# The State and Social Change in Early Modern England, 1550–1640

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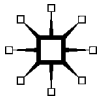



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# 4
# The Keeping of the Public Peace

> I have noted one thing, that your ancestors though they had no authority, were so painful and careful as soon as they heard of any differences or suits between any of their neighbours, that they would interpose themselves and mediate an end, by which the expense of time and much money was saved, and the courts at Westminster nothing near so filled and pestered with causes as now they are.
>
> Sir Thomas Egerton,
> Circuit Charge in Star Chamber, 1602[?][1]

As the Star Chamber archive suggests, the relationship between social harmony and social conflict was particularly ambiguous in late Elizabethan and early Stuart England. This was a society whose obsession with order is axiomatic, yet one where tension, dispute and litigation were common enough. Fundamentally, the community politics of this society entailed the resolution of social conflict, the keeping of the public peace. Pacification appealed to an extensive value system of neighbourly relations, especially to aspirations of charity and harmony. In practice, however, the 'moral economy of the early modern community' might be less than consensual, the meaning of charity might fluctuate, and the keeping of the peace might involve public processes of constraint or coercion as well as private injunctions to mutuality and forgiveness.[2] In this sense, pacification and litigation enjoyed a particularly problematic relationship, one that is much commented upon, though not yet fully resolved, in the historiography of the period. It will be argued here that this 'culture of reconciliation' depended upon far more than ideals of neighbourliness.[3] Ultimately, pacification involved the injection of some measure of public authority into the





10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

'disputing process', and it is with the experience of that authority that this chapter is concerned.

Both historians and anthropologists have identified the salient features of the processes of dispute and reconciliation in past societies.[4] Ideally, it has been argued, initiatives of force, aggression or malice should be curtailed through extra-curial settlements, usually private composition or third party mediation, which might foster amicable social relationships thereafter. In practice, however, disputing parties often eschewed pacification, pursuing satisfaction through the 'waging of law'. Even then, the issuing of writs was not infrequently intended as a means of precipitating an out of court settlement. 'Societies being weaned from habits of private revenge always turn to the law with intemperate enthusiasm', and litigation, initially promoted as a solvent for violent self-assertion, was gradually found to be corrosive of social harmony. Casting the 'utterly uncertain dice of pleas' resulted not only in trouble and charge, it raised the stakes of conflict, propelling dispute into the public arena.[5] Bills and brawls were equally abhorred as the symptoms of the breakdown of harmony. In this light, the preference for quasi-formal or arbitrated settlement is easily understood. Arbitration countered both the fear of violence on the one hand, and the fear of litigation on the other, and was revered as 'such redress as would best stand with the quiet of the country'.[6] These were the parameters of tolerance within which social conflict was perforce resolved.

There was, therefore, a structured ambiguity about the role of law in this disputing process: Was litigation intended to resolve or to further dispute? Broadly speaking, historians have answered this question in two ways. On the one hand, litigation has been regarded as characteristic of an environment racked by socio-economic tension, anxious about its own stability and ridden with endemic petty conflict. This school of thought can conveniently be divided into two hypotheses: the 'hard' and the 'soft'. Lawrence Stone has proposed the crudest variant, arguing that litigation was fuelled by a general decline of neighbourliness, a monolithic trend concomitant on 'the Reformation' which steamrollered community values in the onward march of individualism. Stone envisages a dog-eat-dog world characterised by high levels of dispute and violence: a place where interpersonal behaviour was often unrestrained, and in which even 'respectability' did not imply self-control. With characteristic hyperbole, Stone writes of 'social anomie', the 'breakdown of consensual community methods of dealing with conflict', and 'ethical and economic fissures' opening up in communities 'filled with malice and hatred'.[7] John Beattie,



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

Keith Wrightson and J.A. Sharpe might be taken as spokesmen for the second, 'soft', hypothesis, in that each recognises the dynamics and ambiguities inherent in any given social situation. Beattie and Wrightson are particularly sensitive to the subtleties of changing attitudes in the past, while Sharpe's focus on the enduring orderliness of Stuart society is tempered by his sophisticated understanding of the complex social significance of litigation.[8] Both hypotheses, however, are vulnerable to the criticisms that they generalise about the nature of social control, and that their evidence is drawn exclusively from the archives of complaint, prosecution and litigation.[9]

On the other hand, Cynthia Herrup has portrayed a fundamentally stable society, obsessed with order and infused with a keen sense of Christian charity. In her stress on orderliness and participatory legal responsibility, Herrup echoes Alan Macfarlane's views that 'there is scarcely any evidence that people used physical threats or brutal attacks to punish each other', and that the law was a resource to be used for doing 'good'.[10] This understanding of charity is arguably a very traditional one, focusing exclusively on the ideal of loving one's neighbour. The ideal of parochial harmony carried enormous ethical weight, and could be potent. But ultimately, as Eamon Duffy reminds us, it was just that – an ideal.[11] The consensus approach, therefore, is equally flawed, most obviously because it underestimates the practical difficulties of managing 'social relations in motion',[12] but also because it fails to take account of incremental social change, in particular the cultural shifts resulting from the interacting processes of increasing economic differentiation and cultural stratification, especially at the turn of the sixteenth century.

The ambiguous relationships between charity and conflict are perfectly illustrated by the popularity of quasi-formal processes of dispute settlement. This chapter explores these ambiguities by discussing the technique of binding over, one mechanism through which public authority was integrated into the multilateral process of pacification. Binding over, it will be suggested, acted as a non-aggression pact, initially precluding any further physical self-assertion, and subsequently allowing a cooling-off period during which negotiation, either 'informally' (through mediation) or 'quasi-formally' (through arbitration) might restore disputing parties to the condition of charity. This analysis accordingly addressed four specific problematics in the increasingly complex historiography of law and society in late Elizabethan and early Stuart England. First, it emphasises the significance of binding over, a practice gradually becoming recognised as crucial to the governmental



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

process.[13] Second, it implicitly reconstructs the 'ideology of order', a phenomenon usually investigated through consideration of its obverse.[14] Third, following Edward Thompson's suggestion that the 'violence we have lost' debate is best located within a total context 'which assigns different values to different kinds of violence' (whether physical, verbal or symbolic), this discussion argues that violence was the product of a wider system of attitudes and mentalities, and seeks to trace them over time.[15] Fourth, it raises important questions both about the quality of social relations and of the civilising process, some of which are considered in a concluding discussion of the relationship between authority, arbitration and state formation. It will be suggested that the public peace was guaranteed less by governors' initiatives of coercion and control than by the widespread exercise and experience of authority by middling sorts of people within the populace at large.

## Policing the peace

How was the public peace best kept in early modern England? The significance of magistrates' contributions to early modern government under the revised commission of the peace of 1590 has long been evident to historians. But recent scholarship has suggested that magistrates' labours would have been fruitless without the active co-operation of inferior officers and sections of the public at large.[16] Both the massive growth of civil litigation and extensive popular participation in the criminal and administrative aspects of the legal system suggest a general familiarity with, and desire to use, judicial structures and processes. Striking demonstration of such popular legalism is provided by the widespread practice of appearing before magistrates to swear the peace, to request that an opponent be bound over. Binding over refers to a magistrate's power to bind an individual in a fixed sum, or recognizance, and for a fixed period, to keep the peace and/or to be of good behaviour irrespective of conviction for a criminal offence.[17] If the person bound over was subsequently found to have breached the peace and/or failed to be of good behaviour during that period, he or she was liable to have the recognizance 'estreated' or forfeited to the crown. The practice has underpinned the structures of authority in English society for almost ten centuries.

Although binding over probably originated with Anglo-Saxon attempts to combine suretyship with local self-policing, the first 'commissions of the peace' empowering magistrates to hear and determine criminal cases were issued in 1328. A statute of 1361 enjoined justices



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

'to take all of them that be [not] of good Fame … sufficient surety and mainprise of their good behaviour towards the King and his people'. This statute has formed the basis of magisterial powers to bind over ever since, and several legal commentators, including William Lambarde and Michael Dalton in the late sixteenth and early seventeenth centuries, William Blackstone in the late eighteenth, and contemporary Law Commissioners, have devoted considerable energy to explaining them. Blackstone noted in the 1760s that

> a man may be bound to his good behaviour for causes of scandal, *contra bonos mores* [against good behaviour], as well as *contra pacem* [against the peace]; … or for words tending to scandalise the government, or in abuse of the officers of justice, especially in the execution of their office. Thus also a justice may bind over all nightwalkers; eavesdroppers; such as keep suspicious company, or are reported to be pilferers or robbers; such as sleep in the day and wake in the night; common drunkards; whore masters; the putative fathers of bastards; cheats; idle vagabonds; and other persons, whose misbehaviour may reasonably bring them within the general words of the statute as persons not of good fame.[18]

Throughout these developments, discretion has been both the strength and weakness of the system. While breach of the peace has always had a 'surprising lack of authoritative definition', the limits of 'good behaviour' extend even more vaguely to activities which are neither strictly criminal nor even dangerous, but are simply distasteful to the magisterial establishment and those that have its ear. Although the Law Commissioners of 1994 recommended the abolition of binding over, on grounds of 'uncertainty' and 'natural justice', they noted that the power was most fervently supported by those responsible for its practical application.[19] From a contemporary perspective this reminds us of the distinction, particularly marked in the early modern period, between legal theory and legal practice. Historians of early modern law enforcement agree not only that 'common law' might differ from 'common practice' but also that the fabric of criminal justice was shot through with discretion at every level.[20]

Binding over in early modern England can be divided into three broad categories: first, to keep the peace, either towards a named individual or to the community at large; second, to be of good behaviour, likewise either to particular persons or in general; and third, to perform specified activities or to refrain from performing others. Early modern

justices' handbooks devote lengthy sections to the warrants and sureties through which recognizances were administered.[21] Dalton's *The Countrey Justice* (1618), for example, explained that a 'surety of the peace' was a measure of 'security' because 'the party that was in fear is thereby the more secure and safe'. Justices could demand sureties either 'as a minister, commanded thereto by a higher authority' or 'as a judge'. In the latter case, Dalton distinguished between powers exercised by a magistrate 'of his own motion and discretion', and those executed 'at the request and prayer of another' party. These categories overlapped slightly in that a justice might persuade one party to desire the peace against another.[22] Of the 16 offences identified by Dalton for which 'discretionary' sureties might be commanded, six were transgressions committed in the justice's presence: assault on the magistrate himself; assault on others; threats of assault, wounding or arson; 'contending in hot words (for from thence often times do ensue affrays and batteries, and sometimes mayhems, yea manslaughters and murders)'; riding with unusually numerous attendants, including any servant or labourer bearing arms; and suspected inclination to breach the peace.[23] Justices were also empowered to bind over any person arrested by a constable for threatening assault; for suspicion of imminent breach of the peace; or for participation in a domestic dispute into which a constable had intervened, even 'by breaking open the doors' of a house. Those reported to have made affray could be bound by discretion, and in cases of wounding, both parties were to be bound 'until the wound be cured and the malice be over'. Constables were empowered to arrest and secure the binding before a justice of any who rode armed, rioted or committed barratry.[24]

Although Dalton described magistrates' discretionary powers in some detail, he emphasised that binding over depended upon popular participation. To a far greater extent than either Blackstone or the Law Commissioners of 1994, he stressed the role of private initiatives in causing justices to bind others over. Magistrates usually commanded the finding of sureties upon a complaint by a third party. Such requests had to be validated by an oath that the party stood 'in fear of his life or of some bodily hurt', thus ensuring that the peace was not craved lightly, or 'for any private malice, or for vexation, but of very fear, and for the needful safety of body or houses'.[25] 'Breach of the peace', therefore, constituted an offence against the person rather than against property, and recognizances could not protect 'cattle, servants or other goods'.[26] They were, moreover, concerned solely with present or future danger, and could not be used retrospectively. Almost any individual



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

could, therefore, be bound before a magistrate if their opponent could both afford the legal fees and was prepared to swear that they had been threatened.[27] Only peers of the realm could not be bound over, Dalton argued, because the law 'conceived an opinion of the peaceable disposition of noblemen', whose word of honour was considered sufficient.[28] But otherwise, the technique was of virtually unlimited application: sureties could, for instance, be demanded both of local office-holders and between members of a family.[29] In practice, then, the smoky, wainscoted parlours of gentry seats were to be filled with local yeomen and husbandmen swearing oaths that they feared for their lives, as magistrates' clerks filled out the relevant documents.

The oath not only deterred the perpetuation of feuds in the law, it also represented the sanction of spiritual violence that was inherent in the judicial process, in that the oath-taker was required, voluntarily, to imperil his or her soul. This spiritual and psychological threat was legitimated by the law, which harnessed its coercive potential for the good of the commonwealth. In this *symbolic* sense, authority worked through the ordering of violence: a 'rite of violence' presided over by a magistrate regulated the right of violence.[30] The *practical* virtue of the system for those in authority, however, lay in the justice's discretionary power 'to appoint and allow the number of sureties, their sufficiency in goods or lands, the sum of money wherein they shall be bound, and to limit the time how long the party shall be bound'.[31]

So much, then, for binding over to keep the peace. Dalton described 'surety of good behaviour' as 'of great affinity with the peace, and ordained chiefly for the preservation of the peace', although he argued that 'there is more difficulty in the performance [of good behaviour], and the party so bound may sooner fall into the danger of it'.[32] Whereas 'affray, battery, assault, imprisonment or extremity of menacing' merely constituted breach of the peace, both 'the peace' and 'the good behaviour' could be infringed by the attendance of an extraordinary number of people; by carrying arms; by issuing threats tending to the breach of the peace; or by any activity which 'put the people in dread or fear'.[33] Although the surety of the peace was 'usually granted at the request of one, and for the preservation of the peace towards one', 'good behaviour' was usually granted 'to provide for the safety of many' upon complaint from several 'very honest and credible persons'.[34] This explains why warrants for good behaviour were usually ordered after quarter sessions benches received petitions from the 'better sort' of people in the local community.[35] In this way, five types of delinquent were likely to be bound for their good behaviour: barrators, quarrellers and



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

disturbers of the peace; rioters; those who lay in wait to rob or assault; suspected highway robbers; and those with intent to commit murder.[36] But here, again, the discretionary powers granted to the justices were very broad: such warrants could be awarded against 'any of evil name and fame generally', including 'suspected persons who live idly and yet fare well, or are well apparelled having nothing whereon to live'.[37]

Behaviour tending to breach of the peace was, therefore, extremely broadly defined, while warrants of good behaviour could be ordered against an almost infinite range of transgressors. Those categorised as anti-social included many (quarrellers, fornicators, night-walkers, drunkards, idlers) whose actions might not have been strictly criminal. 'The peace' was, therefore, on the one hand, a flexible and powerful *instrument* of authority which empowered the magistracy to suppress conduct perceived to be anti-social; and, on the other, a *resource* of authority, available for private individuals to protect themselves from aggression. In this sense, binding over was attractive to magistrates and disputing parties alike. For justices, it operated as an early modern 'sus law', with all the discretion and flexibility that implies. To the actual or potential victim of crime, swearing the peace offered protection without the trouble and charge of indictment for assault or civil litigation.

Analysis of both the extent and operational significance of binding over is fraught with difficulty. In the first place, recognizances were evidently certified to courts whose records do not survive, or, even more significantly, were never certified at all.[38] Second, 'discretionary' bonds are difficult to distinguish from those secured upon private complaint, a task further complicated by the 'dark figure' of warrants which never succeeded in bringing defendants before magistrates. Third, by the turn of the seventeenth century, recognizances were apparently taken in disputes which, strictly speaking, did not involve threats to the person. Both Beattie and Robert Shoemaker have demonstrated that Restoration justices used recognizances in cases relating to vice, to the Poor Law, and to property and regulatory offences.[39] By 1700, binding over apparently formed part of the matrix of social control in the metropolitan campaign for the reformation of manners and was frequently used by justices who heard large numbers of cases of vice in which defendants were frequently poor.[40] Shoemaker distinguishes three patterns of judicial preference in the handling of misdemeanour prosecutions, which he categorises as 'ideal types' of magisterial activity: 'mediating', 'law and order' and 'social control'.[41] The 'mediating' justices who frequently issued recognizances did so because binding over facilitated quasi-formal arbitrated settlements.[42]



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

Shoemaker's analysis is invaluable in two respects. First, it clarifies the inordinately complex relationship between recognizances and indictments, and therefore between binding over and prosecution. Second, it emphasises the importance of magistrates' idiosyncrasies, especially in a system which granted them enormous discretion. It does, however, have certain limitations. The validity of its conclusions depends upon the quantification of data whose integrity he defends at great length, yet the complexities of real life are often sacrificed to the demands of this heavily statistical methodology. Furthermore, in focusing on magistrates' strategies, rather than plaintiffs' priorities, it illuminates the exercise, rather than the experience, of authority. Shoemaker regards recognizances as a governmental tool, to be used as and when magistrates saw fit. To put it another way, he is more concerned with binding over than with the swearing of the peace that caused it. Moreover, his analysis entirely ignores the question of violence, and treats both oath-taking and threats of physical harm as if they were legal fictions.[43] Finally, he fails to address the changing social dynamics of binding over: How did the practice of, and attitudes towards, swearing the peace change over time?

Although medieval evidence is scarce, the archives of the palatinate of Chester provide the largest and most complete set of peace bonds for any county in the fifteenth century.[44] In the period 1442–85, Dorothy Clayton counted 1,069 mainprize bonds, and a further 1,717 recognizances to keep the peace. Given that these bonds were certified in the county court rather than at quarter sessions, these statistics are of limited comparative value.[45] For the early modern period, however, the picture is much fuller. Surviving quarter sessions records for mid-seventeenth century Essex contain almost 1,700 recognizances for the peace or good behaviour in a 60-year period, an annual average of 28.[46] Shoemaker himself identifies 2,392 defendants prosecuted by recognizance in Middlesex and Westminster between 1661 and 1725.[47] Of these, 2,092 had not previously been indicted, and of them only 1,148 (55 per cent) were involved in offences against the peace.[48] The changing purposes of binding over therefore render the quantitative analysis of long-term trends in the use of recognizances extremely hazardous.

The following discussion thus seeks to illuminate changing attitudes towards contention, litigation and violence through a medium-term analysis of the priorities of those who sought to have opponents bound over in late sixteenth- and early seventeenth-century England. Much of the evidence is drawn from Cheshire, a county whose abundant Elizabethan and early Stuart records have been relatively little

studied by historians.[49] At the very least, discussion of social relations in this far distant place of the realm, in an environment relatively unfamiliar to those social and legal historians preoccupied with the small-scale, closed communities of lowland incorporated England, might encourage comparative analysis. It is not suggested here that the north-western marches of the realm were necessarily more lawless than the Home Counties. None the less, the dynamics of authority, neighbourliness and conflict were bound to ramify according to the 'politics' of each individual parish.[50] Furthermore, the nature of the Cheshire archive facilitates both quantitative and qualitative analysis.

In the first place, administrative records provide impressionistic evidence of the increasing frequency of swearing the peace during the course of the seventeenth century. Various county benches modified their procedures relating to recognizances: increasing business was visibly placing strains on the system, and intervals between court appearances for those bound over were extended in order to ease pressure on quarter sessions' agenda.[51] This impression is confirmed by a count of recognizances for the peace and for good behaviour certified in Cheshire quarter sessions order books, 1590–1609. A total of 4,120 persons, or an average of 206 each year, stood bound to the peace or for good behaviour during these two decades. Moreover, the numbers bound were increasing over time. The average number bound at each sessions in the last quinquennium of this sample period was almost 64, an increase of over 80 per cent on the average for the first.[52] The increasing popularity of collective petitioning to have an individual opponent bound for good behaviour is demonstrated by a doubling of the proportion of all recognizances which were entered for good behaviour from 43 or 2.7 per cent (1590–9) to 136 or 5.3 per cent (1600–9). This picture is confirmed by a count of warrants issued upon petition to quarter sessions: over these two decades, the number of warrants for good behaviour ordered by the bench increased from 14 to 96. At a 'time of troubles', during which a combination of social, economic and cultural tensions were at work in village communities, the recognizance for good behaviour was 'an ideal instrument of social control' in that it helped the better sort of the inhabitants of English parishes, especially those holding local power, to 'enforce standards of behaviour which they considered appropriate and conducive to social well-being upon all members of the community'.[53]

This late sixteenth-century intensification of craving the peace was not confined to Cheshire. Of the 23 interpersonal disputes which resulted in recognizances to keep the peace in the Essex village of Terling



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

during 1560–1699, 16 arose in the period 1599–1612. This concentration of business has been taken as evidence of 'a high degree of conflict amongst villagers of middling status', conflict bitter enough to result in threats, fear and requests for formal arbitration.[54] This suggestion is confirmed by analysis of the changing social profile of peace-swearers. Clayton argued that 'the vast majority of people involved in Cheshire recognizances made in the second half of the fifteenth century were gentlemen'.[55] The late sixteenth-century evidence suggests that binding over was far more frequently requested by those of much lower status. In a sample of 244 recognizances filed at eight Elizabethan Cheshire quarter sessions, 86 of those swearing the peace can definitely be classified as yeomen, and a further 42 as husbandmen. These two groups therefore account for almost two-thirds of all those of known social status who swore the peace in this period. The 'middling sort' were the most frequent swearers of the peace in late Elizabethan England.[56] Such a conclusion is significant in two respects. First, it chimes with Shoemaker's view that while recognizances were cheaper than indictments, they were still prohibitively expensive for the poorer sort of the parish. The bare minimum cost of prosecution by recognizance (the fee for a warrant for the peace) was 2 shillings, at a time when a Chester labourer might earn between 6 and 8 pence a day.[57] Second, it suggests that middling sort respectability first found expression in changing attitudes towards violence, threatening language and contention.[58]

Recognizances illustrate both the nature and extent of these forms of social tension in the past. In the first place, the reporting of threats to the peace implies that conflict was endemic, and attempts have been made to relate the frequency of binding over to the experience of social change in local communities. In Terling, for example, Wrightson and Levine argue that demographic pressure at the turn of the sixteenth century created new patterns of social and economic differentiation within the middling ranks of parish society, resulting in a sharp concentration of interpersonal disputes concerning property issues.[59] Although economic tensions may well have been at play there, wider issues were clearly at stake in other communities, especially since violence was both a cause and a symptom of conflict. In the second place, the fact that recognizances were secured at all, often in preference to indictments, suggests that, whatever its causes, conflict was often highly mediated.[60] This perspective helps explain other contemporaneous trends in the use of the law, including the complex networks of petitioning and counter-petitioning to which magistrates were subject; the increasing concern of grand jurors with anti-social behaviour;



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

and the redefinition and punishment of sedition at every social level.[61] This was evidently a period in which larger processes of social change created new forms of conflict and necessitated novel forms of control. Binding over for an increasingly wide range of activities was merely one expression of this trend, and because it reflects the extent of potential rather than actual lawlessness in this period, it serves as a valuable index of both contention and resolution.

Binding over therefore reflects two facets of early modern social relations: on the one hand, the ubiquitous threat of violence; on the other, notorious law-mindedness. While the widespread use of recognizances is *prima facie* evidence of participation in the legal process, this particular form of quasi-litigation was ostensibly appropriate only when threats of violence had been issued. These two apparently contradictory trends can, however, be reconciled. As Phillipa Maddern has argued, there is 'little chance of understanding the purposes and progresses of … litigation and arbitration without analysing the role of violence'.[62] Indeed, the tendency to place violence and the law at opposite moral poles is arguably a very modern one, which ignores the extent to which they might operate in tandem to establish and protect divinely ordained social and political order. Binding over perfectly embodies this complementary relationship between violence and litigation. Recognizances were popular not simply because they were authoritative, but also because they coerced antagonists to desist from violent acts. The frequency of swearing the peace might be taken as evidence of an increasing tendency to litigate, but it was also characteristic of an environment in which even the most respectable members of a community could be provoked into offering insults or uttering threats of violence. While it is true, therefore, that the proliferation of recognizances reflects a great deal more about life in early modern England than its tendency to become violent, the threat of violence necessarily underpins it. The widespread finding of sureties at the turn of the sixteenth century was arguably a decisive phase of what John Beattie describes as 'a very long term transformation of the place of violence in English society, from a period in the late middle ages when violence was less restrained either by the state or by men's attitudes, to what has come to be the broad disapproval and control of private violence in the modern world'.[63] The demanding of the peace suggests that the line dividing acceptable from unacceptable conduct was not hard and fast, and implies a gradually emerging sense of abhorrence, especially amongst middling social groups, of deeds and words that had once been so commonplace as to cause little concern.[64]



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

It is, therefore, into the contexts of both 'warring' and 'lawing', of both 'pistols' and 'process', that the cultural preference for pacification must be placed. Evidence from the Cheshire archive demonstrates the complex relationship between litigation, violence and binding over. Several of those bound over in late Elizabethan and early Stuart Cheshire were guilty of issuing threats of violence. They included George Richardson of Rushton, whose 'foul words' included the threat to 'stick that old queen' widow Addishead; John Gill of Aston-near-Minshull who promised to put that 'cuckoldly knave' William Gibbons in a sack and beat him'; William Fallowes of Chelford who offered 'twentie nobles' to have that 'arrant knave' William Burges 'cunningly knocked'; Robert Bancroft of Hulme who tempted James Taylor with £20 to 'knock out the brains of his master'; Richard Tue of Buerton who conspired with Thomas Dayes, 'one of the conningest men in all England', to murder Thomas Massy of Wrenbury; and Thomas Day of Tibbe Green who had maliciously 'lain in wait to have grievously wounded and assaulted' Robert Audley.[65]

But recognizances were also employed to preclude the institutionalised vengeance of litigation, by bringing the force of authority 'to remedy that that otherways seems to be remedyless'.[66] The Cheshire magistrate Sir Richard Grosvenor, for example, was furious with his son's insistence on litigation during a property dispute. Although a neighbour had 'propounded divers ways of peace' in a 'difference for making a diche' between their lands, the younger Grosvenor would 'proceed noe way' but by a jury. His father urged him to 'gayne and keep the love of your neighbours, without which I had rather not be. Differences may arise betwixt the nearest friends; but it is a Christian part to try all faire way to decide them before extremity be used.' Grosvenor urged his son to enter a recognizance, to 'yield to a reference and try to make a choice of one to end the cause'.[67] His analysis of the disputing process was at once moralistic yet intensely practical. Litigation, he explained, 'for the most part concludes doubtfully and ends costly'. A willingness to attempt a 'fair and friendly way of composure' was crucial to the pacification of quarrels. Even when confronted with obdurate opponents, Grosvenor advised clemency: 'a seasonable gentler usage may have power to charme, when rigour helpeth to enrage'. Reconciliation should be sought in every case. 'None can dislike this Christian way', he wrote, 'but men of froward dispositions and turbulent spirits' who sought 'to glutt themselves in revenge, and to delighte in the misery of their neighbours'. Only as a final eventuality, when attempts at mediation and arbitration had



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

proved unsuccessful, would he sanction institutional retaliation: 'then may a man justly seeke for his owne by law … you are then blameless before God and man, and may justly defend yourself with weapons answerable to those wherewith you are assaulted'.[68]

Grosvenor's air of resignation seems well justified in the context of the massive increase in litigation in late Elizabethan and early Stuart England.[69] Whatever the ideal of charity and forgiveness, the 'furious words, threats and taunting recriminations' that Grosvenor feared were common enough, and men of 'base sperits' used the law with alacrity.[70] One dispute in Waverton, in 1597, captures this trend perfectly, the parson informing the bench that although he and his neighbours had 'endeavoured to compound variance and dissension' between two parishioners, they had 'prevailed nothing therein, neither is there any likelihood that persuasion might hereafter prevail, but more malice and ill will is like to be showed' by 'molesting either other by suits and charges in law'. Although one party was 'willing that all such matters be laid away so as they might live in love and charity as becomes good Christians', his opponent refused to yield 'unto this Christian reconciliation, being in very deed of wayward and wrangling nature'.[71] Such mediation often failed precisely because mediators were usually selected with hard bargaining in mind. Grosvenor noted that even where mere 'trifles and toyes' were at stake, disputants sought out mediators 'so fast knit and tyed unto' them that they could be trusted to prosecute their interests rigorously.[72] The desire for authoritative arbitration led to a substantial increase in quasi-formal dispute settlement during the late sixteenth and early seventeenth centuries, without which the increase of litigation would have been more marked.

Arbitration was crucial in almost every jurisdiction in early modern England. Three examples from the Cheshire archive demonstrate the centrality of quasi-formal settlement at every level of the legal system. In 1620, the Privy Council appointed a Chester exchequer commission to settle 'all questions and controversies' among crown copyholders during the enclosure of Macclesfield common. When certified that substantial exceptions still remained, a second commission was issued to 'mediate a peaceable and friendly atonement' if one might 'be conveniently effected'. In 1607, Lord Chancellor Ellesmere referred a 'debate' to the justices of Chester 'for the settling of quietnes' between the cathedral and city authorities there. In 1594, a property dispute in Hurleston was referred by the Kinderton court leet to the arbitration of a local yeoman, who subsequently certified the end of 'controversie and discord'.[73] The quarter sessions bench likewise stepped into this



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

role, frequently delegating individual magistrates to arbitrate in specific disputes, urging reconciliation rather than rigorous prosecution. The Chester diocesan chancellor was ordered in 1594 to sequestrate a pew disputed by two Knutsford parishioners and to mediate between them; a Hurleston yeoman was compelled to accept the order of two magistrates 'concerning all matters in variance' in 1597; another magistrate was delegated to mediate between a 'poor man' and his landlord during a rack-renting dispute in Mobberley in 1608; and in 1617 Sir Urian Leigh arbitrated a settlement between four disputing husbandmen in Macclesfield forest.[74]

Some of these arrangements could be complex. When two petitioners who had been 'grievously troubled and vexed' by riot indictments prosecuted 'upon unjust and untrew suggestions' pleaded for mediation by 'some gentlemen of Macclesfield hundred', the Cheshire bench referred them initially to the 'arbitrament and ending' of two magistrates, and ultimately to an 'umpire indifferently chosen betwixt them'.[75] Ideally, arbitrators should not only carry sufficient authority to be impartial, they ought to be familiar with the personal circumstances of the parties. Local magistrates or landlords were, therefore, very frequently ordered to enforce reconciliation. 'Differences' within the Tomlinson family, for example, were regarded as 'fittest to be determined by such justices as live near' them because 'they understand and know best [their] qualities', while 'oppressions and injuries' between Sir Thomas Smith's tenants were referred to their landlord.[76] Arbitrators were not even necessarily required to certify the conclusion of their hearings: Sir Richard Wilbraham was ordered to certify his opinion only if he failed to end an apprenticeship dispute. If litigation was inevitable, the bench might dictate its terms: 'all the controversies touching trespasses betwixt' two parties in Macclesfield were 'to be tried between them, and not by way of indictment'.[77]

Recognizances were particularly useful in this regard, since by referring disputes to arbitration, they might preclude further private initiatives. Their role was ambiguous. Recognizances might sometimes be suspended pending arbitration, or actually made conditional upon composition. Recognizances against two parties in Nantwich were 'stayed for that the controversy is referred to the ending of William Lord Brereton'. Good behaviour was to be granted in favour of petitioners from Partington only if those appointed to 'end the controversie' failed. Because the bench referred 'controversies' in Nantwich to two magistrates 'not doubting that [they] will take paynes for the ending thereof', warrants of good behaviour were 'ceased and none



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

hereafter to be granted forth'. Equally, binding over could defuse tension pending further investigation: Sir Richard Wilbraham was delegated to 'order' a dispute in Nantwich while the parties were continued bound to their good behaviour.[78]

How effectively, then, were positive attitudes to a 'fair and friendly way of composure' fostered? How did Elizabethan and early Stuart English men and women react when they were bound to the peace? Although binding over might actually have constrained further vexation or violence, it seems to have been growing less effective over time, perhaps as a consequence of the decreasing social status of those involved. Among Clayton's largely gentle late medieval participants in the practice, 'there is little evidence that Cheshire peace bonds were broken'. In Shoemaker's Restoration and Hanoverian sample, however, 'close to a third of all recognizances did not lead to satisfactory conclusions'. Perhaps as many as 15 per cent of recognizances issued by Westminster justices were actually estreated, while process for forfeiture was initiated in a further 11 per cent of cases.[79] In early seventeenth-century Cheshire, the data do not lend themselves to systematic quantification, but there is sufficient impressionistic evidence to demonstrate the matrix of social and cultural pressures which constituted the experience of being bound over.

Some of those subject to bonds were simply contemptuous. Most obviously, the very poorest members of the community, 'people of low and desperate fortunes' as they were later called, had little to lose if they defaulted.[80] Ralph Ashes feared that his opponent was 'the rather emboldened' to break the peace because he and his sureties were 'all men of very weak estate, and have not wherewithal to satisfy His majesty of any forfeiture'. William Baker of Calcott allegedly regarded the forfeiture of his recognizance 'but lightly'. In other cases, rage, fury and the desire for revenge were sufficiently intense to outweigh any financial or judicial imperatives. John Bradshaw threatened to 'be loose' and to 'be remembered upon' those who had sworn against him. Before a fracas in Stockport in 1602, one of the rioters initially remarked that 'we are bound to the peace and therefore dare not stir', but his grieving father swore that he 'would be in no place quiet' towards his son's murderers. Other offenders were simply incorrigible. Thomas Sale of Weaverham had beaten his wife so badly that 'for fear of her life', she fled to live with Sale's sister. When he threatened them with arson, magistrates affirmed that they 'had formerly bound [Sale] to the peace and good abearing which he did infringe'. Similarly, although the Jenkyn brothers of Wigland were 'very lewd persons,



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

common quarrellers and barretors, common defamers and slanderous of their neighbours, [and] common drunkards' who had repeatedly been bound to their good behaviour, they had nevertheless 'continued their usual and wonted course of life' in quarrelling brawling defaming and slandering of their neighbours'. In a third instance, Randle Farrer remarked that he 'neither cared for the warrant [of the peace] nor for the King', and threatened to kill the vicar of Weaverham. Such contempt often resulted in physical violence: Michael Millington committed an assault in Wybunbury churchyard 'wherein he broke a bond of £40'. Some officers were not above reproach either. Although the constable of Broxton was bound to the peace, he incited his wife to assault a bailiff, promising to 'bear her out if she was in danger of law'.[81] For these, and others, the threat of financial penalties for them and their sureties was neither sharp nor even meaningful, and their participation in the law was a downward spiral of binding over, imprisonment and indictment.

Pacification, then, was not always easily achieved, least of all when recognizances were secured vexatiously. The frequency and geographical spread of references to vexation have led J.A. Sharpe to conclude that instigating suits on slight or malicious grounds was a national problem.[82] Swearing the peace was no less vulnerable to abuse, and evidence suggests that malicious binding over was relatively common. If litigation constituted a breach of proper neighbourly relations, binding over at least tended to one's discredit within the community, and implied guilt, unless a counter-warrant was procured. Being bound over also entailed considerable trouble and charge, since the minimum cost of defending a recognizance was 4s 4d in fees to clerk and court.[83] Since a warrant cost 2 shillings to secure, both prosecutors and magistrates might have motives for abusing the system. Sir Richard Grosvenor reminded his fellow magistrates to 'prize not the clerks fee before the peace and quiet of your neighbours'.[84] Malicious oaths, like vexatious litigation as a whole, illustrate what might be termed 'unpopular legalism', the use of the law to further feuds.

Several laconic references to malicious recognizances suggest that men of a 'wayward and wrangling nature' were all too common. When composition was suggested by Clement Starky's opponent after both were bound over, for example, Starky replied that 'he had him fast and would keep him fast' so long as he lived. Robert Sponne of Warmincham was alleged to have 'upon mere malice and knavery' sworn the peace against his neighbours 'whom he knew to be men well stayed and of good government [who] never purposed or intended any hurt against him'. Henry Mainwaring prayed for the release of another



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

recognizance because both parties 'are labourers and are poor and the man has been kept long enough under no great charge rather upon malice than matter'. Thomas Marbury perceived that the warrant procured against John Shaw yeoman of Rostherne was 'rather upon malice than upon cause.' A shoemaker who 'upon meere malice' swore the good behaviour against the mayor of Stockport was whipped through the market there in 1621.[85] For some individuals, swearing the peace was apparently a habitual, even a professional activity. William Baker of Calcott retaliated to his neighbours' complaints by maliciously binding them to the peace 'until they give him money for composition, when he himself has spent nothing at all'. Agnes Stonyer allegedly 'made a living of swearing her dread of bodily harm and thereupon procuring warrants of the peace' and taking money to dispense with them, to a total of 36 shillings from seven neighbours.[86]

Grosvenor warned his fellow magistrates that recognizances were wide open to such vexatious abuse: the demanding of the peace from one another by neighbours was, he wrote, 'too common a way of revenge upon the least unkindness'.[87] Dalton had anticipated this tendency, warning that 'if a man will require the peace because he is at variance with his neighbour, it shall not be granted'.[88] The issue depended on the magistrate's ability to distinguish between 'matter' and 'malice'. If the justice perceived vexation, he might 'safely deny' the request for a warrant, he accepted that this could be a frequent occurrence: 'where A shall upon just cause come and crave the peace against B and have it granted to him; when B shall come before the justice, B will likewise crave the peace against A, but yet will nevertheless be content to surcease his suit and demand against A so as A will relinquish to have the peace against him.' Placed in this difficult situation, it was the magistrate's responsibility to arbitrate. If B took the oath, then the justice was obliged to grant the peace against A, but Dalton warned justices 'not to be too forward in thus granting the peace', but rather 'to persuade with B' and show him the danger of his oath'.[89]

Grosvenor, however, doubted the efficacy of the threat of spiritual violence implied by the oath. Although he warned the Cheshire grand jury that oathtaking was 'a most sacred action which is not to be sleighted as a matter of base form but to be accounted of great weight and moment', he feared that 'custom in often taking of an oath may with some irreligious persons lessens their esteem thereof'.[90] Grosvenor knew that perjury was endemic where sworn testimony was ubiquitous, and he would certainly have heard comments of those like Peter Norris of Middlewich who allegedly remarked in 1604 that 'oathes



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

were but wordes, wordes were but wynde and wynde is mutable', and that it was merely 'a chyldishe tricke to make account of an oathe'. Norris was more concerned with the physical rather than the spiritual danger of his oath: 'if I forsweare me I shall lose but my eares'.[91] For some, it seems, a cropping at the pillory was, even in the early seventeenth century, more potent a threat than the smell of brimstone.[92]

Both malicious binding over and perjury indicate that participation in the legal system, so often regarded as a positive advantage, might have negative consequences. Vexatious swearing of the peace (the 'brabbles and discurtesies', for example that were exhausting the patience of the Cheshire bench by the mid-1630s) is a potent reminder that litigation was not invariably beneficial.[93] Making the system work, and striving to make the system work for you, were very different enterprises, and some of those who employed the mechanism of binding over did both. Indeed, arbitration could be coercive, and historians should be more sensitive to the contours of the power structures which are all too often levelled by indiscriminate use of the term 'arbitration'. Sir Richard Grosvenor's injunctions to reconciliation might well have been, at least in part, class-specific, noting that amongst gentlemen 'the most noble soules are beawtified with the raies of clemency', and implying that only the wealthy were 'armed with power as with will to revenge' their enemies at law. His comments were, moreover, explicitly justified on the ground of 'pollicye'. These reservations are especially pertinent with respect to binding over: where magistrates sought to reconcile antagonists, they often denied poor disputants access to the protection offered by the formal mechanisms of the law, and enforced them to submit to recognizances that might be beyond their means. Neither injunctions nor unilateral willingness to consent to arbitration should, therefore, necessarily be read as indices of altruism or public spirit.[94]

It would, however, be both churlish and misguided to deny that in practice 'a gentler answer pacifieth wrath'.[95] Swearing the peace frequently did smooth the passage to amicable composition. In these cases, it was probably the pacifying influence of sureties, themselves vulnerable to financial penalty if the recognizance was forfeit, that prevailed. The coercive potential of the bond restrained several would-be pugilists. George Clayton, against whom the peace had been sworn by Richard Stapleton, could only threaten his opponent that 'if he were not bound, he would beat him'. Although the sureties for Thomas Rawlinson's good behaviour 'made great braggs that they would do much', the magistrate who had bound him over was confident that they would be 'tamer before he be released'.[96] Although 'a suddayne



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

falling out between the vicar of Plemstow and his neighbour' resulted in 'some bodily hurt', soon afterwards the two parties 'in verie loving manner reconcyled themselves' before two magistrates 'and did then become and do still continue perfect friends'. Two days before the sessions at which he had bound Roger Bennett to appear, George Barrett travelled to Adlington and released his opponent of a recognizance taken before Thomas Leigh. Ralph Rutter informed the bench that 'all quarrels controversies and unkyndnesses betwixt' him and John Malbon were 'ended, pacified and friended', and asked for the recognizance to be cancelled. Thomas Aston certified 'upon [his] creditt' that two of his tenants were agreed before the sessions. Henry Delves similarly certified that Thomas Waddington and his wife Elizabeth had composed their differences and that she had released him of the peace.[97] For those bound by magisterial discretion, the cooling-off period could be similarly effective: for 12 months after 'dissension and breach of the peace' in Middlewich had caused Thomas Venables to bind two quarrellers for their good behaviour, they had 'honestly and peaceably behaved themselves towards their neighbours and others with whom they had occasion to deal', and Venables released them without further action.[98] A substantial proportion of the recognizances were intended to precipitate this type of settlement. The number of recognizances which were released within a day or two of the coming sessions lends further weight to this argument. Of 244 recognizances to keep the peace towards a named party surviving in eight Cheshire quarter sessions files, at least 80 (30.5 per cent) were relaxed before the sessions at which the bound party was to appear.[99] Once an individual was made to appear, however, he was almost certain to be bound over for a further appearance. Almost two-thirds of all those who found sureties of either type were continued bound over, to allow tempers to cool.[100]

Sometimes, therefore, binding over was abused or manipulated by disingenuous adversaries to harass or intimidate their opponents; more frequently, it constrained the contentious or recalcitrant; quite regularly, it facilitated an arbitrated or negotiated settlement between parties in dispute; most often, it formed part of the litigation strategies of enemies seeking short-term advantage over one another. In all these circumstances, a recognizance might serve as a 'sword of Damocles' hanging over the head of a defendant, though its efficacy depended both upon the sharpness of the threat of forfeiture and upon the attitudes of sureties.[101] The public peace was not always kept, and in a society where governmental and judicial resources were unprofessional and relatively shallow, contention was the thin end of the wedge of malice, disorder and violence.



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

## Authority, arbitration and state formation

The divergent analyses of the 'conflict' and 'consensus' schools of thought on early modern English social relations are only, then, to be reconciled by an awareness that each reflects the ambiguities and ambivalences of a social reality: that whatever its claims, the state enjoyed no monopoly of violence in early modern England.[102] Such ambiguities had, of course, to be managed in practice. Hence the significance of binding over: it represented a way of mediating between the ideal of social harmony and the realities of social conflict. Its widespread use owed much to its marvellous flexibility. The very broad applicability of swearing the peace, and the subtly coercive potential of binding to the good behaviour, were precisely what made them attractive to contemporaries. In this regard, recognizances had three main merits. First, they shared several of the characteristics of formal action, even of coercion: they were in many ways as effective as a prosecution. Second, they could be highly sensitive to individual circumstances. Recognizances could be released easily and cheaply without loss of face and with the threat of further 'prosecution' unimpaired. Third, from the point of view of those in authority, they were a splendid instrument for defusing tension and encouraging restraint. It is not coincidental that historians of the administration of central government have made so much of recognizances as an innovative 'policy of financial terror' against the late medieval nobility; and of the Cromwellian regimes use of binding over by the 'commissioners for securing the peace of the commonwealth' in the 1650s.[103] In all these respects, swearing the peace was an almost infinitely adaptable apparatus of containment. Binding over curtailed head-on conflict and encouraged the 'civilising process', without itself bringing social and political relationships to crisis point.

Recognizances could, and often did, cope admirably with various forms of social tension. But bonds and their sureties also had a creative role to play in that they subtly reinforced the early modern obsession with order. In attempting to preclude the violent settlement of dispute, binding over injected public authority into the regular communion of conflict thus symbolically edging forward the boundaries of the state. Recognizances therefore illustrate the participatory nature of state formation in the English context. Social theorists have drawn attention to the increasing emphasis on 'civilisation', 'discipline', and the management of disorder in early modern Europe, suggesting that the initiative for 'normative pacification' lay with governors and with the state, and

that cultural values shifted under the pressure of constraint imposed 'from above'.[104] Such analyses arguably ignore, or at least overlook, the extent to which order and authority did not merely 'trickle down' but 'welled up' within society itself. In this sense, analysis of the experience of authority facilitates an understanding of the fashioning of the forms and processes of governance 'from below', especially by the 'honest' or 'better sort' of inhabitants of English parishes. The early modern English state in particular grew as structures of authority, especially those of the law and administration, were participated in, and experienced, by sections of the population at large. The central role of the middling sort in such participation and experience in the sixteenth and seventeenth centuries arguably prefigured later more structured developments in the transformation of the 'public sphere'.[105] In this sense, binding over provides an invaluable insight into the wider processes of social and political development in Elizabethan and early Stuart England. The very increase of governance meant that the recognizance was quite simply more available to the populace, especially those holding local wealth, power and influence, for their own purposes. For the governed as well as their governors, binding over restrained conflict without rechannelling it into other forms, and demonstrated that the law might be manipulated and adjusted to local needs. Arbitration was the most effective mechanism of adjustment, enabling the law to function as an instrument both of the state, to secure 'order', and of the individual and his or her community, to achieve 'settlement'. The often contradictory impulses of authority and amity could be reconciled precisely because, when dealing with recognizances, magistrates were required to arbitrate. Sir Richard Grosvenor was explicit on this point, enjoining his fellow magistrates to 'be a Chancellor rather than a Justice among your neighbours, who are tow apt to fale into contentions, and count it an honour if you can compose their differences and keep them from that pick-purse lawing … If your neighbours demand from you the peace against one another … before you grant it persuade and move them to a reconciliation; such an end will be lasting and begett heavenly peace.'[106] The practice of binding over is, therefore, one manifestation of the capacity of the Tudor and Stuart state to mould local society by providing it with an instrument of authority that served local social needs and yet simultaneously promoted the interests of government. As such, it served rather than challenged the existing power structures of society. The simple recognizance, that laconic, much neglected and undramatic instrument of law enforcement, was arguably crucial to the keeping of the public peace at every social level.



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

# Notes

The following abbreviations are used throughout the notes. Place of publication is London, unless otherwise stated.

| | |
|---|---|
| *AgHR* | *Agricultural History Review* |
| *AHEW* | Joan Thirsk (ed.), *The Agrarian History of England and Wales* |
| *AJLH* | *American Journal of Legal History* |
| *Albion's Fatal Tree* | Douglas Hay, Peter Linebaugh, John G. Rule, E.P. Thompson and Cal Winslow, *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England* (1975) |
| *APC* | J.R. Dasent (ed.), *Acts of the Privy Council 1577–1626* (31 vols, 1895–1938) |
| Baker (ed.), *Dyer's Reports* | J.H. Baker (ed.), *Reports From the Lost Notebooks of Sir James Dyer, Volume I* (Selden Society, 1994) |
| *BIHR* | *Bulletin of the Institute of Historical Research* |
| BL | British Library, London |
| Bodl. | Bodleian Library, Oxford |
| *C&C* | *Continuity and Change* |
| *CAR* | J.S. Cockburn (ed.), *Calendar of Assize Records: Home Circuit Indictments* (15 vols, 1975– ) |
| *CJH* | *Criminal Justice History* |
| Cockburn, *Assize Records: Introduction* | J.S. Cockburn (ed.), *Calendar of Assize Records: Home Circuit Indictments. Introduction* (1985) |
| CRO | Cheshire Record Office, Chester |
| *EcHR* | *Economic History Review* |
| *EHR* | *English Historical Review* |
| EYAS | East Yorkshire Archives Service, Hull |
| *Grosvenor Papers* | Richard Cust (ed.), *The Papers of Sir Richard Grosvenor, 1st Bart. (1585–1645)* (Record Society of Lancashire and Cheshire 134, 1996) |
| HEHL | Henry E. Huntington Library, San Marino, California |
| Hindle, 'The State & Local Society' | Steve Hindle, 'Aspects of the Relationship of the State and Local Society in Early Modern England, with Special Reference to Cheshire, c.1590–1630' (Unpublished Cambridge University PhD Thesis, 1993) |
| *HLQ* | *Huntington Library Quarterly* |
| *HJ* | *Historical Journal* |
| HMC | Historical Manuscripts Commission Reports |
| *HR* | *Historical Research* |
| *JBS* | *Journal of British Studies* |
| *MH* | *Midland History* |
| *NH* | *Northern History* |
| NUL | Nottingham University Library |





10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

| | |
|---|---|
| *P&P* | *Past and Present* |
| PC | Privy Council Registers |
| PRO | Public Record Office, London |
| *Proceedings in Parliament* | T.E. Hartley (ed.), *Proceedings in the Parliaments of Elizabeth* (3 vols, Leicester, 1981–95) |
| *Proceedings of Lancashire JPs* | B.W. Quintrell (ed.), *Proceedings of the Lancashire Justices of the Peace at the Sheriff's Table During the Assizes Week, 1578–1694* (Record Society of Lancashire and Cheshire 121, 1981) |
| *REED* | *Records of Early English Drama* |
| RO | Record Office |
| RSTC | Revised Short Title Catalogue (1986–92) |
| SCH | Studies in Church History |
| *SH* | *Social History* |
| *SRP I* | James F. Larkin and Paul L. Hughes (eds), *Stuart Royal Proclamations, Volume I: Royal Proclamations of King James I, 1603–1625* (Oxford, 1973) |
| *SRP II* | James F. Larkin (ed.), *Stuart Royal Proclamations, Volume II: Proclamations of King Charles I, 1625–1646* (Oxford, 1983) |
| *THSLC* | *Transactions of the Historical Society of Lancashire and Cheshire* |
| *TRHS* | *Transactions of the Royal Historical Society* |
| *TRP* | Paul L. Hughes and James F. Larkin (eds), *Tudor Royal Proclamations* (3 vols, 1964–9) |

## Chapter 1

1 CRO QJF 38/4/1. Cf. Bodl. MS Firth c.4, pp. 545–48. For the context, see Paul Slack, 'Books of Orders: The Making of English Social Policy, 1577–1631', *TRHS* 5th ser. 30 (1980), 19.

2 Cf. Keith Wrightson, 'The Enclosure of English Social History', reprinted in Adrian Wilson (ed.), *Rethinking Social History: English Society 1570–1920 and its Interpretation* (Manchester, 1993), p. 66; Patrick Collinson, '*De Republica Anglorum*: Or History with the Politics Put Back', reprinted in Collinson, *Elizabethan Essays* (1994), p. 14.

3 Collinson, '*De Republica Anglorum*', p. 14.

4 Anthony Fletcher, *Reform in the Provinces: The Government of Stuart England* (New Haven, Conn., 1986), pp. 116–42.

5 See Christopher Coleman and David Starkey (eds), *Revolution Reassessed: Revisions in the History of Tudor Government and Administration* (Oxford, 1986); S.J. Gunn, *Early Tudor Government, 1485–1558* (Basingstoke, 1995), pp. 1–22; and the essays which arose from the Royal Historical Society conference on 'The Eltonian Legacy'. See *TRHS* 6th ser. 7 (1997), 177–336.

6 G.R. Elton, 'Tudor Government: The Points of Contact', reprinted in Elton, *Studies in Tudor and Stuart Politics and Government, Volume III: Papers and Reviews 1973–1981* (Cambridge, 1983), pp. 3–57.

7 The most influential studies are Joel Hurstfield, 'County Government: Wiltshire, c.1530–1660', reprinted in Hurstfield, *Freedom, Corruption and Government in Elizabethan England* (1973), pp. 236–93; A.H. Smith, *County and Court: Government and Politics in Norfolk, 1558–1603* (Oxford, 1974);



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

128 PRO STAC 8/14/7, mm.30, 37v; Cogswell, *Home Divisons*, p. 226.
129 The following calculations are based upon Hindle, 'The State & Local Society', pp. 171–2.
130 Wrigley and Schofield, *The Population History of England*, pp. 216–17, 252; cf. Keith Thomas, 'Age and Authority in Early Modern England', *Proceedings of the British Academy* 62 (1976), 205–48; Adam Fox, 'Custom, Memory and the Authority of Writing', in Griffiths *et al*. (eds), *The Experience of Authority*, pp. 89–116.
131 Thomas, 'The Meaning of Literacy'.
132 Wood, 'The Place of Custom in Plebeian Political Culture', 47, 49.
133 PRO CHES 24/113/3, unfol.
134 PRO STAC 8/87/14, m.2; 8/52/16, m.3; 8/292/8, m.9; 8/288/16, mm.16, 19, 22.
135 PRO STAC 8/237/20, m.3; Wilcox, 'Lawyers & Litigants in Stuart England', 541.
136 PRO STAC 8/288/16; 8/313/42–3.
137 Ingram, 'Ridings, Rough Music & the "Reform of Popular Culture"'. Cf. Heal, *Hospitality in Early Modern England*, p. 13; Felicity Heal, 'Reputation and Honour in Court and Country: Lady Elizabeth Russell and Sir Thomas Hoby', *TRHS* 6th ser. 6 (1996), 169–75.

## Chapter 4

1 Cited in Knafla, *Law & Politics in Jacobean England*, pp. 108–9.
2 Collinson, 'The Cohabitation of the Faithful with the Unfaithful', p. 71.
3 Muldrew, 'The Culture of Reconciliation'.
4 Simon Roberts, *Order and Dispute* (Harmondsworth, 1979); Bossy (ed.), *Disputes & Settlements*.
5 Stone, *The Crisis of the Aristocracy*, p. 240; Michael Clanchy, 'Law and Love in the Middle Ages', in Bossy (ed.), *Disputes & Settlements*, p. 47.
6 Quoting the inhabitants of the Cheshire township of Calcott in 1605: CRO QJF 33/1/24.
7 Lawrence Stone, 'Interpersonal Violence in English Society, 1300–1980', *P&P* 101 (1983), 32; Stone, *The Family, Sex and Marriage in England, 1500–1800* (Oxford, 1977), pp. 95, 98.
8 J.M. Beattie, 'The Pattern of Crime in England, 1660–1800', *P&P* 62 (1974), 47–94; Beattie, *Crime and the Courts in England, 1660–1800* (Oxford, 1986), pp. 74–139, 400–49, 619–38; Wrightson and Levine, *Poverty & Piety*, pp. 110–41, 173–85; Wrightson, *English Society*, pp. 39–65, 149–82; J.A. Sharpe, '"Such Disagreement Betwyx Neighbours": Litigation and Human Relations in Early Modern England', in Bossy (ed.), *Disputes & Settlements*, pp. 186–7; Sharpe, 'The People & the Law', pp. 262–5; Sharpe, 'Debate: The History of Violence in England, Some Observations', *P&P* 108 (1985), 212–13.
9 Margaret Spufford, 'Puritanism and Social Control?', in Fletcher and Stevenson (eds), *Order & Disorder in Early Modern England*, p. 43; Cynthia B. Herrup, 'Crime, Law and Society: A Review Article', *Comparative Studies in Society and History* 27 (1985), 170.



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

10 Cynthia Herrup, 'Law and Morality in Seventeenth-Century England', *P&P* 106 (1985), 102–23; and Herrup, *The Common Peace*. Cf. Alan Macfarlane, *The Justice and the Mare's Ale: Law and Disorder in Seventeenth-Century England* (Cambridge, 1981), pp. 1–26, 173–99, quoting p. 194; Macfarlane, *The Culture of Capitalism* (Oxford, 1987), pp. 53–76.
11 Eamon Duffy, *The Stripping of the Altars: Traditional Religion in England, 1400–1580* (New Haven, Conn., 1992), p. 95.
12 W.G. Runciman, *A Treatise on Social Theory, Volume II: Substantive Social Theory* (Cambridge, 1989), p. 123.
13 See, e.g., Joel B. Samaha, 'The Recognizance in Elizabethan Law Enforcement', *AJLH* 25 (1981), 189–204; Norma Landau, *The Justices of the Peace, 1679–1760* (Berkeley, 1984), pp. 173–208; Ruth Paley (ed.), *Justice in Eighteenth-Century Hackney: The Justicing Notebook of Henry Norris and the Hackney Petty Sessions Book* (London Record Society 28, 1991), pp. xvi–xxii; Robert B. Shoemaker, *Prosecution and Punishment: Petty Crime and the Law in London and Rural Middlesex, c.1660–1725* (Cambridge, 1991), pp. 19–41, 95–126; Shoemaker, 'Using Quarter Sessions Records as Evidence For the Study of Crime and Criminal Justice', *Archives* 20 (1993), 145–57.
14 For treatments of disorder see most of the essays in three recent collections: Brewer and Styles (eds), *An Ungovernable People*; Paul Slack (ed.), *Rebellion, Popular Protest and the Social Order in Early Modern England* (Cambridge, 1984); Fletcher and Stevenson (eds), *Order & Disorder in Early Modern England*. The oustanding discussion of ideals of order is Wrightson, 'Two Concepts of Order'.
15 Quoting Edward Thompson, 'Folklore, Anthropology and Social History', *Indian Historical Review* 3 (1977), 255. For the violence debate itself, which has generally assumed rather than explained the link between litigation, violence and mentalities, see Macfarlane, *The Justice & the Mare's Ale*; J.A. Sharpe, 'Domestic Homicide in Early Modern England', *HJ* 24 (1981), 29–48; Stone, 'Interpersonal Violence'; J.M. Beattie, 'Violence and Society in Early Modern England', in A.N. Doob and E.L. Greenspan (eds), *Perspectives in Criminal Law: Essays in Honour of John Ll.J. Edwards* (Toronto, 1984), pp. 36–60; Sharpe and Stone: 'Debate: The History of Violence in England'; Beattie, *Crime & the Courts*, pp. 74–139; J.S. Cockburn, 'Patterns of Violence in English Society: Homicide in Kent 1560–1985', *P&P* 130 (1991), 70–106; and Susan Dwyer Amussen, 'Punishment, Discipline and Power: The Social Meanings of Violence in Early Modern England', *JBS* 34 (1995), 1–34.
16 See chapter 1 above.
17 For a brief summary, see Shoemaker, *Prosecution & Punishment*, pp. 25–7.
18 The best summaries of the history of binding over are in Matthew Hale, *Historia Placitorum Coronae: The History of the Pleas of the Crown* (1778), vol. I, p. 23 n.(n); and in Justice Avory's judgment in an action before King's Bench in 1914. See *Lansbury vs. Riley* [1914] 3 KB 229, pp. 235–7; and 34 Edward III, c.1 (1361). For contemporary legal commentators, see William Lambarde, *Eirenarcha: Or, Of the Office of the Justice of the Peace*, 7th edn (1592 [*RSTC* 15167]), pp. 189–205, 299–349; Michael Dalton, *The Countrey Justice Conteyning the Practise of the Justices of the Peace out of the Their Sessions* (1618 [*RSTC* 6205]), pp. 127–64; and William Blackstone, *Commentaries on the Laws of England*, new edn (1811), vol. IV, pp. 256ff, quoting p. 256.



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

19 G.L. Williams, 'Arrest for Breach of the Peace', *Criminal Law Review* (1954), 578; Law Commission (LAW COM. no. 222), *Binding Over: Report on a Reference under Section 3(1)(e) of the Law Commissions Act 1965* (HMSO Cm 2439, February 1994), pp. 4, 6, 30–1, 41.
20 This problem of 'legal pluralism' is addressed in Wrightson, 'Two Concepts of Order'; Amy L. Erickson, 'The Common Law *versus* Common Practice: The Use of Marriage Settlements in Early Modern England', *EcHR* 2nd ser. 43 (1990), 21–39; and Peter King, 'Gleaners, Farmers and the Failure of Legal Sanctions in England 1750–1850', *P&P* 125 (1989), 116–50.
21 The clearest, although not the fullest, treatment is Dalton, *The Countrey Justice*, pp. 127–64; but see also Lambarde, *Eirenarcha*, pp. 189–205, 299–349. The following critique draws largely on Dalton, citing Lambarde's conflicting interpretations where relevant.
22 Dalton, *The Countrey Justice*, p. 127.
23 Dalton, *The Countrey Justice*, p. 128.
24 Dalton, *The Countrey Justice*, pp. 128–9.
25 Dalton, *The Countrey Justice*, p. 130.
26 Dalton, *The Countrey Justice*, p. 130.
27 Dalton, *The Countrey Justice*, p. 131.
28 Dalton, *The Countrey Justice*, pp. 131–2. For the lawlessness of late Tudor aristocrats, see Stone, *The Crisis of the Aristocracy*, pp. 225–34. Cf. James, 'English Politics and the Concept of Honour', pp. 375–83.
29 Dalton, *The Countrey Justice*, p. 134.
30 Cf. Natalie Zemon Davis, 'The Rites of Violence: Religious Riot in Sixteenth-century France', reprinted in Davis, *Society and Culture in Early Modern France* (Stanford, 1975), p. 187. Oathtaking and perjury are neglected subjects, although preliminary discussions include Perez Zagorin, *Ways of Lying: Dissimulation, Persecution and Conformity in Early Modern Europe* (Cambridge, Mass., 1990); Zagorin, 'The Historical Significance of Lying and Dissimulation', *Social Research* 63 (1996), 863–912; John Spurr, 'Perjury, Profanity and Politics', *The Seventeenth Century* 8 (1993), 29–50; James C. Oldham, 'Truth-Telling in the Eighteenth-Century English Courtroom', *Law and History Review* 12 (1994), 95–121.
31 Dalton, *The Countrey Justice*, p. 141.
32 Dalton, *The Countrey Justice*, p. 158. Cf. Lambarde, *Eirenarcha*, p. 115, where the two sureties are virtually indistinguishable.
33 Dalton, *The Countrey Justice*, p. 158.
34 Dalton, *The Countrey Justice*, p. 159.
35 For an analysis of such petitions, see Hindle, 'The State & Local Society', pp. 243–52. Cf. Susan Amussen, *An Ordered Society: Gender and Class in Early Modern England* (Oxford, 1988), p. 166.
36 Dalton, *The Countrey Justice*, p. 160.
37 Dalton, *The Countrey Justice*, pp. 161–2.
38 The possibility that large numbers of agreed recognizances were never certified is raised in Landau, *Justices of the Peace*, pp. 184–90.
39 Beattie, *Crime & the Courts*, pp. 61–3; Shoemaker, *Prosecution & Punishment*, pp. 96–7 (table 5.1).
40 Shoemaker, *Prosecution & Punishment*, pp. 230–3 (esp. table 8.6).

41 Shoemaker, *Prosecution & Punishment*, p. 228.
42 Shoemaker, *Prosecution & Punishment*, pp. 93, 237.
43 Shoemaker, *Prosecution & Punishment*, p. 27.
44 Dorothy J. Clayton, 'Peace Bonds and the Maintenance of Law and Order in Late Medieval England', *BIHR* 58 (1985), 133–48; and Clayton, *The Administration of the County Palatine of Chester, 1442–85* (Manchester, 1990), pp. 240–1.
45 Clayton, *The Administration of the County Palatine*, pp. 242, 245.
46 Sharpe, *Crime in Seventeenth-Century England*, pp. 116–17.
47 Shoemaker, *Prosecution & Punishment*, p. 50.
48 Shoemaker, *Prosecution & Punishment*, pp. 96–7 (table 5.1).
49 G.P. Higgins, 'The Government of Early Stuart Cheshire', *NH* 12 (1976), 32–52; T.C. Curtis, 'Quarter Sessions Appearances and Their Background: A Seventeenth-Century Regional Study', in Cockburn (ed.), *Crime in England*, pp. 135–54.
50 Wrightson, ' The Politics of the Parish'.
51 The orders made by the Cheshire bench at the turn of the sixteenth century are CRO QJB 1/3, fols. 128, 164v; 1/4, fol. 7v; and Eaton Hall MS Grosvenor 2/32. For the modification of procedures in other counties, see Fletcher, *Reform in the Provinces*, pp. 89–90.
52 Based on an analysis of CRO QJB 1/2, fols. 162v–199v; 1/3; 1/4, fols. 1–20v.
53 Quoting (in turn) William Hunt, 'Spectral Origins of the English Revolution: Legitimation Crisis in Early Stuart England', in Eley and Hunt (eds), *Reviving the English Revolution*, p. 307; (Tim Curtis cited in) Fletcher, *Reform in the Provinces*, p. 81; and McIntosh, *A Community Transformed*, p. 2 n.2.
54 Wrightson and Levine, *Poverty & Piety*, p. 122.
55 Clayton, *The Administration of the County Palatine*, p. 261.
56 The relevant sessions files are CRO QJF 29/1–4; 31/1–4.
57 Shoemaker, *Prosecution & Punishment*, pp. 117, 277, 280–1. Donald Woodward, 'The Determination of Wage Rates in the Early Modern North of England', *EcHR* 2nd ser. 47 (1994), 40.
58 Cf. Donna T. Andrew, 'The Code of Honour and its Critics: The Opposition to Duelling in England, 1700–1850', *SH* 5 (1980), 434; Vic Gatrell, *The Hanging Tree: Execution and the English People, 1770–1868* (Oxford, 1994), pp. 225–41, and John Stevenson, 'An Unbroken Wave?', *HJ* 37 (1994), 695.
59 Wrightson and Levine, *Poverty & Piety*, p. 123.
60 The relationship between recognizances for the peace and indictments for assault is ambiguous, and it is far from clear that the ratio of recognizances to indictments for assault is meaningful. For what it is worth, the ratio in Essex (1620–80) appears to have been about 3:1, in Middlesex and Westminster (1661–1725) about 9:1, and in Cheshire (1610–19) about 14:1. These ratios are calculated from Sharpe, *Crime in Seventeenth-century England*, pp. 116–17; Shoemaker, *Prosecution & Punishment*, pp. 50, 130; and (Tim Curtis cited in) Fletcher, *Reform in the Provinces*, p. 81.
61 For a discussion of these related trends, see Hindle, 'The State & Local Society', pp. 243–72 For a micro-historical study of their investigation, see Steve Hindle, 'The Shaming of Margaret Knowsley: Gossip, Gender and



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle

the Experience of Authority in Early Modern England', *C&C* 9 (1994), 391–419.

62 Phillipa C. Maddern, *Violence and Social Order: East Anglia, 1422–42* (Oxford, 1992), p. 227.

63 Beattie, *Crime & the Courts*, p. 138. Cf. Macfarlane, *The Justice & the Mare's Ale*, pp. 185–9.

64 For a subtle and astute analysis of a not entirely dissimilar long-term attitudinal shift, see Keith Thomas, *Man and the Natural World: Changing Attitudes in England, 1500–1800* (1983).

65 CRO QJF 32/4/11; 26/3/23–24; 27/2/2; 29/1/35; 29/2/30; 30/3/26. The use of the legalistic terminology in this last example hints that petitioners often borrowed the legal formulae of recognizances in order to make their case more persuasive.

66 Quoting the petitioners soliciting magisterial intervention in a dispute in Waverton (Cheshire) in 1597. CRO QJF 27/2/44.

67 *Grosvenor Papers*, p. 41. Grosvenor's personal papers are replete with references to litigation, arbitration and reconciliation.

68 *Grosvenor Papers*, pp. 35–6.

69 See chapter 1 above.

70 *Grosvenor Papers*, p. 36.

71 CRO QJF 27/2/44. On the settlement of conflict as the primary social task of the ministry, see Bossy, 'Blood and Baptism'. For the ideals and mechanics of reconciliation, see Duffy, *The Stripping of the Altars*, pp. 94–5, 125–9.

72 Grosvenor here refers to privately chosen arbitrators (mediators) in this context. *Grosvenor Papers*, p. 2.

73 PRO CHES 38/28/7; Eaton Hall MS Grosvenor 2/2; CRO DVE Kinderton Manor Court Book 2/3, fols. 222–3.

74 CRO QJB 1/3, fols. 7, 56v, 270v; 1/4, fols. 168v–69.

75 CRO QJB 1/5, fol. 32.

76 CRO QJB 1/5, fol. 221.

77 CRO QJB 1/5, fols. 204, 85.

78 CRO QJB 1/5, fols. 121v, 122, 130v, 224v.

79 Clayton, *The Administration of the County Palatine*, p. 268; Shoemaker, *Prosecution & Punishment*, pp. 111, 113–14. Whether estreats were actually collected is another matter, and one rendered more problematic by the poor survival rate of sheriffs' accounts.

80 Thomas DeVeil, *Observations on the Practice of a Justice of the Peace* (1747), quoted in Shoemaker, *Prosecution & Punishment*, p. 113.

81 CRO QJF 32/4/5; 33/1/24; 32/4/5; 31/2/56v; PRO CHES 24/109/1/2, unfol. (warrant for the apprehension and good behaviour of Thomas Sale); PRO CHES 24/109/4/2, unfol. (petition of John Parker of Wigland); CRO QJF 33/3/82; 26/3/31; 32/3/99. Cf. the attitude of Thomas Holman quoted in Wrightson and Levine, *Poverty & Piety*, pp. 124–5.

82 Sharpe, '"Such Disagreement Betwyx Neighbours"', pp. 169–70. Cf. Paley (ed.), *Justice in Eighteenth-Century Hackney*, pp. xxix–xxx. For a full-scale study of malice at law in the later period, see Douglas Hay, 'Prosecution and Power: Malicious Prosecution in the English Courts, 1750–1850', in Douglas Hay and Frances Snyder (eds), *Policing and Prosecution in Britain, 1750–1850* (Oxford, 1989), pp. 343–95.

83 Shoemaker, *Prosecution & Punishment*, p. 117.
84 *Grosvenor Papers*, p. 37. This concern with judicial extortion long pre-dates the mercenary activities of trading justices. Cf. Landau, *Justices of the Peace*, pp. 184–6.
85 CRO QJF 27/2/43; 31/2/67; 29/3/18; 32/4/4; QJB 1/5, fol. 51.
86 CRO QJF 33/1/24; 26/4/20.
87 *Grosvenor Papers*, p. 37.
88 Dalton, *The Countrey Justice*, p. 131.
89 Dalton, *The Countrey Justice*, p. 131.
90 *Grosvenor Papers*, p. 9.
91 PRO STAC 8/288/16, mm.35, 16.
92 Cf. Douglas Hay, 'Property, Authority and the Criminal Law', in *Albion's Fatal Tree*, p. 29. Oldham, 'Truth-telling in the Eighteenth-Century English Courtroom', 103 suggests that by the eighteenth century oathtaking was largely ritualistic and that prosecution for perjury was a 'largely impotent threat'.
93 CRO QJB 1/5, fols. 424v–25.
94 *Grosvenor Papers*, pp. 35–6.
95 *Grosvenor Papers*, p. 36, an allusion to Solomon in Proverbs 15:1.
96 CRO QJF 40/1/21; 27/1/30. Cf. the attitude of John Vincent quoted in Herrup, *The Common Peace*, p. 88.
97 PRO CHES 24/112/1, unfol. (petition of John Batteriche of Barrow); CRO QJF 24/2/47; 26/4/26; 27/1/30; 28/3/23. For printed examples of such agreements, see Paley (ed.), *Justice in Eighteenth-Century Hackney*, pp. 6 (no. 26), 47 (no. 260), 48 (no. 267), 52 (no. 291).
98 CRO QJF 25/2/43.
99 The sessions files on which these calculations are based are CRO QJF 29/1–4; 31/1–4.
100 This would suggest that the party who had sworne the peace would almost always prefer to release his opponent locally before the nearest resident magistrate rather than attend a distant quarter sessions. Of the 4,120 individuals who stood bound in the period 1590–1609, 1,549 (38 per cent) were released at each sessions. Cf. the view that 'most of the recognizances entered at the [East Sussex] Quarter Sessions were discharged without further action'. Herrup, *The Common Peace*, p. 88.
101 Cf. Herrup, *The Common Peace*, p. 88.
102 This Weberian definition of the state is arguably implicit in the notion of the King's peace. Those bound by recognizance were expected to keep the peace to 'the King and all his liege people'. See Dalton, *The Countrey Justice*, p. 127; and the legal *formulae* for Jacobean recognizances surviving as CRO QJF 32/1/55. On Weber's definition, see R. Axtmann, 'The Formation of the Modern State: A Reconstruction of Max Weber's Arguments', *History of Political Thought* 11:2 (1990), 295–311.
103 See S.B. Chrimes, *Henry VII* (1972), pp. 212–16; J.R. Lander, 'Bonds, Coercion and Fear: Henry VII and the Peerage', in Lander, *Crown and Nobility, 1450–1509* (1976), pp. 267–300; Williams, *The Tudor Regime* (Oxford, 1979), pp. 393–4; and Morrill, *Cheshire*, pp. 280–3; Underdown, *Revel, Riot & Rebellion*, pp. 199–206; John Sutton, 'Cromwell's Commissioners for Preserving the Peace of the Commonwealth: A Staffordshire Case Study', in

Ian Gentles, John Morrill and Blair Worden (eds), *Soldiers, Writers and Statesmen of the English Revolution* (Cambridge, 1998), pp. 151–82.

104 In different ways, the works of Elias on manners, on Foucault on surveillance and of Bakhtin on Rabelasian carnival converge in a portrait of the mechanics of the enforcement of 'cultural order'. Norbert Elias, *The Civilising Process: Sociogenetic and Psychogenetic Investigations, Volume 2: State Formation and Civilisation* ([1939] English trans., Oxford, 1982); Michel Foucault, *Discipline and Punish* ([1975] English trans., Harmondsworth, 1979); Mikhail Bakhtin, *Rabelais and His World* ([1965] English trans., Bloomington, 1984). For a treatment of some of these themes, see Peter Burke, *History and Social Theory* (Cambridge, 1992), pp. 147–58.

105 See chapters 8 and 9 below.

106 *Grosvenor Papers*, p. 37.

## Chapter 5

1 *Grosvenor Papers*, p. 8.

2 J.A. Sharpe, '"Last Dying Speeches": Religion, Ideology and Public Execution in Seventeenth-Century England', *P&P* 107 (1985), 144–67; Archer, *The Pusuit of Stability*, p. 219.

3 Cockburn, *A History of English Assizes*, p. 3.

4 Barnabe Barnes, *Foure Bookes of Offices* (1606 [*RSTC* 1468]), p. 142; James Spedding (ed.), *The Letters and Life of Francis Bacon* (7 vols, 1861–74), VI, 211; NUL Mi O16/6.

5 J.A. Sharpe, *Crime in Early Modern England, 1550–1750* (1984), p. 54.

6 Cockburn, 'The Nature & Incidence of Crime'; Cockburn, *Assize Records: Introduction*; Archer, *The Pursuit of Stability*, pp. 245–8.

7 Sharpe, *Crime in Early Modern England,* p. 55.

8 Cockburn, 'The Nature & Incidence of Crime', p. 67.

9 These figures are calculated from Cockburn, *Assize Records: Introduction*, pp. 182–97.

10 Archer, *The Pursuit of Stability*, p. 208. For the distinction that follows, see Lawson, 'Property Crime & Hard Times', 102.

11 Cockburn, *A History of English Assizes*, p. 101.

12 Lenman & Parker, 'The State, the Community & the Criminal Law'.

13 Wrightson, 'Two Concepts of Order'. Cf. J.A. Sharpe, 'Enforcing the Law in the Seventeenth-Century English Village', in Gatrell *et al*. (eds), *Crime & the Law*, pp. 97–119; and chapter 6 below.

14 Cockburn, *Assize Records: Introduction*, pp. 31–2.

15 Cockburn, *Assize Records: Introduction*, pp. 24, 68–9, 111–12.

16 Cockburn, *Assize Records: Introduction*, pp. 115–20, 130.

17 Cockburn, *Assize Records: Introduction*, p. 125.

18 Philip Jenkins, 'From Gallows to Prison? The Execution Rate in Early Modern England', *CJH* 7 (1986), 52.

19 Sharpe, 'Last Dying Speeches'; J.A. Sharpe, *Judicial Punishment in England* (1990), pp. 31–5.

20 Williams, *The Tudor Regime*, pp. 359–60; James, 'English Politics & the Concept of Honour', p. 358; Lawson, 'Lawless Juries?', pp. 147–48.



10.1057/9780230288461 - The State and Social Change in Early Modern England, 1550-1640, Steve Hindle