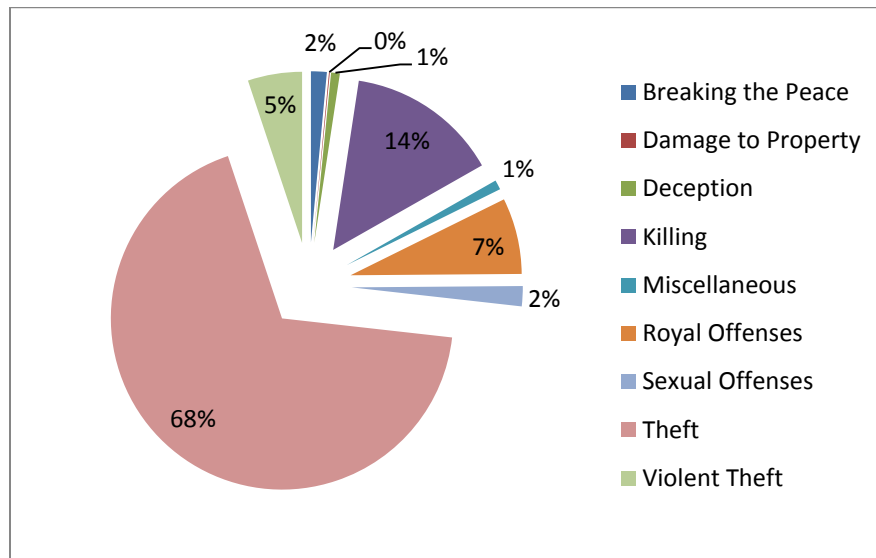


Figure 7.1 Crimes in the Reign of Charles II

Sixty-eight percent of the cases that resulted in convictions during this period were accounted for by theft and another five percent were crimes of violent theft. These numbers are only slightly lower than the aggregate crime percentages for the whole forty-year period. Perhaps the biggest difference is that killings accounted for fourteen percent of the crimes convicted during the reign of Charles II; that is up nearly five percent from the overall average. It is not clear why trials killings were so comparatively common during this period. Absent evidence that there was an epidemic of violence in the Metropolis at this time, however, it could be a result of the Old Bailey publication being in its infancy.

7.2.2 Royal offenses in the reign of Charles II

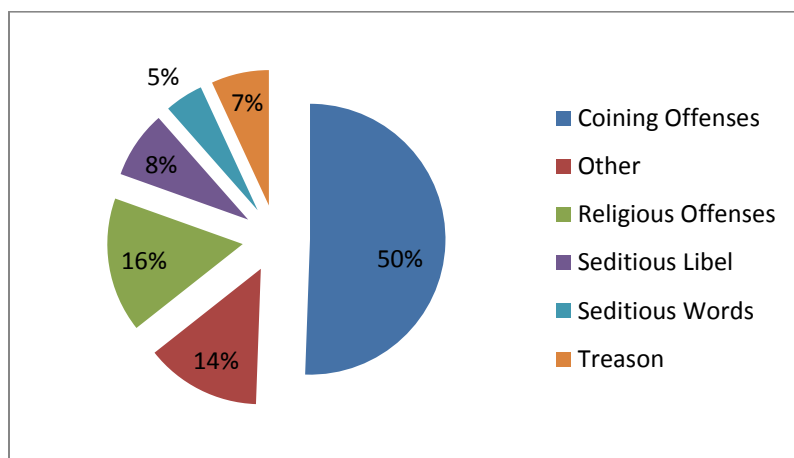


Figure 7.2 Royal Offenses in the Reign of Charles II

Royal offenses accounted for seven percent of the total from 1674 to 1685; this is in line with the average seen over the longer period. Where one does see a difference is when looking at the break down of royal offense sub-categories. Coining offenses still account for the most at fifty percent, but religious offenses, “other” and treason all had substantially more convictions during this early period. In the case of religious offenses the increase was more than ten percent; it is possible and in fact likely that the threat of the Popish Plot was the cause of this increase. The rumors of the plot were on going from 1678 to 1681, and religious offenses increased in 1680 from one a year for the prior three years to eight in 1680 and three in 1681. After 1681 no more convictions of religious offenses are recorded for the remainder of Charles’ reign. This is not a surprise as Charles’ Royal Declaration of Indulgences in 1672 brought the Catholic question once again to the forefront. Despite the increase in religious offenses for this period, royal offenses were just as common under Charles II as they were for the overall period; theft, violent theft, and killings were still the crimes that occupied the majority of the court’s time.

7.2.3 Punishments in the reign of Charles II

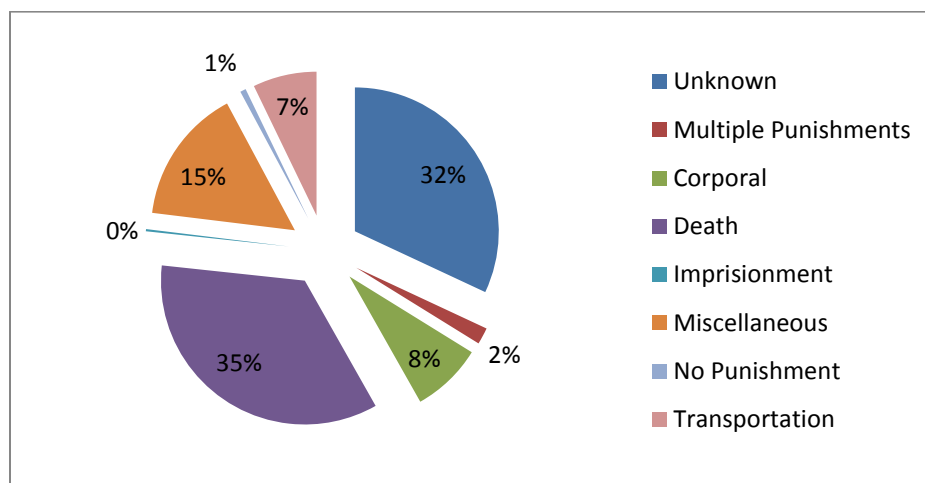


Figure 7.3 Punishments in the Reign of Charles II

The chart above clearly indicates that the punishments recorded for this period were distributed differently than the numbers seen during the rest of the forty-years. First, the “miscellaneous” category was not the largest during the Charles’ reign; instead the death penalty held that distinction with thirty-five percent. Second, “unknown punishments” more than doubled their share from 1674 to 1685. This change in the “unknown punishments” is likely the cause of both “miscellaneous punishments” being down and the death penalty being higher. As was discussed in the chapter Two, the early years of the session records were both spotty and selective in their reporting. It is possible that “miscellaneous punishments” simply were not recorded for a variety of reasons. While the increase in death sentences might also suggest a tendency of the court to enforce the severest penalties possible it is hard to support this claim while knowing the early status of the records.

What is interesting is that the Old Bailey records reported transportation as accounting for seven percent of the punishments handed down during the reign of Charles II. This is two percent higher than the longer period of 1674 to 1714. This is not an expected outcome given that the colonies in the Americas were not as well established as in later periods. It is hard to know what might be the catalyst for this difference, but it could suggest a number of possibilities

like a closer connection between England and her Atlantic holdings or an earlier trend to seek alternative forms of punishment. The latter seems unlikely though, since the death penalty accounts for the most punishments for this reign.

The state of the Old Bailey Sessions Papers during this period makes any concrete assessment difficult. Convictions for royal offense, specifically religious offenses, and death penalties appear to be higher than what is seen for the overall average. It is possible that the records themselves, or lack thereof, account for these differences. It is also possible that dramatic episodes like the Popish Plot play a role in the deviation from the average. Certainly Charles II had tried to assert his authority over the realm at times, but his reign was mostly marked by lack of political conflict when compared to later reigns in this period. Thus, some of these statistics seem out of place for his reign and perhaps more likely to have occurred under his brother James. While the differences in crime and punishment between Charles II's reign and the overall era are significant, theft, killings, and coining offenses remained the most important crimes to the court though the death penalty replaced punishments such as fines and sureties they were still in use and accounted for the third most reported punishments.

7.3 Crime and punishment in the reign of James II

The shortest reign of the four monarchs during this period was that of James II. He reigned from February of 1685 to December of 1688, roughly two month short of four years. Unlike the other monarchs during this period his reign was not ended by his death, but by his forced abdication and replacement by William and Mary. There were many events that scarred the reign of James. Even before the Glorious Revolution James faced two rebellions; one rebellion in England led by the Duke of Monmouth and one in Scotland led by the Earl of Argyll. In relation to the Old Bailey the rebellion of Monmouth is of most importance because the rebellion brought about the Bloody Assizes. These were a series of treason trials held in a number of counties and presided over by judges from the King's Bench. As will become

apparent, this likely had an impact on the nature and number of royal offenses seen at the Old Bailey during these years. The Declaration of Indulgence is another important event both to James II's reign and to the administration of justice in England. James first issued the declaration in 1687, but re-issued it again in 1688 with the decree that its provisions must be read at Anglican churches. It was upon this second issuing that a number of Anglican bishops petitioned the king to reconsider; this eventually resulted in their subsequent arrest and imprisonment for seditious libel. Like the Bloody Assizes the case was tried through the court of the King's Bench and therefore is another example of how the Old Bailey does not reflect the prosecution of royal offenses in England for this period.

7.3.1 Crimes in the reign of James II

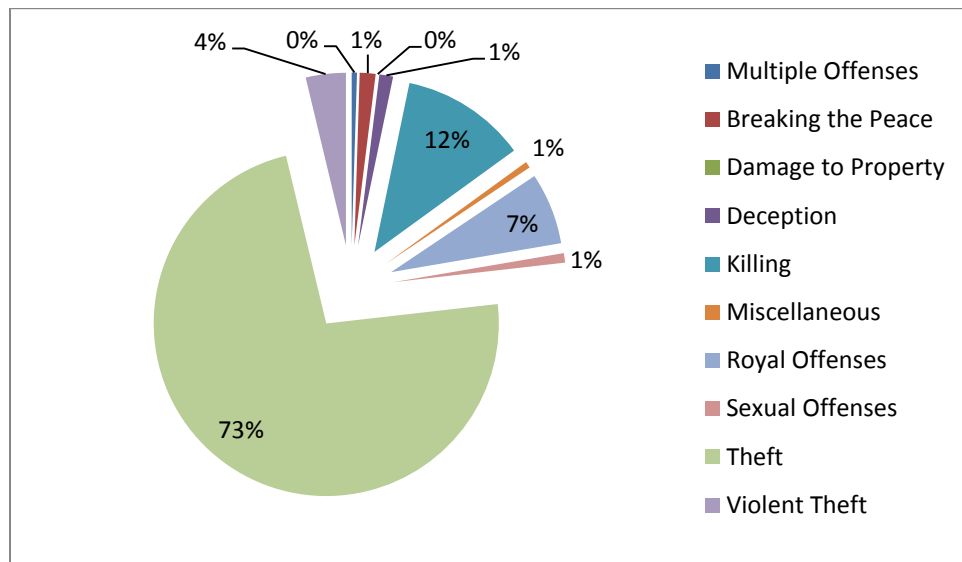


Figure 7.4 Crimes in the Reign of James II

The statistical makeup of crimes during James' reign is very consistent with the numbers seen for the entire forty-year period. The only area that showed an apparent difference was the crime of killing which increases during this period to twelve percent from the nine percent average seen in the overall statistics. However this number is down from the fourteen percent seen during the reign of Charles II. This suggests that by the time of James II the

functions of the Old Bailey and its associated publication had likely reached cohesion between what was important to the court and what they felt worth reporting in the published sessions. In this case the themes seen in the chapter on crime are repeated with theft, killings, royal offenses and violent theft holding the priorities in the court.

7.3.2 Royal offense in the reign of James II

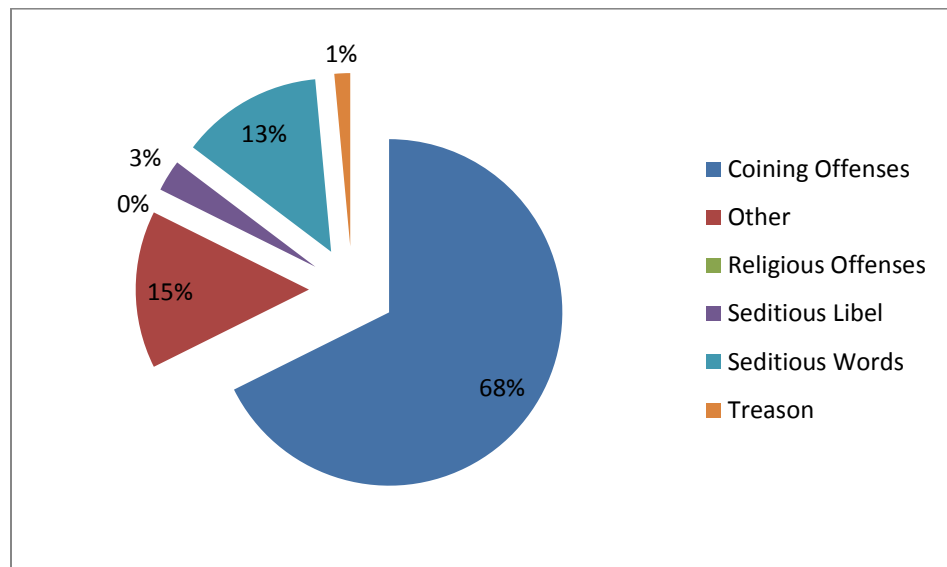


Figure 7.5 Royal Offenses in the Reign of James II

Where one does see a marked difference from the overall statistics of the Old Bailey is in the composition of the royal offenses tried in the court during James' reign. Coining offenses account for the largest portion of royal offenses seen at the Old Bailey, but seditious words saw an increase from eight percent to thirteen percent. Furthermore, there were no reports of religious offenses being tried at the Old Bailey while James reigned and only one case of treason. It is possible that the increase in the prosecution of seditious words is an indication of James' interest in prosecuting even less well-known offenders for insulting the crown. The possibility of this interest becomes even more likely in light of the fact that this number is an increase from the reign of Charles II as well. It is interesting to note that the number of prosecutions seditious libel in fact was lower in James' reign than it was in reigns of Charles II

or William III. This makes it hard to conclude that sedition was a greater concern to the Old Bailey during the reign of James II, but the increase in convictions for seditious words cannot be denied.

With domestic affairs including two rebellions and a controversy over religion the decrease in instances of treason and religious offenses seems counter intuitive at first look, but one must keep in mind that the Bloody Assizes and James's dispute with the Seven Bishops were handled by the court of the King's Bench – an entity James could exert more control over. The king's efforts to secure a favorable verdict in the Seven Bishops' case, of course backfired, they were found not guilty. The Declaration of Indulgence was really aimed at greater tolerance rather than persecution. Thus the Old Bailey saw fewer cases of religious offenses under that policy of James'.

7.3.3 Punishments in the reign of James II

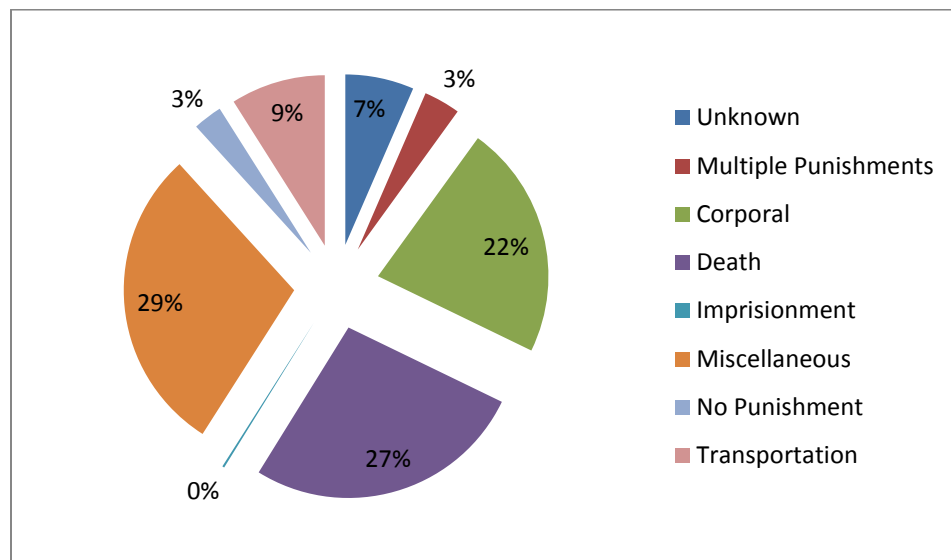


Figure 7.6 Punishments in the Reign of James II

While this break down of crimes during the reign of James II suggests at the very least that the concerns of the monarch were somewhat reflected in the court's prosecution of royal offenses, the statistical configuration of punishments during this time does not mark 1685-1688

as a vindictive few years for the Old Bailey. “Miscellaneous punishments” accounted for the highest percentage of sentences handed down with death penalties not far behind. The fact that “unknown” penalties only account for seven percent over this four year period is a little surprising. This seven percent is roughly half of what they are for the whole forty-year averages and in a time when the rhetoric of royal authority is at its height, one might not expect to see an increase in transparency especially for punishments. While James II probably had no role in the court’s improved statistics of reporting punishments he very easily could have tried to influence the change in the opposite direction. Another interesting difference between the statistics for punishments under James II and the longer period overall, is that transportation was four percent more likely to be invoked. As will become clear with the reign of William and Mary, outside events appear to play a big role in the choice to sentence transportation. Although James II likely had no direct role in this increase, the lack of foreign conflicts during his reign allowed transportation to become a viable alternative to other punishments.

In the four years of James II’s reign there were one thousand thirteen reported guilty verdicts – an average of roughly two hundred fifty-three convictions a year. This is higher than the forty-year average of one hundred forty-seven and the yearly average for Charles II, which again was one hundred twelve. Thus, during the reign of James II the cases that the Old Bailey saw and reported more than doubled from those under Charles II. As is the case with the reign of Charles some of this difference may have to do with the terse nature of the earliest Old Bailey reports of proceedings, but the increase also suggests that the sessions were becoming more popular. The increased number of cases at the Old Bailey may also suggest a greater use of the legal system by the people of London. It may be impossible to pinpoint the role the reign of James II played in these statistical differences, but they demonstrate that justice was not completely uniform during the various reigns. James II’s four short years on the throne came to an abrupt end when he escaped to France on Dec. 23, 1688.

7.4 Crime and punishment in the reign of William and Mary

Despite James' de facto abdication of the throne in December, William and Mary were not officially made co-monarchs until February of 1689. There is also a gap in the Old Bailey publications from December 5, 1688 to May 16, 1689. It is unclear if this gap is because of the Glorious Revolution or was unrelated. The dates certainly make it seem plausible that it was connected to the change in regime. The authors of the Old Bailey discuss some of the other gaps,

Although there is no evidence that publication was interrupted, it is not clear whether publication was constant throughout the period from 1678 to 1714. Whereas editions survive for the vast majority of sessions between April 1674 and 1698, between 1699 and 1714 editions are missing for two-thirds of the sessions, and there are three years for which no Proceedings survive: 1701, 1705, and 1706.²³⁹

This however does not discuss the missing session during the Glorious Revolution. That the Glorious Revolution interrupted the publication is very possible, the Old Bailey records list at least five session dates between December of 1687 and May 1688 (December 7, January 13, February 22, April 25, May 31). That next year three of these sessions were missing, all during the time that the power of the throne was in a transition. This seems too much of a coincidence to ignore. However as the quote from the Old Bailey authors demonstrates, this was not the only period records are missing for, in fact whole years are missing during the reign of William III²⁴⁰ and Ann. While the reasons for the publications hiatus during the Glorious Revolution are unclear, the publication resumed again only four months after the William came to the throne. Unfortunately it is unclear if only the publication was suspended during this period or if the trials at the Old Bailey were interrupted too.

²³⁹ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "The Proceedings - Publishing History of the Proceedings", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 04 February 2012)

²⁴⁰ Though both William was co-monarch with Mary from 1689 to 1694, he outlived her and continued to on the throne until 1702. For this reason the remaining references to this period will refer to it as the reign of William III for simplicity. This is not to argue the relationship that William and Mary had as co-monarchs, but rather to avoid changing the nomenclature midway through the section.

Not only did the reign of William III start with a revolution, ~~but~~ his years on the throne were filled with conflict and controversy. The first hurdle that the monarch encountered after the revolution was the nonjuring schism of clergy who refused to recognize William and Mary's rights to the throne. The Nine Years' War, which spanned from 1689 to 1697, occupied much of William's reign and once again embroiled England with France. Domestic matters were not much better. In the early years of his reign, the king had to contend with Jacobite risings in both Ireland and Scotland. In Scotland these risings eventually led to the Massacre of Glencoe and further political turmoil in the aftermath. In England itself, however, Williams' reign was less turbulent than those of the Stuarts before him. Still the Old Bailey saw instances of Jacobite sentiments. In 1696 a Jacobite plot to kill William was discovered and charges were brought against Sir John Fenwick:

On Thursday Sir John Fenwick Bar. was brought into Court, where he was Arraigned for High-Treason, for Conspiring the Death of the King , and Pleaded Not Guilty; The Court gave him notice to prepare himself for his Trial on Thursday next, at 9 of the Clock in the Forenoon.²⁴¹

Unfortunately, records of Fenwick's trial do not exist; it is unclear if it was not recorded or if the matter was removed from the Old Bailey and held at a different court. He was eventually beheaded for his crime. This is actually not the first reference to Sir John Fenwick that is found in the Old Bailey records; in 1695 he along with a number of others was indicted for riot, but they were found not guilty.

Though marked by resistance from those loyal to James, the reign of William III was defined by the Nine Years' War. The war's resolution in 1697 also ended the French support of James II and thus brought an effective end to serious Jacobite to William III. The remaining five years of his reign were relatively uneventful. Though the Act of Settlement was passed in June of 1701, it would really have a greater impact on Anne's reign.

²⁴¹ *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 04 February 2012), September 1696 (o16960909-1).

7.4.1 Crimes in the reign of William II

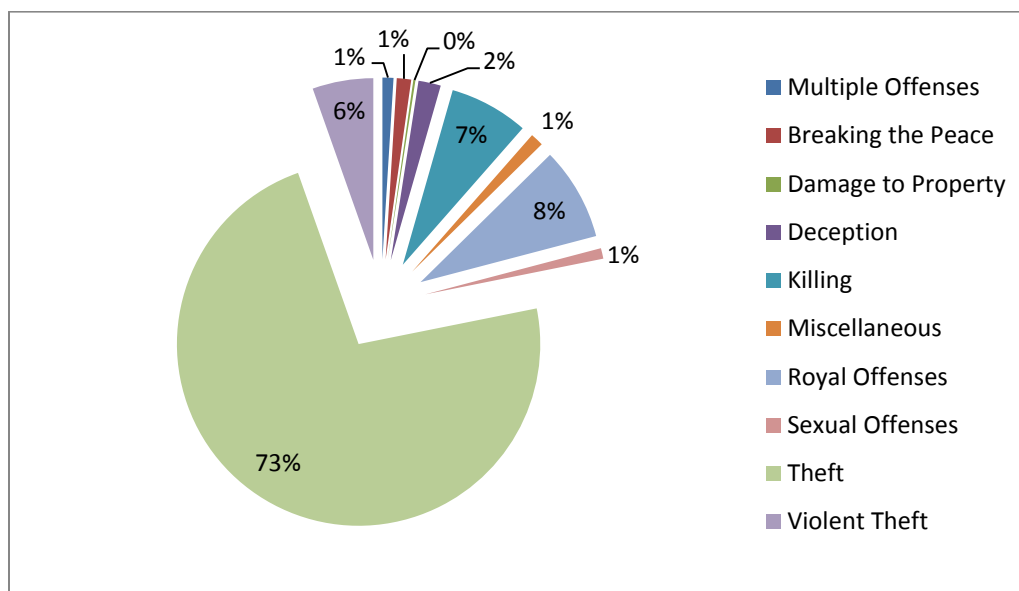


Figure 7.7 Crimes in the Reign of William III

The chart above shows the statistical break down of the two thousand six hundred fifty-nine guilty verdicts that were rendered by the Old Bailey from 1689 to 1702. This would give a yearly average of two hundred twenty-one convictions a year²⁴² reported by the Old Bailey. This is down from the number seen during the reign of James II, but up from Charles II's reign. One must also keep in mind that the records for the entire year of 1701 are missing, so these numbers are not as precise as they could be.

When comparing the Old Baileys statistics on crimes and punishments within William's reign to those of his predecessors, Charles and James, the first striking differences is the lower number of killing offenses. Killing accounted for half of the number of crimes under William that it did under Charles and it was five percent lower than it had been under James. In fact, reports of convictions for the crime of killing under William are two percent lower than they are for the forty-year period of 1674 to 1714. The number of crimes reported as "killings" in the Old Bailey

²⁴² This is based on twelve years instead of the thirteen years of William's reign, as the records for the year 1701 are missing.

records was not the only change seen during William's reign; violent theft convictions were up by two percent and royal offenses went up one percent. There were actually more royal offenses during his reign than during the individual reigns of James II or Charles II. In the case of James this might be due to more royal offenses being tried in other courts like the Court of King's Bench.

7.4.2 Royal offenses in the reign of William III

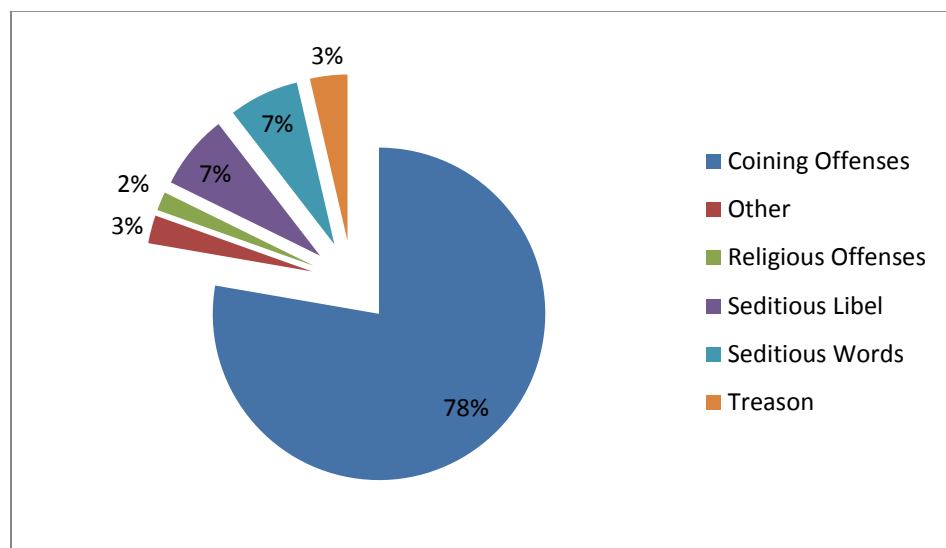


Figure 7.8 Royal Offenses in the Reign of William III

When comparing the statistics of royal offenses during William's reign and those for the forty-year period it is obvious that under William a royal offense conviction was ten percent more likely to be for a coining offense. Both treason and seditious words were one percent lower than the cumulative average while seditious libel was one percent higher. When compared to the Old Bailey's records under Charles, royal offenses under William were much less concerned with treason or religious offenses. It is hard to say if the fact that William was not a Catholic helped reduce the number of religious offense heard at the Old Bailey or if in fact James II's pressure for tolerance had something to do with this. While there were no reports of religious offenses being tried at the Old Bailey during James' reign, the more interesting difference in royal offenses between his reign and that of William is that convictions were nearly

half as likely to be for seditious words under William. Royal offenses under William were still distributed differently than those for the aggregate average. If compared to the two previous reigns, though, Williams' reign produced numbers closer to the forty-year averages. If this is a reflection on the court's approach to justice during the reign of William or evolution of the Old Bailey Sessions Papers as a publication, s unclear, but the difference is worth noting nonetheless.

7.4.3 Punishments in the reign of William III

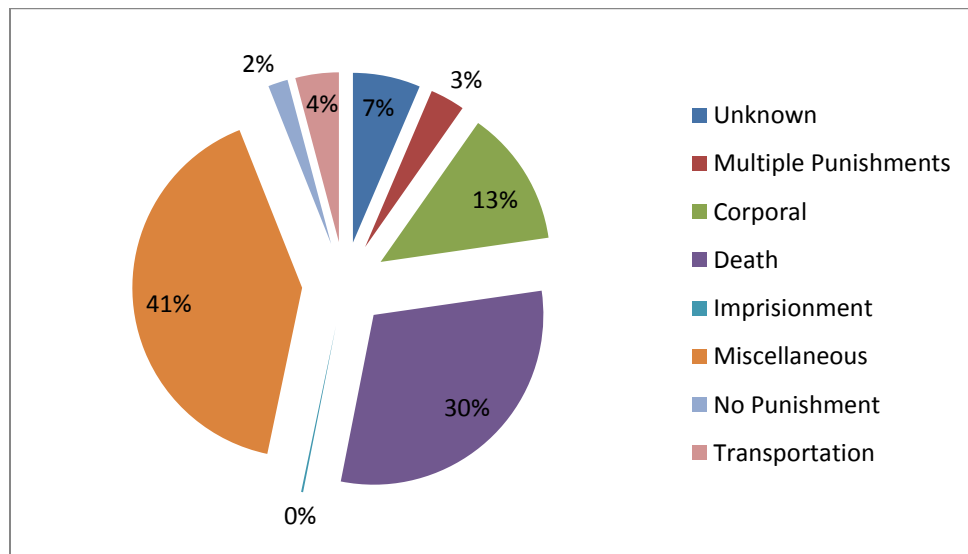


Figure 7.9 Punishments in the Reign of William III

In the case of punishments during William III reign a few trends are worth discussing. First, “unknown punishments” during his reign were down from the forty-year statistics by more than half, though the percentage is the same as it had been under James II. The use of “miscellaneous punishments” went up significantly under William. The court presented an eight percent increase from the overall numbers and a twelve percent increase from those of James II. Death penalties also saw an increase during William III's reign up by three percent from the forty-year trends. Though transportation only saw a one percent decrease from the overall statistics it dropped five percent in his reign from that of James II. The explanations for some of these statistical differences likely lie in the Nine Years' War. First, transportation would have

been disrupted during the war as it took place both in Europe and in the colonial holdings of the European powers. Without transportation as a reliable means of punishment, the court likely had to find substitutes like death, brandings or fine. Secondly, the increase in “miscellaneous punishments” might be explained in part by an increase in military duty sentences. In fact, fifty-two of the total fifty-eight reported sentences of military duty issued from 1674 to 1714, take place during William’s reign. With these two factors in mind there is no doubt that the justice dispensed at the Old Bailey was influenced by the Nine Years’ War.

Though William III likely had no personal hand in the changes at the Old Bailey during his reign, these differences no doubt reflect on how events around the court influenced justice. The king’s foreign policies clearly put different pressures on the court and limited the ways in which it had previously expressed justice.

7.5 Crime and punishment in the reign of Anne

After the death of William III in March of 1702, William’s sister-in-law Anne Stuart ascended to the throne. The Act of Settlement of 1701 had already established Anne’s ascendancy failing the production of any heirs by William. Though her reign was not as turbulent domestically as those of her predecessors, Anne’s reign did include a pivotal piece of legislation. The Acts of Union were passed in 1707, uniting the Parliaments of England and Scotland for the first time since they had shared a monarch under James I. Though the Acts passed with relatively little resistance, there were dissenters on both sides of the issue. There was no open insurrection; an abortive Jacobite invasion in 1708 meant that Anne’s reign was unmarred by claims from the exiled Catholic Stuarts. On the foreign front the War of Spanish Succession, also known as Queen Anne’s War, encompassed nearly her entire reign from 1702 to 1713. Like the Nine Years’ War before it, Queen Anne’s War was trans-Atlantic and this conflict took its toll on transportation.

7.5.1 Crimes in the reign of Anne

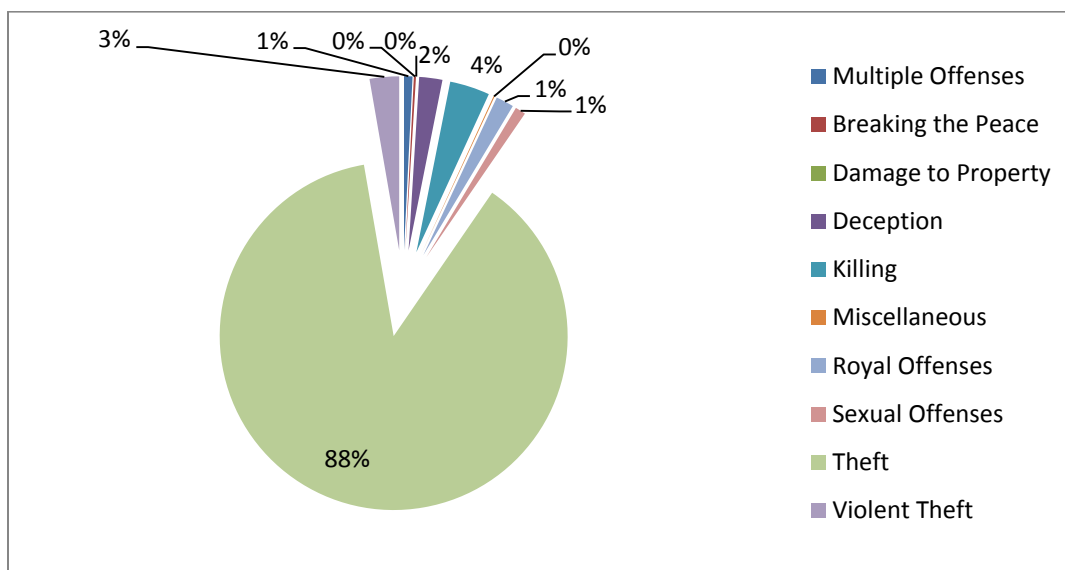


Figure 7.10 Crimes in the Reign of Anne

There was an average of one hundred two convictions a year²⁴³ during Anne's reign, though records for two of those years do not exist. This is substantially lower than the averages for both James II and William III and is a little lower than the figure for Charles II's reign. It is unclear if this is a reflection of trends regarding justice during the period or if it was caused by changes in the reporting of the sessions. Since that average is adjusted for the missing two years of records, it would mean that the Old Bailey was either not as active or the publication was more selective under Queen Anne.

As the chart above demonstrates, the crimes for which persons were convicted at the Old Bailey during the reign of Queen Anne were predominantly thefts. Of the one thousand twenty-three convictions during this period nearly eighty-eight percent were theft crimes. In fact, theft crimes were fourteen percent more common among the convictions during her reign and fifteen percent higher than under William III. Royal offenses were at their lowest of all the monarchs under Anne at roughly one percent. Also at their lowest percentage were crimes of

²⁴³ This average is based on ten years rather than the twelve years that Queen Anne held the throne because the records from 1705 and 1706 are missing.

killings; they were down to four percent. This decrease is a trend that was seen to occur throughout this period. Violent theft is also a category that saw a decrease; it was down one percent from the forty-year average and down three percent from the figures during William's reign.

7.5.2 Royal offenses in the reign of Anne

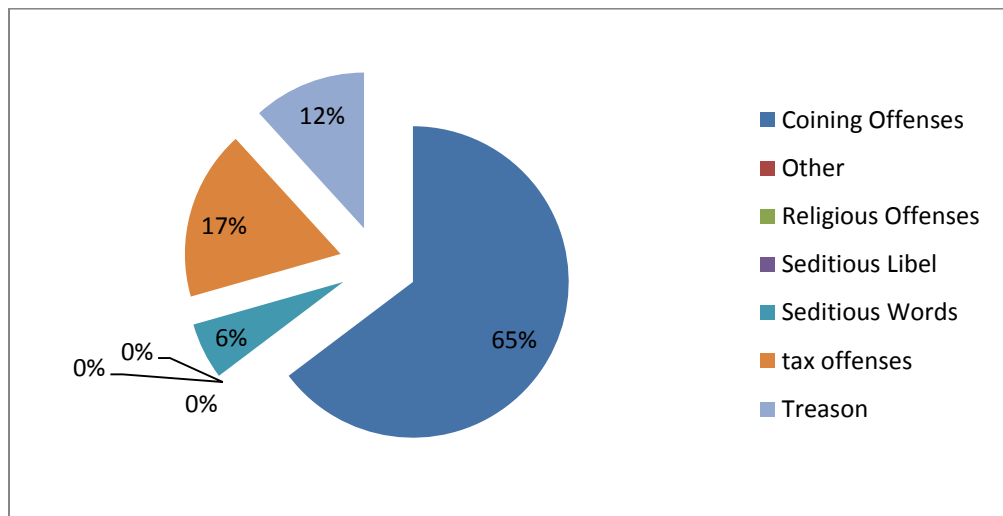


Figure 7.11 Royal Offenses in the Reign of Anne

Though royal offenses were at their all-time low under Queen Anne, the statistics on the crimes that were tried during her reign yield some surprising results. Under Anne, as in all three of the previous reigns, coining offenses accounted for the largest portion of royal offenses that were seen at the Old Bailey, though these were down substantially from William's reign. Treason convictions were at their highest percentage under Anne, though there were only two during this time. What is more interesting is the introduction of a new category – tax offenses. This was the second most common royal offense of which persons were convicted at the Old Bailey from 1702 to 1714. As described in chapter Four, tax offenses were crimes where citizens were charged with the failure to pay duties and customs. It is hard to know why these crimes were not tried during earlier reigns they clearly are a reflection of the court's concern with protecting revenues to the government. No doubt the Old Bailey felt pressure to support the

war effort during Queen Anne's War, but the Nine Years' War should have been similar in that regard. A look at the punishments issued during the reign of Anne may help shed light on other demands that the war created.

7.5.3 Punishments in the reign of Anne

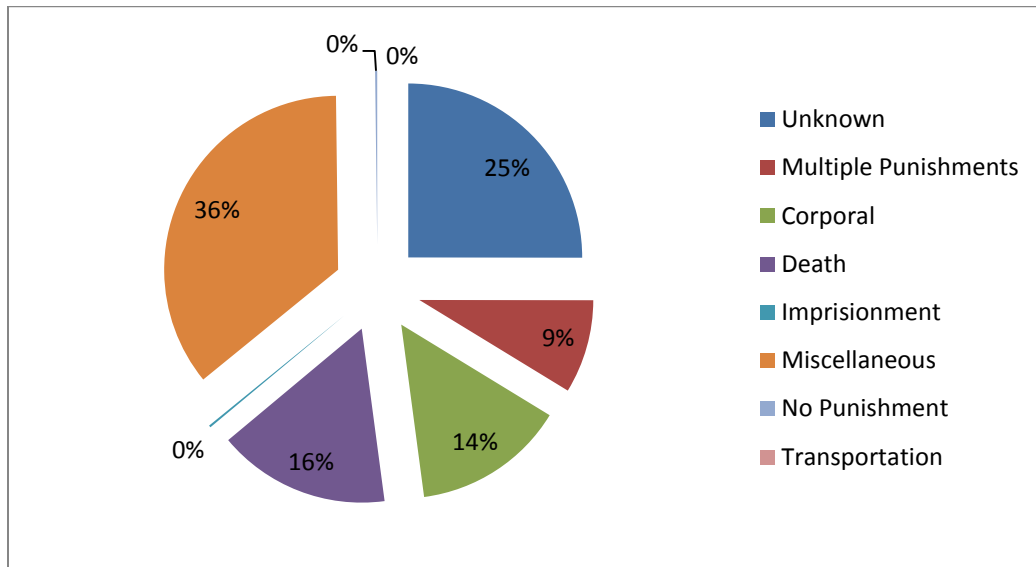


Figure 7.12 Punishments in the Reign of Anne

Queen Anne's War interrupted transportation; not a single instance of transportation was reported during this period. This means that from the reign of James II to that of Anne the percentage of convicts transported through the Old Bailey sentences dropped from nine to zero. To put this another way, there were one hundred and ten instances of transportation being imposed at the Old Bailey; this accounted for four percent of the total punishments under William III. Prior to Anne this was the lowest percentage, but in Anne's reign there were no reports of transportation in the one thousand twenty-three convictions. Due to her reign being marked by a global war one might guess that military duty would account for a high percentage of the sentences that transportation lost. Though Anne's reign did see more sentences of military duty than that of Charles and James²⁴⁴ this punishment only accounted for six of the

²⁴⁴ No records of military duty sentences exist for the reigns of the two Catholic Stuarts

total punishments during this period – a significant drop from the numbers seen during the reign of William III. Likewise both death penalties and “miscellaneous punishments” were down during these years from those registered under William. “Miscellaneous punishments” were higher in Queen Anne’s reign than they were for the forty-year averages, but the death penalty is lower. Where one sees an interesting increase, is in the “unknown punishments”. “Unknown punishments” accounted for seven percent in the reigns of both James II and William III, but under Queen Anne this number skyrockets to twenty-five percent. The reason for this change is unknown. It seems counter-intuitive for the Old Bailey publications to regress in their reporting, but the statistics appear to suggest this.

Queen Anne’s War no doubt had an impact on how the Old Bailey’s judges and juries approached justice during this period. Whereas with the Nine Years’ War there was an increase in punishments of military duty and death, the reign of Queen Anne seems to have resulted in less reporting of punishments. Since the reasons for the increase in “unknown punishments” is unclear it is fair to return to the question of how to account for these punishments that was posed in chapter Three. The death penalty may account for a portion of these “unknown punishments” due to the ubiquitous nature of hangings that was discussed. The role of changing public opinions towards capital punishment cannot be discounted, especially with the consideration that thefts accounted for so many convictions during this period. There is no evidence that Queen Anne’s government tried to influence the direction of trials or sentences at the Old Bailey. Still, once again the numbers show that the monarch’s policies – especially foreign policies – nevertheless worked to shape the dispensing of justice.

Queen Anne’s reign demonstrates a larger point about the relationship between rulers and the Old Bailey. When a monarch’s policies resulted in a relative peace on the foreign front, punishments like transportation were more likely. When domestic issues took center stage, then crimes like religious offenses and sedition seem to have played bigger roles than at other times. Unsurprisingly, military duty became more important in times of war as techniques employed to

control crime by the Old Bailey. What also stands out though, is that crimes like theft and coining offenses remained the mainstay of prosecutions at the Old Bailey. While the number of trials for killings and royal offenses fluctuated during this period it did not see them overtake theft; only once did these crimes trade positions in their overall standings. It appears from this study that monarchs did influence the dispensing of justice at the Old Bailey, but far more often this influence was indirect, rather than through overt intervention. Even considering variations in monarchs' views of their own roles, the Old Bailey was a consistent arbiter of justice for Londoners during the era of the Glorious Revolution.

CHAPTER 8

UNDERSTANDING THE OLD BAILEY AND LOOKING FORWARD

8.1 The Place of the Old Bailey in the Glorious Revolution

The Old Bailey held a central place in London society both figurative and physically. By combining public trials and punishments with publications that offered moral lessons about the risks of a criminal lifestyle, the authorities at the Old Bailey and Newgate prison were able to influence Londoners directly as well as indirectly. As has been shown through statistical analysis and individual cases studies the Old Bailey had to negotiate the demands of political reality against the demands of the people. The statistics show that the crimes seen at the Old Bailey were often concerned protection of property of individual safety. The punishments issued to those found guilty reflect the extent to which the court tried to use both threats of violence and non-violent means like fines or transportation.

With theft (and violent theft) accounting for nearly eighty percent of the guilty verdicts rendered by the Old Bailey it is clear that protection of individuals and their property was an important, if not the most important, role of the court. That cases of killings accounted for the next highest number of convictions reinforces this idea that the Old Bailey was a court dedicated to safeguarding Londoners. When it came to protecting the interests of the crown via the prosecution of royal offenses, the third most common category of crimes, the Old Bailey was mostly concerned with coining offenses. Illegal production of coins endangered both the monarch's interests as well as the interests of citizens and merchants. While crimes like treason and religious offenses consistently were heard at the Old Bailey, their place in the popular image of the period is not justified by the statistics. The average Londoner's experience with

justice during the era of the Glorious Revolution, in other words, was not dominated by royal or religious concerns.

The community participated in not only trials, but also punishments; most punishments were public. This means that the relationship between the Old Bailey and London's citizens that often began with the community's involvement in apprehending the criminal usually concluded with the public display of the corrective process. The statistics for punishments imposed suggests that the Old Bailey judges and juries tried to strike a balance between bring the full force of authority to bear through the death penalty and deterrence. If criminals were not to suffer the ultimate penalty – which was the most visible if not the most prevalent sentence – then criminals usually paid their dues through fines and other restrictions of their liberties. This study establishes that “miscellaneous punishments” including brandings and fines accounted for roughly a third of all punishments issued by the Old Bailey. The death penalty was not far behind at twenty-eight percent, with corporal punishments and “unknown punishments” each accounting for nearly fifteen percent.

The individual case studies presented here demonstrate that the court sometimes was concerned with legal questions that could be mundane – i.e. of limited value as precedents. For example the case of William Shakesby, convicted of animal theft and sentenced to branding, demonstrates to legal scholars a sense of *quid pro quo* in sentencing shown by the Old Bailey. On occasion the Old Bailey proceedings hint at what might be discovered in what the trials leave unsaid. After examining the trial of the unnamed woman who was acquitted of arson for reasons of *non compos mentis*, the researcher suspects that there are many cases involving mentally ill persons that never made it to trial. This case stands out, that is because a trial occurred. On the whole, this study supports the idea that the Old Bailey represented a justice system that was interested in both upholding the law as well as guarding the rights of defendants. While it would be inaccurate and anachronistic to project a contemporary sense of a “fair trial” unto the Old Bailey proceedings over this forty-year period, the court and the people

of London who participated in the system had their own sense of fairness that was maintained, even in the face of external pressures like the Glorious Revolution.

The years between 1674 and 1714 saw a number of important political events. From the restoration of the monarchy to a number of foreign conflicts Londoners endured many changes beyond just the overthrow of James II. Rather than seeing this period as one dominated by the monarchs the Old Bailey records allows scholars to see events in a different light. From the perspective of justice and the common person the Old Bailey was clearly a system where the court both reacted to the demands of London's citizens as well as negotiated the political landscape that the various policies of the monarchs produced. The Nine Years' War sits as an example of how events beyond the control of the court created a situation where the dispensing of was adjusted due to the limits experienced in transportation and demands from the military for more bodies.

The average Londoner participated in the judicial process from start to finish, and central to this process was the Old Bailey. The court was far more an institution of the community than it was a tool of royal authority and as such the institution withstood the many changes of the political landscape that occurred from 1674 to 1714.

8.2 Epilogue: The Old Bailey After the Transportation Act of 1718

The first transportation act was passed in 1718. It authorized English courts to sentence criminals convicted of crimes that were covered by the benefit of clergy to seven years of indentured labor in the North American colonies.²⁴⁵ This act also made it possible to sentence those convicted of capital crimes, but pardoned by the crown, to transportation.²⁴⁶ Another law was passed in 1720 that permitted the government to pay merchants who carried those

²⁴⁵ Clive Emsley, Tim Hitchcock and Robert Shoemaker, "Crime and Justice - Punishments at the Old Bailey", *Old Bailey Proceedings Online* (www.oldbaileyonline.org, version 6.0, 03 March 2012)

²⁴⁶ Ibid.

sentenced to transportation across the Atlantic to the colonies.²⁴⁷ From January 1718 to July of 1776 there were nineteen thousand nine hundred twelve criminals convicted at the Old Bailey; of these roughly eighteen thousand persons were convicted of theft or violent theft, meaning these crimes accounted for over ninety-two percent. Thirteen thousand two hundred sixteen of the total convicted over this period were sentenced to transportation, which is almost sixty-seven percent.

In 1718 and 1719 there were one hundred fifty-one criminals transported to the colonies, compare that to the two hundred eighty transported in the entire period from 1674 to 1714. In fact, there are no records of any criminals being sentenced to transportation by the Old Bailey from 1714 to 1718. Without a doubt the Transportation Act changed the nature of punishment at the Old Bailey. Though such a question goes beyond the scope of this work, a more detailed discussion of transportation would be instructive in understanding how the Old Bailey changed after the Stuart monarchs. The secondary literature on transportation tends to place the impetus for these trends on mostly economic factors.

Kenneth Morgan's 1985 article "The Organization of the Convict Trade to Maryland" lays a foundation for this economic approach to transportation. The article utilizes records from the trading firm Stevenson, Randolph and Cheston from 1768 to 1775 to explore the nature of the convict trade. First, Morgan discovers through the correspondence of the business partners that the court was unofficially involved in the selling of convict; he notes that contracts were negotiated between the justices of the peace and the firm, in various parts of Britain.²⁴⁸ Morgan also finds that these sources agree with older conclusions that the majority of the convict trade was centered on the Chesapeake Bay region encompassing Maryland and Virginia. Morgan argues that this concentration of the convict trade in this region is because of the diversification

²⁴⁷ Ibid.

²⁴⁸ Kenneth Morgan, "The Organization of the Convict Trade to Maryland: Stevenson, Randolph and Cheston, 1768- 1775" *The William and Mary Quarterly Third Series*, Vol. 42, No. 2 (1985), 210..

of the agriculture business in parts of Maryland and that the semi-skilled labor offered by convicts made them more appealing than slaves or indentured servants²⁴⁹. Furthermore, Morgan argues that skill alone was not the only criterion that made convicts more attractive, but also the ability to specify regional origins.²⁵⁰ Given the limited space in an article, Morgan did not dedicate much time to the discussion of English society and legal system that created transportation. Still, Morgan's analysis of the Stevenson, Randolph and Cheston firm's documents help set the tone for several subsequent studies on transportation.

Ekrich's book *Bound for America*, expands on Morgan's thesis. Ekrich introduces the English legal system to the discourse. In Ekrich's assessment, the system of transportation is the culmination of a domestic concern for rising crime in the cities of England and the desire for a punishment that lacked the finality of the death penalty, but was more effective than corporal methods.²⁵¹ For Ekrich the Transportation Act of 1717 was an innovation that would ultimately add to the colonial grievances; in that sense, the legislation spelled its own demise. Unlike Morgan, Ekrich believes that despite the economic motivations, the colonials largely viewed these convicts, and rightly so, as "experienced troublemakers"²⁵². This perhaps is an oversimplification of the relationship between the colonials and the convicts as well as the nature of crime and punishment in England, but Ekrich demonstrates that the convicts were often not welcomed and their presence resented. Ekrich argues that by the time of the American Revolution the British legal system was so reliant on transportation and its removal of convicts from the public view that it could not successfully return to a policy of capital punishment. Therefore, Ekrich sees the birth of the English prison in the death of Atlantic transportation.

In *Eighteenth Century Criminal Transportation*, Gwenda Morgan and Peter Rushton return to Kenneth Morgan's argument about the growth of the convict trade and view

²⁴⁹ Ibid., 227-228.

²⁵⁰ Ibid., 216.

²⁵¹ Robert Ekrich, *Bound For America: The Transportation of British Convicts to the Colonies 1718-1775* (Oxford: Clarendon Press 1987), 223.

²⁵² Ekrich, 166.

transportation as the result of a surplus in criminals in England and the demand for unfree labor in the North American colonies. As Morgan and Rushton suggest, it is erroneous to assume that the result of capitalism is freedom and ownership on one's labor.²⁵³ In this work Morgan and Rushton introduce the influence of the media that surrounded the Old Bailey. They point out that images of "dangerous British criminals" soured the colonials to the prospects of transported convicts in their midst.²⁵⁴ A network of criminal literature that began in England with publications like the Old Bailey sessions papers and the Ordinary of Newgate's Accounts extended to the new world with the circulation of runaway servant/convict advertisements. It is this recognition of the role of convict literature in the development and image of transportation that Morgan and Rushton add to the historical discourse on transportation. In the end though, for Morgan and Rushton economic factors fuel transportation on both sides of the Atlantic.

Like most questions in history, the answer to what drove the boom in transportation sentences after 1718 is likely more complex than simple economics. No doubt economics played a role, but one factor to consider is that transportation was far more common under Charles II and James II, this is long before the economic incentives of the 1720 statutes were a motivating factor. Furthermore the transportation seems to enter a decline in use when conflicts with foreign nations make it hard to rely on the punishment. It is not implausible, then, that the rise in transportation sentences after 1718 is a reflection of earlier trends.

England's increasing reliance on transportation, then, occurred at the same time and perhaps partly helped inspire the trend of moving punishments from the public to the private sphere. As demonstrated in the present study, the community was a vital part of the discourse of justice; Londoners' role in the punitive side of the law was unquestionable. Transportation may have been a reaction to a desire from the community to see an alternative to the death penalty in part, but it was also a step in making punishment less public. For Britain

²⁵³ Gwenda Morgan and Peter Rushton, *Eighteenth Century Criminal Transportation: The Formation of the Criminal Atlantic*, (New York: Palgrave MacMillan, 2004), 161.

²⁵⁴ *Ibid.*, 161

transportation appears to be an intermediate step in the movement from punishments like the death penalty or corporal punishments to imprisonment.

For many reasons the Old Bailey turned to transportation after the period of the Glorious Revolution until the American Revolution when once again the English legal system pondered what to do with its convicts. Historians know that the English did not have to ponder this question for long. By 1790 the “first” and “second” fleet of convicts had been transported to Australia, thus postponing the English need to deal with growing domestic distaste for the hanging tree. The question of exactly how a nation should apportion blame and punishment for crimes continues to vex more modern societies. With rising prison populations and a penal system that often seems to fail both the community and the convicts, it might just be time to see the relationship between the common person and the law change again.

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Nathaniel Goodwin received his BA from Trinity College before starting his MA at the University of Texas at Arlington. At Trinity Nathaniel won the George B. Cooper Prize in British History. Nathaniel hopes to continue his passion for history through teaching.