

CRIME, GENDER AND
SOCIAL ORDER IN
EARLY MODERN
ENGLAND

GARTHINE WALKER

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1

Introduction

HISTORIES OF CRIME AND GENDER

In an important review essay of 1986, Joanna Innes and John Styles described the social history of crime and the criminal law as ‘one of the most exciting and influential areas of research in eighteenth-century history’.¹ It would be somewhat optimistic to make such a statement today about the field as a whole. In some respects, the history of crime appears to be a history that has been standing still. One may observe that the field is not so much reflective of new approaches and interpretations as it is the honing of older ones. Much recent work remains characterised by aspects of what in the 1970s and 1980s was known as the ‘new’ social history approach. Books are still produced in the mould of ‘history from below’ or which draw on the methods of positivist social science in order to identify patterns in social behaviour by, for example, counting numbers of indictments and analysing statistically verdicts and sentences over time.² It is noticeable that the approach, assumptions and scope of some recent contributions, while being fine pieces of scholarship in their own terms, are similar to those of older works.³ In this present work, I wish not to dismiss these traditions, but to develop their strengths.

The ‘new’ social history approach remains fruitful. In line with the latter stance, one historiographical strand has emphasised the amount of

¹ Joanna Innes and John Styles, ‘The crime wave: recent writing on crime and criminal justice in eighteenth-century England’, *Journal of British Studies* 25 (1986), 380.

² Malcolm Gaskill, *Crime and Mentalities in Early Modern England* (Cambridge, 2000); Gwenda Morgan and Peter Rushton, *Rogues, Thieves and the Rule of Law: The Problem of Law Enforcement in North-East England, 1718–1800* (London, 1998).

³ For example, Morgan and Rushton, *Rogues, Thieves and the Rule of Law* published a decade and a half after J.A. Sharpe, *Crime in Seventeenth-Century England: A County Study* (Cambridge, 1983). The only real concession in the former to advances in the field is a separate chapter on women’s crime. Incidentally, on the issue of gender, Sharpe himself did not so much revise the second edition of his textbook on early modern crime as insert the odd paragraph that sat somewhat at odds with his otherwise undisturbed original narrative: J.A. Sharpe, *Crime in Early Modern England*, 2nd edn (London, 1999).

communal participation in enforcing the law and the degree of discretion involved at every stage of the criminal process.⁴ The most recent developments here have been in the work of John Beattie and Peter King. The late Roy Porter situated Beattie's work on London crime in the tradition of E.P. Thompson's social history wherein law is seen as 'the creature of the ruling class', but one that 'because it needed legitimacy, ... had to possess a power not primarily coercive but consensual'.⁵ Porter's error is born of certain similarities between Marxist and non-Marxist accounts of the law. For Beattie's approach has more in common with that of non-Marxist social science, which focuses on law as a system in its own right, a system within a system that was not always aligned with the wishes of the elite.⁶ We may place King's contribution in the older social science tradition, too, partly because of its explicit engagement with and critique of the well-known arguments of Thompson, Douglas Hay and Peter Linebaugh, which were articulated in the 1970s.⁷ The result is an extremely sophisticated argument about how procedures and practices changed over time, which problematises the extent to which the law was a tool of the ruling class.

The Thompsonian tradition remains fruitful too. The idea that the law was 'a multiple use-right available to most Englishmen [sic]' has been reinforced and modified.⁸ For instance, Andy Wood has shown how free miners were able to use customary law as a resource in their struggles for autonomy.⁹ Such studies suggest not so much that the common people shared with their rulers a consensual view of the legitimacy of the system, but rather that law provided a resource to which many sorts of people might turn to bolster their own claims of legitimacy for their own ends. This takes us beyond the view of earlier histories that merely identified aspects of 'class antagonism' and even 'class hatred' in early modern society,¹⁰ a view that has been generally

⁴ Cynthia B. Herrup, *The Common Peace: Participation and the Criminal Law in Seventeenth-Century England* (Cambridge, 1987).

⁵ Roy Porter, 'F for felon', *The London Review of Books* 24, 7 (2002), 23.

⁶ J.M. Beattie, *Policing and Punishment in London, 1660–1750: Urban Crime and the Limits of Terror* (Oxford, 2001).

⁷ Peter King, *Crime, Justice and Discretion in England, 1740–1820* (Oxford, 2000). See also Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (London, 1975) and Peter Linebaugh, *The London Hanged: Crime and Civil Society in the Eighteenth Century* (London, 1991).

⁸ John Brewer and John Styles, 'Introduction' to John Brewer and John Styles eds., *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), 20.

⁹ Andy Wood, 'Custom, identity and resistance: English free miners and their law, c. 1500–1800', in Paul Griffiths, Steve Hindle and Adam Fox eds., *The Experience of Authority in Early Modern England* (London, 1996), 249–85.

¹⁰ Buchanan Sharp, *In Contempt of All Authority: Rural Artisans and Riot in the West of England, 1586–1660* (Berkeley, 1980), 7–8, 33; Joel Samaha, 'Gleanings from local criminal court records: sedition among the "inarticulate" in Elizabethan Essex', *Journal of Social History* 8 (1975), 61–79.

rejected on the grounds that few of those who resisted the law or exhibited disorderly behaviour seem to have had a developed sense of (modern) class consciousness or any idea of an alternative social order.¹¹ Debates over class and status have thus continued to inform the field as a whole.¹²

There has been less integration of a study of gender into that of crime *per se*, and there is some truth in the contention of poststructuralists that social history has tended to universalise the male experience.¹³ First, although some work on women's criminality has been undertaken, the experience of ordinary women who came before the courts as defendants, plaintiffs and witnesses in other than supposedly 'female' crimes has remained largely obscure.¹⁴ This poses something of a puzzle for two reasons. Court records are among the most potentially illuminating of all early modern historical sources, offering vivid insights into the nature of social interaction and diverse aspects of early modern life. It is no accident that both the currently standard textbooks on the social history of the period are written by historians whose own research interests originally lay in the history of crime and the law.¹⁵ Indeed, for historians of women (as opposed to historians of crime), court records have 'probably afforded us a greater understanding of women in the past, as individuals, within the family and the community than any other type of material yet examined'.¹⁶ Moreover, given that historians have emphasised the broad participatory base of the legal system, the absence of any real consideration of what this meant for women is conspicuous.¹⁷ Secondly, assumptions (largely unacknowledged) about gender often appear

¹¹ Sharpe, *Crime*, 198; Wrightson, *English Society*, 65. See also Roger B. Manning, *Village Revolts: Social Protest and Popular Disturbance in England, 1509–1640* (Oxford, 1988); Keith Lindley, *Fenland Riots and the English Revolution* (London, 1982).

¹² An excellent discussion of the concept of class in early modern historiography is found in Wood, *Politics of Social Conflict*, ch. 1.

¹³ For a lengthier critique, see Garthine Walker, 'Crime, gender and social order in early modern Cheshire', unpublished Ph.D. thesis, University of Liverpool (1994), 2–16.

¹⁴ Examples of recent studies that focus on women rather than gender include Mark Jackson, *New-Born Child Murder: Women, Illegitimacy and the Courts in Eighteenth-Century England* (Manchester and New York, 1996); Jenny Kermode and Garthine Walker eds., *Women, Crime and the Courts in Early Modern England* (London, 1994); Ulinka Rublack, *The Crimes of Women in Early Modern Germany* (Oxford, 1999). For a pioneering work, see J.M. Beattie, 'The criminality of women in eighteenth-century England', *Journal of Social History* 8 (1974–5), 80–116.

¹⁵ Keith Wrightson, *English Society, 1580–1680* (London, 1982); J.A. Sharpe, *Early Modern England: A Social History, 1550–1760* (London, 1987).

¹⁶ Olwen Hufton, 'Women and violence in early modern Europe', in Fia Dieteren and Els Kloock eds., *Writing Women into History* (Amsterdam, 1991), 75.

¹⁷ For example, Anthony Fletcher and John Stevenson, 'Introduction' to Anthony Fletcher and John Stevenson eds., *Order and Disorder in Early Modern England* (Cambridge, 1985), 1–40; Herrup, *Common Peace*; James Sharpe, 'The people and the law', in Barry Reay ed., *Popular Culture in Seventeenth-Century England* (London, 1985), 244–70; Keith Wrightson, 'Two concepts of order: justices, constables and jurymen in seventeenth-century England', in John Brewer and John Styles eds., *An Ungovernable People: The English and their Law in the Seventeenth and Eighteenth Centuries* (London, 1980), 21–46.

to be based on little other than our own culture's stereotypes, which may or may not be pertinent to the early modern period.¹⁸ These assumptions have informed the selection, organisation and interpretation of historical evidence in such a manner as to produce results that reproduce those very assumptions contained in the premise. A few behaviours for which women were disproportionately prosecuted relative to men are labelled as peculiarly 'feminine', such as witchcraft, infanticide and scolding. By definition, all other offences must implicitly be 'masculine'. Yet, thirdly, the extent to which criminality was related to masculinity has scarcely been addressed. Historians tend to accept criminality in general to be a masculine category without conceptualising or contextualising it in terms of gender. Male criminality is thus normalised, while female criminality is seen in terms of dysfunction, an aberration of the norms of feminine behaviour.¹⁹

In fact, as we shall see, neither women nor men committed acts solely in line with the prescriptions either of their own society or of ours. The supposedly 'feminine' crimes are typical neither of female behaviour nor of prosecutions of women. Women participated in most categories of crime. Indeed, they were far more likely to participate in the non-'feminine' offences than they were in those labelled as women's crimes. For every one woman who was suspected of infanticide or indicted as a scold (and even fewer were prosecuted for witchcraft) at quarter sessions and assizes in Cheshire, for instance, eight were prosecuted for some kind of theft, ten were prosecuted for assault, and twenty-five were bound to the peace or to be of good behaviour. Women seem to have committed more 'male' crimes than they did 'female' ones! Discussion of the peculiarly 'female' crimes would seem therefore not to take us very far in assessing the nature of female criminality. Part of the explanation for the unsatisfactory account of gender within histories of crime, then, is conceptual.

This state of affairs is also related to the crime historian's method of choice: quantification of formal judicial records to establish patterns of indictment, jury verdicts and sentences. Quantification shows us time and again that women constituted a minority of those prosecuted for most categories of crime. What tends to happen is that women are counted, and being a minority of offenders, are subsequently *discounted* as unimportant. However, the conventional sources chosen for quantification themselves may underestimate the degree of women's participation in the legal process. Prosecuting by recognisance, for instance, provided an alternative to formal indictment

¹⁸ For example, Carol Z. Wiener, 'Sex-roles and crime in late Elizabethan Hertfordshire', *Journal of Social History* 8 (1974-5), 38-60; Frank McLynn, *Crime and Punishment in Eighteenth-Century England* (Oxford, 1991), chs. 6 and 7.

¹⁹ See also Garthine Walker and Jenny Kermode, 'Introduction' to Kermode and Walker eds., *Women, Crime and the Courts*, 1-7.

and one in which greater numbers of women featured as both complainants and offenders.²⁰ But even when we include recognisances in our study, an interpretation based on aggregates of individuals alone is bound to mislead. We have to analyse figures in *context* if we are to make sense of them. Attending to context begins within quantification itself. At various points in subsequent chapters, I therefore analyse criminal acts in terms of the groups that carried them out, thereby demonstrating that women's participation had a higher profile than simple aggregates of 'men' and 'women' suggest. These groups frequently coalesced around the household. Indeed, we shall see that the household is implicated repeatedly in criminal activity, which is why a short section is devoted to it below. Context is also provided by a systematic qualitative analysis of court records such as depositions and examinations, petitions, JPs' memoranda books, letters and so forth, and of other types of narrative source, such as pamphlets of various kinds, ballads and moral commentaries. In the chapters that follow, I have contextualised quantitative data within early modern discursive frameworks. With regard to property crimes, to give but one example, this allows for 'different forms of illegal appropriation [to] be systematically investigated as economic activities with their own histories'.²¹ By analysing narrative sources, historians are able to do more than reveal information about crime, criminality and the legal process. They may open windows through which we may view aspects of the wider culture and ways of thinking and doing in early modern society. Hence, the history of crime becomes a broader cultural history of the period.

Systematic qualitative analyses need not be restricted to studies of gender.²² Nor is a qualitative study necessarily superior to a quantitative one. Method has to be determined by the questions that one wishes to ask. Ideally, in asking questions about gender and crime, one's interpretation would arise from a dialogue between qualitative and quantitative analyses. The major shortcoming of a recent study of women's crime in early modern Germany, for example, is that it neglects to place an otherwise brilliant analysis within any quantitative framework, which makes it difficult to ascertain the relative significance of the material or of the author's conclusions.²³

The analysis of discursive frameworks potentially provides a bridge between the older 'new' social history approach to crime and the newer approaches of the 1990s. In line with broader historiographical advances, it is

²⁰ Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c. 1660–1725* (Cambridge, 1991), 207–16.

²¹ Innes and Styles, 'The crime wave', 401.

²² See, for instance, the excellent use of qualitative material in King, *Crime, Justice and Discretion*, and Gaskill, *Crime and Mentalities*.

²³ Rublack, *Crimes of Women*.

possible to embark on a linguistic analysis of texts, to read them for their semantic content or the way in which they are discursively constructed in particular material circumstances.²⁴ Despite this, the method of reading narrative sources in histories of crime remains largely in the social history tradition, in which narratives are read for the conventional information that they contain. The reason for a certain ambivalence towards discourse analysis is, I believe, rooted in general concerns among social historians about the threat posed to the integrity of the discipline by postmodernism. Close textual analysis is associated, for good reason, with poststructuralist linguistic theory, the premises of which deny the validity of a 'real' past that is accessible to historians. Poststructuralism stresses that we are dealing only with representations of the past, not the past itself. The implication of this is that none of these representations is more valid than any other. This is anathema to social historians, who conventionally wish to recover evidence of the experience of early modern people, and whose methods involve the evaluation and re-evaluation of competing historical analyses in the light of which is the more convincing.²⁵ At the same time, early modern social historians of crime have tended to shy away from explicit engagement with the theoretical issues raised by a poststructuralist approach. This is evident in responses to the writing of the French poststructuralist historian/philosopher Michel Foucault, which invariably emphasise the empirical shortcomings of his thesis. For example, Pieter Spierenburg sought to refute Foucault's account of the prison as a modern form of punishment by charting the sixteenth-century origins of the institution.²⁶ However, Spierenburg's insistence that the origins of the prison shaped the institution as it evolved does not take us far in refuting Foucault's account. For Foucault had not written a conventional history of the prison, nor did he argue that incarceration sprang up as a new type of punishment in the nineteenth century. Rather, Foucault argued that the discourse of imprisonment typified a style by which the modern state ruled, in the same way that the discourse of punishing and eradicating the body of a traitor exemplified the style of power held by sixteenth-century monarchical rule. Foucault was concerned with these styles of punishment as expressions

²⁴ For example, Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Oxford, 1988); Garthine Walker, 'Just stories: telling tales of infant death in early modern England', in Margaret Mikesell and Adele Seeff eds., *Attending to Early Modern Women: Culture and Change* (London, 2003), forthcoming; Garthine Walker, '“Strange kind of stealing”: abduction in early modern Wales', in Michael Roberts and Simone Clarke eds., *Women and Gender in Early Modern Wales* (Cardiff, 2000), 50–74; Garthine Walker, 'Rereading rape and sexual violence in early modern England', *Gender and History* 10, 1 (1998), 1–25.

²⁵ See the debates in Keith Jenkins ed., *The Postmodern History Reader* (London, 1997).

²⁶ Pieter Spierenburg, *The Prison Experience: Disciplinary Institutions and their Inmates in Early Modern Europe* (New Brunswick, 1991).

of power, not as empirical descriptions of penal regimes.²⁷ Shifting the date of the prison's origin does not necessarily invalidate Foucault's point about the nature of punishment.

Poststructuralism, however, is neither the only nor necessarily the most useful theoretical approach to the narrative sources available to historians of crime. My own method is informed by the linguistic theory of M.M. Bakhtin. While Bakhtin is best known to early modernists for his work on carnival and the grotesque, his potential contribution is far wider. Whereas Derrida followed Saussure in his concern with the deep structures of language (*langue*), Bakhtin theorised about *everyday* language use (*parole*). I do not intend here to elaborate upon Bakhtin's work, but to point to two of his central concepts – heteroglossia and multivocality.²⁸ In a crude simplification, any utterance is dialogic in a dual sense. First, it is produced in a dialogue with sources that draw on certain other discourses according to context. In speaking or writing, we draw on all sorts of explicit and unacknowledged ideas. Secondly, it is produced in dialogue with the listener or reader, in that we assume the responses of those we address. Therefore, there are three categories of 'voice' in any given discourse: those of source, author and listener. For example, law is not a pure product of reason or natural justice, but is the product of academic discourses, religious ideas and unacknowledged prejudices, which might well not differ too much from those of the common people. We will see this, for instance, in chapter four, when we discuss homicide law, which was constructed in part according to elite and popular ideas about masculine behaviour. Law also contains the voice of the people, the ruled, in the sense that people's behaviour and the problem of enforceability are taken into account in framing law. Law itself is then a negotiation, not something pre-existent and fixed which is then negotiated. Narratives such as pre-trial statements produced by the legal process provide a further example of multivocality. They contain within them the speaker's agenda, popular ideas, plus the anticipation of how the law will act and needs to be accommodated. Descriptions of violence, and the meanings intended and inferred from them, like other forms of expression, varied according to the particular circumstances in which they were uttered and heard. In a legal setting, they might be differently constructed from those uttered among fellowship in the alehouse. Speech about violence drew upon a range of concepts, images, metaphors and vocabulary that themselves were part of or variously conditioned by ideas about gender, class, law, religion and more. In this sense, an account of a violent exchange (or anything else, for that matter) involves a number of 'voices'.

²⁷ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (London, 1977).

²⁸ See Simon Dentith ed., *Bakhtinian Thought: An Introductory Reader* (London, 1995).

As we shall see in the following chapters, attending to the multivocality of discourse reveals the pervasiveness and shortcomings of a superficial mapping of terms such as violent/non-violent, aggressive/passive onto those of male/female. Paying attention to the richness of lay social theories, schemas and scenarios concerning violence also allows us to challenge views of an early modern 'crisis' in gender relations. Such accounts tend to privilege rather rigid notions of class or gender as a primary determinant, or 'core', of gender identity. But there was in fact a multiplicity of gendered discourses, and thus 'voices', with which early modern people spoke and through which they constituted and positioned themselves, and were positioned by others, as subjects. The images and concepts used to depict behaviour and disposition cohered within narratives to provide an explanatory framework within which culpability could be evaluated. The images and concepts themselves, however, could be incongruent, incompatible and even contradictory. An account of infanticide, for instance, may contain within it and be structured by multiple 'voices': those of law and motherhood, say, as well as violence and burial. To acknowledge this does not privilege structure over agency. For, as I have suggested, when we read qualitative materials for the various languages or voices within them we may glimpse the way in which early modern people positioned themselves in their narratives and learn something of their subject position.²⁹ By interpreting narrative sources, legal or otherwise, not as monovocal texts but for the multiple voices that are contained within them, and by marrying qualitative with quantitative material, I hope to offer a more sensitive interpretation of crime and subjectivities in early modern England than is usually presented in the historical literature.

The concept of gender with which I work is close to that of Joan Scott's theorisation. In employing gender as an analytic concept,

we need to deal with the individual subject as well as social organization and to articulate the nature of their interrelationships, for both are crucial to understanding how gender works, how change occurs. Finally, we need to replace the notion that social power is unified, coherent, and centralized with something like Foucault's concept of power as dispersed constellations of unequal relationships, discursively constituted in social 'fields of force'. Within these processes and structures, there is room for a concept of human agency as the attempt (at least partially rational) to construct an identity, a life, a set of relationships, a society with certain limits and with language – conceptual language that at once sets boundaries and contains the possibility for negation, resistance, reinterpretation, the play of metaphoric invention and imagination.³⁰

²⁹ See, for example, John H. Arnold, 'The historian as inquisitor: the ethics of interrogating subaltern voices', *Rethinking History* 2, 3 (1998), 379–86; Walker, 'Just stories: telling tales of infant death'.

³⁰ Joan W. Scott, 'Gender: a useful category of historical analysis', *American Historical Review* 91 (1986), 1067.

This does not mean that gender is *the* primary category. It has a privileged place in my work because of the particular questions I am asking. But one could just as easily use this method to investigate class, religion or any other category of difference. Indeed, while gender remains my primary concern, class and, to a much lesser extent, religion, are discussed at various points in the pages that follow.

HOUSEHOLD

One of the most important ways in which we can question the universalisation of the autonomous male subject is through consideration of the role of the household in early modern crime. The ubiquity of the analogy between household and state in early modern rhetoric, theology and law is routinely remarked upon by historians. The presentation of the household as little commonwealth conflated personal and public authority in a patriarchal and Christian vision in which the rule of husbands, fathers, magistrates, ecclesiastics and monarchs each legitimated that of the others. The ideology of the household thus resided at every level of the various institutions of governance: central and local, secular and ecclesiastical, formal and informal.³¹ In many practical respects as well as in theory, the household was the relevant social, economic and political unit. When population was calculated, whether in official censuses or by Gregory King, households were counted, not people. Taxation, too, was effectively based on household, not individual, wealth. Certain forms of taxation, such as the hearth and window taxes, were imposed upon the physical manifestation of the household – the dwelling-house – itself. The franchise was similarly based on the property of the household unit. When the Levellers demanded in 1646 the abolition of the property qualification and the extension of the franchise, their conception of universal (i.e., ‘manhood’) suffrage was restricted to all (male) heads of households. These few examples suggest some of the interconnected meanings of the household as a cultural form.

The term ‘household’ was used to describe the collective body of persons who lived together in a family unit. In most households, this included with the nuclear family maidservants and servants in husbandry or apprentices. In this sense, household and family were virtually synonymous. Relatives by blood or marriage who lived elsewhere were perhaps more appropriately

³¹ Important overviews include Susan Dwyer Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988); Anthony Fletcher, *Gender, Sex and Subordination in England 1500–1800* (London and New Haven, 1995); G.J. Schochet, *Patriarchalism in Political Thought: The Authoritarian Family and Political Speculation and Attitudes Especially in Seventeenth-Century England* (Oxford, 1975); Rachel Weil, *Political Passions: Gender, the Family and Political Argument in England, 1680–1714* (Manchester, 1999).

termed kin. Many households, chiefly among the poorer sorts of people, conformed not to this pattern but took various forms as was expedient. They functioned as households, nonetheless, even when quite unrelated people lived together.³² With the exception perhaps of the vagrant poor, everyone was part of some sort of household, no matter how far it deviated from the ideal. Household also referred to the way in which the household was 'held' or maintained by its members, the economy that formed its basic unit of production and consumption. It is no coincidence that the word 'economic' originated in the Greek term for 'housekeeping' or 'household management'. Household denoted, too, the physical structure in which a family resided, whether mansion, farmhouse or single room sublet from another tenant. A further meaning of household was the material contents of the domestic unit, such as household goods and furniture. The family (broadly defined), the manner in which they got their living, their physical dwelling and their collective goods and chattels: 'household' encompassed all these things.

These interconnected meanings of household pervaded understandings of social, political and economic interaction. Craig Muldrew has emphasised that the circulating capital in the early modern economy was household credit in social terms. In other words, the currency of most earning, spending, lending and borrowing was not cash but a household's reputation for honesty, fair dealing and reliability. Establishing, communicating and negotiating credit-worthiness and trust was therefore an exercise in moral, as well as economic, competition. Yet competing households were, at the same time, mutually dependent. Everyone was involved in multiple chains of credit. If debtors did not promptly discharge their debts, creditors might be unable to pay theirs. Self-interest and practicality thus fostered a moral imperative that obligations to pay debts, deliver goods and perform services were met.³³ In modern western society, too, social and economic standing is related to family and household, and is informed by various cultural meanings. But whereas in modern society, credit ratings affect the individual, the early modern household played a *direct* role in the regulation of credit. This has important repercussions for any study of inter-household disputes, and indeed for diverse other matters of order and disorder.

The 'dominant' ideology professed from pulpit, parliament and courts of law established that the household was the foundation upon which good

³² Margaret Pelling, 'Old age, poverty and disability in early modern Norwich', in Margaret Pelling and Richard M. Smith eds., *Life, Death and the Elderly: Historical Perspectives* (London, 1991), 74–101.

³³ Craig Muldrew, *The Economy of Obligation: The Culture of Credit and Social Relations in Early Modern England* (Basingstoke, 1998).

governance rested.³⁴ Household order was a microcosm of that desired elsewhere, in parish, county, kingdom and even the cosmos. Good household governance was therefore deemed essential and, like the household itself, was defined variously. A properly governed household was characterised by orderly and appropriate conduct within it, with due authority and deference being displayed as precise relationships demanded, and the absence of illicit alliances of all kinds. Thus the household's inhabitants 'are so squared and framed by the word of God, as they may serve in their several places, for useful pieces in God's building'.³⁵ Good household governance also encompassed good husbandry or enterprise, which ensured the proper use of household resources and could be taken as an index of the morality of household members. Moreover, just as the household embodied those who peopled it, inhabitants represented their households within and outside its walls. Interpersonal relations were understood in the light of, among other things, both the relative household positions of individuals and the relative positions of their households. In all these ways, household obligations were fundamental to common definitions of order and disorder.

A great many disputes between individuals that resulted in indictments being filed for a range of misdemeanours, including assault, or in the issuing of recognisances to keep the peace or for good behaviour, are revealed on closer inspection to be ongoing intra-household disputes. A majority of the quarrels that came before quarter sessions were apparently between heads of households.³⁶ This is a practical consequence not of married men's greater propensity for quarrelling and fighting, but of their legal accountability for the conduct of their household members and their own responsibility for maintaining good order. Many complaints about violent behaviour collapsed the different meanings of household into each other. In relating before a Justice of the peace how Ambrose Wettenhall had fallen upon him before beating at his doors and windows with a staff and tearing a crossbar and part of the latch off one of his doors, Robert Bruen explicitly depicted Wettenhall as endangering his entire household – the physical edifice and the whole family who lived there. The JP's warrant also made explicit reference to house and family, stating that Wettenhall might well inflict some bodily harm on Bruen's wife and the rest of the household. The recognisance collapsed the meanings still further: only Robert Bruen – who as head

³⁴ On 'household governance' see Amussen, *Ordered Society*; Julie Hardwick, *The Practice of Patriarchy: Gender and the Politics of Household Authority in Early Modern France* (University Park, Pennsylvania, 1998); Mary Elizabeth Perry, *Gender and Disorder in Early Modern Seville* (Princeton, 1990); Lyndal Roper, *The Holy Household: Women and Morals in Reformation Augsburg* (Oxford, 1989).

³⁵ Matthew Griffith, *Bethel: Or, a Forme for Families* (London, 1633), frontispiece.

³⁶ In Hertfordshire, too, the named protagonists in at least two-thirds of cases involving interpersonal violence were married men: Wiener, 'Sex roles and crime', 45.

of the household stood for the rest of the domestic establishment – was mentioned as a person towards whom Wettenhall had to be of particularly good behaviour.³⁷ This has obvious implications for the quantification of female offenders. Frequently, depositional evidence and even Justices' warrants allege the involvement of women, but only husbands or fathers, as the household's public face, were held formally accountable in that they alone were bound over by recognisance or indicted.³⁸ This has nothing to do with the concept of male heads of households 'possessing' their wives, children or other household dependants. The patriarchal extremism of fictional characters, who declared, for example, 'I will be master of what is mine own, She is my goods, my chattels, she is my house', was actually the speech of male ignorance, as other married, male characters pointed out.³⁹ Anyone could crave the peace against a *feme covert* (or an infant under the age of fourteen), although such persons had to be bound by sureties rather than by their own pledge.⁴⁰ It must often have seemed more sensible to prosecute only the head of the household. It was not only cheaper, but his bond stood for other members of his household as he was responsible for household order. It is telling that so many disputes that came in various forms before magistrates concerned competition between households over material and cultural resources. In this sense, much litigation and the precipitating quarrels were not strictly *interpersonal* at all. While the existence of the 'dark figure' of unrecorded crime means that we will never know what proportion of women relative to men committed offences without being formally held to account, we can surmise that women's place in the household meant that they were especially likely to be excluded from the official court record.

The early modern household, with its broad spectrum of meaning, provides a crucial context for understanding the dynamics of disorder in early modern England. Household is thus a useful category of analysis *apropos* disorderly and violent behaviour. This is not to reify the household, or to deny the importance of other analytic categories. Acknowledging that the household, like gender, was everywhere does not imply that the household (any more than gender) is *the* primary category. The household served as one category of differentiation and inclusion alongside others. The manner in which the household informed such behaviours is in turn related to gender, class, and so forth. At the level of both ideology and praxis, tensions between ideology and praxis created conceptual spaces in which people could

³⁷ CRO, QJF 97/2/150, /90, /91 (1669). See also QJF 81/2/301 (1653), QJF 55/3/83 (1626).

³⁸ For example, CRO, QJF 25/3/33, /34, QJB 1/3 fos. 25v–29r (1593); QJF 29/2/64, QJB 1/3 fo. 64r (1599); QJF 49/2/151 (1620); QJF 53/2/163, QJB 1/5 fos. 113v–114v (1624); QJF 53/3/64, /53, /54 (1624); QJF 57/2/94, /95 (1628); QJF 89/2/156 (1661); QJF 89/2/167 (1661); QJF 89/2/56, /126 (1661); QJF 89/2/76, /79 (1661); QJF 89/2/188 (1661).

³⁹ William Shakespeare, *The Taming of the Shrew* (1596), III, ii, 232.

⁴⁰ Dalton, *Country Justice*, 147.

construct meanings other than dominant ones while remaining within the terms of 'dominant' household ideology.

THE SETTING

Cheshire has been selected as the geographical location for this study for its unrivalled, rich and extensive criminal court records.⁴¹ Although I deploy the sources of a county administration, this is not a conventional county study. To create a manageable amount of data, the quantitative aspect of the study is confined to Cheshire material in alternate years during the 1590s, 1620s, 1650s, 1660s and all years for which sessions were held during the 1640s. But the story I tell here is not one about Cheshire *per se*. The conceptual questions asked of the material and the interpretations that follow are applicable to early modern England as a whole. I do not here consider in depth the relationship between local society and the types and incidence of crime. This does not preclude a further study in which alternative questions could be asked that would illuminate such a county perspective. I have, however, tried to weave a broader thread through the narrower web of social, economic, political and topographical peculiarities of the region in order to give a textured account of early modern life. This means that an understanding of the county setting is desirable as background.

Early modern Cheshire has conventionally been seen as a 'dark corner of the land', politically, socially and economically underdeveloped due to its institutional idiosyncrasies as a Palatinate, its isolation as a north western border county, and its character as an upland pastoral region.⁴² This view of

⁴¹ The main primary sources are those of the county quarter sessions and Palatinate great sessions. Quarter Sessions Books (CRO, QJB), which survive from 1559, contain a record of indictments, presentments, certified recognisances and orders. Quarter Sessions Files (CRO, QJF), which start from 1571, contain examinations, depositions, informations, warrants, letters, indictments that were returned *ignoramus*, and recognisances that were discharged before the sessions, as well as the original documents of items entered in the court books. The Great Sessions Crown Books (PRO, CHES 21) calendar the business of each session, while the Gaol Files (PRO, CHES 24) contain indictments, presentments, coroners' inquisitions, calendars of gaol deliveries, mainprizes and supporting documents. Unfortunately, a full set of depositions has not survived for the great sessions. The quarter and great sessions material has been supplemented by that of other courts. The City of Chester enjoyed a separate jurisdiction from 1507, and therefore held its own quarter sessions. The Sessions Files (CCRO, QSF) are incomplete, and subsequently have not been used in the quantitative study to the same extent as those of the aforementioned courts. Their contents, however, are similar to those of the county quarter sessions. I have also examined the Diocese of Chester Consistory Court Papers (CDRO, EDC 5), and various other classes of document as indicated in the bibliography.

⁴² For example, J. Beck, *Tudor Cheshire* (Chester, 1969), 1–3; G. Barraclough, 'The Earldom and County Palatine of Chester', *Transactions of the Historic Society of Lancashire and Cheshire*, 103 (1951), 24; Dorothy J. Clayton, *The Administration of the County Palatine of Chester 1442–1485* (Manchester, 1990), 215–16; B.E. Harris ed., *Victoria History of the Counties of England. Cheshire* (hereafter, *VCH Cheshire*) Vol. II, 31–2.

Cheshire is mistaken. Granted, as a Palatinate, some aspects of central and local government relations did remain particular. The terms of military service for Cheshire knights were slightly different from those elsewhere; taxation was calculated by a traditional unit of assessment, the 'mize'; Cheshire had its own Exchequer Court that dealt with (among other things) the business which elsewhere would have gone before the Westminster Chancery; assizes took the form of the Palatinate Court of Great Sessions, which had a civil as well as criminal jurisdiction. Despite this, Cheshire was no more and no less peculiar than any other county.⁴³

Palatinate status gave Cheshire only nominal independence. The county's judicial and administrative business came under the supervision of Justices of the peace appointed by the Crown in 1536. Following the Diocese of Chester's creation in 1541, Cheshire was subject to routine ecclesiastical administration. The city of Chester and the County both returned Members of Parliament from 1543. The Port of Chester was absorbed into the national customs system in 1559. A royal Lord Lieutenant was in office by the later sixteenth century.⁴⁴ Links with central government and the rest of the political nation were hardly obscure. Sir Thomas Egerton became Master of the Rolls in 1594, Lord Keeper in 1596 and Lord Chancellor in 1603. His son, John Egerton, Earl of Bridgewater was a member of the Privy Council from 1626, President of the Council of Wales and Lord Lieutenant of North and South Wales from 1631. Sir Thomas Savage became the Queen's Chancellor in the 1620s, and although his duties often kept him away from Cheshire, his son John remained active in county affairs. Sir Ranulphe Crewe, the Cheshire knight, became Lord Chief Justice of King's Bench in January 1625. Sir Urian Legh, an active Cheshire Justice of the peace in the early seventeenth century, was knighted for his bravery at the siege of Cadiz. The Cheshire lawyer John Bradshaw, who later was Chief Justice of Cheshire, was a Commissioner of the Great Seal in 1646, and President of the short-lived Court of Justice which was created on the last day of the Long Parliament. Another Cheshire man, who became Lord Mayor of London in 1641, had retained links with his home town of Nantwich, where, in 1638, he established

⁴³ For an expanded discussion see Walker, 'Crime, gender and social order', 16–38.

⁴⁴ Barry Coward, 'The Lieutenancy of Lancashire and Cheshire in the sixteenth and seventeenth centuries', *Transactions of the Historic Society of Lancashire and Cheshire* 119 (1969), 39–64; R.N. Dore, *Cheshire* (London, 1977), 12–13; G.P. Higgins, 'The government of early Stuart Cheshire', *Northern History* 12 (1976), 32–52; G.P. Higgins, 'County government and society in Cheshire, c. 1590–1640', M.A. thesis, University of Liverpool (1973), 12; Alfred Ingham, *Cheshire: Its Traditions and History* (Edinburgh, 1920), 78; Annette Kennett, *Archives and Records of the City of Chester* (Chester, 1985), 34; J.S. Morrill, *Cheshire, 1630–1660: County Government and Society during the English Revolution* (Oxford, 1974); Dorothy Sylvester, *A History of Cheshire*, 2nd edn (London 1980), 60.

almshouses.⁴⁵ The anti-episcopal petition of 1641 was sponsored by Sir William Brereton, and many of the signatures were those of Cheshire men; Brereton, of course, became an important parliamentary commander in the civil wars. Sir George Booth was likewise a prominent Parliamentarian, who later led the rising of 1659. Nor was Cheshire isolated from the affairs of the nation in wider terms. Chester's port gave the county an important strategic position as a main embarkation point for troops, travellers, mail and supplies to and from Ireland. Trade to and from the Continent and America also came through Chester. (It was only at the end of the seventeenth century that Liverpool overtook Chester as a port, due to the silting up of the River Dee.) Cheshire was privileged by more than one royal visit: James I visited in 1617, Charles I in 1642 and reputedly again in 1645. During the wars, in addition to three important battles at Nantwich, Middlewich and Rowton Moor near Chester, the county suffered many smaller battles and military engagements. The ordinary men and women of Cheshire played a significant role in the civil wars.⁴⁶ The assumption that Cheshire was not integrated into the affairs of the nation seems spurious.

Cheshire's criminal justice system operated in much the same way as elsewhere. The court of great sessions was equivalent in criminal matters to the assizes. Indeed, many contemporaries used the terms 'assizes' and 'great sessions' interchangeably, which convention I have followed here. The great sessions were presided over by a Chief Justice and his deputy who usually remained in office for several years rather than perambulating circuits as assize judges did. Sir Henry Townshend, for instance, held his post for over forty years.⁴⁷ Nevertheless, Chief Justices were royal appointees, who certainly were neither socially nor professionally isolated from Westminster. They were very much part of the legal elite that congregated in Sergeant's Inn.⁴⁸ Indeed, the Lord Chancellor's speech on James Whitelocke's appointment as Chief Justice instructed that one of his duties was to 'keep good quarter with Westminster Hall'.⁴⁹ Great sessions were biannual, and lasted between two

⁴⁵ Higgins, 'County government', 20, 18–19, 28; Ingham, *Cheshire*, 238–9, 240, 241–2, 276; James Hall, *A History of the Town and Parish of Nantwich* (Manchester, 1972), 126–7, 365–71. Sir Urian Leigh was the hero of a Cheshire ballad entitled 'How a Spanish Lady Woo'd a Cheshire Man'.

⁴⁶ Simon Harrison, Annette M. Kennet, Elizabeth J. Shepherd and Eileen M. Willshaw, *Tudor Chester: A Study of Chester in the Reigns of the Tudor Monarchs, 1485–1603* (Chester, 1986), 31; Hall, *Nantwich*, 121; *Royal Commission on Historical Manuscripts. Sixth Report* (London, 1877), 64, 85, 135, 435, 438, 470.

⁴⁷ *VCH Cheshire*, Vol. I, 37. Chester's Chief Justice additionally presided over sessions in three Welsh counties (Flint, Denbigh and Montgomery) in the Chester Circuit.

⁴⁸ For example, both Thomas Chamberleyne and James Whitelocke were transferred to the King's Bench in the 1620s.

⁴⁹ James Whitelocke, *Liber Famelicus of Sir James Whitelocke*, ed. John Bruce (Manchester, 1858), 80.

and six days. Virtually all felonies prosecuted in the county were brought before this tribunal. Sufficient regional variations in the character and operation of assize courts elsewhere make Cheshire's great sessions not especially unusual. The second inquest that was sworn in at the great sessions, for example, existed also in Staffordshire and Lincolnshire. In fact, every county had 'a distinctive pattern of local government'.⁵⁰ Cheshire quarter sessions were held at four of five towns each year: the Epiphany sessions at Chester, the Easter sessions at Knutsford, the Trinity sessions at Nantwich and the Michaelmas sessions alternately at Northwich and Middlewich. Here, as elsewhere, Justices usually dealt with most sorts of criminal complaints other than the more serious felonies.⁵¹

The county had seven large administrative units, or hundreds: Bucklow, Macclesfield, Northwich and Nantwich on the eastern side, and Wirral, Broxton and Eddisbury in the west. Cheshire's lack of hundredal juries was not unique. By the 1590s, local justices held regular meetings in their hundreds, and strong hundredal organisation provided the basis for the implementation of much of the county's financial and social policy.⁵² Including those in the City of Chester, Cheshire had eighty-four parishes and a few extra-parochial liberties. As in other northern counties, parishes were generally large: eight contained over fifteen townships – Great Budworth and Prestbury each had over thirty – a further four contained more than ten townships. Excluding the nine city parishes, only eleven had a solitary township within their boundaries.⁵³ Seventeenth-century Cheshire also had between 250 and 300 manors, many of whose manorial courts were still in regular biannual business.⁵⁴ As incorporated boroughs, both Congleton and Macclesfield had their own administrative and judicial mechanisms, but inhabitants nonetheless brought suits before county quarter sessions. The same applied to eleven seigniorial boroughs, whose borough courts were still functioning.⁵⁵

⁵⁰ J.S. Morrill, *The Cheshire Grand Jury, 1625–1659* (Leicester, 1976), 6; *VCH Cheshire*, Vol. I, 38. Sarah Mercer, 'Crime in late-seventeenth-century Yorkshire: an exception to a national pattern?', *Northern History* 27 (1991), 106–19. For assize courts see, for example, Beattie, *Crime and the Courts*, 5; Herrup, *Common Peace*, 43–51, 62–5.

⁵¹ For example, Beattie, *Crime and the Courts*, 283–8; Herrup, *Common Peace*, 42–5; Shoemaker, *Prosecution and Punishment*.

⁵² E.I. Dunn, *The Ancient Parishes, Townships and Chapelries of Cheshire* (Chester, 1987), 7; Morrill, *Grand Jury*, 41–2, 9, 30–1.

⁵³ Dunn, *Parishes, Townships and Chapelries*; Higgins, 'County government', 196–8; Dorothy Sylvester, 'Parish and township in Cheshire and north-east Wales', *Journal of the Chester Archaeological Society* 54 (1967), 23–35.

⁵⁴ For example, at Nantwich, Stockport, Macclesfield, Bromborough and Kinderton. Dorothy Sylvester, 'The manor and the Cheshire landscape', *Transactions of the Historic Society of Lancashire and Cheshire*, 70 (1960).

⁵⁵ Morrill, *Cheshire*, 6; C.B. Phillips and J.H. Smith, *Lancashire and Cheshire from AD 1540* (London, 1994), 30–5.

The City of Chester was a county in its own right, and thus held its own quarter sessions independently of the county, and capital felonies were tried at the crownmote court, both of which were presided over by the mayor – documentation pertaining to the quarter sessions and the crownmote continued to be filed together throughout the early modern period. The current mayor and aldermen who were former mayors were empowered to act as JPs within the city. The mayor and sheriffs were also responsible for other administrative duties that would otherwise have come under the direction of the county bench. These included the publication and enforcement of central government directives, such as those concerning trade and taxation, poor law and the regulation of the assizes of ale and bread. In addition, the mayor headed the city Assembly, which consisted of two sheriffs, a recorder, twenty-four aldermen and forty common councilmen.⁵⁶ Chester was also the home of the ecclesiastical courts for the Diocese of Chester. The seventeenth-century consistory courtroom in Chester Cathedral has survived intact to this day. Criminals or dangerous suspects in the city were incarcerated not in the county's gaol in Chester Castle, but in the city's Northgate, which was flanked by towers with a prison over it and dungeons cut out of the rock below. The city sheriff, however, arranged the execution of felons condemned at the city courts and at the Palatinate great sessions.

The number of different courts in operation in Cheshire indicates the unhelpfulness of the concept of the 'county study' for the social history of crime and the courts in early modern England. Any 'county study' of crime or the legal process should ideally take account of the various jurisdictions within which a variety of suits could be brought. In addition to those courts mentioned above, Cheshire people prosecuted suits at a range of central courts at Westminster, such as those of star chamber and queen's or king's Bench. These would also have to be considered.⁵⁷ The same is true for other counties. Only if we could analyse *all* prosecutions in all operative legal arenas would

⁵⁶ The mayor was also chief officer in the portmote court, while the city sheriff presided over the passage and pentice courts. Kennett, *Archives and Records*, 17, 19, 22–31, 88–9; Harrison et al., *Tudor Chester*, 24; Simon Harrison, Annette M. Kennet, Elizabeth J. Shepherd and Eileen M. Willshaw, *Loyal Chester: A Brief History of Chester in the Civil War Period* (Chester, 1984), 14.

⁵⁷ The Public Record Office (PRO), London, holds most of the documentation generated by these courts. Social historians of crime have largely shown a disinterest in or ignorance of central Westminster courts. Nor have they paid much attention to the multiplicity of local courts: courts baron, urban borough courts of requests or their equivalents, local small claims courts, along with the quasi-legal institutions set up to regulate trade or industry. Consequently, there has as yet been no attempt to write a comprehensive social history of law; rather what has been achieved is a limited social history of crime. Given the way that interpersonal disputes could be played out in a multiplicity of ways in any number of jurisdictions, 'county studies' are unreliable gauges of behaviour and litigation within counties.

a county-based study of prosecution for various types of social conflict be comprehensive. L.A. Knafla has demonstrated that, for instance, while property offences prosecuted at the Kent assizes in the early seventeenth century constituted seventy-four per cent of the total number of prosecutions, the figure was reduced to a mere ten per cent if prosecutions at quarter sessions and other local courts were taken into account. More recently, Sarah Mercer has pointed to the discrepancies which occur between 'crime rates' calculated not only from different courts but also in different regions. Simply comparing prosecutions of one jurisdiction, such as that of the assizes, may be fundamentally flawed as not all assize courts in England necessarily dealt with a similar cross-section of unlawful behaviour.⁵⁸

We might wish to know something of Cheshire's economic profile. In very general terms, Cheshire may be described as 'pastoral vale country'. Cheshire was renowned for its cheeses and for the rearing and fattening of cattle. Cheese production was most common in the south and west of the county, and although much cheese was marketed in London and the Home Counties, the greatest part of Cheshire's cheese was sold locally. Large-scale beef production was also important to the county's economy, with thousands of cattle being sold on the Midland and Home Counties markets after being reared and/or fattened in north Cheshire. Only in the Wirral, the peninsula in the north west of the county, did arable land form a major determinant of the local economy. Around the county borders in the east, there were areas of moorland, hence the preponderance of marl pits in that area. Small areas of wood-pasture land were dotted throughout the county, in addition to the important forests of Delamere and Macclesfield and large heaths such as those at Knutsford and Rudheath. In the north east of the county and Macclesfield forest, sheep, horses and pigs were additionally important.⁵⁹

Chester was the only city in the county. It had 4,000 or 5,000 inhabitants in the mid-sixteenth century and almost 10,000 by 1664, by which time the population of Nantwich was just under 3,000 and that of Macclesfield over 2,500. Congleton and Stockport had between 1,500 and 2,000 inhabitants. The remaining Cheshire towns were smaller, with fewer than 1,000 inhabitants each.⁶⁰ There were thirteen market towns in the county for which Chester acted as the distributive centre: Nantwich, Macclesfield, Congleton, Knutsford, Middlewich, Northwich, Altrincham, Stockport and Sandbach

⁵⁸ L.A. Knafla, '“Sin of all sorts swarmeth”: criminal litigation in an English county in the early seventeenth century', in E.W. Ives and A.H. Manchester eds., *Law, Litigants and the Legal Profession* (London, 1983), 50–67. Mercer, 'Crime in late-seventeenth-century Yorkshire'.

⁵⁹ Dore, *Cheshire*, 13; Higgins, 'County government', 3–4; Howard Hodson, *Cheshire 1660–1780: Restoration to Industrial Revolution* (Chester, 1978), 93; Ingham, *Cheshire*, 263–5; Phillips and Smith, *Lancashire and Cheshire*, 28–9; Joan Thirsk, *England's Agricultural Regions and Agrarian History, 1500–1750* (London, 1987), 38–9, 41–4.

⁶⁰ Hodson, *Cheshire*, 93.

in the south and east of the county, and Frodsham, Malpas, Halton and Tarvin in the west. Each of these towns was important to the local market economy, holding busy markets each week and at least one annual fair that lasted between one and three days. Chester held markets on Wednesdays and Saturdays, and enjoyed two annual fairs. In addition to the towns, a number of populous townships were scattered throughout eastern Cheshire. For example, Rainow near Bollington, Sutton near Macclesfield, and Bollin and Pownall Fees in Wilmslow parish were not large enough to form towns as such, yet all were integrated and industrialising communities in the seventeenth century.⁶¹

By the early seventeenth century, there were about sixty different crafts or occupations in Chester although these were predominantly related to the provision of food, clothes and domestic equipment for local markets. Chester was the largest centre for the Cheshire leather trades. Leather craftsmen formed the largest male occupational group in the city – roughly twenty per cent of all freemen were engaged in branches of the trade. The leather trades also thrived in Congleton, where the main leather market was held, and Macclesfield. Even in Nantwich and Sandbach, where there were fewer tanneries, a large number of the local inhabitants got their livings in the various trades associated with the leather industries. Tanners, shoemakers, cordwainers and cobblers were all prominent in Nantwich, along with glovers, who constituted a smaller specialist group of artisans. Tanning could be a lucrative trade: Hugh Worthington, a Wilmslow tanner whose inventory was proved in 1669, was worth £1,200 when he died. His goods and chattels included twenty cattle, £189 in ready gold and silver, and £275 in leather. In Congleton, too, tanners and skinners figured prominently amongst the more substantial taxpayers.⁶²

Another industry for which the county was renowned was salt. Nantwich was the centre of the salt industry up until the later seventeenth century. In the late sixteenth century, there were over 200 salt houses in Nantwich alone, with about 100 in both Northwich and Middlewich. Only after 1670, when the discovery of rock-salt in Northwich led to the development of a more commercially viable method of creating salt than the boiling and evaporation of sea water, did Nantwich lose its central importance in the trade. Women rarely ‘occupied’ the wich-houses, in which brine was evaporated for making salt: in the early seventeenth century, only two of seventy-one occupiers in Nantwich were female, and only four of thirty-two in Middlewich. Women were, however, employed alongside men as wallers, an occupation that

⁶¹ Hall, *Nantwich*, 81; Harrison et al., 18; Higgins, ‘County government’, 11–12; Hodson, *Cheshire*, 93–4.

⁶² Hall, *Nantwich*, 270–1; Harrison et al., *Loyal Chester*, 10–11; Higgins, ‘County government’, 4–5; Hodson, *Cheshire*, 75, 140; Phillips and Smith, *Lancashire and Cheshire*, 46–7.

entailed heavy and dangerous work: they gathered salt from the bottom of large barrels of boiling sea water with wooden rakes, and then deposited it into wicker baskets from which the surplus water could drain leaving a residue of salt at the bottom. The inflated number of single women living in the salt towns suggests that the industry did provide major female employment.⁶³

The weaving and stocking trades were common in the south and east of the county, although in the City of Chester those craftsmen involved in textiles and weaving were amongst the most substantial freemen, along with merchants and ironmongers, often holding the office of mayor in the early seventeenth century. The linen industry was especially associated with Stockport (a town also renowned for its hat manufacture) and Wilmslow. The cloth trades in general were well represented in Cheshire by the early seventeenth century, although it never developed into a major textile centre. It has been estimated that in the late sixteenth and early seventeenth centuries, nearly a third of the Cheshire population were employed in domestic industry and piece-work, spinning and weaving flax and hemp. Since the sixteenth century, silk and mohair buttons were manufactured in Macclesfield. While 'skilled' male workers produced the button moulds and metal backs in small workshops, most of the work was undertaken by women and children under the putting-out system.⁶⁴ There was also some small-scale coal mining in the north and east of Cheshire, into which part of the north west coalfield extended, such as at Worth in Poynton and Stockport. In addition, the Neston area in the north east constituted one end of the north Wales coalfield. While Cheshire's coal production did not approximate anything like that of Lancashire and north Wales, its existence was important locally.⁶⁵

Like other northern counties, such as Lancashire and Yorkshire, Cheshire was relatively poor. It consistently had one of the lowest taxation rates in England: in the Poll Tax of 1641, only seven English counties had a lower assessment rate, and for Ship Money, only six. With two-thirds of the gentry being worth less than £500 *per annum* in the early seventeenth century, the average Cheshire gentleman was worth half as much as many of his counterparts in the south east. Cheshire gentlemen were nonetheless major landowners. For example, Sir Henry Delves in 1663 was the sole landowner in seventeen of the eighteen townships of Wybunbury parish. In the first half of the seventeenth century, the lower gentry and wealthier yeomen of Cheshire do seem to have improved their lot, prospering through cattle

⁶³ Hall, *Nantwich*, 254–5; Higgins, 'County government', 9; Phillips and Smith, *Lancashire and Cheshire*, 50–2.

⁶⁴ Hodson, *Cheshire*, 145–50, 138; Gail Malmgreen, *Silk Town: Industry and Culture in Macclesfield, 1750–1835* (Hull, 1985), 10.

⁶⁵ Phillips and Smith, *Lancashire and Cheshire*, 47–8.

farming as the prices of milk, cheese, meat and hides rose, along with the rental value of land.⁶⁶ During a period in which some members of the gentry were becoming more affluent, other middling people and the lower orders suffered from the economic climate. One study of the parish of Mottram-in-Longdendale in the north eastern tip of the county has shown that between 1570 and 1680 cattle herd sizes became increasingly smaller. Rising inflation and a decline in real wages caused especial difficulties in the industrialising pastoral areas of eastern and north eastern Cheshire. In 1673, when between three and five hearths were necessary for a household to be considered comfortably off, ninety-four per cent of Congleton households had two hearths or less, and forty-five per cent were exempt from the hearth tax altogether. In Chester, forty-one per cent of households were too poor to be taxed. Of those that were not exempt, forty-six per cent had only one hearth, and a further twenty-one per cent had two.⁶⁷ A great part of the population lived only marginally above the basic level of subsistence. Given that there was very little arable land in the county, it is not surprising that Cheshire appears to have suffered from the dearths of the 1590s, 1621–3 and 1647–9.⁶⁸ For instance, wheat cost from between 43 shillings and 4 marks (£2 13s. 4d.) per bushel in the dearth year of 1597, but a mere 3s. 8d. in the ‘plentiful’ year of 1625. There were similar differentials in the prices of equal measures of other commodities in the respective years. Rye cost between 42s. and 44s. in 1597 and 2s. 8d. in 1625. Peas and beans cost up to 32s. in 1597 but only 2s. 8d. in 1625. Malt cost as much as 40s. and 4s. respectively, barley 30s. and 2s. 6d., oats 20s. and 2s., and ale a groat (4d.) and 2d. a quart. A Cheshire labourer might earn something in the region of 6d. daily with food and drink, or 10d. daily without. A woman in service, even ‘of the best sort’, probably earned less than 40s. *per annum*, while the City of Chester wage assessment stated that a female servant of ‘the third sort’ should earn only 20s. annually. Even the daily wages of an artisan have been estimated at a mere 7d. *ob*. In Chester, in 1597, the highest annual wage, for master craftsmen, was £5. No wonder the prices of that year were described as ‘very fearful’.⁶⁹ For most early modern Cestrians, life was undoubtedly hard. Relative poverty is potentially relevant to the nature of crimes committed and prosecuted, and to crime’s gendered nature. This

⁶⁶ Higgins, ‘County government’, 45, 37–9, 49–50, 235; Hodson, *Cheshire*, 73–4.

⁶⁷ Hodson, *Cheshire*, 95–7; Roger Wilbraham, cited in Hall, *Nantwich*, 207.

⁶⁸ Parish Register of Nantwich, cited in Hall, *Nantwich*, 111–12; Richard Wilbraham’s Journal, cited in Hall, *Nantwich*, 111–12; Harrison et al., *Tudor Chester*, 18; Joyce Powell, ‘The parish of Mottram-in-Longdendale, 1570–1680’, Local History Certificate dissertation, University of Manchester (1976), cited in Hodson, *Cheshire*, 76. For other commentators on the hardness of the times, Hodson, *Cheshire*, 111–13; Higgins, ‘County government’, 56.

⁶⁹ Hall, *Nantwich*, 111–13, 122; Harrison et al., *Tudor Chester*, 18, 24; Higgins, ‘County government’, 56–7.

study, however, places poverty as a backdrop to criminal activity rather than seeking to establish causal connections.

THE SCOPE OF THIS BOOK

Throughout the analyses in this book, I have tried to illuminate the marriage of discourse and practice. What follows is thus not about abstract ideas of gender and crime, but about how those ideas impacted on prosecutions, verdicts and sentences. A major theme is the relative leniency or harshness with which women were treated compared to men within the legal process. Throughout the book, I challenge the ways in which historians have conventionally depicted male and female offenders without attending to the contexts of particular crimes and misdemeanours. The book raises issues about the centrality of the early modern household to understandings and practices of criminal behaviour. It also considers some of the wider implications of civil war for perceptions of criminal behaviour.

In chapters two and three, I deal respectively with male and female non-lethal violence. I ask questions about the 'styles' of violence attributed to men and women and about how violence was understood in terms of gendered concepts. I am particularly interested in how certain discourses hindered and facilitated complaints and justifications of violent acts, how these discourses operated differently for women and for men, with practical repercussions, and how they changed over time. Chapter four considers homicide, investigating the ways in which the categories of culpability inscribed in law were not equally applicable to women and to men, and what this meant in practice for suspects. In chapter five, I turn to theft and related offences such as receiving stolen goods. Again, gendered assumptions made by contemporaries and historians are interrogated in the light of evidence of what women and men actually did. Different sorts of theft are considered in the light of their own histories, the extent to which they had gendered associations, and the practical implications of such associations. The sixth chapter investigates issues of authority, agency and law. Here, I focus on several aspects of plebeian use of the law, in particular concerning bastard-bearing, requesting permission to build cottages on common land, and involvement in forcible rescue, to ask broader questions about the agency of early modern people who operated within a hierarchical social order.