

LAW ENFORCEMENT, CRIME AND PUNISHMENT IN SEVENTEENTH-CENTURY BUCKINGHAMSHIRE

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The machinery of law enforcement in late seventeenth-century Bucks is described, and the incidence of petty crime analysed, together with the standard penalties for it. It is shown that non-attendance at church was by far the commonest cause of presentment, and also that there was a time-lag between changes of regime and changes of practice in the persecution of dissent.

Court Records in the Seventeenth Century

Elton commented that 'the student of crime works with necessarily very patchy and incomplete records'¹. They were particularly bad until the last quarter of the seventeenth century for three reasons. Firstly, there was little observance of any demands made by the Court of King's Bench. Secondly, the Fire of London destroyed a large number of records, and thirdly, many documents were lost. Even after 1670 the quality of primary sources varies from county to county. Some counties, such as Essex and Surrey, have excellent records, but no comparative study of crime over a wide area would be possible. The two studies that stand out are those by Cockburn² (Sussex, Hertfordshire and Essex) and Beattie³ (Surrey). The former's researches span the late seventeenth century, the latter's the early eighteenth.

In Buckinghamshire, while the Quarter Sessional order books are relatively complete and readable from 1679 to 1700, the sessional rolls for the Assizes are very poor. Only six out of forty-four rolls survive, and those in the Public Record Office are in very bad condition. The main sources available to the historian analysing crime and punishment in seventeenth-century Buckinghamshire are therefore the Quarter Sessional records. The main source used here has been the order books, which are not only reasonably comprehensive but in good condition.

Order books were usually written up from minute books, which were the notes made during the sessions. The 'Books of Orders of this Court' were written in English and contained the following documentation, besides the orders: appeals, indictments, presentments, recognizances, lists of jurors, lists of constables, calendars of prisoners, enrollments of returns and details of fines. Some order books also contain material relating to loyal addresses, wage rates, repairs to roads, details of enclosures and reports by committees and officers.

In this survey I have counted all the presentments made by the constables and others. These usually take a form similar to the following: 'Presentments of the constables of Sylvester Lane of Dinton, Francis London of Cublington and James Wild of Iver for selling beer without a licence'⁴.

Recognizances can be described as an early form of bail money. People pledged a sum of money, which was forfeited if the defendant failed to appear in court on the due date.

'Recognizances entered into: Henry Lloyd of Dorney, gentleman in 40s. with Thomas Goodchild and Bartholomew Langley, both of the same, yeomen, as sureties in 20s. each to appear and answer'⁵. 'Recognizances discharged in John Maurice, yeoman, John Whitbourne

timberman and John Bray, yeoman, all of Bradenham etc.⁶.

Court orders might relate to discharging prisoners: 'Barbara Headly, committed to the Bridewell at Chepping Wycombe as a vagrant, to be discharged'⁷.

Others related to appeals against orders made under the Settlement Act: 'Order allowing an appeal of Great Horwood against a warrant removing Richard Fuller from Little Horwood'⁸.

Others concerned fiscal matters: 'William Penn of Chepping Wycombe, tailor, admitted to a country pension of £2 a year upon providing a certificate that he had served Charles II in the Dutch War on board a ship called Soldares and was by a hurt disabled from following his trade'⁹.

Other sources exist but generally they have proved to be less useful for a number of reasons. Depositions, for example, give valuable information to those analysing particular crimes but tend to be of more use in assessing levels of literacy, as evidenced in Cressy's study¹⁰.

There is a certain amount of material in the form of diaries, pamphlets etc., but as Elton remarks, they are 'a very unsystematic collection of cases biased towards the sensational'¹¹. Accounts and bills can be useful for studying expenditure on maintaining law and order, but the treasurers' rolls for the county start only in 1700. Writs by sheriffs summoning jurors, jury lists and lists of constables can also yield information, but have not been used for this study.

A number of primary sources for sessional records were collected and published by a working party in 1936, and I am greatly indebted to the researchers for providing strong foundations on which to write the present paper. While the records for Buckinghamshire are less complete than those of other counties, some interesting findings can still be made.

Law Enforcement and Court Procedure

Constables and watchmen were often illiterate. Wrightson refers to a Wiltshire constable who had to run two miles to get someone to read the written instructions he had been given¹³.

Chief Constables were gentlemen; in Buckinghamshire most of the Petty Constables were working men. John Parriot was a bricklayer¹⁴, Matthew Crane a blacksmith¹⁵, Christopher Andrews a bargemaster¹⁶, and John Allen¹⁷, Henry Cocker¹⁸ and Henry Symons¹⁹ were labourers. Professor Samaha estimated that in Essex only one in four constables were men of substance²⁰, and this appears to have been the pattern over the country as a whole.

Not all constables took their responsibilities seriously. In Buckinghamshire between 1679 and 1700 there were 174 cases of negligent constables, like John Stanley and Robert Hawkins, labourers and constables of Denham, who in 1700 failed to bring in their presentments and quarterly money²¹. In the same year Edward Gomm, labourer and constable of Ilmer, was presented for the same offence.

It appears that those with least power in the community were expected to enforce law and order, often in the face of strong opposition. Negligent constables were fined, but others were liable to be attacked. In 1700, for example, John Milmay of Wendover was accused of assaulting Simon Peddlar and Benjamin Lake, constables²², and in the same set of presentments five people from Hardwick were accused of assaulting John Rogers the constable²³. It seems that anyone undertaking this unpopular position was likely to be alienated from the community.

Turning to court procedure, Quarter Sessions were held, as the term suggests, four times a year: at Epiphany (January), Easter (April), Midsummer (July), and Michaelmas (October). Fig. 1 shows where each session was held in the years under review. Aylesbury was the principal location, but sessions tended to be held in most of the larger towns, with a concentration around the middle of the county.

LOCATION OF QUARTER SESSIONS IN BUCKS 1679 - 1700

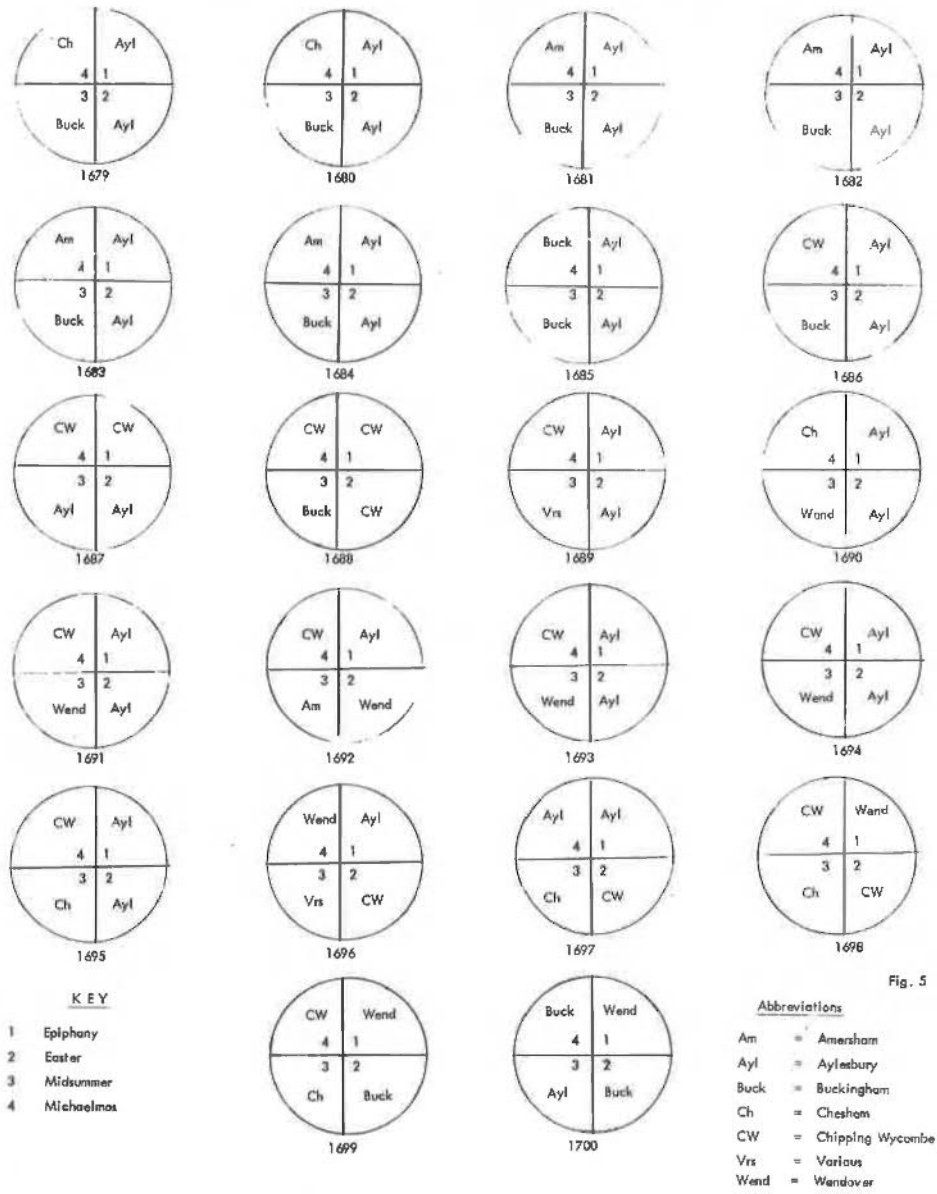


Fig. 1. Locations of Quarter Sessions in Bucks, quarter by quarter, 1679-1700.

Jurors had to be forty-shilling freeholders. All were male except the special juries of women empanelled to determine whether a woman sentenced to hang was pregnant or not. The number of people available for jury service was increasing as inflation eroded the value of forty shillings. There are no records of literacy levels in the county, but Wrightson and Levine's research into Terling, Essex, suggests high literacy among jurors: only six out of forty-four presentations acknowledged were marked with crosses²⁴.

Court administration was carried out by the sheriff, the Justice of the Court, and the Clerk of the Court. The duties of the sheriff still included the swearing-in of jurors, the collection of taxes and the enforcement of penalties (fines, whipping, hanging, etc.). The Justice of the Court was responsible for a large amount of the paperwork, deciding on bail and the calling of witnesses. Other court duties were carried out by the Clerk of the Court, who was responsible for preparing the dates of the trials, organising the court, co-ordinating investigations and ensuring that records of the proceedings were made and kept.

The final group crucial to court procedure were the Justices of the Peace. Although the post of Justice was prestigious it was also time-consuming, following administrative and judicial burdens imposed during Elizabeth I's reign. The Justices were not only responsible for trying offences, but for the upkeep of roads and bridges, frequently making presentments against those failing to carry out such repairs. They were also busy with meetings and duties involving the Commission of the Peace. Justices were accountable to the Privy Council, who ensured that they were carrying out their duties efficiently. This was reflected in the growth of petty sessions and the introduction of the Book of Orders in the 1630s.

Petty Crime in Buckinghamshire, 1679-1700

Incomplete records hamper any attempt to analyse petty crime in the county before 1679. After this date, using the quarter sessional order books, a quantitative study is possible.

The stimulus for this exercise was the survey carried out by J. S. Cockburn in 1977²⁵. While his analysis covered three counties over a period of sixty-six years, mine is of only one county over twenty-two years, and is therefore only one ninth the size. However, my methodology is based on his work, and similar variables affecting criminal behaviour have been analysed. It must be stressed however that these are the only two similarities, as this survey is of a different county some fifty years later.

Methodology

From the Quarter Sessional Order books a list was made of the main categories of offence. Fifty-four types of crime were identified in the twenty-two years under review, and for each crime a count was taken of the number of presentments in each year between 1679 and 1700, inclusive. The original categories were then reduced to thirty, by grouping offences of a similar nature together. For example, offences such as failure to take apprentices, illegal trading, selling underweight goods were all grouped under Trading Offences. In the same way, not clearing a waterway, obstructing a highway and diverting a waterway were all grouped under Waterway Offences.

The tabulated data is shown in Fig. 2, which includes not only all offences counted in the full period, but also vertical totals showing the number of presentments for all crimes in each year.

A number of problems were encountered. First, there was the problem of how many people were involved in certain offences. For example, there were many cases of charges being made against the constables of 'not making any presentments'. For lack of evidence as to the number of constables in each parish, each indictment against village constables has been counted as one. The same problem arose with towns and villages where there was failure to repair roads and bridges. Again, each indictment has been counted as one charge. Similarly, in the case of bastard children, indictments against the parents have been counted as one.

	1679	1680	1681	1682	1683	1684	1685	1686	1687	1688	1689	1690	1691	1692	1693	1694	1695	1696	1697	1698	1699	1700	Total
Petty theft	5	2	-	1	1	3	6	2	3	10	2	10	8	20	4	17	6	2	29	9	5	5	150
Assault	10	20	34	5	17	17	28	14	24	19	13	20	16	11	4	20	24	2	12	8	5	9	332
Unlicenced/disorderly alehouse	11	13	15	14	14	13	14	8	10	16	22	34	38	12	9	12	15	21	2	13	8	3	307
Recusancy/absence from church	133	56	65	215	688	603	611	246	41	-	1	62	220	205	141	143	67	118	76	65	55	56	3,867
Waterway offences	1	4	4	2	1	3	2	17	-	-	-	-	3	7	20	5	-	2	-	-	2	1	74
Negligent constables	12	13	16	9	11	7	12	5	9	3	7	5	-	3	7	6	6	6	5	5	8	25	174
Failure to carry out highway/bridge repairs	8	10	14	18	13	27	17	13	16	34	4	16	13	10	30	19	12	8	5	4	6	12	319
Bastardy	6	-	2	-	-	1	3	1	1	-	-	1	2	-	1	-	-	2	-	-	1	-	21
Failure to observe Sundays/Holy Days	2	-	-	-	12	2	13	-	-	-	-	2	-	9	7	-	-	-	1	-	-	8	56
Perjury at Assizes	2	1	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	5
Causing a riot/disturbing the peace	3	5	7	10	24	34	21	3	15	17	14	6	11	16	1	10	5	1	22	2	-	1	232
Disobeying a Justice's Order/Warrant	2	1	-	1	2	-	1	-	-	-	-	-	-	-	1	1	1	-	1	2	-	-	13
Obstructing a highway	3	-	2	5	1	4	1	2	2	-	1	2	1	-	-	-	-	1	1	1	5	-	32
Non-payment of tax	2	-	-	2	-	1	9	6	4	-	4	6	-	4	4	4	1	6	5	6	6	7	79
Refusing to watch	6	1	15	14	2	-	1	-	-	-	1	6	2	9	-	1	3	6	-	-	2	-	69
Swearing/insult/libel	3	1	-	1	-	2	3	1	1	-	-	7	1	2	-	1	-	1	-	1	1	1	27
Abuse/neglect of office	3	-	4	2	-	1	-	-	-	2	3	1	-	1	3	6	2	1	2	1	4	3	39
Illegal fishing/killing game/keeping dogs, guns, nets	1	1	-	1	1	3	7	4	1	-	10	9	6	1	-	-	1	-	-	1	5	2	54
Hedging/ditching/enclosing/engrossing	1	1	-	-	-	-	-	1	1	-	-	4	1	-	1	-	2	-	2	-	-	-	14
Entertaining inmates/harboursing vagrants/vagabonds, etc	1	3	5	10	5	10	5	2	1	4	4	7	11	1	1	3	-	2	6	2	11	7	101
Not working	3	-	1	-	-	-	-	3	-	-	-	1	-	-	2	4	-	-	-	-	-	-	14
Erecting a cottage with under 4 acres of land	-	2	3	4	5	6	10	1	3	3	3	6	13	-	-	2	2	1	-	1	1	-	66
Forgery/fraud/extortion	-	3	-	1	-	-	1	1	2	-	2	-	-	-	-	-	-	-	-	-	-	3	13
Trading offences	-	1	37	-	-	6	2	5	10	3	2	3	22	18	9	3	2	20	11	7	12	2	175
Pound breach	1	-	1	-	1	1	2	-	-	1	-	-	-	-	-	-	-	3	-	-	-	-	10
Failure to supply the Assizes	-	-	2	-	-	-	2	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	4
Trying to influence a jury	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	1	-	-	-	-	-	1
Trespass/forcible entry/damage/vandalism	2	-	-	-	2	5	1	-	-	12	4	5	3	-	2	12	6	5	8	-	3	1	70
Obstructing/failure to assist a constable	-	-	-	-	-	-	-	-	5	2	3	4	4	1	-	-	1	2	5	1	3	1	32
Other misdemeanours/nuisances	-	-	-	-	-	-	-	-	3	10	-	-	-	-	-	-	-	-	-	-	-	-	13
TOTAL	221	138	227	317	798	746	776	336	152	124	108	216	377	333	245	259	162	212	190	137	140	149	6,363

Source : Bucks. C.C. Record Office
Quarter Sessional Order Books

Fig. 2. Offences coming before Quarter Sessions in Bucks, by category, 1679-1700.

The second problem related to the actual offences. Offences such as 'digging stones for to days'²⁶, and 'having bad mounds'²⁷ were hard to comprehend. Even when the nature of the offence was clear, it was sometimes difficult to decide the category to which it belonged. A case in point was the cottage that was built on a common without the statutory four acres of ground. The question was whether that offence should be classified under the terms of the statute, or under Enclosure. Thirdly, it proved difficult to assess whether or not some presentments were new or simply old cases that had been held over. In many of the religious presentments the same names constantly reappear. Obviously these were dissenters being prosecuted again and again for failing to attend church; but just how many of them had their cases put back to another session is open to debate.

Finally, double offences, such as assault and theft, are counted in each category. Therefore in this particular example both assault and theft would increase by one presentment each.

The Commonest Offences

From Fig. 2 it is clear that the most common reason for presentment during our period was failure to attend church. In this sample six out of every ten presentments were for this, with the years 1683-1685 being the worst (see Fig. 3). This pattern reflects events nationally. Kenyon remarked: 'Over the period 1682-1686 the persecution of dissenters was at its height'²⁸. Dr Coward also made this point when he wrote: 'From 1681 to 1685, especially after the Rye House Plot, Tory magistrates persecuted Catholic and Protestant dissenters, spurred on by the Privy Council'²⁹. In Buckinghamshire the number of presentments for recusancy/non-attendance at church was 688 in 1683, 603 in 1684, and 611 in 1685. Not only were these figures three times as great as at any other time during the period; almost half of all religious presentments occurred during these three years. Turning to the other extreme, Fig. 3 shows a marked decline in religious presentment in the years 1686 to 1690. In the years between the Declaration of Indulgence and the Revolution this is to be expected: where Catholics and

dissenters held local positions of power their co-religionists were naturally free from persecution. This freedom seems to have extended to Buckinghamshire, although its Lord Lieutenant, Lord Bridgewater, was one of the seventeen Lords Lieutenant dismissed in 1687 for refusing to obey the King's instruction to produce lists of Roman Catholics and dissenters to serve as Justices and officers of the Militia³⁰. His successor, Lord Jeffreys ('Judge Jeffreys') although not a Catholic, could be trusted to see that King James's wishes were carried out.

The return to the bench of adherents of the established Church brought renewed persecution of recusants and dissenters—though not at first. For a time after the Revolution it is possible that people were so concerned with national events that they had little time to worry about Church attendance. This is supported by the fact that there were fewer presentments of any kind in 1688 (124) and 1689 (108) than at any other time in the period studied.

While religious presentments were more numerous than any others, it is important to look at trends in other petty crimes. Many of these were more numerous in some years than in others. In 1681, for example, there were thirty-seven presentments for trading offences. This compares with only one in the previous two years. There are two ways of explaining such fluctuations: either the justices and constables had been slack in 1679 and 1680, or they had been instructed to carry out a purge in 1681. Similar variations can be seen in the number of presentments for failing to repair roads, and in the numbers of negligent constables.

Theft has been analysed in detail by historians studying crime. Presentments for petty theft were particularly high in 1692 and 1697 (see Fig. 2). A likely explanation is high inflation and high unemployment following the return of soldiers from the war. According to the Phelps Brown and Hopkins Index, prices were high in the period 1690-1699³¹.

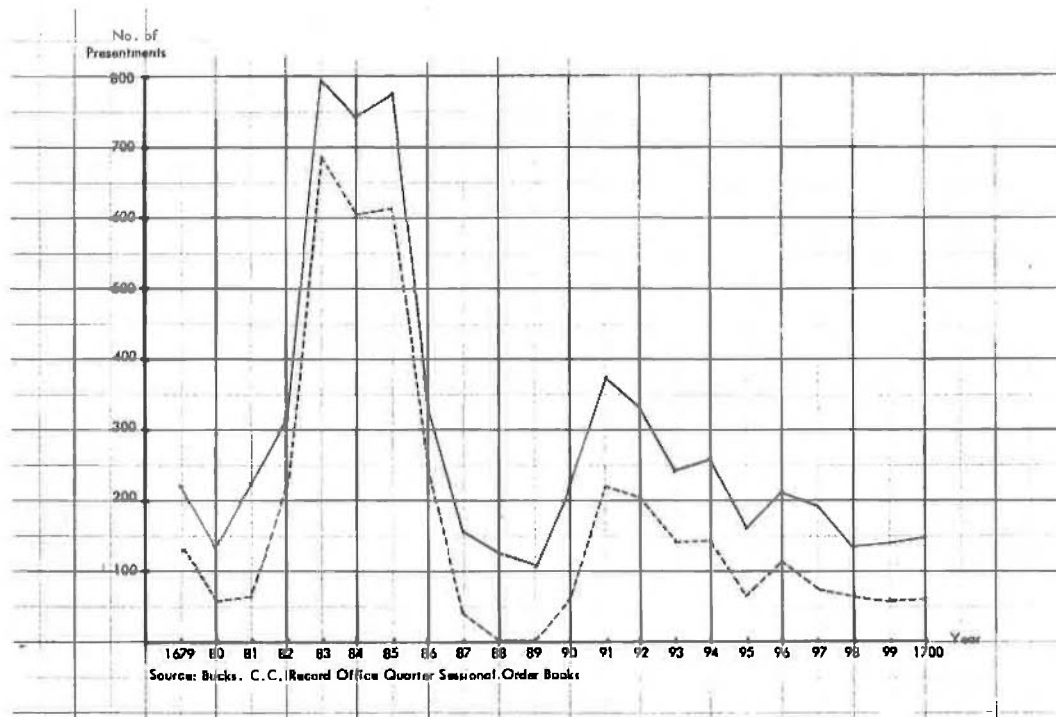


Fig. 3 Annual totals of all presentments (solid line), and religious presentments (broken line), before Bucks Quarter Sessions, 1679-1700.

It would of course be a mistake to relate all crime to economic or social factors. A large proportion of crimes were spontaneous: assaults often followed arguments and rioting was often due to drunkenness. Theft sometimes resulted from longstanding disputes. The relatively small number of cases of assault (on average fifteen a year), and of libel/insult, might suggest that social relationships were generally harmonious, but is more likely to reflect a general tolerance of violence.

To conclude: over half the presentments made to Quarter Sessions in Buckinghamshire between 1679 and 1700 were connected with religion. The other most common offences were assault, petty theft, unlicensed/disorderly alehouses, negligent constables, failure to carry out highway/bridge repairs, causing a riot/disturbing the peace, entertaining inmates/vagrants/vagabonds, and trading offences. A significantly high number of categories saw only a handful of offences brought before the Quarter Sessions (e.g., perjury at Assizes,

failure to supply the Assizes, trying to influence a jury, etc.).

Punishments

From the nature and frequency of crime we turn to the question of punishment. While some of the offences carried fairly standard fines, others varied according to statute, the seriousness of the offence, and the circumstances. Variations also arose because Justices in some areas were anxious to stamp out certain offences, which those in other areas were perhaps not so concerned about. This section studies the standard punishments awarded for particular crimes in Buckinghamshire during the period covered.

Petty theft seems to have been generally punished by whipping. For example, 'John Holcroft of Haversham, labourer, who pleaded guilty of stealing half a bushel of wheat, value 10d, is ordered to be well whipped in the gaol, by the gaoler, until his body bleeds'³².

On the other hand a gentleman, William Veery, was fined 13s. 4d. for stealing a cock from Widow Burnham³³. Heavy fines were imposed on those of high social standing, rather than whippings. William Dorrell, gentleman, was fined £10 for assaulting William Russell³⁴, while Roger Ewer, labourer, was fined 3s. 4d.³⁵. Richard Deller, gentleman, and Charles Cullen, gentleman, were each fined £5 for assault.

The standard fine seems to have been 3s. 4d. (one sixth of a pound or one quarter of a mark). Ralph Lacy, for example, was fined this sum for keeping a disorderly alehouse in Princes Risborough in 1691³⁸. James Wild was fined double this amount for the same offence, perhaps because it was his second³⁹. Poaching also often incurred a fine of 3s. 4d., as in the case of Edward Urlyn of Langley Marish, found guilty of destroying game³⁹, although in 1689 Benjamin Smith was fined £6 13s. 4d. for the same offence. Refusing to employ apprentices usually carried a 3s. 4d. fine, the case of Edward Leered of Amersham being one example⁴⁰. Trading offences carried varying penalties, with not selling a full quart of beer for a penny attracting a 20s. fine⁴¹, while mixing malt with meal in an attempt to defraud the purchaser carried the standard 3s. 4d.⁴³.

The penalty for being absent from church for one month was £20, the fine being doubled for two months absence. Such fines would be equivalent to several thousand pounds today. Buckinghamshire Justices were strict, too, on other religious offences. A case of swearing on the Sabbath met with a fine of £1 6s. 8d.⁴⁴, five times greater than the penalty for weekday swearing. Drinking on the Sabbath was also severely dealt with, a fine of 13s. 4d. being imposed in 1693⁴⁵.

The penalty for rioting, on the other hand, tended to be light. Eight Soulbury villagers were fined 3s. 4d. each in 1697 for 'rioting and overturning the wagons of William Taylor'⁴⁶. The most severe penalty for this seems to have been the £1 fine imposed on two of the people caught rioting in Olney in 1684⁴⁷. Forging a certificate carried a fine of 3s. 4d.; forging an

assessment, 5s.; and forging a warrant £5. Finally, trespass and forcible entry carried sentences varying from 3s. 4d. to £20.

For more serious crime there were four possible penalties: death, goal, fines or whipping. One who suffered the first was John Quarrendon, who, after being found guilty of forging coins was ordered '... to be drawn from this piace and hanged'⁴⁸. Some of those convicted escaped the death penalty by being able to claim benefit of clergy. This meant that they were able to read what was commonly called 'the neck verse', and thereby escape being hanged. How many people were actually able to save themselves in this way is impossible to discover, because the Assize records for the county are so poor. However, records from other counties, notably Essex, suggests that the number was quite high.

Whippings were awarded at both Assizes and Quarter Sessions; fines were less common at the Assizes. Gaol was a frequent punishment, and conditions were so bad in gaol that many prisoners died before completing their sentences. A significant number of those awaiting trial suffered a similar fate, although the Habeas Corpus Act of 1679 shortened the interval between arrest and trial.

Other punishments included Bridewell, where vagabonds were sent to work. In the period 1679 to 1700 offences which led to committal to Bridewell included deserting a family, not working, and 'night walking'. These institutions had come under the jurisdiction of the Justices in the early seventeenth century, and it appears from the sessional records that there were Bridewells at Aylesbury and Chepping Wycombe.

Transportation at this time was still in its infancy.

To conclude, therefore, the penalty seems to have related to the seriousness of the offence and the status and record of the offender. Swearing, for example, carried a 2s. fine for every oath uttered, the fine doubling for every subsequent offence. Doubling up was common,

the pattern being 3s. 4d., 6s. 8d., or 13s. 4d. Penalties seem to have been determined largely by the status of the person concerned: gentlemen were fined more heavily than others, and were not whipped. Defective records are the main obstacle to certainty, sentences not always being written up, and the circumstances of the offence being rarely recorded. Finally, there is little to say whether or not the sentence was actually carried out.

It would have been useful to have looked at indictable offences as well as those triable at the Sessions, but with only six out of forty-four Assize rolls surviving this would have been impossible. However, in view of the fact that these quarter-sessional rolls are the earliest consecutive criminal records that exist for the county, and the turbulent historical background, it is thought that these findings will be of some interest.

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